# Colorado Revised Statutes 2018

# TITLE 39

TAXATION

**PROPERTY TAX**

**General and Administrative**

**Editor's note:** Articles 1 to 4, part 1 of article 5, and articles 6 to 12 of this title were numbered as articles 1 to 12 of chapter 137, C.R.S. 1963. These articles and part 1 were repealed and reenacted in 1964, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to these articles and part 1 prior to 1964, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

## ARTICLE 1

General Provisions

**Cross references:** For the constitutional provisions establishing the maximum rate of taxation on property, see § 11 of article X of the state constitution; for the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

**39-1-101. Legislative declaration.** The general assembly declares that its purpose in enacting articles 1 to 13 of this title is to exercise the authority granted in section 3 of article X of the state constitution wherein it is provided, among other things, that "the actual value of all real and personal property not exempt from taxation under this article shall be determined under general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessment of all real and personal property not exempt from taxation under this article". It further declares that it intends to fix the percentage of such determined actual value at which all such property shall be assessed for taxation. It further declares that the actual value of certain classes of real property may not be able to be determined after appropriate consideration of the three approaches to value; therefore, it is incumbent upon the general assembly to provide for a means to determine the actual value of such taxable property, and, to effect this result, the general assembly hereby finds and declares that, when appropriate consideration of the three approaches to value fails to derive an actual value for such property, the actual value of such property shall be determined by comparison of the surface use of such property to property with a similar surface use. It further declares that the actual value of nonproducing oil, gas, and oil and gas mineral interests shall be determined by the income

approach capitalizing annual net rental income at an appropriate market rate. To these ends, the provisions of said articles shall be strictly construed.

**Source: L. 64:** R&RE, p. 675, § 1. **C.R.S. 1963:** § 137-1-2. **L. 83:** Entire section amended, p. 1480, § 1, effective April 22. **L. 85:** Entire section amended, p. 1209, § 1, effective May 9.

**39-1-101.5. Legislative declaration - taxpayer rights.** The general assembly hereby finds and declares that section 3 of article X of the state constitution was approved in 1982 by the voters of Colorado in order to ensure the fair and uniform valuation for assessment of real and personal property located in Colorado; that, since the adoption of said constitutional amendment, the property tax system in Colorado has developed into an impersonal system which is more concerned with the mechanisms to levy and collect such property tax than with the fair and courteous treatment of the owners of real and personal property who pay such tax; that the purpose of the property tax system is to raise revenues to be used for purposes which benefit the citizens of Colorado, including such property owners; that property owners accept their civic responsibility to pay their fair share of taxes to be used for such purposes; that all levels of government involved in the property tax system should recognize that they exist to serve their citizens; and that the owners of real and personal property should be accorded the respect and courtesy which they deserve and should be provided such services which are necessary to assist them in complying with the property tax laws of this state.

**Source: L. 88:** Entire section added, p. 1276, § 1, effective January 1, 1989.

**39-1-102. Definitions.** As used in articles 1 to 13 of this title 39, unless the context otherwise requires:

(1) "Administrator" means the property tax administrator.

(1.1) "Agricultural and livestock products" means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture.

(1.3) "Agricultural equipment which is used on the farm or ranch in the production of agricultural products":

(a) Means any personal property used on a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, for planting, growing, and harvesting agricultural products or for raising or breeding livestock for the primary purpose of obtaining a monetary profit; and

(b) Includes:

(I) Any mechanical system used on the farm or ranch for the conveyance and storage of animal products in a raw or unprocessed state, regardless of whether or not such mechanical system is affixed to real property; and

(II) Silviculture personal property that is designed, adapted, and used for the planting, growing, maintenance, or harvesting of trees in a raw or unprocessed state.

(1.6) (a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(I) (A) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) shall not include two acres or less of land on which a residential improvement is located unless the improvement is integral to an agricultural operation conducted on such land. "Agricultural land" also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation. The use of a portion of such land for hunting, fishing, or other wildlife purposes, for monetary profit or otherwise, shall not affect the classification of agricultural land. For purposes of this subparagraph (I), a parcel of land shall be "in the process of being restored through conservation practices" if: The land has been placed in a conservation reserve program established by the natural resources conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

(B) A residential improvement shall be deemed to be "integral to an agricultural operation" for purposes of sub-subparagraph (A) of this subparagraph (I) if an individual occupying the residential improvement either regularly conducts, supervises, or administers material aspects of the agricultural operation or is the spouse or a parent, grandparent, sibling, or child of the individual.

(II) A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsections (3.5) and (13.5) of this section. "Agricultural land" under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land.

(III) A parcel of land that consists of at least eighty acres, or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement, if such land was classified by the assessor as agricultural land under subparagraph (I) or (II) of this paragraph (a) at the time such easement was granted, if the grant of the easement was to a qualified organization, if the easement was granted exclusively for conservation purposes, and if all current and contemplated future uses of the land are described in the conservation easement. "Agricultural land" under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or nonagricultural residential purposes.

(IV) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, if the owner of the land has a decreed right to appropriated water granted in accordance with article 92 of title 37, C.R.S., or a final permit to appropriated groundwater granted in accordance with article 90 of title 37, C.R.S., for purposes

other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land;

(V) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that has been reclassified from agricultural land to a classification other than agricultural land and that met the definition of agricultural land as set forth in subparagraphs (I) to (IV) of this paragraph (a) during the three years before the year of assessment. For purposes of this subparagraph (V), the parcel of land need not have been classified or eligible for classification as agricultural land during the ten years preceding the year of assessment as required by subparagraph (I) of this paragraph (a).

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), all other agricultural property that does not meet the definition set forth in paragraph (a) of this subsection (1.6) shall be classified as all other property and shall be valued using appropriate consideration of the three approaches to appraisal based on its actual use on the assessment date.

(II) On and after January 1, 2015, "all other agricultural property" includes greenhouse and nursery production areas used to grow food products, agricultural products, or horticultural stock for wholesale purposes only that originate above the ground.

(c) An assessor must determine, based on sufficient evidence, that a parcel of land does not qualify as agricultural land, as defined in subparagraph (IV) of paragraph (a) of this subsection (1.6), before land may be changed from agricultural land to any other classification.

(d) Notwithstanding any other provision of law to the contrary, property that is used solely for the cultivation of medical marijuana shall not be classified as agricultural land.

(2) "Assessor" means the elected assessor of a county, or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(2.5) "Bed and breakfast" means an overnight lodging establishment, whether owned by a natural person or any legal entity, that is a residential dwelling unit or an appurtenance thereto, in which the innkeeper resides, or that is a building designed but not necessarily occupied as a single family residence that is next to, or directly across the street from, the innkeeper's residence, and in either circumstance, in which:

(a) Lodging accommodations are provided for a fee;

(b) At least one meal per day is provided at no charge other than the fee for the lodging accommodations; and

(c) There are not more than thirteen sleeping rooms available for transient guests.

(3) "Board" means the board of assessment appeals.

(3.1) "Commercial lodging area" means a guest room or a private or shared bathroom within a bed and breakfast that is offered for the exclusive use of paying guests on a nightly or weekly basis. Classification of a guest room or a bathroom as a "commercial lodging area" shall be based on whether at any time during a year such rooms are offered by an innkeeper as nightly or weekly lodging to guests for a fee. Classification shall not be based on the number of days that such rooms are actually occupied by paying guests.

(3.2) "Conservation purpose" means any of the following purposes as set forth in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended:

(a) The preservation of land areas for outdoor recreation, the education of the public, or the protection of a relatively natural habitat for fish, wildlife, plants, or similar ecosystems; or

(b) The preservation of open space, including farmland and forest land, where such preservation is for the scenic enjoyment of the public or is pursuant to a clearly delineated federal, state, or local government conservation policy and where such preservation will yield a significant public benefit.

(3.5) "Farm" means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit.

(4) "Fixtures" means those articles which, although once movable chattels, have become an accessory to and a part of real property by having been physically incorporated therein or annexed or affixed thereto. "Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting, and plumbing of such building. "Fixtures" does not include machinery, equipment, or other articles related to a commercial or industrial operation which are affixed to the real property for proper utilization of such articles. In addition, for property tax purposes only, "fixtures" does not include security devices and systems affixed to any residential improvements, including but not limited to security doors, security bars, and alarm systems.

(4.3) "Forest land" means land of which at least ten percent is stocked by forest trees of any size and includes land that formerly had such tree cover and that will be naturally or artificially regenerated. "Forest land" includes roadside, streamside, and shelterbelt strips of timber which have a crown width of at least one hundred twenty feet. "Forest land" includes unimproved roads and trails, streams, and clearings which are less than one hundred twenty feet wide.

(4.4) "Forest management plan" means an agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of such forest land through use of forest management practices and which has been either executed between the owner of forest land and the Colorado state forest service or executed between the owner of forest land and a professional forester and has been reviewed and has received a favorable recommendation from the Colorado state forest service. The Colorado forest service shall annually inspect each parcel of land subject to a forest management plan to determine if the terms and conditions of such plan are being complied with and shall report by March 1 of each year to the assessor in each affected county the legal descriptions of the properties and the names of their owners that are eligible for the agricultural classification. The report shall also contain the legal descriptions of those properties and the names of their owners that no longer qualify for the agricultural classification because of noncompliance with their forest management plans. No property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service. The Colorado state forest service shall charge a fee for the inspection of each parcel of land in such amount for the reasonable costs incurred by the Colorado state forest service in conducting such inspections. Such fee shall be paid by the owner of such land prior to such inspection. Any fees collected pursuant to this subsection (4.4) shall be subject to annual appropriation by the general assembly.

(4.5) "Forest management practices" means practices accepted by professional foresters which control forest establishment, composition, density, and growth for the purpose of producing forest products and associated amenities following sound business methods and technical forestry principles.

(4.6) "Forest trees" means woody plants which have a well-developed stem or stems, which are usually more than twelve feet in height at maturity, and which have a generally well-defined crown.

(5) Repealed.

(5.5) (a) "Hotels and motels" means improvements and the land associated with such improvements that are used by a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public and that are predominantly used on an overnight or weekly basis; except that "hotels and motels" does not include:

(I) A residential unit, except for a residential unit that is a hotel unit;

(II) A residential unit that would otherwise be classified as a hotel unit if the residential unit is held as inventory by a developer primarily for sale to customers in the ordinary course of the developer's trade or business, is marketed for sale by the developer, and either has been held by the developer for less than two years since the certificate of occupancy for the residential unit has been issued or is not depreciated under the internal revenue code, as defined in section 39-22-103 (5.3), while owned by the developer; or

(III) A residential unit that would otherwise be classified as a hotel unit if the residential unit has been acquired by a lender or an owners' association through foreclosure, a deed in lieu of foreclosure, or a similar transaction, is marketed for sale by the lender or owners' association and is not depreciated under the internal revenue code, as defined in section 39-22-103 (5.3), while owned by the lender or owners' association.

(IV) Repealed.

(b) If any time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit is owned by any non-hotel unit owner, then, unless a declaration or other express agreement binding on the non-hotel unit owners and the hotel unit owners provides otherwise:

(I) The hotel unit owners shall pay the taxes on the hotel unit not required to be paid by the non-hotel unit owners pursuant to subparagraph (II) of this paragraph (b).

(II) Each non-hotel unit owner shall pay that portion of the taxes on the hotel unit equal to the non-hotel unit owner's ownership or usage percentage of the hotel unit multiplied by the property tax that would have been levied on the hotel unit if the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit was residential real property.

(III) For purposes of determining the amount due from any hotel unit owner or non-hotel unit owner pursuant to subparagraph (II) of this paragraph (b), the assessor shall, upon the request of any hotel unit owner or non-hotel unit owner, calculate the property tax that would have been levied on the hotel unit if the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit were residential real property. A hotel unit owner or non-hotel unit owner may petition the county board of equalization for review of the assessor's calculation pursuant to the procedures set forth in section 39-10-114. Any appeal from the decision of the county board shall be governed by section 39-10-114.5.

(c) As used in this subsection (5.5):

(I) "Condominium unit" means a unit, as defined in section 38-33.3-103 (30), C.R.S., and also includes a time share unit.

(II) "Hotel unit owners" means any person or member of a group of related persons whose ownership and use of a residential unit cause the residential unit to be classified as a hotel unit.

(III) "Hotel units" means more than four residential unit ownership equivalents in a project that are owned, in whole or in part, directly, or indirectly through one or more

intermediate entities, by one person or by a group of related persons if the person or group of related persons uses the residential units or parts thereof in connection with a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public predominantly on an overnight or weekly basis. "Hotel unit" means any residential unit included in hotel units. For purposes of this subparagraph (III):

(A) "Control" means the power to direct the business or affairs of an entity through direct or indirect ownership of stock, partnership interests, membership interests, or other forms of beneficial interests.

(B) "Related persons" means individuals who are members of the same family, including only spouses and minor children, or persons who control, are controlled by, or are under common control with each other. Persons are not related persons solely because they engage a common agent to manage or rent their residential units, they are members of an owners' association or similar group, they enter into a tenancy in common or a similar agreement with respect to undivided interests in a residential unit, or any combination of the foregoing.

(IV) "Project" means one or more improvements that contain residential units if the boundaries of the residential units are described in or determined by the same declaration, as defined in section 38-33.3-103 (13), C.R.S.

(V) "Residential unit" means a condominium unit, a single family residence, or a townhome.

(VI) "Non-hotel unit owner" means any owner of a time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit who is not a hotel unit owner with respect to the hotel unit.

(VII) "Residential unit ownership equivalent" means:

(A) In the case of time share units, time share interests or time share use periods in one or more time share units that in the aggregate entitle the owner of such time share interests or time share use periods to three hundred sixty-five days of use in any calendar year or three hundred sixty-six days of use in any calendar year that is a leap year; and

(B) In the case of residential units other than time share units, undivided interests or other ownership interests in one or more such residential units that total one hundred percent. For purposes of this sub-subparagraph (B), any undivided interest or other ownership interest not stated in terms of a percentage of total ownership shall be converted to a percentage of total ownership based on the rights accorded to the holder of the undivided interest or other ownership interest.

(VIII) "Time share unit" means a condominium unit that is divided into time share estates as defined in section 38-33-110 (5), C.R.S., or that is subject to a time share use as defined in section 12-61-401 (4), C.R.S.

(5.6) "Hotels and motels" as defined in subsection (5.5) of this section shall not include bed and breakfasts.

(6) "Household furnishings" means that personal property, other than fixtures, in residential structures and buildings which is not used for the production of income at any time.

(6.3) "Improvements" means all structures, buildings, fixtures, fences, and water rights erected upon or affixed to land, whether or not title to such land has been acquired.

(6.8) "Independently owned residential solar electric generation facility" means personal property that:

(a) Is located on residential real property;

(b) Is owned by a person other than the owner of the residential real property;

(c) Is installed on the customer's side of the meter;

(d) Is used to produce electricity from solar energy primarily for use in the residential improvements located on the residential real property; and

(e) Has a production capacity of no more than one hundred kilowatts.

(7) (Deleted by amendment, L. 2010, (HB 10-1267), ch. 425, p. 2198, § 1, effective August 11, 2010.)

(7.1) "Innkeeper" means the owner, operator, or manager of a bed and breakfast.

(7.2) "Inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale" means those classes of personal property which are held primarily for sale by a business, farm, or ranch, including components of personal property to be held for sale, or which are held for consumption by a business, farm, or ranch, or which are rented for thirty days or less. For the purposes of this subsection (7.2), "personal property rented for thirty days or less" means personal property rented for thirty days or less which can be returned at the option of the person renting the property, in a transaction on which the sales or use tax is actually collected before being finally sold, whether or not such personal property is subject to depreciation. It is the purpose of the general assembly to exempt "personal property rented for thirty days or less" from property tax because of the similarity of such property to inventories of merchandise held by retail stores. Further, the general assembly intends this exemption to encompass a transaction under a rental agreement in which the customer pays rent in order to use an item for a brief period of time; it is not intended to encompass an equipment lease contract covering a specific period of time and which includes financial penalties for early cancellation. Except for "personal property rented for thirty days or less", the term "inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale" does not include personal property which is held for rent or lease or is subject to an allowance for depreciation. For property tax years commencing on or after January 1, 1984, the term does include inventory which is owned by and which is in the possession of the manufacturer of such inventory unless:

(a) Such inventory is in the possession of the manufacturer after having previously been leased by the manufacturer to a customer; and

(b) Such manufacturer has not designated such inventory for scrapping, substantial reconditioning, renovating, or remanufacturing in accordance with its customary practices. For the purposes of this paragraph (b), normal maintenance shall not constitute substantial reconditioning, renovating, or remanufacturing.

(7.5) Repealed.

(7.7) "Livestock" includes all animals.

(7.8) "Manufactured home" means any preconstructed building unit or combination of preconstructed building units that:

(a) Includes electrical, mechanical, or plumbing services that are fabricated, formed, or assembled at a location other than the residential site of the completed home;

(b) Is designed and used for residential occupancy in either temporary or permanent locations;

(c) Is constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., as amended;

(d) Does not have motive power;

(e) Is not licensed as a vehicle; and

(f) Is eligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S.

(7.9) "Minerals in place" means, without exception, metallic and nonmetallic mineral substances of every kind while in the ground.

(8) "Mobile home" means a manufactured home built prior to the adoption of the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., as amended.

(8.3) "Modular home" means any preconstructed factory-built building that:

(a) Is ineligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S.;

(b) Is not constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., as amended; and

(c) Is constructed in compliance with building codes adopted by the division of housing in the department of local affairs.

(8.4) "Natural cause" means fire, explosion, flood, tornado, action of the elements, act of war or terror, or similar cause beyond the control of and not caused by the party holding title to the property destroyed.

(8.5) "Not for private gain or corporate profit" means the ownership and use of property whereby no person with any connection to the owner thereof shall receive any pecuniary benefit except for reasonable compensation for services rendered and any excess income over expenses derived from the operation or use of the property and all proceeds from the sale of the property of the owner shall be devoted to the furthering of any exempt purpose.

(8.7) "Perpetual conservation easement" means a conservation easement in gross, as described in article 30.5 of title 38, C.R.S., that qualifies as a perpetual conservation restriction pursuant to section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any regulations issued thereunder.

(9) "Person" means natural persons, corporations, partnerships, limited liability companies, associations, and other legal entities which are or may become taxpayers by reason of the ownership of taxable real or personal property.

(10) "Personal effects" means such personal property as is or may be worn or carried on or about the person, and such personal property as is usually associated with the person or customarily used in personal hobby, sporting, or recreational activities and which is not used for the production of income at any time.

(11) "Personal property" means everything that is the subject of ownership and that is not included within the term "real property". "Personal property" includes machinery, equipment, and other articles related to a commercial or industrial operation that are either affixed or not affixed to the real property for proper utilization of such articles. Except as otherwise specified in articles 1 to 13 of this title, any pipeline, telecommunications line, utility line, cable television line, or other similar business asset or article installed through an easement, right-of-way, or leasehold for the purpose of commercial or industrial operation and not for the enhancement of real property shall be deemed to be personal property, including, without limitation, oil and gas distribution and transmission pipelines, gathering system pipelines, flow lines, process lines, and related water pipeline collection, transportation, and distribution systems. Structures and other buildings installed on an easement, right-of-way, or leasehold that are not specifically referenced in this subsection (11) shall be deemed to be improvements pursuant to subsection (6.3) of this section.

(12) "Political subdivision" means any entity of government authorized by law to impose ad valorem taxes on taxable property located within its territorial limits.

(12.1) Repealed.

(12.3) and (12.4) Repealed.

(12.5) "Professional forester" means any person who has received a bachelor's or higher degree from an accredited school of forestry.

(13) "Property" means both real and personal property.

(13.2) "Qualified organization" means a qualified organization as defined in section 170 (h)(3) of the federal "Internal Revenue Code of 1986", as amended.

(13.5) "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

(14) "Real property" means:

(a) All lands or interests in lands to which title or the right of title has been acquired from the government of the United States or from sovereign authority ratified by treaties entered into by the United States, or from the state;

(b) All mines, quarries, and minerals in and under the land, and all rights and privileges thereunto appertaining; and

(c) Improvements.

(14.3) "Residential improvements" means a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families. The term includes buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use. The term also includes a manufactured home as defined in subsection (7.8) of this section, a mobile home as defined in subsection (8) of this section, and a modular home as defined in subsection (8.3) of this section.

(14.4) (a) "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term includes land upon which residential improvements were destroyed by natural cause after the date of the last assessment as established in section 39-1-104 (10.2). The term also includes two acres or less of land on which a residential improvement is located where the improvement is not integral to an agricultural operation conducted on such land. The term does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified, except as provided for in section 39-1-103 (10.5).

(b) (I) Notwithstanding section 39-1-103 (5)(c) and except as provided in subparagraph (II) of this paragraph (b), when residential improvements are destroyed, demolished, or relocated as a result of a natural cause on or after January 1, 2010, that, were it not for their destruction, demolition, or relocation due to such natural cause, would have qualified the land upon which the improvements were located as residential land for the following property tax year, the residential land classification shall remain in place for the year of destruction, demolition, or relocation and the two subsequent property tax years. The residential land classification may remain in place for additional subsequent property tax years, not to exceed a total of five

subsequent property tax years, if the assessor determines there is evidence the owner intends to rebuild or locate a residential improvement on the land. For purposes of this determination, the assessor may consider, but shall not be limited to considering, a building permit or other land development permit for the land, construction plans for such residential improvement, efforts by the owner to obtain financing for a residential improvement, or ongoing efforts to settle an insurance claim related to the destruction, demolition, or relocation of the residential improvement due to a natural cause.

(II) The residential land classification of the land described in subparagraph (I) of this paragraph (b) shall change according to current use if:

(A) A new residential improvement or part of a new residential improvement is not constructed or placed on the land in accordance with applicable land use regulations prior to the January 1 after the period described in subparagraph (I) of this paragraph (b), unless the property owner provides documentary evidence to the assessor that during such period a good-faith effort was made to construct or place a new or part of a new residential improvement on the land but that additional time is necessary;

(B) The assessor determines that the classification at the time of destruction, demolition, or relocation as a result of a natural cause was erroneous; or

(C) A change of use has occurred. For purposes of this sub-subparagraph (C), a change of use shall not include the temporary loss of the residential use due to the destruction, demolition, or relocation as a result of a natural cause of the residential improvement.

(c) (I) Notwithstanding section 39-1-103 (5)(c) and except as provided in subsection (14.4)(c)(II) of this section, when residential improvements are destroyed, demolished, or relocated on or after January 1, 2018, that, were it not for their destruction, demolition, or relocation, would have qualified the land upon which the improvements were located as residential land for the following property tax year, the residential land classification shall remain in place for the year of destruction, demolition, or relocation and one subsequent property tax year if the assessor determines there is evidence that the owner intends to rebuild or locate a residential improvement on the land. For purposes of this determination, the assessor may consider, but is not limited to considering, a building permit or other land development permit for the land, construction plans for such residential improvement, or efforts by the owner to obtain financing for a residential improvement.

(II) The residential land classification of the land described in subsection (14.4)(c)(I) of this section shall change according to current use if:

(A) A new residential improvement or part of a new residential improvement is not constructed or placed on the land in accordance with applicable land use regulations prior to the January 1 after the period described in subsection (14.4)(c)(I) of this section;

(B) The assessor determines that the classification of the land at the time of the destruction, demolition, or relocation was erroneous; or

(C) A change of use has occurred. For purposes of this subsection (14.4)(c)(II)(C), a change of use shall not include the temporary loss of the residential use due to the destruction, demolition, or relocation of the residential improvement.

(14.5) "Residential real property" means residential land and residential improvements but does not include hotels and motels as defined in subsection (5.5) of this section.

(15) Repealed.

(15.5) (a) "School" means:

(I) An educational institution having a curriculum comparable to that of a publicly supported elementary or secondary school or college, or any combination thereof, and requiring daily attendance; or

(II) An institution that is licensed as a child care center pursuant to article 6 of title 26, C.R.S., that is:

(A) Operated by and as an integral part of a not-for-profit educational institution that meets the requirements of subparagraph (I) of this paragraph (a); or

(B) A not-for-profit institution that offers an educational program for not more than six hours per day and that employs educators trained in preschool through eighth grade educational instruction and is licensed by the appropriate state agency and that is not otherwise qualified as a school under this paragraph (a) or as a religious institution.

(b) "School" includes any educational institution that meets the requirements set forth in subparagraph (I) or (II) of paragraph (a) of this subsection (15.5), even if such educational institution maintains hours of operation in excess of the minimum hour requirements of section 22-32-109 (1)(n)(I), C.R.S.

(16) "Taxable property" means all property, real and personal, not expressly exempted from taxation by law.

(17) "Treasurer" means the elected treasurer of a county or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(18) "Works of art" means those items of personal property that are original creations of visual art, including, but not limited to:

(a) Sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic;

(b) Paintings or drawings;

(c) Mosaics;

(d) Photographs;

(e) Crafts made from clay, fiber and textiles, wood, metal, plastics, or any other material, or any combination thereof;

(f) Calligraphy;

(g) Mixed media composed of any combination of forms or media; or

(h) Unique architectural embellishments.

**Source: L. 64:** R&RE, p. 674, § 1. **C.R.S. 1963:** § 137-1-1. **L. 65:** p. 1095, § 1. **L. 67:** p. 945, § 1. **L. 70:** p. 379, § 8. **L. 73:** p. 237, § 17. **L. 75:** (8) repealed, p. 1473, § 30, effective July 18. **L. 77:** (7.5), (12.3), and (12.4) added, p. 1728, §1, effective June 20; (8) RC&RE, p. 1740, § 1, effective January 1, 1978. **L. 78:** (12.1) added, p. 467, § 1, effective July 1. **L. 79:** (12.1) amended, p. 1400, § 1, effective March 13; (12.1)(a) amended, p. 1059, § 9, effective June 20; (12.1) repealed, p. 1456, § 4, effective July 1, 1981. **L. 80:** (18) added, p. 711, § 1, effective April 16. **L. 81:** (12.1)(d) R&RE, p. 1872, § 4, effective June 29; (12.1)(a)(II) amended, § 5, effective July 1. **L. 83:** (15) repealed, p. 1485, § 11, effective April 22; (1.1), (1.3), (1.6), (3.5), (5.5), (7.2), (7.8), (13.5), and (14.3) to (14.5) added, (5) repealed, and (12.3)(b) amended, pp. 1486, 1488, §§ 1, 6, 4, effective June 1. **L. 84:** (7.2) amended, p. 983, § 1, effective May 8. **L. 85:** IP(7.2) amended and (7.9) added, pp. 1215, 1210, §§ 1, 2, effective May 9. **L. 87:** (1.3)

amended, p. 1382, § 1, effective May 8; (7.5), (12.3), and (12.4) repealed, p. 1304, § 1, effective May 20. **L. 88:** (4) and (11) amended and (12.1) repealed, pp. 1269, 1275, §§ 4, 14, effective May 29. **L. 89:** (15.5) added, p. 1482, § 3, effective April 23. **L. 90:** (1.6)(a) amended, (4.3) to (4.6) and (12.5) added, p. 1706, § 1, effective April 16; (9) amended, p. 450, § 26, effective April 18; (1.6)(a) and (13.5) amended and (8.5) added, pp. 1695, 1703, 1701, §§ 16, 37, 33, effective June 9. **L. 91:** IP(7.2) amended, p. 1980, § 1, effective April 20; (8) amended, p. 1394, § 2, effective April 27. **L. 92:** (4) amended, p. 2216, § 3, effective June 2. **L. 94:** (8) and (14.3) amended, p. 2568, § 86, effective January 1, 1995. **L. 95:** IP(1.6)(a) amended and (1.6)(a)(III), (3.2), (8.7), and (13.2) added, pp. 173, 174, §§ 1, 2, effective April 7. **L. 97:** (1.1) and (1.6) amended, p. 509, § 1, effective April 24. **L. 98:** (11) amended, p. 1276, § 1, effective June 1. **L. 99:** (15.5) amended, p. 1299, § 1, effective June 3. **L. 2000:** (15.5)(a)(II) amended, p. 1499, § 1, effective August 2. **L. 2001:** (2) and (17) amended, p. 268, § 14, effective November 15. **L. 2002:** (5.5) amended, p. 1939, § 1, effective August 7; (2.5), (3.1), (5.6), and (7.1) added, (5.5)(a)(IV) repealed, and (14.4) amended, pp. 1671, 1673, §§ 1, 3, effective January 1, 2003. **L. 2004:** (1.6)(a)(I) amended, p. 1208, § 86, effective August 4. **L. 2008:** (14.3) amended, p. 1914, § 129, effective August 5. **L. 2009:** (7.7) and (8.3) added and (7.8), (8), and (14.3) amended, (SB-040), ch. 9, p. 70, § 12, effective July 1; (8.5) amended, (SB 09-042), ch. 176, p. 779, § 1, effective August 5. **L. 2010:** (1.1) amended, (SB 10-177), ch. 392, p. 1861, § 1, effective August 11; (1.6)(a)(III) amended, (HB 10-1197), ch. 175, p. 634, § 1, effective August 11; (6.3) and (6.8) added and (7) and (11) amended, (HB10-1267), ch. 425, p. 2198, § 1, effective August 11. **L. 2011:** (8.4) added and (14.4) amended, (HB 11-1042), ch. 138, p. 479, § 1, effective May 4; (1.6)(d) added, (HB 11-1043), ch. 266, p. 1213, § 23, effective July 1; (1.6)(a)(I) and (14.4) amended, (HB 11-1146), ch. 166, p. 571, § 1, effective January 1, 2012. **L. 2013:** (14.4)(a) amended, (HB 13-1300), ch. 316, p. 1699, § 116, effective August 7. **L. 2014:** (8.5) amended, (HB 14-1349), ch. 230, p. 854, § 4, effective May 17; (1.6)(b) amended, (SB 14-043), ch. 53, p. 248, § 1, effective August 6. **L. 2016:** (14.4)(b)(II)(A) amended, (SB 16-012), ch. 66, p. 169, § 1, effective April 5. **L. 2017:** IP, (1.1), and (1.3) amended, (SB 17-302), ch. 311, p. 1675, § 1, effective June 2. **L. 2018:** (14.4)(c) added, (HB 18-1283), ch. 270, p. 1665, § 1, effective August 8.

**Editor's note:** (1) Amendments to subsection (1.6)(a) by House Bill 90-1229 harmonized with House Bill 90-1018.

(2) Amendments to subsection (14.4) by House Bill 11-1042 and House Bill 11-1146 were harmonized, effective January 1, 2012.

(3) Section 3(2) of chapter 270 (HB 18-1283), Session Laws of Colorado 2018, provides that the act changing this section applies to residential improvements that are destroyed, demolished, or relocated on or after August 8, 2018.

**Cross references:** For the creation of the property tax administrator, see § 39-2-101.

**39-1-103. Actual value determined - when.** (1) The valuation for assessment of producing mines and nonproducing mining claims shall be determined as provided in article 6 of this title.

(2) The valuation for assessment of leaseholds and lands producing oil or gas shall be determined as provided in article 7 of this title.

(3) The actual value for property tax purposes of the operating property and plant of all public utilities doing business in this state shall be determined by the administrator, as provided in article 4 of this title.

(4) (a) Repealed.

(b) The valuation for assessment of mobile homes shall be determined as provided in section 39-5-203.

(5) (a) All real and personal property shall be appraised and the actual value thereof for property tax purposes determined by the assessor of the county wherein such property is located. The actual value of such property, other than agricultural lands exclusive of building improvements thereon and other than residential real property and other than producing mines and lands or leaseholds producing oil or gas, shall be that value determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal. The assessor shall consider and document all elements of such approaches that are applicable prior to a determination of actual value. Despite any orders of the state board of equalization, no assessor shall arbitrarily increase the valuations for assessment of all parcels represented within the abstract of a county or within a class or subclass of parcels on that abstract by a common multiple in response to the order of said board. If an assessor is required, pursuant to the order of said board, to increase or decrease valuations for assessment, such changes shall be made only upon individual valuations for assessment of each and every parcel, using each of the approaches to appraisal specified in this paragraph (a), if applicable. The actual value of agricultural lands, exclusive of building improvements thereon, shall be determined by consideration of the earning or productive capacity of such lands during a reasonable period of time, capitalized at a rate of thirteen percent. Land that is valued as agricultural and that becomes subject to a perpetual conservation easement shall continue to be valued as agricultural notwithstanding its dedication for conservation purposes; except that, if any portion of such land is actually used for nonagricultural commercial or nonagricultural residential purposes, that portion shall be valued according to such use. Nothing in this subsection (5) shall be construed to require or permit the reclassification of agricultural land or improvements, including residential property, due solely to subjecting the land to a perpetual conservation easement. The actual value of residential real property shall be determined solely by consideration of the market approach to appraisal. A gross rent multiplier may be considered as a unit of comparison within the market approach to appraisal. The valuation for assessment of producing mines and of lands or leaseholds producing oil or gas shall be determined pursuant to articles 6 and 7 of this title.

(b) If, having considered the three approaches prescribed in paragraph (a) of this subsection (5), at the sole discretion of the assessor the use of the three approaches to value cannot accurately determine the actual value of any parcel of taxable property, or in the opinion of the assessor the application of the three approaches to value does not result in uniform, just, and equalized valuation, then the actual value thereof shall be determined by comparison of the surface use of such property with a similar surface use.

(c) Except as provided in section 39-1-102 (14.4)(b) or 39-1-102 (14.4)(c) and in subsections (5)(e) and (5)(f) of this section, once any property is classified for property tax purposes, it shall remain so classified until such time as its actual use changes or the assessor discovers that the classification is erroneous. The property owner shall endeavor to comply with the reasonable requests of the assessor to supply information which cannot be ascertained independently but which is necessary to determine actual use and properly classify the property

when the assessor has evidence that there has been a change in the use of the property. Failure to supply such information shall not be the sole reason for reclassifying the property. Any such request for such information shall be accompanied by a notice that states that failure on the part of the property owner to supply such information will not be used as the sole reason for reclassifying the property in question. Subject to the availability of funds under the assessor's budget for such purpose, no later than May 1 of each year, the assessor shall inform each person whose property has been reclassified from agricultural land to any other classification of property of the reasons for such reclassification including, but not limited to, the basis for the determination that the actual use of the property has changed or that the classification of such property is erroneous.

(d) If a parcel of land is classified as agricultural land as defined in section 39-1-102 (1.6)(a)(III) and the perpetual conservation easement is terminated, violated, or substantially modified so that the easement is no longer granted exclusively for conservation purposes, the assessor may reassess the land retroactively for a period of seven years and the additional taxes, if any, that would have been levied on the land during the seven year period prior to the termination, violation, or modification shall become due.

(e) (I) Except as provided in subparagraph (II) of this paragraph (e) and in paragraph (f) of this subsection (5), if a parcel of land is classified as agricultural land as defined in section 39-1-102 (1.6) and the productivity of such parcel of land is destroyed by a natural cause on or after January 1, 2012, so that, were it not for the destruction of the productivity of the land by a natural cause, the land would have qualified as agricultural land for the following property tax year, the agricultural land classification shall remain in place for the year of destruction and the four subsequent property tax years so long as the assessor receives evidence from the owner that the owner is in the process of rehabilitating the productivity of the land for agricultural use. Such evidence includes, but is not limited to, removing debris, removing contaminants, restoring fences and agricultural structures, reseeding, providing water for livestock, or contouring the land suitable for agricultural use.

(II) The agricultural land classification of the land described in subparagraph (I) of this paragraph (e) must change according to current use if:

(A) The productivity of the land is not rehabilitated for agricultural use prior to the January 1 after the period described in subparagraph (I) of this paragraph (e), unless the property owner provides documentary evidence to the assessor that during such period a good-faith effort was made to rehabilitate the productivity of the land for agricultural use but that additional time is necessary;

(B) The assessor determines that the classification at the time of destruction of the productivity of the land as a result of a natural cause was erroneous; or

(C) A change of use has occurred. For purposes of this sub-subparagraph (C), a change of use does not include the temporary loss of agricultural classification of the land as a result of the destruction of the productivity of the land by a natural cause.

(f) (I) Except as provided in subparagraph (II) of this paragraph (f), if a parcel of land is classified as agricultural land as defined in section 39-1-102 (1.6)(a)(II) and the productivity of the parcel of land is destroyed by a natural cause on or after January 1, 2012, so that, were it not for the destruction of the productivity of the land by a natural cause, the land would have qualified as agricultural land for the following property tax year, the agricultural land classification shall remain in place notwithstanding the length of the rehabilitation period

specified in subparagraph (I) of paragraph (e) of this subsection (5) so long as the owner is in compliance with an approved forest management plan and is on the list provided by the Colorado state forest service as having such a plan.

(II) The agricultural land classification of the land described in subparagraph (I) of this paragraph (f) must change according to current use if:

(A) The assessor determines that the classification at the time of destruction of the productivity of the land as a result of a natural cause was erroneous; or

(B) A change of use has occurred. For purposes of this sub-subparagraph (B), a change of use does not include the temporary loss of agricultural classification of the land as a result of the destruction of the productivity of the land by a natural cause.

(6) and (7) Repealed.

(8) In any case in which sales prices of comparable properties within any class or subclass are utilized when considering the market approach to appraisal in the determination of actual value of any taxable property, the following limitations and conditions shall apply:

(a) (I) Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes. In order to obtain a reasonable sample and to reduce sudden price changes or fluctuations, all sales shall be included in the sample that reasonably reflect a true or typical sales price during the period specified in section 39-1-104 (10.2). Sales of personal property exempt pursuant to the provisions of sections 39-3-102, 39-3-103, and 39-3-119 to 39-3-122 shall not be included in any such sample.

(II) Because of the unique characteristics and limited number of oil shale mineral interests, a minimum of five arm's-length sales of reasonably comparable oil shale mineral interests shall be required to constitute a market for purposes of utilization of the market approach to appraisal in determining the actual value of nonproducing oil shale mineral interests.

(b) Each such sale included in the sample shall be coded to indicate a typical, negotiated sale, as screened and verified by the assessor.

(c) All such coded, typical sales samples shall be supplied to the administrator for the performance of his duties.

(d) In no event shall a sales ratio be established or utilized for any class or subclass of property unless and until there have been at least thirty such coded, typical sales or at least five percent of all properties in such class or subclass within the county have been sold and verified by the assessor as coded, typical sales, whichever amount is greater. When such minimum requirement has not been met but typical sales within any such class or subclass indicate that valuations in the class or subclass are too high or too low, such fact shall be reported to the state board of equalization, which board may order an independent appraisal study in such county.

(e) Repealed.

(f) Such true and typical sales shall include only those sales which have been determined on an individual basis to reflect the selling price of the real property only or which have been adjusted on an individual basis to reflect the selling price of the real property only.

(9) (a) In the case of an improvement which is used as a residential dwelling unit and is also used for any other purpose, the actual value and valuation for assessment of such improvement shall be determined as provided in this paragraph (a). The actual value of each portion of the improvement shall be determined by application of the appropriate approaches to

appraisal specified in subsection (5) of this section. The actual value of the land containing such an improvement shall be determined by application of the appropriate approaches to appraisal specified in subsection (5) of this section. The land containing such an improvement shall be allocated to the appropriate classes based upon the proportion that the actual value of each of the classes to which the improvement is allocated bears to the total actual value of the improvement. The appropriate valuation for assessment ratio shall then be applied to the actual value of each portion of the land and of the improvement.

(b) In the case of land containing more than one improvement, one of which is a residential dwelling unit, the determination of which class the land shall be allocated to shall be based upon the predominant or primary use to which the land is put in compliance with land use regulations. If multiuse is permitted by land use regulations, the land shall be allocated to the appropriate classes based upon the proportion that the actual value of each of the classes to which the improvements are allocated bears to the combined actual value of the improvements; the appropriate valuation for assessment ratio shall then be applied to the actual value of each portion of the land.

(10) Common property or common elements within a common interest community as defined in the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., shall be appraised and valued pursuant to the provisions of section 38-33.3-105, C.R.S.

(10.5) (a) The general assembly hereby finds and declares that bed and breakfasts are unique mixed-use properties; that all areas of a bed and breakfast, except for the commercial lodging area, are shared and common areas that allow innkeepers and guests to interact in a residential setting; that the land on which a bed and breakfast is located and that is used in conjunction with the bed and breakfast is primarily residential in nature; and that there appears to exist a wide disparity in how assessors classify the different portions of bed and breakfasts.

(b) Therefore, notwithstanding any other provision of this article, a bed and breakfast shall be assessed as provided in this subsection (10.5). The commercial lodging area of a bed and breakfast shall be assessed at the rate for nonagricultural or nonresidential improvements. Any part of the bed and breakfast that is not a commercial lodging area shall be considered a residential improvement and assessed accordingly. The actual value of each portion of the bed and breakfast shall be determined by the application of the appropriate approaches to appraisal specified in subsection (5) of this section. The actual value of the land containing a bed and breakfast shall be determined by the application of the appropriate approaches to appraisal specified in subsection (5) of this section. The land containing a bed and breakfast shall be assessed as follows:

(I) The portion of land directly underneath a bed and breakfast shall be assessed pursuant to the procedures pertaining to land set forth in subsection (9) of this section.

(II) There shall be a rebuttable presumption that all remaining land shall be assessed as residential land. Such presumption shall only be overcome if there is a nonresidential use not reasonably associated with the operation of the bed and breakfast on some portion of the remaining land, in which case, such portion of the remaining land shall be assessed as nonresidential land.

(III) Subparagraphs (I) and (II) of this paragraph (b) shall not apply to agricultural land.

(11) The general assembly hereby declares that consideration by assessing officers of the cost approach, market approach, and income approach to the appraisal of real property has resulted in valuations of minerals in place which are neither uniform, nor just and equal, because

of wide variations within the same locality in quality and quantity of mineral deposits, if any, because of uncertainty in the existence or extent of such deposits, because of difficulty in measuring acquisition or replacement costs, or because of speculative value judgments when minerals in place are not income producing. Therefore, in the absence of preponderant evidence shown by the assessing officer that the use of the cost approach, market approach, and income approach result in uniform and just and equal valuation, minerals in place are not to be considered in determining the actual value of real property.

(12) In any case in which the income approach is utilized in the determination of the actual value of any nonproducing oil shale mineral interests, the following limitations and conditions shall apply:

(a) The assessor shall capitalize the annual rental income for such nonproducing mineral interests at a capitalization rate of thirteen percent. If nonproducing mineral interests are unleased, the assessor shall use the annual rental as defined in paragraph (b) of this subsection (12).

(b) For the purposes of this subsection (12), "annual rental" means annual rental payments, or other compensatory payments payable for the right to hold a mineral interest, which payments are fixed and certain in amount and payable periodically over a fixed period calculated on a twelve-month basis. "Annual rental" shall be the representative annual rental for such mineral interests leased within the county or the area, and "annual rental" does not include royalty payments, advanced royalty payments, bonus payments, or minimum royalty payments covering periods when the mineral interests are not in production, even though said payments may be fixed and certain in amount and payable periodically. For the purposes of this paragraph (b), "royalty payments", "advanced royalty payments", and "minimum royalty payments" mean payments attributable to a portion of the current or future mineral production of a mineral interest, paid for the privilege of producing minerals, and "bonus payments" means compensation paid as consideration for the granting of a mineral lease or other compensatory payments which are payable regardless of the extent of use of the mineral interest and which are fixed and certain in amount and may be payable in one or more periodical increments over a fixed period.

(13) (a) The general assembly hereby finds and declares that, in the consideration of the cost approach, market approach, and income approach to the appraisal of personal property by assessing officers, the cost approach shall establish the maximum value of property if all costs incurred in the acquisition and installation of such property are fully and completely disclosed by the property owner to the assessing officer.

(b) Therefore, in the assessment of taxable personal property, the assessing officer shall consider the value derived from the cost approach to be the maximum value of the property if the property owner has timely filed his declaration and the declaration contains all relevant information pertaining to the valuation of the property and, also includes, a full disclosure of all costs incurred in the acquisition and installation of all personal property owned by or in the possession of the taxpayer.

(c) Assessing officers shall consider the cost approach to the appraisal of property, pursuant to the provisions of this subsection (13), in good faith and shall deny the use of the cost approach only upon just cause that the requirements set forth in this subsection (13) and in section 39-5-116 have not been complied with by a taxpayer. If it is determined at any time that an assessing officer wrongly denied the use of the cost approach, such assessing officer shall be

held liable for all costs incurred by the taxpayer in protesting such assessment based on such denial. However, nothing in this subsection (13) shall preclude the assessing officers from considering the market approach or income approach to the appraisal of personal property when such consideration would result in a lower value of the property and when such valuation is based on independent information obtained by the assessing officers.

(14) (a) The general assembly hereby finds and declares that, in determining the actual value of vacant land, there appears to exist a wide disparity in the treatment of vacant land by the assessing officers of the various counties; that the methods of appraisal currently being utilized by assessing officers for such valuation remain unclear; and that such assessing officers are provided detailed information concerning the appraisal of vacant land in the manuals, appraisal procedures, and instructions prepared and published by the administrator.

(b) The assessing officers shall give appropriate consideration to the cost approach, market approach, and income approach to appraisal as required by the provisions of section 3 of article X of the state constitution in determining the actual value of vacant land. When using the market approach to appraisal in determining the actual value of vacant land as of the assessment date, assessing officers shall take into account, but need not limit their consideration to, the following factors: The anticipated market absorption rate, the size and location of such land, the direct costs of development, any amenities, any site improvements, access, and use. When using anticipated market absorption rates, the assessing officers shall use appropriate discount factors in determining the present worth of vacant land until eighty percent of the lots within an approved plat have been sold and shall include all vacant land in the approved plat. For purposes of such discounting, direct costs of development shall be taken into account. The use of present worth shall reflect the anticipated market absorption rate for the lots within such plat, but such time period shall not generally exceed thirty years. For purposes of this paragraph (b), no indirect costs of development, including, but not limited to, costs relating to marketing, overhead, or profit, shall be considered or taken into account.

(c) (I) For purposes of this subsection (14), "vacant land" means any lot, parcel, site, or tract of land upon which no buildings or fixtures, other than minor structures, are located. "Vacant land" may include land with site improvements. "Vacant land" includes land that is part of a development tract or subdivision when using present worth discounting in the market approach to appraisal; however, "vacant land" shall not include any lots within such subdivision or any portion of such development tract that improvements, other than site improvements or minor structures, have been erected upon or affixed thereto. "Vacant land" does not include agricultural land, producing oil and gas properties, severed mineral interests, and all mines, whether producing or nonproducing.

(II) For purposes of this subsection (14):

(A) "Minor structures" means improvements that do not add value to the land on which they are located and that are not suitable to be used for and are not actually used for any commercial, residential, or agricultural purpose.

(B) "Site improvements" means streets with curbs and gutters, culverts and other sewage and drainage facilities, and utility easements and hookups for individual lots or parcels.

(d) As soon after the assessment date as may be practicable, the assessor shall mail or deliver two copies of a subdivision land valuation questionnaire for each approved plat within the county to the last-known address of the subdivision developer known or believed to own vacant land within such approved plat. Such questionnaire shall be designed to elicit information

vital to determining the present worth of vacant land within such approved plat. Such subdivision developer or his agent shall answer all questions to the best of his ability, attaching such exhibits or statements thereto as may be necessary, and shall sign and return the original copy thereof to the assessor no later than the March 20 subsequent to the assessment date. All information provided by the subdivision developer in such questionnaire shall be kept confidential by the assessor; except that the assessor shall make such information available to the person conducting any valuation for assessment study pursuant to section 39-1-104 (16) and his employees and the property tax administrator and his employees.

(e) If any subdivision developer fails to complete and file one or more questionnaires by March 20, then the assessor may determine the actual value of the taxable vacant land within an approved plat which is owned by such subdivision developer on the basis of the best information available to and obtainable by the assessor.

(15) The general assembly hereby finds and declares that assessing officers shall give appropriate consideration to the cost approach, market approach, and income approach to appraisal as required by section 3 of article X of the state constitution in determining the actual value of taxable property. In the absence of evidence shown by the assessing officer that the use of the cost approach, market approach, and income approach to appraisal requires the modification of the actual value of taxable property for the first year of a reassessment cycle in order to result in uniform and just and equal valuation for the second year of a reassessment cycle, the assessing officer shall consider the actual value of any taxable property for the first year of a reassessment cycle, as may have been adjusted as a result of protests and appeals, if any, prior to the assessment date of the second year of a reassessment cycle, to be the actual value of such taxable property for the second year of a reassessment cycle.

(16) (a) The general assembly hereby finds and declares that in the consideration of the cost approach, market approach, and income approach to appraisal for the valuation of superfund water treatment facilities, the cost approach to appraisal does not adequately reflect characteristics specific to superfund water treatment facilities that negatively impact the value of such facilities, including, but not limited to, the lack of income producing ability and the absence of any market for sale of superfund water treatment facilities. Therefore, in the assessment of superfund water treatment facilities, the income approach to appraisal shall be considered the primary indicator of value and the cost approach or market approach to appraisal shall be used only if the value determined under the cost approach or market approach is less than the value determined under the income approach to appraisal. For the purposes of determining the actual value of superfund water treatment facilities as of the assessment date using the income approach to appraisal, the assessing officer shall capitalize the actual income generated by the facility during the calendar year preceding the assessment date at the rate of ten percent per annum.

(b) For purposes of this subsection (16), "superfund water treatment facilities" means real and personal property that is:

(I) Installed and constructed pursuant to an agreement with or an order of the federal government or the state or any of its political subdivisions and to satisfy the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601, et seq., as amended; and

(II) Operated for the purpose of eliminating, reducing, controlling, or disposing of pollutants, as defined in section 25-8-103 (15), C.R.S., that could alter the physical, chemical, biological, or radiological integrity of state waters if released into state waters.

(17) (a) The general assembly declares that the valuation of possessory interests in exempt properties is uncertain and highly speculative and that the following specific standards for the appropriate consideration of the cost approach, the market approach, and the income approach to appraisal in the valuation of possessory interests must be provided by statute and applied in the valuation of possessory interests to eliminate the unjust and unequalized valuations that would result in the absence of specific standards:

(I) The actual value of any possessory interest of the lessee or permittee of lands owned by the United States and leased or permitted for use for ski area recreational purposes in connection with a business conducted for profit shall be determined by capitalizing at an appropriate rate the annual fee paid to the United States by the lessee or permittee of such land for the use thereof in the immediately preceding calendar year, adjusted to the level of value using a factor or factors to be published by the administrator pursuant to the same procedures and principles as are provided for property in section 39-1-104 (12.3)(a)(I). The rate used to capitalize any fee pursuant to this subparagraph (I) shall include an appropriate rate of return, an appropriate adjustment for the applicable property tax rate, and an appropriate adjustment to reflect the portion of the fee, if any, required to be paid over by the United States to the state of Colorado and its political subdivisions.

(II) (A) Except for possessory interests in land leased or permitted for use for ski area recreational purposes valued in accordance with subparagraph (I) of this paragraph (a) and except as otherwise provided in subparagraph (III) of this paragraph (a), the actual value of a possessory interest in land, improvements, or personal property shall be determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal. When the cost or income approach to appraisal is applicable, the actual value of the possessory interest shall be determined by the present value of the reasonably estimated future annual rents or fees required to be paid by the holder of the possessory interest to the owner of the underlying real or personal property through the stated initial term of the lease or other instrument granting the possessory interest; except that the actual value of a possessory interest in agricultural land, including land leased by the state board of land commissioners other than land leased pursuant to section 36-1-120.5, C.R.S., shall be the actual amount of the annual rent paid for the property tax year. The rents or fees used to determine the actual value of a possessory interest under the cost or income approach to appraisal shall be the actual contract rents or fees reasonably expected to be paid to the owner of the underlying real or personal property unless it is shown that the actual contract rents or fees to be paid for the possessory interest being valued are not representative of the market rents or fees paid for that type of real or personal property, in which case the market rents or fees shall be substituted for the actual contract rents or fees.

(B) The rents or fees taken into account under the cost or income approach to appraisal under sub-subparagraph (A) of this subparagraph (II) shall exclude that portion of the rents and fees required to be paid for all rights other than the exclusive right to use and possess the land, improvements, or personal property. Such rents or fees to be excluded shall include, but shall not be limited to, any portion of such rents or fees attributable to any of the following: Nonexclusive rights to use and possess public property, such as roads, rights-of-way, easements, and common

areas; rights to conduct a business, as determined in accordance with guidelines to be published by the administrator; income of the holder of the possessory interest that is not directly derived from and directly related to the use or occupancy of the possessory interest; any amount paid under a timber sales contract or similar agreement for the purchase of timber or for the right to acquire and remove timber; and reimbursement to the owner of the underlying real or personal property of the reasonable costs of operating, maintaining, and repairing the land, improvements, or personal property to which the possessory interest pertains, regardless of whether such costs are separately stated, provided that the types of such costs can be identified with reasonable certainty from the documents granting the possessory interest. The actual value of the possessory interest so determined shall be adjusted to the taxable level of value using a factor or factors to be published by the administrator pursuant to the same procedures and principles as are provided for personal property in section 39-1-104 (12.3)(a)(I).

(III) Subparagraphs (I) and (II) of this paragraph (a) shall not apply to any management contract. In the case of a management contract, the possessory interest shall be presumed to have no actual value. For purposes of this subparagraph (III), "management contract" means a contract that meets all of the following criteria:

(A) The government owner of the real or personal property subject to the contract directly or indirectly provides the management contractor all funds to operate the real or personal property;

(B) The government owns all of the real or personal property used in the operation of the real or personal property subject to the contract;

(C) The government maintains control over the amount of profit the management contractor can realize or sets the prices charged by the management contractor, or the management contractor's exclusive obligation is to operate and manage the real or personal property for which the management contractor receives a fee;

(D) The government reserves the right to use the real or personal property when it is not being managed or operated by the management contractor;

(E) The management contractor has no leasehold or similar interest in the real or personal property;

(F) To the extent the management contractor manages a manufacturing process for the government on the real property subject to the contract, the government owns all or substantially all of the personal property used in the process; and

(G) The real or personal property is maintained and repaired at the expense of the government.

(b) This subsection (17) shall not apply to and shall not be construed to affect or change the valuation of public utilities pursuant to article 4 of this title, the valuation of equities in state lands pursuant to section 39-5-106, the valuation of mines pursuant to article 6 or any other article of this title, or the valuation of oil and gas leaseholds and lands pursuant to article 7 of this title.

(18) (a) The general assembly hereby finds and declares that real property that is located in a district in which limited gaming is authorized but that is not used for limited gaming may be unfairly valued by comparison of said real property with real property that is used for limited gaming. The general assembly further finds that real property that is located in a gaming district may be reasonably used for purposes other than limited gaming, that such alternative uses may be beneficial in strengthening the economies of gaming districts, and that such alternative uses

should be encouraged. In addition, the general assembly finds that applying the cost and market approaches to appraisal in valuing real property that is located in a limited gaming district but that is not used for limited gaming may result in an unfairly high valuation of real property that is reasonably used for a purpose other than limited gaming. Therefore, the provisions of this subsection (18) shall govern the classification and valuation of real property that is located within a gaming district but that is not used for limited gaming.

(b) For property tax years beginning on or after January 1, 1999, if the actual use as of the assessment date of any real property that is located in a limited gaming district but that is not used for limited gaming is used as residential real property, the real property shall be classified as residential real property, and the assessing officer shall determine the actual value of said real property as of the assessment date by applying the market approach to appraisal. If, due to the limited number of real properties located within a limited gaming district that are not used for limited gaming and that are used as residential real property, comparable valuation data is not available from within a limited gaming district to determine adequately the actual value of real property located within said limited gaming district that is not used for limited gaming and that is used as residential real property, notwithstanding any law to the contrary, the assessing officer shall consider sales of reasonably comparable residential real property located inside and outside of any limited gaming district for purposes of utilization of the market approach to appraisal in determining the actual value of said real property located within a limited gaming district that is not used for limited gaming and that is used as residential real property.

(c) For property tax years beginning on or after January 1, 1999, if the actual use as of the assessment date of any real property that is located in a limited gaming district is not for limited gaming or as residential real property, including but not limited to vacant land, the real property shall be classified as nongaming real property, and the assessing officer shall determine the actual value of said real property as of the assessment date by giving appropriate consideration to the cost, market, and income approaches to appraisal. If, due to the limited number of real properties located within a limited gaming district that are not used for limited gaming or as residential real property, comparable valuation data is not available from within a limited gaming district to determine adequately the actual value of real property located within said limited gaming district that is not used for limited gaming or as residential real property, notwithstanding any law to the contrary, the assessing officer shall:

(I) Consider sales of reasonably comparable real property that is not used as residential property located inside and outside of any limited gaming district for purposes of utilization of the market approach to appraisal in determining the actual value of real property located within a limited gaming district that is not used for limited gaming or as residential real property; and

(II) Consider reasonably comparable real property that is not used as residential property located inside and outside of any limited gaming district for purposes of utilization of the income approach to appraisal in determining the actual value of real property located within a limited gaming district that is not used for limited gaming or as residential real property.

(d) For purposes of this subsection (18), real property is considered to be "used for limited gaming" if the owner or lessee of the real property holds a retail gaming license issued pursuant to part 5 of article 30 of title 44, and if the owner or lessee actually uses the real property in offering limited gaming for play or for administrative support services related to providing limited gaming or makes the real property available for other uses by persons who are

engaged in limited gaming for play, including but not limited to using the property for parking, for a restaurant, or for a hotel or motel.

**Source: L. 64:** R&RE, p. 676, § 1. **C.R.S. 1963:** § 137-1-3. **L. 67:** p. 945, §§ 2-4. **L. 70:** p. 380, § 9. **L. 71:** p. 1242, § 1. **L. 73:** pp. 237, 1429, §§ 18, 1. **L. 75:** (6)(a)(I) amended, p. 1453, § 1, effective May 22; (4)(b) repealed, p. 1473, § 30, effective July 18. **L. 76:** (5) amended, p. 754, § 3, effective January 1, 1977. **L. 77:** (5) amended and (7) and (8) added p. 1729, § 2, effective June 20; (4)(b) RC&RE, p. 1740, § 2, effective January 1, 1978. **L. 81:** (5)(a) amended, p. 1829, § 1, effective June 12. **L. 83:** (8)(d) amended, p. 1489, § 1, effective April 21; (9) added, p. 1492, § 1, effective April 21; (4)(a) and (5)(b) repealed and (5)(a), IP(8), and (8)(a) amended, pp. 1485, 1480, §§ 11, 2, effective April 22; (6) repealed, p. 1488, § 6, effective June 1. **L. 84:** (8)(e) and (8)(f) added, p. 986, § 1, effective March 16; (10) added, p. 987, § 1, effective April 5. **L. 85:** (5)(b) RC&RE, (8)(a) amended, and (11) and (12) added, pp. 1210, 1211, §§ 3, 4, effective May 9; (5)(a) amended, p. 1217, § 1, effective May 24. **L. 87:** (7) repealed, p. 1304, § 1, effective May 20; (13) added, p. 1415, § 2, effective June 16; (8)(e) amended, p. 1388, § 9, effective June 20. **L. 88:** (14) added, p. 1281, § 4, effective January 1, 1989. **L. 89:** (8)(a)(I) amended, p. 1482, § 4, effective May 9; (14)(b) and (14)(c)(I) amended, p. 1449, § 1, effective June 7. **L. 90:** (5)(c), (14)(d), and (14)(e) added, (8)(a)(I) and (14)(b) amended, and (8)(e) repealed, pp. 1701, 1688, 1705, §§ 34, 3, 2, 41, effective June 9; (15) added, p. 1697, § 22, effective January 1, 1991. **L. 91:** (8)(a)(I) amended, p. 2005, § 3, effective June 6. **L. 92:** (14)(b) amended, p. 2215, § 1, effective June 2. **L. 93:** (10) amended, p. 654, § 22, effective April 30; (5)(c) amended, p. 1743, § 2, effective July 1. **L. 95:** (8)(a)(I) amended, p. 8, § 2, effective March 9; (5)(a) amended and (5)(d) added, p. 174, § 3, effective April 7. **L. 96:** (16) added, p. 130, § 1, effective March 25; (5)(a) and (8)(a)(I) amended, p. 718, § 1, effective May 22; (14)(c) amended, p. 1198, § 1, effective June 1; (17) added, p. 1852, § 4, effective June 5. **L. 97:** (17)(a)(II)(B) amended, p. 1030, § 63, effective August 6. **L. 98:** (18) added, p. 110, § 1, effective March 23. **L. 2000:** (5)(a) amended, p. 1499, § 2, effective August 2. **L. 2002:** IP(17)(a) amended, p. 1008, § 1, effective August 7; (10.5) added, p. 1672, § 2, effective January 1, 2003. **L. 2003:** (17)(a)(II)(A) amended, p. 1696, § 1, effective January 1, 2004; (17)(a)(II)(B) amended, p. 2492, § 1, effective January 1, 2004. **L. 2004:** (17)(a)(II)(A) amended, p. 1088, § 1, effective January 1, 2005. **L. 2010:** (5)(a) amended, (HB 10-1197), ch. 175, p. 634, § 2, effective August 11. **L. 2011:** (5)(c) amended, (HB 11-1042), ch. 138, p. 480, § 2, effective May 4. **L. 2015:** (5)(c) amended and (5)(e) and (5)(f) added, (HB 15-1008), ch. 90, p. 258, § 1, effective April 10. **L. 2018:** (5)(c) amended, (HB 18-1283), ch. 270, p. 1666, § 2, effective August 8; (18)(d) amended, (SB 18-034), ch. 14, p. 249, § 45, effective October 1.

**Editor's note:** Section 3(2) of chapter 270 (HB 18-1283), Session Laws of Colorado 2018, provides that the act changing this section applies to residential improvements that are destroyed, demolished, or relocated on or after August 8, 2018.

**39-1-103.5. Restrictions on information.** The state board of equalization or the administrator shall not require any person to furnish financial information concerning commercial or industrial property, except as to the value of the real property for rental purposes only. This section shall not apply to public utilities.

**Source: L. 77:** Entire section added, p. 1731, § 3, effective June 20.

**39-1-104. Valuation for assessment - definitions.** (1) The valuation for assessment of all taxable property in the state shall be twenty-nine percent of the actual value thereof as determined by the assessor and the administrator in the manner prescribed by law, and such percentage shall be uniformly applied, without exception, to the actual value, so determined, of the various classes and subclasses of real and personal property located within the territorial limits of the authority levying a property tax, and all property taxes shall be levied against the aggregate valuation for assessment resulting from the application of such percentage. This subsection (1) shall not apply to residential real property, producing mines, and lands or leaseholds producing oil or gas.

(1.5) Residential real property shall be valued for assessment at twenty-one percent of its actual value, except as provided in section 39-1-104.2.

(2) Repealed.

(3) "Valuation for assessment", as used in this section and in articles 1 to 13 of this title, means the same as the term "assessed valuation" as that term may appear in the laws of this state.

(4) Except as provided in section 39-7-109, nonproducing severed mineral interests are to be valued at twenty-nine percent of actual value in the same manner as other real property. Such valuation shall be determined by the assessing officer only upon preponderant evidence shown by such officer that the cost approach, market approach, and income approach result in uniform and just and equal valuation.

(5) to (10.1) Repealed.

(10.2) (a) Except as otherwise provided in subsection (12) of this section, beginning with the property tax year which commences January 1, 1989, a reassessment cycle shall be instituted with each cycle consisting of two full calendar years. At the beginning of each reassessment cycle, the level of value to be used during the reassessment cycle in the determination of actual value of real property in any county of the state as reflected in the abstract of assessment for each year in the reassessment cycle shall advance by two years over what was used in the previous reassessment cycle; except that the level of value to be used for the years 1989 and 1990 shall be the level of value for the period of one and one-half years immediately prior to July 1, 1988; except that, if comparable valuation data is not available from such one-and-one-half-year period to adequately determine the level of value for a class of property, the period of five years immediately prior to July 1, 1988, shall be utilized to determine the level of value. Said level of value shall be adjusted to the final day of the data gathering period.

(b) During the two years of each reassessment cycle, in preparation for implementation in the succeeding reassessment cycle, the respective assessors shall conduct revaluations of all taxable real property utilizing the level of value for the period which will be used to determine actual value in such succeeding reassessment cycle and the manuals and associated data published for the period which will be used to determine actual value in such succeeding reassessment cycle.

(c) Repealed.

(d) For the purposes of this article and article 9 of this title, "level of value" means the actual value of taxable real property as ascertained by the applicable factors enumerated in section 39-1-103 (5) for the one-and-one-half-year period immediately prior to July 1 immediately preceding the assessment date for which the administrator is required by this article

to publish manuals and associated data. Beginning with the property tax year commencing January 1, 1999, if comparable valuation data is not available from such one-and-one-half-year period to adequately determine such actual value for a class of property, "level of value" means the actual value of taxable real property as ascertained by said applicable factors for such one-and-one-half-year period, the six-month period immediately preceding such one-and-one-half-year period, and as many preceding six-month periods within the five-year period immediately prior to July 1 immediately preceding the assessment date as are necessary to obtain adequate comparable valuation data. Said level of value shall be adjusted to the final day of the data-gathering period.

(e) Repealed.

(10.3) Repealed.

(11) (a) (I) It is the intent of the general assembly, as manifested in subsection (10.2) of this section, that, when a change occurs in reassessment cycles as prescribed in said subsection, new manuals and associated data will be published by the administrator, pursuant to section 39-2-109 (1)(e), and that said manuals and associated data and the level of value for the year that said manuals and associated data are published shall be utilized by assessors in the manner described in subsection (10.2) of this section for determining the actual value of real property in each county of the state.

(II) The general assembly hereby further finds and declares that it is the intent of paragraph (b) of this subsection (11) to comply with the provisions of section 3 of article X of the state constitution, including the provision which requires the enactment of "general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessments of all real and personal property"; to reduce the confusion of the owners of taxable property within the state concerning assessment procedures and valuations of such property; to achieve valuations for assessment which represent the current value of such property to the extent which is equitably and practically possible; and to minimize the costs associated with achieving such current valuations for assessment.

(b) (I) The provisions of subsection (10.2) of this section are not intended to prevent the assessor from taking into account, in determining actual value for the years which intervene between changes in the level of value, any unusual conditions in or related to any real property which would result in an increase or decrease in actual value. If any real property has not been assessed at its correct level of value, the assessor shall revalue such property for the intervening year so that the actual value of such property will be its correct level of value; however, the assessor shall not revalue such property above or below its correct level of value except as necessary to reflect the increase or decrease in actual value attributable to an unusual condition. For the purposes of this paragraph (b) and except as otherwise provided in this paragraph (b), an unusual condition which could result in an increase or decrease in actual value is limited to the installation of an on-site improvement, the ending of the economic life of an improvement with only salvage value remaining, the addition to or remodeling of a structure, a change of use of the land, the creation of a condominium ownership of real property as recognized in the "Condominium Ownership Act", article 33 of title 38, C.R.S., any new regulations restricting or increasing the use of the land, or a combination thereof, the installation and operation of surface equipment relating to oil and gas wells on agricultural land, any detrimental acts of nature, and any damage due to accident, vandalism, fire, or explosion. When taking into account such

unusual conditions which would increase or decrease the actual value of a property, the assessor must relate such changes to the level of value as if the conditions had existed at that time.

(II) The creation of a condominium ownership of real property by the conversion of an existing structure shall be taken into account as an unusual condition as provided for in subparagraph (I) of this paragraph (b) by the assessor, when at least fifty-one percent of the condominium units, as defined in section 38-33-103 (1), C.R.S., in a multiunit property subject to condominium ownership have been sold and conveyed to bona fide purchasers and deeds have been recorded therefor.

(c) Repealed.

(12) (a) For the property tax years commencing on or after January 1, 1987, producing mines shall be valued for assessment solely pursuant to article 6 of this title.

(b) For the property tax years commencing on or after January 1, 1987, oil and gas leaseholds and lands shall be valued for assessment solely pursuant to section 39-7-102.

(c) Repealed.

(12.1) Repealed.

(12.2) (a) Except as provided in subsection (12) of this section, for property tax years commencing on or after January 1, 1987, the requirement stated in subsections (10.2) and (11) of this section that the actual value of real property be determined according to a specified year's level of value and manuals and associated data published by the administrator for said specified year pursuant to section 39-2-109 (1)(e) shall apply to the assessment of all classes of real property, including but not limited to the following classes of real property:

(I) (Deleted by amendment, L. 87, p. 1390, § 2, effective April 1, 1987.)

(II) (Deleted by amendment, L. 87, p. 1392, § 2, effective April 1, 1987.)

(III) Operating property and plants of public utilities; and

(IV) Agricultural land.

(V) (Deleted by amendment, L. 87, p. 1385, § 1, effective June 20, 1987.)

(b) This subsection (12.2) shall take effect January 1, 1987.

(12.3) (a) (I) The actual value of personal property shall be determined by appropriate consideration of such of the three approaches specified in section 39-1-103 (5)(a) as are applicable to the appraisal of such property. Subject to review and approval pursuant to section 39-2-109 (1)(e), the administrator shall prepare and publish appraisal procedures and instructions for the annual appraisal of such property that will include a factor or factors to adjust the actual value for the current year of assessment to the level of value applicable to real property.

(II) In determining actual value, depreciation attributable to age shall not exceed that for the actual age of the property on the assessment date. Physical, functional, and economic obsolescence shall be considered in determining actual value.

(b) Repealed.

(12.4) For property tax years commencing on and after January 1, 1987, the requirement stated in subsections (10.2) to (11) of this section that the actual value of real property be determined according to a specified year's level of value and manuals and associated data published by the administrator for said specified year pursuant to section 39-2-109 (1)(e) shall not apply to the assessment of producing coal mines and other lands producing nonmetallic minerals.

(13) to (15) Repealed.

(16) (a) During each property tax year, the director of research of the legislative council shall contract with a private person for a valuation for assessment study to be conducted as set forth in this subsection (16). The study shall be conducted in all counties of the state to determine whether or not the assessor of each county has, in fact, used all manuals, formulas, and other directives required by law to arrive at the valuation for assessment of each and every class of real and personal property in the county. The person conducting the study shall sample each class of property in a statistically valid manner, and the aggregate of such sampling shall equal at least one percent of all properties in each county of the state. The sampling shall show that the various areas, ages of buildings, economic conditions, and uses of properties have been sampled. Such study shall be completed, and a final report of the findings and conclusions thereof shall be submitted to the state board of equalization, by September 15 of the year in which the study is conducted.

(b) During each property tax year, beginning with the property tax year which commences January 1, 1985, in addition to the requirements set forth in paragraph (a) of this subsection (16), the study shall set forth the aggregate valuation for assessment of each county for the year in which the study is conducted.

(c) The person conducting any valuation for assessment study pursuant to this subsection (16) and his employees shall, during the term of his contract, have access to any document in the custody of the administrator or an assessor, including, but not limited to, such documents as are held pursuant to sections 39-4-103, 39-5-120, and 39-14-102 (1)(c). The penalties in section 39-1-116 apply against the divulging at any time of any confidential information obtained pursuant to this paragraph (c).

(d) Repealed.

**Source: L. 64:** R&RE, p. 676, § 1. **C.R.S. 1963:** § 137-1-4. **L. 65:** p. 1096, § 2. **L. 67:** p. 946, § 5. **L. 70:** pp. 380, 388, §§ 10, 28. **L. 73:** p. 1430 § 1. **L. 75:** (5) and (6) added, pp. 863, 1474, §§ 2, 1, effective July 1; (7) added, p. 1454, § 1, effective July 30. **L. 76:** (9) added, p. 755, § 5, effective July 1; (8) added, p. 755, § 4, effective January 1, 1977. **L. 77:** (10) R&RE and (11) and (12) added, pp. 1731, 1732, §§ 4, 5, effective June 20. **L. 79:** (13) added, p. 1329, § 2, effective May 8; (6) R&RE and (14) added, pp. 1403, 1327, §§ 1, 4, effective July 1; (2) amended, p. 1402, § 1, effective January 1, 1980. **L. 80:** (10) amended, p. 714, § 1, effective February 29; (9) amended, p. 711, § 1, effective April 16. **L. 81:** (13)(b) amended, p. 1836, § 1, effective June 4; (9)(a), (10)(a), (10)(b), and IP(12) amended, p. 1830, § 2, effective June 12; (12)(c), (12)(d), (12)(g), and (12)(h) amended, pp. 1848, 1854, §§ 4, 2, effective January 1, 1982; (16) added, p. 1397, § 8, effective January 1, 1983. **L. 82:** (11)(b) amended, p. 553, § 1, effective May 3; (16) amended, p. 457, § 2, effective January 1, 1983. **L. 83:** (2), (7), and (12.3)(b) repealed and (12.3)(a)(I) and (16) amended, pp. 1485, 1482, §§ 11, 3, effective April 22; (10), (11)(a), (11)(b)(I), and (12)(h) amended and (10.1), (12.1), and (12.2) added, pp. 1494, 1495, §§ 1, 2, effective April 28; (5) repealed, p. 2081, § 1, effective January 1, 1984. **L. 84:** (15) repealed, p. 999, § 3, effective January 1; (10), (10.1)(a), (12)(h), (12.1), IP(12.2)(a), and (12.2)(b) amended, p. 988, § 1, effective February 23. **L. 85:** (4) amended, p. 1212, § 8, effective May 9. **L. 86:** (16)(a) amended, p. 1101, § 1, effective March 26. **L. 87:** (16)(c) added, p. 1417, § 1, effective March 13; (12)(a) RC&RE and (12.2)(a) amended, p. 1390, §§ 1, 2, effective April 1; (12)(b) RC&RE and (12.2)(a) amended, p. 1392, §§ 1, 2, effective April 1; (1.5) added, p. 1384, § 1, effective April 16; (6), (13), and (14) repealed, p. 1304, § 1, effective May 20; (9)(a),

(9)(b), and (10) repealed, (10.1) R&RE, (11)(b)(I) and (12.2)(a) amended, and (12)(c) and (12.4) added, pp. 1388, 1386, 1385, §§ 6(1), 3, 1, 5, 2, effective June 20; (1) amended, p. 1383, § 1, effective July 10; (10.3) added, p. 1387, § 4, effective January 1, 1991; (9)(d) and (11)(c) added by revision, p. 1388, § 6(2). **L. 88:** (8) repealed, (9)(c), (9)(d), (10.1)(b), (10.3)(a), (11)(a), (11)(b)(I), (11)(c), and (12.3)(a) amended, (10.1)(d) R&RE, and (10.2) added, pp. 1275, 1269, 1273, 1270, §§ 14, 5, 6, 5, effective May 29; (1.5) R&RE, (16)(c) amended, and (16)(d) added, pp. 1279, 1282, §§ 2, 5, effective January 1, 1989; **L. 89:** (11)(b)(I) amended, p. 1450, § 2, effective June 7; (10.3)(c) amended, p. 1644, § 8, effective January 1, 1991. **L. 90:** (16)(d) repealed, p. 1840, § 19, effective May 31; (12)(c) repealed and (16)(a) and (16)(c) amended, pp. 1705, 1689, §§ 41, 4, effective June 9. **L. 91:** (10.2)(c), (10.3)(a), (11)(a)(I), (11)(b)(I), and (12.4) amended and (10.2)(e) and (11)(c) repealed, pp. 2003, 2005, §§ 1, 5, effective June 6. **L. 92:** (11)(b)(I) amended, p. 2212, § 10, effective June 3. **L. 93:** (7) repealed, p. 1689, § 8, effective June 6. **L. 94:** (11)(b)(I) amended, p. 309, § 1, effective March 22. **L. 95:** (10.2)(c) and (10.3) repealed, p. 7, § 1, effective March 9. **L. 96:** (11)(a)(I), IP(12.2)(a), (12.3)(a)(I), and (12.4) amended, pp. 1198, 1199, §§ 1, 2, effective June 1. **L. 99:** (10.2)(d) amended, p. 202, § 1, effective August 4. **L. 2002:** (16)(a) amended, p. 861, § 1, effective August 7. **L. 2005:** (IP)(12.2)(a) amended, p. 781, § 72, effective June 1.

**Editor's note:** (1) Subsection (12.1) provided for the repeal of subsections (12) and (12.1), effective January 1, 1987. (See L. 84, p. 988.)

(2) Subsection (9)(d) provided for the repeal of subsections (9)(c) and (9)(d), effective January 1, 1989. (See L. 88, p. 1269.)

(3) Subsection (10.1)(d) provided for the repeal of subsection (10.1), effective January 1, 1991. (See L. 88, p. 1273.)

**Cross references:** For constitutional provisions concerning taxation, see article X of the state constitution; for the provision that sets the valuation for assessment of residential real property at 21%, see § 3 (1)(b) of article X of the state constitution.

**39-1-104.1. Implementation costs - annual revaluation. (Repealed)**

**Source: L. 87:** Entire section added, p. 1389, § 10, effective June 21. **L. 95:** Entire section repealed, p. 9, § 5, effective March 9.

**39-1-104.2. Legislative declaration - adjustment of residential rate.** (1) As used in this section, unless the context otherwise requires:

(a) "Residential rate" means the ratio of valuation for assessment for residential real property fixed in accordance with this section.

(b) "Target percentage" means the percentage of aggregate statewide valuation for assessment represented by the valuation for assessment which is attributable to residential real property in the year immediately preceding the year in which a change in the level of value occurs.

(2) After careful consideration of all available information, the general assembly hereby finds and declares that the action of the first session of the fifty-sixth general assembly which set the ratio of valuation for assessment for residential real property at eighteen percent has

produced a deviation from the intent of section 3 of article X of the state constitution which ensures that the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property shall remain the same as it was in the year immediately preceding the year in which a change occurs in the level of value used in determining actual value. Therefore, the general assembly finds that legislation is necessary for the following purposes: To adjust the residential rate for 1988; to ensure that deviations from the constitutional mandate set forth in section 3 of article X of the state constitution shall not be perpetuated into this or any future year; and to provide a process for future adjustments in the ratio of valuation for assessment for residential real property.

(3) (a) The general assembly, pursuant to the authority granted in section 3 of article X of the state constitution, finds and declares that, for the property tax years commencing on or after January 1, 1987, but before January 1, 1989, the percentage of aggregate statewide valuation for assessment which is attributable to residential real property fails to remain as it was in the property tax year commencing January 1, 1986, when the aggregate statewide valuation for assessment was based on the 1985 aggregate statewide valuation for assessment plus the increased valuation for assessment attributable to new construction and to increased volume of mineral and oil and gas production which occurred during 1986. Therefore, for the property tax year commencing January 1, 1988, the ratio of valuation for assessment for residential real property shall be sixteen percent of actual value.

(b) The general assembly, pursuant to the authority granted in section 3 of article X of the state constitution, finds and declares that, for the property tax years commencing on or after January 1, 1989, but before January 1, 1991, the percentage of aggregate statewide valuation for assessment which is attributable to residential real property fails to remain as it was in the property tax year commencing January 1, 1988, when the aggregate statewide valuation for assessment was based on the 1987 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 44.51 percent, for the property tax years commencing on or after January 1, 1989, but before January 1, 1991, the ratio of valuation for assessment for residential real property shall be fifteen percent of actual value.

(c) The general assembly, pursuant to the authority granted in section 3 of article X of the state constitution, finds and declares that, for the property tax years commencing on or after January 1, 1991, but before January 1, 1993, the percentage of aggregate statewide valuation for assessment which is attributable to residential real property fails to remain as it was in the property tax year commencing January 1, 1990, when the aggregate statewide valuation for assessment was based on the 1989 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 44.57 percent, for the property tax years commencing on or after January 1, 1991, but before January 1, 1993, the ratio of valuation for assessment for residential real property shall be 14.34 percent of actual value.

(d) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 1993, but before January 1, 1995, the percentage of aggregate statewide valuation for assessment which is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 1992, when the aggregate statewide valuation for assessment was based on the 1991 aggregate statewide valuation for assessment. Therefore, the

administrator having determined pursuant to subsection (4) of this section that the target percentage is 44.73 percent, the ratio of valuation for assessment for residential real property shall be 12.86 percent of actual value for the property tax years commencing on or after January 1, 1993, but before January 1, 1995.

(e) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 1995, but before January 1, 1997, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 1994, when the aggregate statewide valuation for assessment was based on the 1993 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 45.29 percent, the ratio of valuation for assessment for residential real property shall be 10.36 percent of actual value for the property tax years commencing on or after January 1, 1995, but before January 1, 1997.

(f) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 1997, but before January 1, 1999, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 1996, when the aggregate statewide valuation for assessment was based on the 1995 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.17 percent, the ratio of valuation for assessment for residential real property shall be 9.74 percent of actual value for the property tax years commencing on or after January 1, 1997, but before January 1, 1999.

(g) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 1999, but before January 1, 2001, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 1998, when the aggregate statewide valuation for assessment was based on the 1997 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.49 percent, the ratio of valuation for assessment for residential real property shall be 9.74 percent of actual value for the property tax years commencing on or after January 1, 1999, but before January 1, 2001.

(h) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2001, but before January 1, 2003, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 2000, when the aggregate statewide valuation for assessment was based on the 1999 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.61 percent, the ratio of valuation for assessment for residential real property shall be 9.15 percent of actual value for the property tax years commencing on or after January 1, 2001, but before January 1, 2003.

(i) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2003, but before January 1, 2005, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2002, when the aggregate statewide valuation for assessment was based on the 2001 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 47.08 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2003, but before January 1, 2005.

(j) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2005, but before January 1, 2007, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2004, when the aggregate statewide valuation for assessment was based on the 2003 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 47.22 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2005, but before January 1, 2007.

(k) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2007, but before January 1, 2009, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2006, when the aggregate statewide valuation for assessment was based on the 2005 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 47.43 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2007, but before January 1, 2009.

(l) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2009, but before January 1, 2011, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2008, when the aggregate statewide valuation for assessment was based on the 2007 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.82 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2009, but before January 1, 2011.

(m) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2011, but before January 1, 2013, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2010, when the aggregate statewide valuation for

assessment was based on the 2009 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.53 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2011, but before January 1, 2013.

(n) Based on the determination by the administrator that the target percentage is 45.86 percent, the ratio of valuation for assessment for residential real property is 7.96 percent of actual value for the property tax years commencing on or after January 1, 2013, but before January 1, 2015.

(o) Based on the determination by the administrator that the target percentage is 45.67 percent, the ratio of valuation for assessment for residential real property is 7.96 percent of actual value for the property tax years commencing on or after January 1, 2015, but before January 1, 2017.

(p) Based on the determination by the administrator that the target percentage is 45.76 percent, the ratio of valuation for assessment for residential real property is 7.2 percent of actual value for property tax years commencing on or after January 1, 2017, until the next property tax year that the general assembly adjusts the ratio of valuation for assessment for residential real property.

(4) To ensure that in present and future years there is no deviation from the intent of section 3 of article X of the state constitution:

(a) Commencing January 1, 1989, for each year in which there is a change in the level of value, the administrator shall determine the target percentage in order to ensure that the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property remains the same as it was in the year immediately preceding the year in which such change occurs. In determining the target percentage, the administrator shall use data concerning valuation for assessment which has been adjusted to eliminate the effects of having rounded the then current residential rate to the nearest one-hundredth of one percent. The net increase in valuation for assessment attributable to new construction and to the net increase in the volume of mineral and oil and gas production shall be added to the valuation for assessment, as so adjusted. The sum so determined shall be the basis on which the target percentage is calculated.

(b) In order to implement the provisions of paragraph (a) of this subsection (4), the administrator shall use data concerning the 1987 valuation for assessment when the aggregate statewide valuation for assessment was based on the 1985 aggregate statewide valuation for assessment plus the net increase in valuation for assessment attributable to new construction and to the net increase in the volume of mineral and oil and gas production which occurred during 1986. The administrator shall add the 1988 net increase in valuation for assessment attributable to new construction and the net increase in the volume of mineral and oil and gas production to the 1987 aggregate statewide valuation for assessment, and the resulting amounts shall be the basis for determining the target percentage for 1989.

(5) (a) Commencing January 1, 1989, for each year in which there is a change in the level of value used in determining actual value, the general assembly, pursuant to the authority granted in section 3 of article X of the state constitution, shall, by law, adjust the residential rate in order that the percentage of aggregate statewide valuation for assessment which is attributable to residential real property for such year equals the target percentage.

(b) The residential rate shall be based on a documented estimate of the total valuation for assessment of all taxable property in the state arrived at by projecting the percentage of change in the level of value for each class of taxable property to all taxable property in such class in the state.

(c) The administrator shall be responsible for ensuring that a documented estimate study is completed by the division of property taxation.

(6) No later than January 15 of each year in which there is a change in the level of value used in determining actual value, the administrator shall report to the state board of equalization:

(a) An estimate of the total valuation for assessment of all taxable property in the state;

(b) An estimate of the percentage of aggregate statewide valuation for assessment which would be attributable to residential real property if the residential rate fixed in current law remained the same. Such estimate shall be based upon the projected valuations as determined by the documented study.

(c) The target percentage as determined under paragraph (a) of subsection (4) of this section;

(d) The projected residential rate. The rate shall be rounded to the nearest one-hundredth of one percent, and the rate shall ensure that the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property shall remain as it was in the year immediately preceding the year in which such change occurs.

(7) Repealed.

**Source: L. 88:** Entire section added, p. 1276, § 1, effective January 1, 1989. **L. 89:** (3) and (7)(b) amended, p. 1450, § 3, effective June 7. **L. 90:** IP(7)(a) amended, p. 1689, § 5, effective June 9. **L. 91:** (3)(c) added and (4)(a), (6)(d), and (7)(b) amended, p. 1984, §§ 1, 2, effective April 11. **L. 91, 2nd Ex. Sess.:** (7)(b) amended, p. 100, § 1, effective September 25; IP(7)(a) and (7)(a)(II) amended, p. 101, § 1, effective October 7. **L. 92:** IP(7)(a) and (7)(b) amended, p. 2215, § 2, effective June 3. **L. 93:** (3)(d) added and (7) repealed, pp. 1876, 1689, §§ 1, 8, effective June 6. **L. 95:** (3)(e) added, p. 583, § 1, effective May 22. **L. 97:** (3)(f) added, p. 1149, § 1, effective May 28. **L. 99:** (3)(g) added, p. 505, § 1, effective April 30. **L. 2001:** (3)(h) added, p. 705, § 1, effective May 31. **L. 2002:** IP(6) amended, p. 861, § 2, effective August 7. **L. 2003:** (3)(i) added, p. 1970, § 1, effective May 22. **L. 2005:** (3)(j) added, p. 632, § 1, effective May 27. **L. 2007:** (3)(k) added, p. 1524, § 1, effective May 31. **L. 2009:** (3)(l) added, (HB 09-1360), ch. 362, p. 1875, § 1, effective June 1. **L. 2011:** (3)(m) added, (HB 11-1305), ch. 222, p. 956, § 1, effective May 27. **L. 2013:** (3)(n) added, (HB 13-1319), ch. 324, p. 1815, § 1, effective May 28. **L. 2015:** (3)(o) added, (HB 15-1357), ch. 312, p. 1276, § 1, effective June 5. **L. 2017:** (3)(p) added, (HB 17-1349), ch. 358, p. 1885, § 1, effective June 5.

**39-1-104.5. Severed mineral interest - placement on tax roll.** Any owner of the surface estate from which a mineral interest has been severed, on behalf of himself and any other owners of such interest in the surface, may require the assessor of the county wherein such real estate is situate to place such severed mineral interest, without regard to value, on the tax roll of the county if the owner of the surface estate provides proof of ownership of the severed mineral interest and a record of the creation of the severed mineral interest as shown by the records of the county clerk and recorder. Proof of ownership and the record of creation of the severed

mineral interest shall be provided in the form of a certificate prepared by an attorney, a title insurance company, or a title insurance agent authorized to do business in this state.

**Source: L. 79:** Entire section added, p. 1405, § 1, effective July 1. **L. 83:** Entire section amended, p. 512, § 3, effective May 16.

**39-1-105. Assessment date.** All taxable property, real and personal, within the state at twelve noon on the first day of January of each year, designated as the official assessment date, shall be listed, appraised, and valued for assessment in the county wherein it is located on the assessment date. Personal property shall be listed and valued separately from real property. Whenever construction of any new taxable building within the boundaries of a county occurs subsequent to the assessment date but before July 1 and such county has resolved to implement the procedures set out in section 39-5-132, such building shall be listed, appraised, and valued pursuant to section 39-5-132.

**Source: L. 64:** R&RE, p. 677, § 1. **C.R.S. 1963:** § 137-1-5. **L. 85:** Entire section amended, p. 1226, § 2, effective January 1, 1986. **L. 86:** Entire section amended, p. 1222, § 35, effective May 30.

**Cross references:** For property brought into the state after assessment date, see § 39-5-110; for property destroyed after the assessment date, see § 39-5-117; for the procedure for exclusion of property within a municipality from a special district and for the effect of such an exclusion order, see §§ 32-1-502 and 32-1-503.

**39-1-105.5. Reappraisal ordered based on valuation for assessment study - state school finance payments.**

(1) (a) Repealed.

(b) (I) Pursuant to section 39-1-104 (16)(b) for each property tax year beginning with the property tax year which commences January 1, 1985, the annual study shall, in addition to other requirements, determine and set forth the aggregate valuation for assessment of each county for the year in which the study is conducted.

(II) (A) If the valuation for assessment of a county as reflected in its abstract for assessment for any property tax year beginning with the property tax year commencing January 1, 1985, is more than five percent below the valuation for assessment for such county as determined by the study conducted during the same property tax year, the state board of equalization shall cause to be performed a reappraisal of any class or classes of property that the study shows were not appraised consistent with the property tax provisions of the Colorado constitution or the statutes. The reappraisal must be performed during the next following year at the expense of the county; except that the state board of equalization may waive the requirement that the county reimburse the state for any costs incurred by the state in reappraising any class or classes of property if the county presents the state board with a plan to use the money retained to improve the functioning of the office of the county assessor. If the county fails to implement the plan submitted in a timely manner as agreed upon by the state board and the county, the state board shall revoke the waiver and require the county to reimburse the state for reappraisal costs

incurred by the state. The reappraisal is the county's valuation for assessment with regard to the reappraised class or classes for the year in which the reappraisal is performed.

(B) Even though a county's aggregate valuation for assessment as reflected in its abstract for assessment for any property tax year beginning with the property tax year commencing January 1, 1985, is not more than five percent below the valuation for assessment for such county as determined by the study conducted during the same property tax year, the state board of equalization shall cause to be performed a reappraisal of any class or classes of property that the study shows were not appraised consistent with the property tax provisions of the Colorado constitution or the statutes. The reappraisal must be performed during the next following year at the expense of the county; except that the state board of equalization may waive the requirement that the county reimburse the state for any costs incurred by the state in reappraising any class or classes of property if the county presents the state board with a plan to use the money retained to improve the functioning of the office of the county assessor. The reappraisal is the county's valuation for assessment with regard to the reappraised class or classes of property for the year in which the reappraisal is performed.

(III) Whenever a reappraisal is ordered pursuant to subparagraph (II) of this paragraph (b), state equalization payments to school districts within the county during the year in which the reappraisal is performed shall be based upon the valuation for assessment as reflected in the county's abstract for assessment for the year prior to the year in which the reappraisal is performed. The state board of equalization shall order the county's board of county commissioners to levy, and the board of county commissioners shall levy, an additional property tax on all taxable property within the county. Such additional property tax shall be levied at the same time as other property taxes are levied during the year in which the reappraisal is performed. Such additional property tax shall be in an amount which is sufficient to reimburse the state for the excess state equalization payments made to school districts within the county during the year in which the reappraisal is performed. The county's board of county commissioners shall reimburse the state for such excess state equalization payments. Such excess shall be that amount of the state equalization payments actually paid by the state to the county during the year in which the reappraisal is performed based on the incorrect valuation for assessment as reflected in the county's abstract for assessment for the immediately prior year which amount exceeds the state equalization payments the state would have paid during the year in which the reappraisal is performed had the valuation for assessment for the immediately prior year been determined by the assessor consistent with the provisions of the Colorado constitution and the statutes. In addition, the additional property tax shall be sufficient to pay to the state, and the board of county commissioners shall pay to the state, interest on such excess at the interest rate determined by the state banking commissioner pursuant to section 39-21-110.5.

(IV) If the valuation for assessment of a county as reflected in its abstract for assessment for any property tax year beginning with the property tax year commencing January 1, 1985, is more than five percent below the valuation for assessment for such county as determined by the study conducted during the same property tax year and if the state board of equalization fails to order a reappraisal, state equalization payments to school districts within the county during the year next following the year in which the study was performed shall be based upon the valuation for assessment for the county as reflected in the county's abstract for assessment for the year in which the study was conducted. At the same time as other property taxes are levied during the year in which such state equalization payments are made, the county's board of county

commissioners shall levy an additional property tax on all taxable property within the county. Such additional property tax shall be in an amount sufficient to reimburse the state for the difference between the amount the state actually paid in state equalization payments during the year following the year in which the study was performed and what the state would have paid during such year had the state equalization payments been based on the valuation for assessment as determined by the study. The county's board of county commissioners shall reimburse the state for such difference.

(V) Any finding made in 1988 pursuant to the provisions of subparagraph (II) of this paragraph (b) shall be based primarily on data and information collected from within the county in question, except where data is lacking or deficient. If data from outside the county must be used, then that data must be from a comparable area. If any finding made utilizing the study conducted for the property tax year commencing on January 1, 1987, was based upon data and information comparing taxable property in one county with taxable property in the county subject to such finding, the state board of equalization shall revise such finding so that any orders made pursuant to the provisions of subparagraph (II) of this paragraph (b) are based solely on data and information collected from within each affected county.

(2) Any reimbursement made by a county to the state for the cost incurred by the state in reappraising any class or classes of taxable property for property tax purposes pursuant to subsection (1) of this section shall be made to the state treasurer who shall credit the amount of the reimbursement to the state general fund. For purposes of this section, the costs of salary and benefits for state employees who work on reappraisals is not a reimbursable cost incurred by the state.

**Source: L. 83:** Entire section added, p. 1506, § 4, effective June 2. **L. 84:** (2) added, p. 733, § 2, effective May 11. **L. 87:** (1)(b)(III) amended, p. 1394, § 1, effective July 1. **L. 88:** (1)(b)(V) added, p. 1282, § 6, effective January 1, 1989. **L. 89:** (1)(b)(III) amended, p. 1451, § 4, effective June 7. **L. 2004:** (1)(a) repealed, p. 205, § 27, effective August 4. **L. 2014:** (1)(b)(II)(A), (1)(b)(II)(B), and (2) amended, (SB 14-083), ch. 44, p. 216, § 1, effective August 6.

**39-1-106. Partial interests not subject to separate tax.** For purposes of property taxation, it shall make no difference that the use, possession, or ownership of any taxable property is qualified, limited, not the subject of alienation, or the subject of levy or distraint separately from the particular tax derivable therefrom. Severed mineral interests shall also be taxed.

**Source: L. 64:** R&RE, p. 677, § 1. **C.R.S. 1963:** § 137-1-6. **L. 73:** p. 1430, § 2. **L. 96:** Entire section amended, p. 1850, § 2, effective June 5. **L. 2002:** Entire section amended, p. 1008, § 2, effective August 7.

**39-1-107. Tax liens.** (1) The lien of general taxes for the current year, including taxes levied pursuant to section 39-5-132, shall attach to all taxable property, real and personal, at 12 noon on the assessment date.

(2) Taxes levied on real and personal property, together with any delinquent interest, advertising costs, and fees prescribed by law with respect to any such taxes as may have become

delinquent, shall be a perpetual lien thereon, and such lien shall have priority over all other liens until such taxes, delinquent interest, advertising costs, and fees shall have been paid in full.

(3) Repealed.

(4) The property tax on a possessory interest in real or personal property that is exempt from taxation under this article shall be assessed to the holder of the possessory interest and collected in the same manner as property taxes assessed to owners of real or personal property; except that such property tax shall not become a lien against the property. When due, the property tax shall be a debt due from the holder of the possessory interest to the board of county commissioners for the county in which such property is located or to such other body as is authorized by law to levy property taxes, and shall be recoverable by such board or body by direct action in debt on behalf of each governmental entity for which a property tax levy has been made.

**Source: L. 64:** R&RE, p. 677, § 1. **C.R.S. 1963:** § 137-1-7. **L. 67:** p. 212, § 1. **L. 75:** (1) amended, p. 1462, § 1, effective January 1, 1976. **L. 83:** (3) repealed, p. 1485, § 11, effective April 22. **L. 85:** (1) amended, p. 1226, § 3, effective January 1, 1986. **L. 89:** (1) amended, p. 1482, § 5, effective April 23. **L. 92:** (2) amended, p. 2222, § 1, effective April 9. **L. 2002:** (4) added, p. 1008, § 3, effective August 7. **L. 2016:** (1) amended, (SB 16-189), ch. 210, p. 792, § 105, effective June 6.

**Editor's note:** Section 39-3-135, referenced in subsection (1), was repealed, effective June 5, 1996, but has been left in for historical purposes.

**Cross references:** For receipts for taxes paid, see § 39-10-105; for the effect of issuance of certificate of taxes due, see § 39-10-115; for sale of tax liens, see article 11 of this title.

**39-1-108. Payment of taxes - grantor and grantee.** As between the grantor and grantee, when there is in the instrument of conveyance no express agreement as to which shall pay the taxes that may be levied on the property conveyed in the year in which conveyed, then if such conveyance is made after the thirty-first day of December and before the first day of July next following, the grantee shall pay such taxes; but if the conveyance is made after the thirtieth day of June and before the first day of January next following, the grantor shall pay such taxes.

**Source: L. 64:** R&RE, p. 677, § 1. **C.R.S. 1963:** § 137-1-8.

**39-1-109. Taxes paid by mortgagee - effect.** If the mortgagor of real property fails or neglects to pay the taxes levied on such property or permits such property to be sold for taxes, the mortgagee may pay said taxes or redeem such property if sold for taxes, and any taxes so paid or redeemed shall become and be a lien upon such real property until the same have been repaid to the mortgagee. Upon payment of any such mortgage or in an action to enforce the same, such mortgagee may demand the taxes so paid or redeemed, with interest thereon at the same rate specified in the mortgage, and the same shall be included in any judgment rendered on the mortgage. The term "mortgage" includes deeds of trust, and the term "mortgagee" includes the beneficiary of a deed of trust.

**Source: L. 64:** R&RE, p. 678, § 1. **C.R.S. 1963:** § 137-1-9. **L. 73:** p. 1417, § 100.

**39-1-110. Notice - formation of political subdivision - boundary change of special district.** (1) (a) When any petition for the organization of a political subdivision is filed, the clerk of any court or board or any other officer with whom the petition has been filed shall immediately, in writing, notify the assessor and the board of county commissioners of each county in which the proposed political subdivision is to be located and the division of local government of the filing, and such notice shall specify the boundaries of the proposed political subdivision. No political subdivision shall levy a tax for the calendar year in which it has been organized unless, prior to July 1 of said year, the assessor and the board of county commissioners of each county within which such political subdivision is located have been notified of its organization and have received from its governing body the following:

(I) Official notice that a tax will be levied for such year;

(II) A legal description; and

(III) A map of the political subdivision.

(b) No levy for the calendar year in which a political subdivision has been organized shall be made by the board of county commissioners or certified to the assessor unless the political subdivision has complied with the provisions of paragraph (a) of this subsection (1).

(1.5) No political subdivision that is a special district shall levy a tax against property included in the special district for the calendar year during which such property was included unless, prior to May 1 of said year or, if such property is included in the special district pursuant to section 32-1-401 (2), C.R.S., prior to July 1 of said year, the court order of inclusion has been filed with the county clerk and recorder of the county in which the inclusion took place in accordance with the provisions of section 32-1-105, C.R.S.

(1.8) A political subdivision that is a special district shall not levy a tax against property excluded from the special district for the calendar year during which such exclusion becomes effective if, prior to May 1 of said year, the court order of exclusion has been filed with the county clerk and recorder of the county in which the exclusion took place in accordance with the provisions of section 32-1-105, C.R.S.

(2) Whenever all or any portion of a political subdivision becomes part of another county by reason of any change in county boundaries, the governing body of such political subdivision shall, within thirty days after the effective date of such change, notify, in writing, the assessor and the board of county commissioners of the county, of which all or any portion of such political subdivision has become a part, of its intention to levy a tax for the year in which such change became effective.

(3) The provisions of this section shall not apply to any school district, local college district, health service district created pursuant to section 32-1-1003, C.R.S., or health assurance district created pursuant to section 32-1-1003.5, C.R.S.

(4) For purposes of this section, "special district" means a special district formed in accordance with the provisions of title 32, C.R.S.

**Source: L. 64:** R&RE, p. 678, § 1. **C.R.S. 1963:** § 137-1-10. **L. 67:** p. 946, § 6. **L. 70:** p. 380, § 11. **L. 72:** p. 620, § 162. **L. 73:** p. 1432, § 1. **L. 85:** (1) amended, p. 1022, § 10, effective July 1. **L. 87:** (1.5) and (1.8) added, p. 1396, § 1, effective April 22. **L. 90:** (1) amended, p.

1436, § 8, effective January 1, 1991. **L. 2003:** (1), (1.5), (1.8), and (2) amended and (4) added, p. 746, § 1, effective March 25. **L. 2007:** (3) amended, p. 1201, § 19, effective July 1.

**Cross references:** For required notice for organization, dissolution, or boundary change of a special district, see § 32-1-105.

**39-1-111. Taxes levied by board of county commissioners.** (1) No later than December 22 in each year, the board of county commissioners in each county of the state, or such other body in the city and county of Denver as shall be authorized by law to levy taxes, or the city council of the city and county of Broomfield, shall, by an order to be entered in the record of its proceedings, levy against the valuation for assessment of all taxable property located in the county on the assessment date, and in the various towns, cities, school districts, and special districts within such county, the requisite property taxes for all purposes required by law.

(2) As soon as such levies have been made, the board of county commissioners or other body authorized by law to levy taxes shall forthwith certify all such levies to the assessor, upon forms prescribed by the administrator, and shall transmit a copy of such certification to the administrator, to the division of local government, and to the department of education.

(3) If the board of county commissioners or other body authorized by law to levy taxes fails to certify such levies to the assessor, it is the duty of the assessor, upon direction of the division of local government, to extend the levies of the previous year, subject to the limitations prescribed in section 29-1-301, C.R.S.

(4) If the valuation for assessment for all or any part of any body authorized to levy taxes has been divided for an urban renewal area, pursuant to section 31-25-107 (9)(a), C.R.S., the board of county commissioners shall make the same levy on the portion of valuation for assessment divided under subparagraph (II) as under subparagraph (I) of said section 31-25-107 (9)(a), C.R.S., for payment of taxes according to the provisions of said section, so long as said division remains in effect.

(5) If, after certification of the valuation for assessment pursuant to section 39-5-128 and notification of total actual value pursuant to section 39-5-121 (2)(b) but prior to December 10, changes in such valuation for assessment or total actual value are made by the assessor, the assessor shall send a single notification to the board of county commissioners or other body authorized by law to levy property taxes, to the division of local government, and to the department of education that includes all of such changes that have occurred during said specified period of time. Upon receipt of such notification, such board or body shall make adjustments in the tax levies to ensure compliance with section 29-1-301, C.R.S., if applicable, and may make adjustments in order that the same amount of revenue be raised. A copy of any adjustment to tax levies shall be transmitted to the administrator and assessor. Nothing in this subsection (5) shall be construed as conferring the authority to exceed statutorily imposed mill levy or revenue-raising limits.

**Source: L. 64:** R&RE, p. 679, § 1. **C.R.S. 1963:** § 137-1-11. **L. 69:** p. 1115, § 1. **L. 70:** p. 380, § 12. **L. 72:** p. 620, § 163. **L. 73:** p. 1433, § 2. **L. 75:** (1) amended, p. 1456, § 1, effective July 14; (4) added, p. 1278, § 5, effective July 16. **L. 76:** (1) amended, p. 686, § 3, effective July 1. **L. 81:** (5) added, p. 1397, § 7, effective June 19. **L. 84:** (5) amended, p. 991, § 1, effective

March 26. **L. 87:** (1) and (5) amended, p. 1410, § 13, effective April 22. **L. 88:** (1) amended, p. 823, § 36, effective May 24; (1) amended, p. 1283, § 8, effective January 1, 1989. **L. 89:** (1) and (5) amended, p. 1452, § 5, effective June 7. **L. 93:** (2) and (5) amended, p. 1282, § 3, effective June 6. **L. 96:** (5) amended, p. 719, § 2, effective May 22. **L. 2001:** (1) amended, p. 268, § 15, effective November 15.

**Editor's note:** Amendments to subsection (1) by House Bill 88-1341 and Senate Bill 88-184 were harmonized.

**Cross references:** For certification by boards of education of amounts that may be levied by boards of county commissioners for school districts, see § 22-40-102; for the procedure for levy and collection of taxes in a special district and the duty of county officers to levy and collect the taxes, see §§ 32-1-1201 and 32-1-1202.

**39-1-111.5. Temporary property tax credits and temporary mill levy rate reductions.** (1) In order to effect a refund for any of the purposes set forth in section 20 of article X of the state constitution, any local government may approve and certify a temporary property tax credit or temporary mill levy rate reduction as set forth in this section. The procedures set forth in this section shall be deemed to be a reasonable method for effecting refunds in accordance with section 20 of article X of the state constitution.

(2) Concurrent with the certification of its levy to the board of county commissioners as required pursuant to section 39-5-128 (1), any local government may certify a refund in the form of a temporary property tax credit or temporary mill levy rate reduction. The certification shall include the local government's gross mill levy, the temporary property tax credit or temporary mill levy rate reduction expressed in mill levy equivalents, and the net mill levy, which shall be the gross mill levy less the temporary property tax credit or temporary mill levy rate reduction.

(3) Concurrent with certification to the assessor of all mill levies by the board of county commissioners or other body authorized by law to levy taxes in accordance with section 39-1-111 (2), the board of county commissioners shall certify any other local government's temporary property tax credit or temporary mill levy rate reduction and any temporary property tax credit or temporary mill levy rate reduction for the county or city and county itself, itemized as set forth in subsection (2) of this section.

(4) Concurrent with the delivery to the treasurer of the tax warrant by the assessor in accordance with section 39-5-129, the assessor shall, in addition to all other information required to be set forth in the tax warrant, itemize in the manner set forth in subsection (2) of this section any duly certified temporary property tax credit or temporary mill levy rate reduction.

(5) Upon receipt of any tax warrant reflecting a temporary property tax credit or temporary mill levy rate reduction for any local government, the treasurer shall be responsible for collecting taxes on behalf of such local government based upon such local government's net adjusted mill levy. In addition to any other information required by section 39-10-103, the tax statement shall indicate by footnote which, if any, local government mill levies contained therein reflect a temporary property tax credit or temporary mill levy rate reduction for the purpose of effecting a refund in accordance with section 20 of article X of the state constitution.

**Source: L. 93:** Entire section added, p. 1686, § 1, effective June 6.

**39-1-112. Taxes available - when.** Except as otherwise provided in article 1.5 of this title, all taxes levied pursuant to the provisions of articles 1 to 13 of this title shall be available for expenditure by the political subdivision for which levied during its fiscal year as collected.

**Source: L. 64:** R&RE, p. 679, § 1. **C.R.S. 1963:** § 137-1-12. **L. 81:** Entire section amended, p. 1841, § 2, effective May 28.

**39-1-113. Abatement and refund of taxes.** (1) Except as otherwise provided in subsection (1.5) of this section, no decision on any petition regarding abatement or refund of taxes, as provided for in section 39-10-114, shall be made by the board of county commissioners unless a hearing is had thereon, at which hearing the assessor and the taxpayer shall have the opportunity to be present. The board may appoint independent referees who are experienced in property valuation to conduct the hearing on behalf of the board, to make findings, and to submit recommendations to the board for its final decision.

(1.5) Upon authorization by the board of county commissioners, the assessor may review petitions for abatement or refund and settle by written mutual agreement any such petition for abatement or refund in an amount of ten thousand dollars or less per tract, parcel, or lot of land or per schedule of personal property. Any abatement or refund agreed upon and settled pursuant to this subsection (1.5) shall not be subject to the requirements of subsection (1) of this section.

(1.7) Every petition for abatement or refund filed pursuant to section 39-10-114 shall be acted upon pursuant to the provisions of this section by the board of county commissioners or the assessor, as appropriate, within six months of the date of filing such petition.

(2) (a) Whenever any abatement or refund in an amount of ten thousand dollars or less is recommended by the board of county commissioners, the board shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board shall order the refund of taxes pro rata by all jurisdictions receiving payment thereof.

(b) Whenever any abatement or refund in an amount of ten thousand dollars or less has been agreed upon and settled by the assessor pursuant to subsection (1.5) of this section, the assessor shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the assessor shall order the refund of taxes pro rata by all jurisdictions receiving payment thereof.

(3) Whenever any abatement or refund in an amount in excess of ten thousand dollars is recommended by the board of county commissioners, two copies of an application therefor, reciting the amount of such abatement or refund and the grounds upon which it should be allowed, shall be submitted to the administrator for review pursuant to section 39-2-116. If an application is approved, the board of county commissioners shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board of county commissioners shall order the refund of taxes pro rata by all jurisdictions receiving payment thereof.

(4) (Deleted by amendment, L. 91, p. 1962, § 2, effective June 5, 1991.)

(5) (a) If a hearing is required pursuant to subsection (1) of this section, the board of county commissioners shall provide at least seven days' notice of the scheduled hearing on a petition for abatement and refund of taxes to the person signing such petition and the taxpayer if the taxpayer did not sign the petition. Except as authorized in paragraph (b) of this subsection

(5), notice shall be provided by sending to such person through the United States mail notification of the date, time, and place of the hearing.

(b) A board of county commissioners may authorize by resolution a person required to be notified by paragraph (a) of this subsection (5) or such person's agent to elect to receive the notice by fax or electronic mail at a phone number or electronic mail address supplied by such person. If no election is made by such person, the board of county commissioners shall mail the required notice.

(6) Notwithstanding any law to the contrary, for taxes levied on and after January 1, 1990, a taxpayer may file a petition for abatement or refund of taxes levied on property if the valuation of such property was the subject of an arbitration hearing pursuant to section 39-8-108.5 and the arbitrator presiding over such hearing failed to deliver a decision to the taxpayer prior to the beginning date of the period during which the assessor sits to hear all objections and protests concerning the valuation of such property in the year following the year in which such arbitration hearing was held.

**Source: L. 64:** R&RE, p. 679, § 1. **C.R.S. 1963:** § 137-1-13. **L. 70:** p. 381, § 13. **L. 77:** Entire section amended, p. 1733, § 6, effective June 20. **L. 81:** Entire section amended, p. 1837, § 1, effective January 1, 1982. **L. 87:** Entire section amended, p. 1397, § 1, effective May 6. **L. 88:** (1) to (3) amended, pp. 1290, 1294, §§ 23, 27, effective May 23. **L. 90:** (2) and (3) amended, p. 1703, § 38, effective June 9. **L. 91:** (1) and (4) amended and (5) and (6) added, p. 1962, § 2, effective June 5. **L. 92:** (1), (2), (5), and (6) amended and (1.5) and (1.7) added, p. 2205, § 1, effective June 3. **L. 93:** (1) amended, p. 1744, § 3, effective July 1. **L. 96:** (3) amended, p. 649, § 1, effective May 1. **L. 2003:** (1) amended, p. 1347, § 1, effective August 6. **L. 2008:** (2) and (3) amended, p. 1246, § 5, effective August 5. **L. 2010:** (1.5), (2), and (3) amended, (HB 10-1117), ch. 195, p. 841, § 1, effective August 11. **L. 2016:** (5) amended, (SB 16-172), ch. 280, p. 1148, § 1, effective June 10.

**Cross references:** For approval of tax abatements or refunds by the property tax administrator, see § 39-2-116; for further restrictions relating to the abatement, refund, and cancellation of taxes, see § 39-10-114.

**39-1-114. Who may administer oath.** Whenever any fact, matter, or thing is required by the provisions of articles 1 to 13 of this title to be verified by oath or affirmation, any assessor, treasurer, or county clerk and recorder, or a deputy of any of said officers may administer such oath or affirmation. The deputy need not certify the oath in the name of the principal.

**Source: L. 64:** R&RE, p. 679, § 1. **C.R.S. 1963:** § 137-1-14.

**39-1-115. Records prima facie evidence.** The assessment rolls, the tax warrants, the entries made in the books of the treasurer, and the lists of lands sold for taxes recorded by the treasurer or the county clerk and recorder, or a certified copy thereof, shall be prima facie evidence of all things appearing therein in all courts and places.

**Source: L. 64:** R&RE, p. 679, § 1. **C.R.S. 1963:** § 137-1-15.

**39-1-116. Penalty for divulging confidential information.** Except when pursuant to an order of any court of competent jurisdiction or as otherwise provided by law, any person who divulges or makes known in any way the contents of any private document, as specified in section 39-4-103, 39-5-120, or 39-7-101 (4), to any person not authorized to have access to such documents is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

**Source: L. 64:** R&RE, p. 680, § 1. **C.R.S. 1963:** § 137-1-16. **L. 96:** Entire section amended, p. 110, § 2, effective January 1, 1997.

**Cross references:** For confidential records submitted by a public utility, see § 39-4-103; for confidential personal property schedules, see § 39-5-120.

**39-1-117. Prior actions not affected.** Nothing in articles 1 to 13 of this title shall apply to or in any manner affect any valuation, assessment, allocation, levy, tax certificate, tax warrant, tax sale, tax deed, right, claim, demand, lien, indictment, information, warrant, prosecution, defense, trial, cause of action, motion, appeal, judgment, sentence, or other authorized act, done or to be done, or proceeding arising under or pursuant to the laws in effect immediately prior to August 1, 1964, but the same shall be governed by and conducted pursuant to the provisions of law in effect immediately prior to August 1, 1964.

**Source: L. 64:** R&RE, p. 748, § 2. **C.R.S. 1963:** § 137-1-18.

**39-1-118. Repeal of law levying state property tax - disposition of funds.** After the repeal of any law levying a general property tax for the state or for state purposes takes effect, delinquent taxes collected by county treasurers as a result of the levy imposed by any such repealed law shall, when received by the state treasurer, be credited to the capital construction fund.

**Source: L. 71:** p. 1243, § 1. **C.R.S. 1963:** § 137-1-21.

**Cross references:** For the creation of and provisions relating to the capital construction fund, see § 24-75-302.

**39-1-119. Funds held for payment of taxes - refund - reduction and increase of amounts - penalty.** (1) Subject to section 39-3.5-105 (2), all funds in excess of those permitted to be held by the federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 et seq., as amended from time to time, and any rules promulgated to implement that federal law, as amended from time to time, held in escrow for the payment of ad valorem taxes on property under any deed of trust, mortgage, or other agreement encumbering or pertaining to real property located in this state shall be refunded to the property owner at the time and in the manner required by the federal law and rules. This subsection (1) applies whether or not the federal law and rules would apply to the deed of trust, mortgage, or other agreement in the absence of this subsection (1).

(2) Payments into such escrow accounts for the payment of ad valorem taxes due in subsequent years shall be adjusted annually, based upon the amount of taxes paid on the subject property for the preceding year, but if such person reasonably believes that substantial improvements have been made to such property, which improvements were not included within the previous year's assessment, a reasonable estimate of the taxes for such subsequent years may be used as a basis for establishing the payments for such escrow account.

(2.5) The amount of payments into such escrow accounts for the payment of ad valorem taxes due in subsequent years shall be increased only upon official notification of an increase in the amount of taxes levied on such property. Such amounts shall not be increased based solely upon notification of an increase in the valuation for assessment of such property.

(3) Any person willfully failing to make a refund in violation of subsection (1) of this section for any whole month or more shall be liable for interest at a rate of six percent per annum and an equal amount as penalty.

**Source: L. 73:** p. 1435, § 1. **C.R.S. 1963:** § 137-1-22. **L. 74:** (1) amended, p. 427, § 1, effective March 19. **L. 79:** (1) amended, p. 1414, § 10, effective January 1, 1980. **L. 80:** (1) amended, p. 797, § 62, effective June 5. **L. 87:** (2.5) added, p. 1389, § 11, effective June 20. **L. 93:** (1) amended, p. 346 § 2, effective April 12. **L. 98:** (1) amended, p. 828, § 51, effective August 5. **L. 2015:** (1) amended, (SB 15-142), ch. 29, p. 71, § 1, effective March 18.

**39-1-119.5. Funds collected by lessors of personal property for payments of taxes - refund - damages.** (1) If a personal property lessee is required to make payment to a lessor pursuant to the terms of any contract or other agreement entered into between the lessee and lessor for the payment of personal property tax due on or after January 1, 2007, those payments shall be accounted for upon the termination of the lease entered into between the lessee and lessor. If it is determined upon this accounting that a refund is due to the lessee for overpayment of personal property taxes, the lessor shall make such refund to the lessee on or before August 31 of the year in which the tax is due.

(2) The lessor shall base the accounting and refund on the actual property tax liability due in each year of the lease period.

(3) Any lessor who willfully fails to make a refund in violation of subsection (1) of this section shall be liable to the lessee, in a civil action, in an amount equal to the sum of three times the amount of actual damages sustained and in the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.

(4) Any action brought under this section shall be commenced within three years after the date on which the failure to refund occurred or within three years after the lessee discovered or in the exercise of reasonable diligence should have discovered the lessor's failure to refund. The period of limitation provided in this section may be extended for a period of one year if the lessee proves that failure to timely commence the action was caused by the lessor engaging in conduct calculated to induce the lessee to refrain from or postpone the commencement of the action.

**Source: L. 2006:** Entire section added, p. 311, § 1, effective April 4.

**39-1-120. Filing - when deemed to have been made.** (1) (a) Any report, schedule, claim, tax return, statement, or other document required or authorized under articles 1 to 9 of this title to be filed with or any payment made to the state of Colorado or any political subdivision thereof which is transmitted through the United States mail shall be deemed filed with and received by the public officer or agency to which it was addressed on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed.

(b) Any such document which is mailed, but not received by the public officer or agency to which it was addressed, or is received and the cancellation mark is not legible, or is erroneous or omitted, shall be deemed to have been filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mail on or before the date due for filing. In such cases of nonreceipt of a document by the public officer or agency to which it was addressed, the sender shall file a duplicate copy thereof within thirty days after written notification is given to the sender by such public officer of the failure to receive such document.

(2) If any report, schedule, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States postal service of such registration, certification, or certificate shall be considered competent evidence that the report, schedule, claim, tax return, statement, remittance, or other document was mailed to the public officer or agency to which it was addressed, and the date of the registration, certification, or certificate shall be deemed to be the postmark date.

(3) If the date for filing any report, schedule, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

**Source: L. 77:** Entire section added, p. 1404, § 2, effective July 1. **L. 79:** (1)(a) amended, p. 1420, § 1, effective January 1, 1980.

**39-1-121. Expression of rate of property taxation in dollars per thousand dollars of valuation for assessment - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Communication" means any tax statement pursuant to section 39-10-103.

(b) "Mill" means the rate of property taxation equivalent to the amount of dollars per one thousand dollars of valuation for assessment of taxable real or personal property.

(c) "Valuation for assessment" means the actual value of any real or personal property multiplied by the assessment percentages specified in section 3 of article X of the state constitution.

(2) The general assembly hereby finds, determines, and declares that communications to taxpayers regarding the imposition of property taxes expressed in mills can be unduly confusing to the general public. The general assembly further finds, determines, and declares that, for the convenience of taxpayers and to assist citizens in better understanding the property taxation system, it is advantageous for governmental entities levying property taxes to inform taxpayers of such tax rates in terms of the amount of dollars per one thousand dollars of valuation for assessment of taxable real or personal property.

(3) In any communication to a taxpayer, any mill levy amounts stated shall be converted into the amount of dollars per one thousand dollars of valuation for assessment of taxable real or personal property.

**Source: L. 88:** Entire section added, p. 1273, § 7, effective July 1. **L. 92:** (1)(a) amended, p. 2181, § 52, effective June 2. **L. 94:** (1)(a) amended, p. 1197, § 103, effective July 1.

**39-1-122. Interim task force to study property tax assessment - classification - land used for agricultural and other purposes - 2010 interim - legislative declaration - repeal. (Repealed)**

**Source: L. 2010:** Entire section added, (HB 10-1293), ch. 357, p. 1699, § 1, effective June 7.

**Editor's note:** Subsection (7) provided for the repeal of this section, effective July 1, 2012. (See L. 2010, p. 1699.)

**39-1-123. Property tax reimbursement - property destroyed by natural cause.** (1) **Eligibility.** For property tax years commencing on or after January 1, 2013, real or business personal property listed on a single schedule that was destroyed by a natural cause as defined in section 39-1-102 (8.4), as determined by the county assessor in the county in which the property is located, shall be subject to a reimbursement from the state in an amount equal to the property tax liability applicable to the destroyed property in the property tax year in which the natural cause occurred.

(2) **Report of destroyed properties.** (a) (I) For the property tax year commencing January 1, 2013, on or before July 1, 2014, or on or before October 1, 2014, for public utilities identified in article 4 of this title, the assessor of each county with property destroyed by a natural cause during the year shall forward to the applicable county treasurer a report of the taxable real or business personal property in the county that was destroyed by a natural cause. The report must include the information specified in paragraph (b) of this subsection (2).

(II) For property tax years commencing on or after January 1, 2014, on or before December 15 of the applicable property tax year, the assessor of each county with property destroyed by a natural cause shall forward to the applicable county treasurer a report of the taxable real or business personal property in the county that was destroyed by a natural cause through November of the year. The report must include the information specified in paragraph (b) of this subsection (2).

(III) If after submitting a report to the county treasurer pursuant to subparagraph (I) or (II) of this paragraph (a), the county assessor discovers any taxable real or business personal property that was destroyed by a natural cause during the applicable property tax year that was not included in the report, the county assessor shall forward to the county treasurer a supplemental report of the additional taxable real or business personal property in the county that was destroyed by a natural cause. The report must include the information specified in paragraph (b) of this subsection (2). If applicable, the county assessor shall forward the supplemental report to the county treasurer on or before July 1, or for public utilities identified in article 4 of this

title, on or before October 1 of the year following the property tax year in which the property was destroyed by a natural cause.

(b) (I) In the case of taxable real property, the reports required pursuant to paragraph (a) of this subsection (2) shall include the following:

(A) The legal description of each parcel of real property in the county containing the real property destroyed by a natural cause in the applicable property tax year;

(B) The schedule or parcel number for each parcel of real property containing the real property destroyed by a natural cause in the applicable property tax year;

(C) The name of the real property owner on record;

(D) A description of the real property and the date of the destruction; and

(E) The prorated property taxes due on the destroyed real property for the applicable property tax year according to the records of the county assessor.

(II) In the case of taxable business personal property, the reports required pursuant to paragraph (a) of this subsection (2) shall include the following:

(A) The schedule or identifying number for the business personal property destroyed by a natural cause;

(B) The name of the taxpayer who owns or leases the business personal property that was destroyed by a natural cause and the name of the entity under which the taxpayer does business, if applicable; and

(C) The property taxes due on the destroyed business personal property for the applicable property tax year according to the records of the county assessor.

(3) **Verification of property taxes owed.** (a) Within thirty calendar days of receiving a report from the county assessor pursuant to subsection (2) of this section, the county treasurer of the same county shall verify the total amount of the property tax in the county that is eligible for reimbursement pursuant to subsection (1) of this section. The county treasurer shall calculate such amount based on the certified tax roll that the county treasurer receives from the county assessor, as adjusted by any proration of the amount of property taxes owed due to the destruction of the property.

(b) As soon as practicable after verifying the total amount of property tax in the county that is eligible to be reimbursed, the county treasurer shall transmit a report to the state treasurer that includes the county treasurer's verification and the report of the destroyed properties from the county assessor.

(4) **State treasurer to pay county treasurer.** After receiving a report from a county treasurer pursuant to subsection (3) of this section, and subject to appropriation, the state treasurer shall issue a reimbursement warrant to the applicable county treasurer in an amount equal to the total amount of property tax due in the county that is eligible to be reimbursed pursuant to subsection (1) of this section for the applicable property tax year. The reimbursement shall be paid from the state general fund.

(5) **Reimbursement.** (a) Within thirty calendar days of the receipt of moneys from the state treasurer pursuant to subsection (4) of this section, the county treasurer shall:

(I) Apply a credit to the tax bill of the destroyed property for that year in the amount of the expected reimbursement and apply the reimbursement received from the treasurer to such credit; or

(II) Pay the property tax owed for each destroyed property. If the property tax due for the destroyed property has already been paid, the county treasurer shall issue a reimbursement to the taxpayer's last recorded mailing address.

(b) The county treasurer shall waive any interest on unpaid property taxes that are paid pursuant to this subsection (5).

(c) If any reimbursements are returned to the county treasurer as undeliverable, the county treasurer shall hold the reimbursement for six months from the date that the reimbursement was returned to the county treasurer, and the taxpayer may claim the reimbursement from the county treasurer. The county treasurer shall return to the state treasurer any reimbursements that have not been claimed by the taxpayer within such time.

(d) The state treasurer shall transfer to the general fund any moneys that he or she receives from a county treasurer pursuant to paragraph (c) of this subsection (5).

(e) Nothing in this subsection (5) shall be construed to require a county treasurer to credit or pay the property tax bill of any destroyed property prior to the county treasurer's receipt of a reimbursement warrant from the state treasurer pursuant to subsection (4) of this section.

(6) **Review.** During the first regular session of the seventy-first general assembly, the finance committees of the house of representatives and the senate, or any successor committees, shall review the provisions of this section and make recommendations regarding whether the provisions should be continued, repealed, or continued with modifications.

**Source: L. 2014:** Entire section added, (HB 14-1001), ch. 222, p. 830, § 1, effective May 17.

## ARTICLE 1.5

Prepayment of Ad Valorem Taxes

**39-1.5-101. Legislative declaration.** The general assembly hereby finds and declares that energy development operations and mineral extraction or conversion operations should be authorized to prepay ad valorem taxes to local governments for expenditure on capital improvements in order to meet additional public service demands created by such operations.

**Source: L. 81:** Entire article added, p. 1839, § 1, effective May 28.

**39-1.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Capital improvement" means any road or highway, school facility or equipment, domestic, commercial, or industrial water facility, sewage facility, police and fire protection facility or equipment, hospital facility or equipment, or any other local government administrative or judicial facility which a local government is authorized by law to acquire or construct.

(2) "Local government" means a county, municipality as defined in section 31-1-101, C.R.S., school district, or special district which has the authority to impose general property taxes.

(3) "Operation" means the development, construction, and operation of any facility for the production of energy or the extraction, processing, conversion, or refining of minerals,

including, but not limited to, a mine, power plant, mill, retort, or related facility, or any combination thereof under the same ownership, if the valuation for assessment of the taxable property of the operation within the boundaries of a local government is estimated to exceed fifty million dollars when the operation begins functioning.

**Source: L. 81:** Entire article, p. 1839, § 1, effective May 28.

**39-1.5-103. Authorization of prepayment of taxes for capital improvements to local governments - no effect on obligation to pay taxes to other local governments.** (1) An owner of an operation may prepay moneys to one or more local governments, within the boundaries of which is located taxable property of the operation, for credit against general property taxes which will be levied in the future pursuant to articles 1 to 13 of this title. Said moneys shall be expended on capital improvements which are directly or indirectly related to the additional public service demands created by the operation.

(2) If an operation prepays moneys for credit against general property taxes pursuant to this article to one or more local governments, said prepayment shall not vary the operation's obligations, under law, to pay general property taxes to any local government which does not receive such prepayments.

**Source: L. 81:** Entire article added, p. 1840, § 1, effective May 28.

**39-1.5-104. Prepayment - amounts - credits - limitations.** (1) An owner of an operation who elects to make prepayments under this article and the governing body of a local government shall jointly determine and agree upon:

(a) The total amount of prepayments to be made; except that the total amount of prepayments shall not exceed twenty-five percent of the estimate of the operation's projected tax liability to the local government over a twenty-year period, commencing with the taxable year in which the valuation for assessment of the operation is estimated to exceed fifty million dollars;

(b) The amounts and intervals of prepayments and credits for such prepayments; except that an annual prepayment credit shall not be allowed prior to the taxable year in which the operation begins functioning or the valuation for assessment of the operation exceeds fifty million dollars, whichever is earlier, nor shall it exceed twenty-five percent of the taxes due from the operation to that local government for the then current property tax year.

(2) The owner of an operation, the governing body of the local government, the assessor, the treasurer, and the division of property taxation in the department of local affairs shall estimate when the operation's projected valuation for assessment will exceed fifty million dollars and the amount thereof for the ensuing twenty years, as well as the operation's projected liability for general property taxes for the applicable period.

(3) The governing body of the local government shall adopt a resolution or ordinance which contains the total amount of taxes to be prepaid, the anticipated amounts and anticipated intervals of prepayments and credits for such prepayments, and the capital improvement or improvements upon which such prepaid taxes will be expended.

(4) The credit allowed in any taxable year for prepayments made under this article to or for each local government or any fund or account within the fund thereof shall be treated as an abatement of the property taxes due to such local government for that year from said operation

and shall not affect the determination of the valuation for assessment thereof. The credit shall be shown on the tax statement for that year as it applies to each local government, fund, or fund account to which applied.

**Source: L. 81:** Entire article added, p. 1840, § 1, effective May 28.

**39-1.5-105. Prepaid taxes subject to laws governing financial affairs.** Moneys received pursuant to this article are subject to such laws relating to financial affairs, including budget, accounting, and auditing laws, as are or may be made applicable to the local government which receives such moneys.

**Source: L. 81:** Entire article added, p. 1841, § 1, effective May 28.

**39-1.5-106. Relationship between prepaid taxes and the limitation on local government levies.** In determining the amount of revenue which a local government is allowed to levy under section 29-1-301, C.R.S., prepayments made under this article shall not be deemed property tax revenue in the year of prepayment; however, tax liability against which a credit is to be allowed shall be deemed property tax revenue attributable to increased valuation for new construction or bond revenue in accordance with section 29-1-302, C.R.S., in the year in which a credit is to be allowed.

**Source: L. 81:** Entire article added, p. 1841, § 1, effective May 28.

**39-1.5-107. Prepayment arrangement not a general obligation indebtedness.** Any arrangement for prepayment of ad valorem taxes under this article shall not be construed to be a general obligation indebtedness.

**Source: L. 81:** Entire article added, p. 1841, § 1, effective May 28.

## ARTICLE 2

Division of Property Taxation -
Administrator - Board

**Editor's note:** This article was repealed and reenacted in 1964 and was subsequently repealed and reenacted in 1970, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1970, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume and the editor's note before the article 1 heading.

**39-2-101. Division created - property tax administrator.** There is hereby created the division of property taxation in the department of local affairs, the head of which shall be the property tax administrator, which office is created by section 15 of article X of the state constitution. The administrator shall be appointed by a majority vote of the state board of equalization and shall serve for a term of five years and until a successor is appointed and

qualified. The administrator may be removed from office for cause by a majority vote of the state board of equalization. The position of property tax administrator shall be exempt from the state personnel system.

**Source: L. 70:** R&RE, p. 371, § 1. **C.R.S. 1963:** § 137-3-1. **L. 84:** Entire section amended, p. 992, § 1, effective February 17.

**Cross references:** For the creation of the department of local affairs, see § 24-1-125.

**39-2-102. Qualifications.** The person appointed as property tax administrator shall possess knowledge of the subject of property taxation and of the laws of this state relating thereto and shall have demonstrated ability and experience in the field of property taxation. He shall devote his full time to the performance of his duties as administrator and shall hold no other office under the United States, the state, or any political subdivision thereof.

**Source: L. 70:** R&RE, p. 371, § 1. **C.R.S. 1963:** § 137-3-2.

**39-2-103. Exercise of power.** The division of property taxation and the property tax administrator shall exercise their powers, duties, and functions under the department of local affairs as if they were transferred to said department by a **type 1** transfer under the provisions of the "Administrative Organization Act of 1968".

**Source: L. 70:** R&RE, p. 371, § 1. **C.R.S. 1963:** § 137-3-3.

**Cross references:** For the creation of the department of local affairs, see § 24-1-125; for the "Administrative Organization Act of 1968", see article 1 of title 24.

**39-2-104. Oath of office.** Before entering upon the duties of his office, the property tax administrator shall take and subscribe to the constitutional oath of office, which oath or affirmation shall be filed in the office of the secretary of state.

**Source: L. 70:** R&RE, p. 372, § 1. **C.R.S. 1963:** § 137-3-4.

**Cross references:** For oath of office required of civil officers, see § 8 of article XII of the state constitution.

**39-2-105. Seal.** The division of property taxation shall have an official seal with the words "Property Tax Division - Department of Local Affairs" and such other appropriate design as the property tax administrator may determine engraved thereon, by which he shall authenticate proceedings conducted by him and of which the courts shall take judicial notice.

**Source: L. 70:** R&RE, p. 372, § 1. **C.R.S. 1963:** § 137-3-5.

**39-2-106. Employees - compensation.** Pursuant to the provisions of section 13 of article XII of the state constitution, the property tax administrator may employ a secretary and such

other clerical and professional personnel as may be required to perform his duties. Compensation of the property tax administrator and other employees and necessary expenses of the division of property taxation shall be paid from annual appropriations made to the division by the general assembly. Any costs of the property tax administrator in implementing the assessment and levy procedures required pursuant to section 39-5-132 shall be paid by the local taxing authorities pursuant to said section.

**Source: L. 70:** R&RE, p. 372, § 1. **C.R.S. 1963:** § 137-3-6. **L. 85:** Entire section amended, p. 1226, § 4, effective January 1, 1986.

**39-2-107. Office - hearings.** (1) The property tax administrator shall maintain his office in the city of Denver but may transact official business at any other place within the state. The office shall be open during established hours each day, Saturdays, Sundays, and legal holidays excepted.

(2) Any hearings conducted by the administrator or the division shall be open to the public, and full and correct minutes thereof shall be kept, and such minutes shall be a public record open to public inspection.

**Source: L. 70:** R&RE, p. 372, § 1. **C.R.S. 1963:** § 137-3-7.

**39-2-108. Rules and regulations.** The administrator shall adopt rules and regulations governing proceedings and hearings pursuant to the provisions of article 4 of title 24, C.R.S., which rules and regulations shall be subject to legislative review pursuant to section 24-4-103 (8)(d), C.R.S.

**Source: L. 70:** R&RE, p. 372, § 1. **C.R.S. 1963:** § 137-3-8. **L. 77:** Entire section amended, p. 1733, § 8, effective June 20.

**39-2-109. Duties, powers, and authority.** (1) It is the duty of the property tax administrator, and the administrator shall have and exercise authority:

(a) To value the property and plant of all public utilities doing business in this state in the manner prescribed by law, which value shall be equalized in accordance with the provisions of section 39-4-102 (3), and to prepare and furnish all forms required to be filed with him by public utilities;

(b) To assist and cooperate in the administration of all laws concerning the valuing of taxable property, the assessment of same, and the levying of property taxes;

(c) Repealed.

(d) To approve the form and size of all personal property schedules, forms, and notices furnished or sent by assessors to owners of taxable property, the form of petitions for abatement or refund, the form of all field books, plat and block books, maps, and appraisal cards used in the office of the assessor and other forms and records used and maintained by the assessor and to require exclusive use of such approved schedules, books, maps, appraisal cards, forms, and records by all assessors to insure uniformity;

(e) To prepare and publish from time to time manuals, appraisal procedures, and instructions, after consultation with the advisory committee to the property tax administrator and

the approval of the state board of equalization, concerning methods of appraising and valuing land, improvements, personal property, and mobile homes and to require their utilization by assessors in valuing and assessing taxable property. Said manuals, appraisal procedures, and instructions shall be based upon the three approaches to appraisal and the procedures set forth in section 39-1-103 (5)(a). Such manuals, appraisal procedures, and instructions shall be subject to legislative review, the same as rules and regulations, pursuant to section 24-4-103 (8)(d), C.R.S.

(f) To prepare and furnish to assessors all forms required to be completed by them and filed with the property tax administrator;

(g) To call, upon not less than ten days' prior notice, meetings of assessors at some designated place in the state and, upon reasonable notice, to call group or area meetings of two or more assessors;

(h) To prepare and design a basic form for all assessors to use in the assessment of real property which will set forth in detail information to be inserted pertaining to the approaches to appraisal set forth in section 39-1-103 (5)(a);

(i) To determine, whenever the administrator discovers that any taxable property of a public utility or any taxable rail transportation property has been omitted from the assessment roll of any year or series of years, the value of such omitted property. The administrator shall notify the assessor of such discovery and value. The assessor shall list the same on the assessment roll of the year in which the discovery was made and shall notify the treasurer of any unpaid taxes on such property for prior years.

(j) Repealed.

(k) To prepare and publish guidelines, after consultation with the advisory committee to the property tax administrator and approval of the state board of equalization, concerning the audit and compliance review of oil and gas leasehold properties for property tax purposes, which shall be utilized by assessors, treasurers, and their agents. Such guidelines shall be subject to legislative review, the same as rules and regulations, pursuant to section 24-4-103 (8)(d), C.R.S.

(l) To resolve valuation disputes concerning property or property interests owned or held by the Southern Ute Indian tribe as provided in the taxation compact set forth in section 24-61-102, C.R.S.;

(m) To establish the forms required pursuant to part 2 of article 29 of title 38, C.R.S.

**Source: L. 70:** R&RE, p. 372, § 1. **C.R.S. 1963:** § 137-3-9. **L. 73:** p. 1437, § 1. **L. 76:** (1)(e) amended, p. 756, § 7, effective July 1. **L. 77:** (1)(h) added, p. 1750, § 1, effective June 9; (1)(c) R&RE and (1)(e) amended, p. 1733, §§ 7, 9, effective June 20. **L. 81:** (1)(c) repealed, p. 1398, § 11, effective January 1; (1)(a) amended, p. 1848, § 3, effective January 1, 1982. **L. 82:** (1)(e) amended, p. 555, § 1, effective January 1, 1984. **L. 83:** (1)(e) R&RE, p. 1498, § 1, effective April 12; (1)(b) amended, p. 1489, § 2, effective April 21; (1)(h) amended, p. 1483, § 4, effective April 22; (1)(i) and (1)(j) added, pp. 2082, 2083, §§ 1, 1, effective October 13. **L. 90:** (1)(e) amended, p. 1699, § 26, effective June 9. **L. 91:** (1)(k) added, p. 1953, § 1, effective January 1, 1992. **L. 96:** IP(1) and (1)(d) amended, p. 649, § 2, effective May 1; (1)(l) added, p. 1726, § 2, effective June 3. **L. 99:** (1)(l) amended, p. 629, § 40, effective August 4. **L. 2004:** (1)(j) repealed, p. 206, § 28, effective August 4. **L. 2008:** (1)(m) added, p. 452, § 10, effective July 1.

### 39-2-109.5. Computers for property assessment - state assistance. (Repealed)

**Source: L. 83:** Entire section added, p. 2083, § 2, effective October 13. **L. 2004:** Entire section repealed, p. 206, § 29, effective August 4.

**39-2-110. Annual school for assessors.** To further improvement in appraisal and valuation procedures and methods and understanding and knowledge thereof, the division of property taxation shall conduct annual instruction and discussion sessions in the nature of a school for assessors, their employees, and employees of the division for periods not exceeding fifteen days in length. All costs of conducting such sessions shall be paid by the division, and the necessary travel and subsistence expenses of assessors and their employees while attending such sessions shall be paid by their respective counties. All assessors shall attend this annual school. Each assessor completing this school shall receive a certificate of achievement for his effort.

**Source: L. 70:** R&RE, p. 373, § 1. **C.R.S. 1963:** § 137-3-10. **L. 75:** Entire section amended, p. 1457, § 1, effective June 20.

**Cross references:** For the definition of "assessor", see § 39-1-102 (2).

**39-2-111. Complaints.** The administrator shall examine all complaints filed with him wherein it is alleged that a class or subclass of taxable property in a county has not been appraised or valued as required by law or has been improperly or erroneously valued or that the property tax laws have in any manner been evaded or violated. Complaints shall be in writing and may be filed only by a taxing authority in a county or by any taxpayer. Complaints may be filed only with respect to property located in the county in which the taxing authority levies taxes or in which the taxpayer owns taxable property. If the administrator finds the complaint is justified, he may use his findings as the basis for petitioning the state board of equalization for an order of reappraisal pursuant to section 39-2-114.

**Source: L. 70:** R&RE, p. 373, § 1. **C.R.S. 1963:** § 137-3-11. **L. 76:** Entire section amended, p. 757, § 9, effective January 1, 1977. **L. 83:** Entire section amended, p. 1490, § 3, effective April 21.

**39-2-112. Assessor to appear - when.** The property tax administrator may require any assessor to appear before him at any meeting to ascertain whether he has complied with the law in appraising and valuing the taxable property located in his county.

**Source: L. 70:** R&RE, p. 373, § 1. **C.R.S. 1963:** § 137-3-12.

**Cross references:** For the valuation for assessment, see § 39-1-104.

**39-2-113. Administrator may intervene.** (1) The administrator is authorized to appear as a party in interest in any proceeding before a court or other tribunal in which:

(a) An abatement or refund of property taxes is sought; or

(b) A question bearing on a statewide assessment policy is raised.

**Source: L. 70:** R&RE, p. 373, § 1. **C.R.S. 1963:** § 137-3-13. **L. 76:** Entire section R&RE, p. 757, § 10, effective January 1, 1977.

**Cross references:** For abatement and refund of taxes, see §§ 39-1-113 and 39-10-114.

**39-2-114. Reappraisal - when - procedures.** (1) Whenever the administrator petitions the state board of equalization for its order of reappraisal of any class or subclass of taxable property for the following taxable year, the administrator shall send a copy of such petition to the assessor of the county in which such class or subclass of taxable property is located. The petition of reappraisal shall include the reasons for such reappraisal, and the administrator has the duty to establish to the satisfaction of the state board of equalization the need for such reappraisal. The state board of equalization shall conduct a hearing on such petition, at which hearing the assessors shall attend and shall give such testimony and present such evidence as the state board of equalization may require.

(2) At the hearing on the petition for reappraisal, the affected county assessor shall have the opportunity to appear, to produce testimony and evidence, and to cross-examine witnesses. The decision of the state board of equalization shall be delivered in writing no later than the close of business on November 15.

(3) If such reappraisal is ordered by the state board of equalization, the property tax administrator shall direct the staff of the division of property taxation, working jointly with the assessor of such county, to reappraise such property, and the value so determined shall be the actual value of the taxable property in such county for the next taxable year. The results of the reappraisal shall be filed with the property tax administrator no later than the close of business on the last working day in May of the year in which the reappraised values shall be effective, and a copy thereof shall be filed with the assessor.

(4) The affected assessor, board of county commissioners, town, city, school district, or special district, or any taxpayer resident therein, or any of them, may appeal the reappraised value to the state board of equalization by petition filed with the state board of equalization no later than the tenth day of June next following. Upon appeal, the assessor and any other petitioner shall have the right to appear, produce testimony and evidence, and cross-examine witnesses.

(5) The state board of equalization may affirm, rescind, or modify the reappraised values appealed, and shall enter its written order thereof no later than the first day of July next following.

**Source: L. 70:** R&RE, p. 373, § 1. **C.R.S. 1963:** § 137-3-14. **L. 77:** (1) R&RE, p. 1734, § 10, effective June 20. **L. 81:** (1) amended, p. 1398, § 10, effective January 1. **L. 83:** Entire section amended, p. 1490, § 4, effective April 21. **L. 86:** (2) amended, p. 1101, § 2, effective March 26. **L. 89:** (2) amended, p. 1452, § 6, effective June 7.

**Cross references:** For the duties of the board of assessment appeals, see § 39-2-125; for the determination of actual value, see § 39-1-103.

**39-2-115. Review of abstracts of assessment - recommendations.** (1) (a) No later than August 25 of each year, each county assessor shall file with the property tax administrator two copies of an abstract of assessment of the county.

(b) Repealed.

(2) Upon receipt of the abstracts of assessment from the assessors of the several counties of the state, the administrator shall examine and review each such abstract. If he finds from the abstract of any county that any or all of the various classes or subclasses of real and personal property located in such county have not been valued for assessment by the use of all manuals, factors, formulas, and other directives required by law, the administrator shall determine the amount of increase or decrease in valuation for assessment of such class or subclass necessary to conform to such requirements and shall file a complaint with the state board of equalization specifying the amount recommended to be added to or deducted from the valuation for assessment of such class or subclass of property in such county for the following taxable year.

(3) No later than October 15 of each year, the property tax administrator shall transmit the abstracts of assessment of the several counties to the state board of equalization together with his recommendations.

**Source: L. 70:** R&RE, p. 374, § 1. **C.R.S. 1963:** § 137-3-15. **L. 77:** (2) R&RE, p. 1734, § 11, effective June 20. **L. 83:** (2) and (3) amended, p. 1491, § 5, effective April 21. **L. 86:** (3) amended, p. 1102, § 3, effective March 26. **L. 89:** (1) and (3) amended, p. 1453, § 7, effective June 7. **L. 93:** (1) amended, p. 1283, § 4, effective June 6. **L. 94:** (1)(b) amended, p. 1645, § 79, effective July 1. **L. 96:** (1)(b) repealed, p. 1199, § 3, effective June 1.

**39-2-116. Approval of tax abatement or refund.** The administrator shall review each application submitted by the board of county commissioners or the board of equalization of any county for abatement or refund of taxes, and, if all of such application is found to be in proper form and recommended in conformity with the law, the application shall be approved; otherwise, it shall be disapproved, in which case the disapproval may be appealed to the board pursuant to section 39-2-125 (1)(b). If only a portion of such application is found to be in proper form and recommended in conformity with the law, the administrator shall approve such part and disapprove the remainder of the application, in which case the disapproved portion may be appealed to the board pursuant to section 39-2-125 (1)(b).

**Source: L. 70:** R&RE, p. 374, § 1. **C.R.S. 1963:** § 137-3-16. **L. 77:** p. 1734, § 12. **L. 81:** p. 1842, § 1.

**Cross references:** For abatement and refund of taxes, see § 39-1-113; for abatement or cancellation of taxes, see § 39-10-114.

**39-2-117. Applications for exemption - review - annual reports - procedures - rules.** (1) (a) (I) Every application filed on or after January 1, 1990, claiming initial exemption of real and personal property from general taxation pursuant to the provisions of sections 39-3-106 to 39-3-113.5 and 39-3-116 shall be made on forms prescribed and furnished by the administrator, shall contain such information as specified in paragraph (b) of this subsection (1), and shall be signed by the owner of such property or his or her authorized agent under the penalty of perjury

in the second degree and, except as otherwise provided in this paragraph (a), shall be accompanied by a payment of one hundred seventy-five dollars, which shall be credited to the property tax exemption fund created in subsection (8) of this section. The administrator shall examine and review each application submitted, and, if it is determined that the exemption therein claimed is justified and in accordance with the intent of the law, the exemption shall be granted, the same to be effective upon such date in the year of application as the administrator shall determine, but in no event shall the exemption apply to any year prior to the year preceding the year in which application is made. The decision of the administrator shall be issued in writing and a copy thereof furnished to the applicant and to the assessor, treasurer, and board of county commissioners of the county in which the property is located.

(II) On all properties for which an application is pending in the office of the administrator, taxes shall not be due and payable until such determination has been made. Such property shall not be listed for the tax sale, and no delinquent interest will be charged on any portion of the exemption that is denied.

(III) No later than June 1 of each year, the administrator shall provide to the assessor, treasurer, and board of county commissioners of each county a list of all applications for property tax exemption currently pending in the office of the administrator.

(b) (I) Any users of real and personal property for which exemption from general taxation is requested pursuant to any of the provisions of sections 39-3-107 to 39-3-113.5 may be required to provide such information as the property tax administrator determines to be necessary.

(II) Except as otherwise provided in this subparagraph (II), any application filed pursuant to paragraph (a) of this subsection (1) claiming exemption from taxation pursuant to section 39-3-106 or 39-3-106.5 shall contain the following information: The legal description and address of the real property or the address of the personal property being claimed as exempt; the name and address of the owner of such property; the name and telephone number of the agent of such property; the date the owner acquired such property; the date the owner commenced using the property for religious purposes; a complete list of all uses of the property other than by the owner thereof during the previous twelve months; the total amount of gross income specified in section 39-3-106.5 (1)(b)(I) and the total amount of gross rental income resulting to the owner of such property during the previous twelve months from uses for purposes other than the purposes specified in sections 39-3-106 to 39-3-113.5; and the total number of hours during the previous twelve months that such property was used for purposes other than the purposes specified in sections 39-3-106 to 39-3-113.5. For purposes of this subparagraph (II), if the owner did not own the property being claimed as exempt during the entire twelve-month period prior to filing such application, the application shall contain the required information for that portion of the twelve-month period for which such property was owned by the owner making application. Such application shall also include a declaration that sets forth the religious mission and religious purposes of the owner of the property being claimed as exempt and the uses of such property that are in the furtherance of such mission and purposes. Such declaration shall be presumptive as to the religious purposes for which such property is used. If the administrator is unable to determine whether the property qualifies for exemption based solely on the information specified in this subparagraph (II), the administrator may require additional information, but only to the extent that the additional information is necessary to determine the exemption status of the property. The administrator may challenge any declaration

included in the application only upon the grounds that the religious mission and purposes are not religious beliefs sincerely held by the owner of such property, that the property being claimed as exempt is not actually used for the purposes set forth in such application, or that the property being claimed as exempt is used for private gain or corporate profit.

(III) Any application filed pursuant to paragraph (a) of this subsection (1) claiming exemption from taxation pursuant to section 39-3-116 shall contain such information specified in subparagraphs (I) and (II) of this paragraph (b) as is applicable for the purposes for which such property is used.

(2) No assessor shall classify any real or personal property as being exempt from taxation pursuant to the provisions of sections 39-3-106 to 39-3-113.5 or 39-3-116 in any year unless the application for exemption for the current year has been reviewed and has been granted as provided for by law, nor shall any assessor classify any real or personal property as being taxable after having been notified in writing that such property has been determined to be exempt from taxation by the property tax administrator.

(3) (a) (I) On and after January 1, 1990, and no later than April 15 of each year, every owner of real or personal property for which exemption from general taxation has previously been granted shall file a report with the administrator upon forms furnished by the division, containing such information relative to the exempt property as specified in paragraph (b) of this subsection (3), and signed under the penalty of perjury in the second degree. Each such annual report shall be accompanied by a payment of seventy-five dollars, which shall be credited to the property tax exemption fund created in subsection (8) of this section. Each such annual report filed later than April 15, but prior to July 1, shall be accompanied by a late filing fee of two hundred fifty dollars; except that the administrator shall have the authority to waive all or a portion of the late filing fee for good cause shown as determined by the administrator by rules adopted pursuant to subsection (7) of this section. On and after January 1, 1990, every owner of real or personal property for which exemption from general taxation has previously been granted pursuant to the provisions of section 39-3-111 and that is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113.5 for less than two hundred eight hours during the calendar year or if the use of the property for such purposes results in annual gross rental income to such owner of less than twenty-five thousand dollars shall not be required to file any annual report pursuant to the provisions of this subsection (3). In order to claim such exemption, in lieu of such annual report, the owner shall annually file with the administrator a declaration stating that the property is used for such purposes for less than two hundred eight hours during the calendar year or such use results in annual gross rental income to the owner of less than twenty-five thousand dollars.

(II) In the event an annual report is not received by June 1 from an owner of real or personal property for which an exemption was granted for the previous year pursuant to the provisions of sections 39-3-107 to 39-3-113.5 or 39-3-116, the administrator shall give notice in writing to such property owner by June 15 that failure to comply by July 1 shall operate as a forfeiture of any right to claim exemption of previously exempt property from general taxation for the current year. Failure to timely file such annual report on or before July 1 shall operate as a forfeiture of any right to claim exemption of such property from general taxation for the year in which such failure occurs, unless an application is timely filed and an exemption granted pursuant to the provisions of paragraph (a) of subsection (1) of this section. The administrator shall review each report filed to determine if such property continues to qualify for exemption,

and, if it is determined that the property does not so qualify, the owner of such property shall be notified in writing of the disqualification, and the assessor, treasurer, and board of county commissioners of the county in which the property is located shall also be so notified.

(III) In the event an annual report is not received by June 1 from an owner of real or personal property for which an exemption was granted for the previous year pursuant to the provisions of section 39-3-106 or 39-3-106.5, the administrator shall give notice in writing to such property owner by June 15 that failure to file a delinquent report during a twelve-month period commencing the following July 1 shall operate as the forfeiture of any right to claim exemption of previously exempt property from general taxation for the year in which such notice is given. Upon the filing of the delinquent annual report, a late filing fee of two hundred fifty dollars shall be paid, which shall be credited to the property tax exemption fund created in subsection (8) of this section; except that the administrator shall have the authority to waive all or a portion of the late filing fee for good cause shown as determined by the administrator by rules adopted pursuant to subsection (7) of this section. Failure to file the delinquent annual report within the twelve-month period shall result in the forfeiture of any right to claim exemption of such property from general taxation for the year in which such failure to file the annual report first occurred. The administrator shall review each report filed to determine if the property continues to qualify for exemption, and, if it is determined that the property does not so qualify, the owner of the property shall be notified in writing of the disqualification, and the assessor, treasurer, and board of county commissioners of the county in which the property is located shall also be so notified.

(b) (I) Any user of property which has been exempted pursuant to the provisions of sections 39-3-107 to 39-3-113.5 may be required to provide such information as the property tax administrator determines to be necessary in order to ascertain whether the users and usages of the property are in compliance with the provisions of said sections.

(II) (A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (II), any annual report filed pursuant to paragraph (a) of this subsection (3) claiming exemption from taxation pursuant to section 39-3-106 or 39-3-106.5 shall contain the following information: The legal description or address of the property being claimed as exempt; the name and address of the owner of such property; a complete list of all uses of such property other than by the owner thereof during the previous calendar year; the amount of total gross income specified in section 39-3-106.5 (1)(b)(I) and the total amount of gross rental income resulting from uses of such property that are not for the purposes set forth in sections 39-3-106 to 39-3-113.5; and the total number of hours that such property was used for purposes other than the purposes specified in sections 39-3-106 to 39-3-113.5. Such annual report shall also include a declaration of the religious mission and purposes of the owner of such property claimed as being exempt and the uses of such property that are in the furtherance of such mission and purposes. Such declaration shall be presumptive as to the religious mission and religious purposes of the owner of such property. If the administrator is unable to determine whether the property continues to qualify for exemption based solely on the information specified in this subparagraph (II), the administrator may require additional information, but only to the extent that the additional information is necessary to determine the exemption status of the property. The administrator may challenge any declaration included in such annual report only upon the grounds that the religious mission and purposes are not religious beliefs sincerely held by the owner of such property, that such

property is not actually used for the purposes set forth in the annual report, or that the property being claimed as exempt is used for private gain or corporate profit.

(B) For the purposes of sub-subparagraph (A) of this subparagraph (II), if the owner of property being claimed as exempt did not own such property during the entire previous calendar year, the annual report filed by such owner shall contain the information required in sub-subparagraph (A) of this subparagraph (II) for that portion of the previous calendar year during which such property was owned by such owner.

(III) Any annual report filed pursuant to paragraph (a) of this subsection (3) claiming exemption from taxation pursuant to section 39-3-116 shall contain such information specified in subparagraphs (I) and (II) of this paragraph (b) as is applicable for the purposes for which such property is used.

(4) If, subsequent to the time that exemption of any property was initially granted or annually renewed, as provided in subsections (1) and (3) of this section, it is determined that such exemption was granted or renewed as the result of false or misleading information contained in the initial application, the annual report, or any false information provided by owners or users of such property, then the property tax administrator shall revoke the exemption, and taxes shall be assessed against such property for the year or years affected by such false or misleading information, and all delinquent interest provided by law shall apply to such taxes.

(5) (a) (I) If the administrator tentatively determines that the property does not so qualify, except for the disqualification for failure to file an annual report required in subsection (3) of this section, he shall notify, by certified mail, the owner of such property of his tentative determination. The administrator shall also notify the owner of the owner's right to a public hearing, as provided for in subparagraph (II) of this paragraph (a).

(II) Within thirty days after the issuance of a tentative determination, the owner may request a public hearing regarding the determination. Upon the making of such a request, the administrator or his designees shall provide said owner with a public hearing at which said owner and any users of the property other than the owner, if their use is relevant to the determination of whether the property is exempt, shall be heard if they so desire. Such hearing shall be held no later than ninety days following the issuance of the tentative determination.

(III) Upon the conclusion of such hearing, the administrator shall provide the owner and any users sixty days within which to comply, so as to retain the exemption. If the owner fails to comply within sixty days, the administrator shall notify the owner in writing that the property has been disqualified.

(IV) The owner may waive his right to a public hearing by filing with the administrator a written statement that said right is waived. Upon receipt of such waiver, the administrator shall issue a final determination, in writing, which notifies the owner that the property does not qualify for exemption.

(V) If the owner does not request a public hearing, as provided for in subparagraph (II) of this paragraph (a), or does not file a waiver of his right to a public hearing, as provided for in subparagraph (IV) of this paragraph (a), the administrator shall provide the owner sixty days from the issuance of the tentative determination to file any additional information relevant to the determination of whether the property is exempt. At the conclusion of such sixty-day period, the administrator shall issue a final determination, in writing, which notifies the owner whether the property qualifies for exemption.

(b) An appeal from any decision of the administrator may be taken by the board of county commissioners of the county wherein such property is located, or by any owner of taxable property in such county, or by the owner of the property for which exemption is claimed if exemption has been denied or revoked in full or in part. Any such appeal shall be taken to the board of assessment appeals pursuant to the provisions of section 39-2-125 no later than thirty days following the decision of the administrator.

(6) If the decision of the board is against the petitioner, the petitioner may petition the court of appeals for judicial review thereof according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. If the decision of the board is against the respondent, the respondent, upon the recommendation of the board that it is a matter of statewide concern, may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S.

(7) The administrator shall adopt rules to implement the provisions of this section pursuant to the provisions of article 4 of title 24, C.R.S., including any rules necessary to specify what shall qualify as "good cause shown" for purposes of waiving all or a portion of the late filing fees specified in subparagraphs (I) and (III) of paragraph (a) of subsection (3) of this section.

(8) All fees collected pursuant to this section shall be transmitted to the state treasurer who shall credit such revenues to the property tax exemption fund, which fund is hereby created in the state treasury. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this article.

**Source: L. 70:** R&RE, p. 374, § 1. **C.R.S. 1963:** § 137-3-17. **L. 72:** p. 568, § 49. **L. 83:** (6) added, p. 2086, § 1, effective October 13. **L. 86:** (1) to (4) amended, p. 1104, § 2, effective May 16. **L. 87:** (1)(a), (3)(a), and (5) amended, pp. 1399, 1400, §§ 1, 2, effective July 1. **L. 88:** (1)(a) and (3)(a) amended, p. 1292, § 25, effective May 23. **L. 89:** (1), (2), and (3)(b) amended, p. 1482, § 6, effective April 23; (1) to (3) amended and (7) added, p. 1486, § 4, effective June 7. **L. 90:** (6) amended, p. 1689, § 6, effective June 9. **L. 91:** (1)(b)(II), (3)(b)(II), and (5)(a) amended, pp. 1960, 1955, §§ 7, 1, effective June 7. **L. 92:** (1)(a) and (4) amended, p. 2222, § 2, effective April 9. **L. 2003:** (1)(b)(II) and (3)(b)(II)(A) amended, p. 866, § 1, effective April 7; (1)(a), (3)(a)(I), (3)(a)(III), and (5)(b) amended and (8) added, p. 1465, § 3, effective July 1. **L. 2009:** (1)(a) amended, (SB 09-042), ch. 176, p. 780, § 2, effective August 5. **L. 2010:** (1)(a)(I), (3)(a)(I), (3)(a)(III), and (7) amended, (HB 10-1386), ch. 328, p. 1516, § 1, effective July 1. **L. 2011:** (3)(a)(I) amended, (HB 11-1010), ch. 275, p. 1239, § 1, effective August 10. **L. 2013:** (1)(a)(I), (1)(b)(I), (1)(b)(II), (2), (3)(a)(I), (3)(a)(II), (3)(b)(I), and (3)(b)(II)(A) amended, (HB 13-1300), ch. 316, p. 1700, § 117, effective August 7.

**Cross references:** For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

**39-2-118. Recommendations to governor.** No later than the first day of December of each year, the property tax administrator, in cooperation with a committee from the Colorado assessors association, shall submit to the governor for transmittal to the general assembly any recommendations concerning the administration and enforcement of the property tax laws which he deems necessary and in the public interest.

**Source: L. 70:** R&RE, p. 375, § 1. **C.R.S. 1963:** § 137-3-18.

**39-2-119. Annual report.** As soon after the end of each calendar year as may be practicable, the property tax administrator shall prepare a report covering the activities of the division of property taxation during such calendar year. Such report shall set forth the aggregate valuation for assessment of all taxable property in the state and in each county thereof, by classes and subclasses, for the two latest calendar years, the levies imposed by each political subdivision during the preceding calendar year, and the aggregate amount of taxes produced by such levies in the state and each county thereof, together with such other information as the administrator deems necessary. Such report shall be published in accordance with the provisions of section 24-1-136, C.R.S. Copies of the report shall be furnished to the governor and made available for distribution to the public.

**Source: L. 70:** R&RE, p. 375, § 1. **C.R.S. 1963:** § 137-3-19. **L. 83:** Entire section amended, p. 844, § 78, effective July 1. **L. 2002:** Entire section amended, p. 862, § 3, effective August 7.

**39-2-120. Powers of property tax administrator.** The property tax administrator shall be authorized to certify official acts of the division of property taxation, to administer oaths, issue subpoenas, compel attendance of witnesses and the production of books, accounts, and records, and to cause depositions to be taken. In case any person fails to comply with any subpoena or refuses to testify on any matter upon which he may be lawfully questioned, any court having jurisdiction in the matter may, upon application of the property tax administrator, compel obedience in the manner provided by law.

**Source: L. 70:** R&RE, p. 376, § 1. **C.R.S. 1963:** § 137-3-20.

**39-2-121. Enforcement of orders.** The property tax administrator may compel compliance with his unappealed orders or, after approval by the board of assessment appeals of appealed orders, by proceedings in mandamus, injunction, or by other appropriate civil remedies.

**Source: L. 70:** R&RE, p. 376, § 1. **C.R.S. 1963:** § 137-3-21.

**39-2-122. Notice prior to injunction.** No injunction shall be issued suspending or staying any order of the property tax administrator except upon ten days' notice to the property tax administrator of the application for such injunction and a hearing thereon.

**Source: L. 70:** R&RE, p. 376, § 1. **C.R.S. 1963:** § 137-3-22.

**39-2-123. Board of assessment appeals created - members - compensation.** (1) On and after July 1, 1971, the Colorado tax commission shall be known as the board of assessment appeals, which agency is hereby created within the department of local affairs. The board shall be a quasi-judicial tribunal.

(2) Effective July 1, 1991, the existing board of assessment appeals is abolished, and the terms of members of the board then serving are terminated. Effective July 1, 1991, the new

board shall be comprised of three members, who shall be appointed by the governor with the consent of the senate. Appointments to the board shall be as follows: One member shall be appointed for a term of two years, and two members shall be appointed for terms of four years. Thereafter, appointments to the board shall be for terms of four years each. In order to allow for appeals to be heard timely, up to six additional members may be appointed to the board by the governor with the consent of the senate. Such additional members shall be appointed for terms of one state fiscal year each. Members of the board shall be experienced in property valuation and taxation and shall be public employees, as defined in section 24-10-103 (4)(a), C.R.S., who are not subject to the state personnel system laws. One of such members shall be or shall have been, within the five years immediately preceding the date of initial appointment, actively engaged in agriculture. On and after June 1, 1993, members shall be licensed or certificated pursuant to the provisions of part 7 of article 61 of title 12, C.R.S. Service on the board shall be at the pleasure of the governor, who may appoint a replacement to serve for the unexpired term of any member. Such replacement shall be appointed with the consent of the senate. Any other vacancies on the board shall be filled by appointment by the governor with the consent of the senate for the unexpired term.

(3) In addition to any other compensation provided for by law, members of the board shall be compensated one hundred fifty dollars per diem. In addition, members of the board who do not reside in the Denver metropolitan area, which consists of the counties of Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Gilpin, and Jefferson, shall be reimbursed for their actual and necessary travel expenses as determined by the executive director of the department of local affairs. Per diem compensation not to exceed two hundred twenty days in any calendar year shall be paid only when the board is in session or when any member thereof conducts a hearing pursuant to section 39-2-127. The board shall be in session when it determines that it is necessary or as directed by the executive director of the department of local affairs.

(4) The board of assessment appeals shall exercise its powers, duties, and functions under the department of local affairs as if it were transferred to said department by a **type 1** transfer under the provisions of the "Administrative Organization Act of 1968".

**Source: L. 70:** R&RE, p. 376, § 1. **C.R.S. 1963:** § 137-3-23. **L. 76:** (3) amended, p. 757, § 11, January 1, 1977. **L. 77:** (2) amended, p. 1735, § 13, effective June 20. **L. 83:** (3) amended, p. 1500, § 1, effective May 26. **L. 85:** (3) amended, p. 1219, § 2, effective March 23; (3) amended, p. 1228, § 1, effective July 1. **L. 87:** (2) amended, p. 913, § 30, effective June 15. **L. 88:** (2) amended, p. 1296, § 1, effective April 29. **L. 89:** (2) amended, p. 1453, § 8, effective June 7. **L. 91:** (2) and (3) amended, p. 1977, § 1, effective July 1. **L. 92:** (2) amended, p. 2206, § 2, effective June 3. **L. 2013:** (2) amended, (SB 13-146), ch. 388, p. 2258, § 1, effective July 1; (2) amended, (SB 13-155), ch. 392, p. 2283, § 15, effective July 1.

**Editor's note:** (1) Amendments to subsection (3) by House Bill 85-1105 and House Bill 85-1106 were harmonized.

(2) Amendments to subsection (2) by Senate Bill 13-146 and Senate Bill 13-155 were harmonized.

**Cross references:** For the "Administrative Organization Act of 1968", see article 1 of title 24.

**39-2-124. Executive director to furnish employees and clerical assistance.** Clerical assistance and such employees as are necessary shall be furnished for the board by the executive director of the department of local affairs.

**Source: L. 70:** R&RE, p. 377, § 1. **C.R.S. 1963:** § 137-3-24.

**39-2-125. Duties of the board - board of assessment appeals cash fund - creation.** (1) The board of assessment appeals shall perform the following duties, such performance to be in accordance with the applicable provisions of article 4 of title 24, C.R.S.:

(a) Adopt procedures of practice before and procedures of review by the board;

(b) (I) Hear appeals from orders and decisions of the property tax administrator filed not later than thirty days after the entry of any such order or decision.

(II) Such hearings shall include evidence as to the rationale of such order or decision and the detailed data in support thereof.

(c) Hear appeals from decisions of county boards of equalization filed not later than thirty days after the entry of any such decision;

(d) Repealed.

(e) Hear appeals from determinations by county assessors when a county board of equalization or an assessor has failed to respond within the time provided by statute to an appeal properly filed by a taxpayer;

(f) Hear appeals from decisions of boards of county commissioners filed not later than thirty days after the entry of any such decision when a claim for refund or abatement of taxes is denied in full or in part;

(g) Repealed.

(h) Collect any filing fee that shall accompany a taxpayer's request for a hearing before the board pursuant to this section. All fees collected by the board shall be transmitted to the state treasurer, who shall credit the same to the board of assessment appeals cash fund, which fund is hereby created in the state treasury and referred to in this paragraph (h) as the "cash fund". All moneys credited to the cash fund shall be used in accordance with the requirements of this section and shall not be deposited in or transferred to the general fund of this state or any other fund. The moneys credited to the cash fund shall be available for appropriation by the general assembly to the board of assessment appeals in the annual general appropriation act. In making the annual appropriation to the board of assessment appeals under the annual general appropriation act, the general assembly shall consider available revenues and reserve balances in the cash fund. Any interest earned on amounts in the cash fund shall be credited to the cash fund. Any request for a hearing before the board pursuant to sections 39-2-117 (5)(b), 39-4-108 (8), 39-8-108 (1), and 39-10-114.5 (1) shall be accompanied by a nonrefundable filing fee as follows:

(I) For any person other than a taxpayer pro se, a fee of one hundred one dollars and twenty-five cents for each tract, parcel, or lot of real property and for each schedule of personal property included in such request; except that, if any request for a hearing before the board involves more than one tract, parcel, or lot owned by the same taxpayer and involves the same

issue regarding the valuation of such real property, only one filing fee shall be required for such request for a hearing.

(II) For any person who is a taxpayer pro se, for the first two requests for a hearing within a fiscal year, the taxpayer shall not be required to pay a filing fee, and for each additional request within such fiscal year, a fee of thirty-three dollars and seventy-five cents for each tract, parcel, or lot of real property, and for each schedule of personal property included in such request; except that, if any request for a hearing before the board involves more than one tract, parcel, or lot owned by the same taxpayer and involves the same issue regarding the valuation of such real property, only one filing fee shall be required for such request for a hearing.

(1.5) As used in this section, notwithstanding any other law, "taxpayer pro se" includes the trustee of a trust.

(2) Complaints filed by the property tax administrator shall be advanced on the calendar and shall take precedence over other matters pending before the board.

(3) Effective January 1, 1983, the consideration of a property's market value in the ordinary course of trade and the comparison of a property with other properties of known or recognized value by the board when considering the market approach to appraisal in its review of the determination of a property's actual value are subject to the provisions of section 39-1-103 (8).

**Source: L. 70:** R&RE, p. 377, § 1. **L. 71:** p. 1245, § 1. **C.R.S. 1963:** § 137-3-25. **L. 73:** p. 1438, § 1. **L. 76:** (1)(c) amended, p. 757, § 12, effective January 1, 1977. **L. 77:** (1)(f) amended and (3) added, p. 1735, §§ 14, 15, effective June 20. **L. 79:** (1)(g) added, p. 1461, § 1, effective July 1. **L. 81:** (1)(f) amended, p. 1843, § 1, effective May 18; (3) amended, p. 1831, § 4, effective June 12. **L. 83:** (1)(d)(I) repealed, p. 1491, § 7, effective April 21; (3) amended, p. 1483, § 5, effective April 22; (1)(d) repealed, p. 1508, § 5, effective June 2; (1)(f) amended, p. 2086, § 2, effective October 13. **L. 84:** (1)(c) amended, p. 1001, § 3, effective March 5. **L. 85:** (1)(c) amended, p. 1219, § 1, effective March 24. **L. 88:** (1)(c) amended, p. 1296, § 2, effective April 29. **L. 90:** (1)(c)(I) amended, p. 1709, § 1, effective May 22. **L. 91:** (1)(c)(I) amended, p. 1978, § 2, effective July 1. **L. 92:** IP(1) amended and (1)(h) added, p. 2207, § 3, effective June 3. **L. 2002:** (1)(g) repealed, p. 1361, § 15, effective July 1. **L. 2003:** IP(1) and (1)(h) amended, p. 1465, § 2, effective July 1. **L. 2008:** (1)(h) amended, p. 2147, § 25, effective June 4. **L. 2012:** (1.5) added, (HB 12-1307), ch. 216, p. 929, § 2, effective August 8. **L. 2013:** (1)(c) and IP(1)(h) amended, (SB 13-146), ch. 388, p. 2259, § 2, effective July 1.

**Cross references:** (1) For the legislative declaration contained in the 2008 act amending subsection (1)(h), see section 1 of chapter 417, Session Laws of Colorado 2008.

(2) For the legislative declaration in the 2012 act adding subsection (1.5), see section 1 of chapter 216, Session Laws of Colorado 2012.

**39-2-126. Delaying effect of decision - when.** If the finality of a decision of the board of assessment appeals is suspended until after the last day of the calendar year by a pending judicial review, the property tax valuations for the current year shall be those established by the administrator as to utilities under the provisions of article 4 of this title, or by the county assessor or those approved by the county board of equalization, subject to the refund provisions of section 39-8-109.

**Source: L. 70:** R&RE, p. 377, § 1. **L. 71:** p. 1245, § 2. **C.R.S. 1963:** § 137-3-26.

**39-2-127. Board of assessment appeals meetings - proceedings - representation before board.** (1) The board of assessment appeals shall maintain its headquarters in the city and county of Denver but may transact its official business at any other place within the state. All its sessions shall be open to the public, and full and correct minutes thereof shall be kept, and such minutes shall be a public record open to public inspection.

(2) At the direction of the chairman and with the agreement of the parties before the board, one or more of the members of the board of assessment appeals may conduct hearings in Denver or in a county of closer location to the subject property, administer oaths, examine witnesses, receive evidence, issue subpoenas, and render preliminary decisions subject to concurrence and modification by agreement of at least two members of the board. An additional board member may be added after a hearing to review the evidence and hearing transcript or recording and render a decision in the event the board members who conducted the hearing are unable to reach a decision.

(3) Upon request of any member of the board, legal counsel provided by the office of the attorney general shall attend hearings on appeals before the board and shall advise the board as to matters of procedure, evidence, and law arising in the course of such appeals. Upon the board's own motion, legal counsel shall provide other legal services to the board. When the state property tax administrator is a party to the appeal, such legal counsel shall not be the same legal counsel who advises or represents the state property tax administrator at proceedings before the board.

(4) Any person who is a party in a proceeding before the board may appear on his or her own behalf or be represented by an attorney admitted to practice law in this state or by any other individual of his or her choice. A trust may be represented by an attorney admitted to practice law in this state, by the trustee of the trust, or by the trustee's designee.

(5) The board may permit, in its discretion and upon prior written application, the intervention of another affected party in a matter pending before the board. The board may limit or restrict the participation of an intervenor in such manner as the board, in its discretion, orders.

(6) The board of assessment appeals shall issue a written decision for each appeal it hears. Each such written decision must either be a summary decision or a full decision; however, a summary decision may only be issued upon request for a summary decision made by both parties before the board. A full decision must contain specific findings of fact and conclusions of law. A summary decision need not contain specific findings of fact and conclusions of law. If the board has issued a summary decision, a party dissatisfied with the summary decision may file a written request with the board for a full decision. The written request must be received by the board within ten working days after the date on which the summary decision was mailed. Timely filing of the written request with the board is a prerequisite to review of the board's decision by the court of appeals. Upon timely request for a full decision, the board shall issue a full decision and enter it as the final decision in the appeal subject to judicial review by the court of appeals as provided in section 39-8-108 (2) or 39-10-114.5 (2).

**Source: L. 70:** R&RE, p. 377, § 1. **L. 71:** p. 1245, § 3. **C.R.S. 1963:** § 137-3-27. **L. 85:** (2) amended and (3) added, p. 1221, § 1, effective July 1. **L. 88:** (2) amended and (4) added, p. 1297, § 3, effective April 29. **L. 2011:** (2) amended and (5) added, (HB 11-1011), ch. 15, p. 41, §

1, effective August 10. **L. 2012:** (4) amended, (HB 12-1307), ch. 216, p. 929, § 3, effective August 8. **L. 2013:** (6) added, (SB 13-146), ch. 388, p. 2260, § 3, effective July 1.

**Cross references:** For the legislative declaration in the 2012 act amending subsection (4), see section 1 of chapter 216, Session Laws of Colorado 2012.

**39-2-128. Board of assessment appeals may issue orders.** The board of assessment appeals may issue such orders as it deems necessary to ascertain facts and to carry out its decisions, and any such order directed to a county assessor or a county board of equalization shall be enforceable in the district court of the county.

**Source: L. 70:** R&RE, p. 377, § 1. **C.R.S. 1963:** § 137-3-28. **L. 83:** Entire section amended, p. 1491, § 6, effective April 21. **L. 2013:** Entire section amended, (SB 13-146), ch. 388, p. 2260, § 4, effective July 1.

**39-2-129. Advisory committee to the property tax administrator created.** (1) There is hereby created in the department of local affairs the advisory committee to the property tax administrator. Said advisory committee shall exercise its powers and perform its duties and functions under the department of local affairs as if it were transferred to said department by a **type 1** transfer under the provisions of the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) Repealed.

**Source: L. 76:** Entire section added, p. 755, § 6, effective July 1. **L. 86:** Entire section amended, p. 426, § 62, effective March 26. **L. 93:** (2) repealed, p. 675, § 12, effective May 1.

**39-2-130. Membership of the advisory committee - terms - compensation - meetings.** (1) Said advisory committee shall be comprised of the following five members, no more than three of whom shall be affiliated with the same political party and all of whom shall be appointed by the governor with the consent of the senate:

(a) One assessor and one nonassessor appointed from the counties of seventy-five thousand or more population according to the most recent federal census;

(b) One assessor and one nonassessor appointed from the counties of less than seventy-five thousand population according to the most recent federal census; and

(c) One nonassessor from the western slope.

(2) (a) The governor shall appoint one of the nonassessor members as chairman of the advisory committee.

(b) The governor shall appoint the assessor members from among the certified assessors recommended by the Colorado assessors association.

(3) Initially, two members shall be appointed to the advisory committee for two-year terms and three members for four-year terms. Thereafter, appointments to the advisory committee shall be for terms of four years each. Vacancies on the advisory committee shall be filled by appointment of the governor for the unexpired term.

(4) Members of said committee shall be compensated on a per diem allowance basis at the rate of thirty-five dollars per day and shall be reimbursed for their actual and necessary

expenses. Per diem compensation, not to exceed thirty days in any calendar year, shall be paid only when the advisory committee is in session.

(5) The advisory committee shall meet at least quarterly but may meet more frequently upon call of the chairman and may hold hearings as deemed necessary. A quorum of at least three members shall be required to conduct official business.

(6) Repealed.

**Source: L. 76:** Entire section added, p. 755, § 6, effective July 1. **L. 86:** (6) added, p. 426, § 63, effective March 26. **L. 93:** (6) repealed, p. 1792, § 86, effective June 6.

**39-2-131. Function of the committee.** (1) (a) It is said committee's function and it shall have and exercise the authority, prior to publication, to review:

(I) Manuals or any part thereof, appraisal procedures, instructions, and guidelines prepared and published by the administrator pursuant to section 39-2-109 (1)(e) and based upon the approaches to appraisal set forth in section 39-1-103 (5)(a) and pursuant to section 39-2-109 (1)(k); and

(II) Forms, notices, and records approved or prescribed pursuant to the authority of the property tax administrator set forth in section 39-2-109 (1)(d).

(b) Upon completion of such review, said committee shall submit such manuals, appraisal procedures, instructions, guidelines, forms, notices, and records and its recommendations to the state board of equalization for approval or disapproval pursuant to section 39-9-103 (10).

(2) Repealed.

**Source: L. 76:** Entire section added, p. 756, § 6, effective July 1. **L. 83:** Entire section amended, p. 1483, § 6, effective April 22. **L. 86:** Entire section amended, p. 426, § 64, effective March 26. **L. 90:** (1) amended, p. 1699, § 27, effective June 9. **L. 91:** (1) amended, p. 1953, § 2, effective January 1, 1992. **L. 93:** (2) repealed, p. 1792, § 87, effective June 6.

## Exemptions

## ARTICLE 3

Exemptions

**Editor's note:** This article was repealed and reenacted in 1964 and was subsequently repealed and reenacted in 1989, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note before the article 1 heading. Former C.R.S. section numbers prior to 1989 are shown in editor's notes following those sections that were relocated.

**Cross references:** For applications for exemptions, see § 39-2-117.

**Law reviews:** For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985); for article, "Property Tax Exemptions for Religious and Nonprofit Organizations", see 18 Colo. Law. 1939 (1989); for article, "A Survey of the Law of Colorado Nonprofit Entities", see 27 Colo. Law. 5 (April 1998).

PART 1

PROPERTY EXEMPT FROM TAXATION

**39-3-101. Legislative declaration - presumption of charitable purpose.** The general assembly recognizes that only the judiciary may make a final decision as to whether or not any given property is used for charitable purposes within the meaning of the Colorado constitution; nevertheless, in order to guide members of the public and public officials alike in the making of their day-to-day decisions and to assist in the avoidance of litigation, the general assembly hereby finds, declares, and determines that the uses of property which are set forth in this part 1 as uses for charitable purposes benefit the people of Colorado and lessen the burdens of government by performing services which government would otherwise be required to perform. Therefore, property used for such purposes shall be presumed to be owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit, and, consequently, property used for such purposes is entitled to be exempt from the levy and collection of property tax pursuant to the provisions of this part 1 and the Colorado constitution. This legislative finding, declaration, determination, and presumption shall not be questioned by the administrator and shall be entitled to great weight in any and every court.

**Source: L. 89:** Entire article R&RE, p. 1470, § 1, effective April 23. **L. 2002:** Entire section amended, p. 1032, § 66, effective June 1.

**39-3-102. Household furnishings - exemption.** (1) Household furnishings, including free-standing household appliances, wall-to-wall carpeting, an independently owned residential solar electric generation facility, and security devices and systems that are not used for the production of income at any time shall be exempt from the levy and collection of property tax. If any household furnishings are used for the production of income for any period of time during the taxable year, such household furnishings shall be taxable for the entire taxable year. An independently owned residential solar electric generation facility shall not be considered to be used for the production of income unless the facility produces income for the owner of the residential real property on which the facility is located. For property tax purposes only, rebates, offsets, credits, and reimbursements specified in section 40-2-124, C.R.S., shall not constitute the production of income. For purposes of this subsection (1), for property tax purposes only, security devices and systems shall include, but shall not be limited to, security doors, security bars, and alarm systems.

(2) For property tax years commencing on and after January 1, 1990, no work of art, as defined in section 39-1-102 (18), which is not subject to annual depreciation and which would otherwise be exempt under this section shall cease to be exempt because it is stored or displayed on premises other than a residence.

**Source: L. 89:** Entire article R&RE, p. 1470, § 1, effective April 23; entire section amended, p. 1494, § 1, effective June 8. **L. 92:** (1) amended, p. 2216, § 4, effective June 2. **L. 2010:** (1) amended, (HB 10-1267), ch. 425, p. 2199, § 2, effective August 11.

**Editor's note:** This section is similar to former § 39-3-101 (1)(a) as it existed prior to 1989.

**39-3-103. Personal effects - exemption.** Personal effects which are not used for the production of income at any time shall be exempt from the levy and collection of property tax.

**Source: L. 89:** Entire article R&RE, p. 1471, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-101 (1)(b) as it existed prior to 1989.

**39-3-104. Ditches, canals, and flumes - exemption.** Ditches, canals, and flumes which are owned and used by any person exclusively for irrigating land owned by such person shall be exempt from the levy and collection of property tax.

**Source: L. 89:** Entire article R&RE, p. 1471, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-101 (1)(c) as it existed prior to 1989.

**39-3-105. Public libraries - governments - school districts - exemption.** Property, real and personal, of public libraries and of the state and its political subdivisions, including school districts or any cooperative association thereof, shall be exempt from the levy and collection of property tax.

**Source: L. 89:** Entire article R&RE, p. 1471, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-101 (1)(d) as it existed prior to 1989.

**39-3-106. Property - religious purposes - exemption - legislative declaration.** (1) Property, real and personal, which is owned and used solely and exclusively for religious purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax.

(2) In order to guide members of the public and public officials alike in the making of their day-to-day decisions, to provide for a consistent application of the laws, and to assist in the avoidance of litigation, the general assembly hereby finds and declares that religious worship has different meanings to different religious organizations; that the constitutional guarantees regarding establishment of religion and the free exercise of religion prevent public officials from inquiring as to whether particular activities of religious organizations constitute religious worship; that many activities of religious organizations are in the furtherance of the religious

purposes of such organizations; that such religious activities are an integral part of the religious worship of religious organizations; and that activities of religious organizations which are in furtherance of their religious purposes constitute religious worship for purposes of section 5 of article X of the Colorado constitution. This legislative finding and declaration shall be entitled to great weight in any and every court.

(3) For the purpose of claiming an exemption pursuant to this section, property that is owned and used by a charitable trust that is exempt from taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, shall be treated the same as property that is owned and used by any other type of nonprofit organization.

**Source: L. 89:** Entire article R&RE, p. 1471, § 1, effective April 23; entire section R&RE, p. 1485, § 1, effective June 7. **L. 2004:** (3) added, p. 506, § 3, effective August 4.

**Editor's note:** This section is similar to former § 39-3-101 (1)(e) as it existed prior to 1989.

**Cross references:** For the constitutional provision regarding exemptions for property used for religious worship, schools, or charitable purposes, see § 5 of article X of the state constitution.

**39-3-106.5. Tax-exempt property - incidental use - exemption - limitations.** (1) If any property, real or personal, which is otherwise exempt from the levy and collection of property tax pursuant to the provisions of section 39-3-106, is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113.5, such property shall be exempt from the levy and collection of property tax if:

(a) The property is used for such purposes for less than two hundred eight hours, adjusted for partial usage if necessary on the basis of the relationship that the amount of time and space used for such other purpose bears to the total available time and space, during the calendar year; or

(b) The use of the property for such purposes results in either:

(I) Less than ten thousand dollars of gross income to the owner of such property which is derived from any unrelated trade or business, as determined pursuant to the provisions of sections 511 to 513 of the federal "Internal Revenue Code of 1986", as amended; or

(II) Less than ten thousand dollars of gross rental income to the owner of such property.

(1.5) Notwithstanding the provisions of subsection (1) of this section, for property tax years commencing on or after January 1, 1994, if any property, real or personal, which is otherwise exempt from the levy and collection of property tax pursuant to the provisions of section 39-3-106, is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113.5, such property shall be exempt from the levy and collection of property tax if:

(a) The property is used for such purposes for less than two hundred eight hours, adjusted for partial usage if necessary on the basis of the relationship that the amount of time and space used for such other purpose bears to the total available time and space, during the calendar year; or

(b) The use of the property for such purposes results in:

(I) Less than ten thousand dollars of gross income to the owner of such property which is derived from any unrelated trade or business, as determined pursuant to the provisions of sections 511 to 513 of the federal "Internal Revenue Code of 1986", as amended; and

(II) Less than ten thousand dollars of gross rental income to the owner of such property.

(2) Except as otherwise provided in section 39-3-108 (3) and subsection (3) of this section, if any property, real or personal, that is otherwise exempt from the levy and collection of property tax pursuant to the provisions of sections 39-3-107 to 39-3-113.5 is used on an occasional, noncontinuous basis for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113.5, such property shall be exempt from the levy and collection of property tax if:

(a) The property is used for such purposes for less than two hundred eight hours, adjusted for partial usage if necessary on the basis of the relationship that the amount of time and space used for such other purpose bears to the total available time and space, during the calendar year; or

(b) The use of the property for such purposes results in less than twenty-five thousand dollars of gross rental income to the owner of such property.

(3) The requirement that property be used on an occasional basis in order to qualify for the exemption set forth in subsection (2) of this section shall not apply to property, real or personal, that is otherwise exempt from the levy and collection of property tax pursuant to the provisions of section 39-3-111 that is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113.5.

**Source: L. 89:** Entire section added, p. 1486, § 2, effective June 7. **L. 91:** (2) added, p. 1956, § 2, effective June 7. **L. 93:** (1.5) added, p. 613, § 1, effective April 30. **L. 2004:** (2)(b) amended, p. 359, § 1, effective August 4. **L. 2011:** IP(2) amended and (3) added, (HB 11-1010), ch. 275, p. 1240, § 2, effective August 10. **L. 2013:** IP(1), IP(1.5), IP(2), and (3) amended, (HB 13-1300), ch. 316, p. 1703, § 118, effective August 7.

**39-3-107. Property - not-for-profit schools - exemption.** Property, real and personal, which is owned and used solely and exclusively for schools which are not held or conducted for private or corporate profit shall be exempt from the levy and collection of property tax. No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption. Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

**Source: L. 89:** Entire article R&RE, p. 1471, § 1, effective April 23. **L. 90:** Entire section amended, p. 1711, § 1, effective June 9.

**Editor's note:** This section is similar to former § 39-3-101 (1)(f) as it existed prior to 1989.

**39-3-108. Property - nonresidential - health care facility - water company - charitable purposes - exemption - limitations.** (1) Property, real and personal, which is owned

and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if:

(a) Such property is nonresidential;

(b) Such property is licensed by the state of Colorado as a health care facility; or

(c) Such property is used as an integral part of a nonprofit domestic water company.

(1.3) Nonresidential property that is owned and used solely and exclusively by a qualified amateur sports organization shall be presumed to be owned and used solely and exclusively for strictly charitable purposes. For purposes of this subsection (1.3), the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster local, statewide, national, or international amateur sports competition if such organization is also organized and operated primarily to support and develop amateur athletes for national or international competition in sports; except that no part of the net earnings of such organization inure to the benefit of any private shareholder or individual. So long as a qualified amateur sports organization demonstrates that its membership is open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in such sport or to any amateur sports organization that conducts programs in such sport, or both, the organization shall be presumed to provide public benefits to an indefinite number of persons and to directly benefit the people of Colorado whether or not the right to benefit may depend upon voluntary membership in the organization.

(1.5) No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption.

(2) Any exemption claimed pursuant to the provisions of subsection (1) of this section shall comply with the provisions of section 39-2-117.

(3) (a) When any property of a health care facility, real or personal, or any portion thereof, which is otherwise exempt from the levy and collection of property tax pursuant to the provisions of paragraph (b) of subsection (1) of this section, is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113.5, such property or portion thereof shall be exempt from the levy and collection of property tax if the use of the property or portion thereof does not result in gross income derived from any unrelated trade or business to the owner which is in excess of fifteen percent of the total gross revenues derived from the operation of the property. Gross income derived from any unrelated trade or business shall be determined pursuant to the provisions of sections 511 through 513 of the federal "Internal Revenue Code of 1986", as amended.

(b) If the use of any property or portion thereof results in gross income derived from any unrelated trade or business in excess of fifteen percent of the total gross revenues to the owner derived from the operation of the property, the administrator shall determine the value of the nonexempt portion of the property for property tax purposes.

**Source: L. 89:** Entire article R&RE, p. 1471, § 1, effective April 23. **L. 90:** (1.3), (1.5), and (3) added, pp. 1711, 1702, §§ 2, 35, effective June 9. **L. 2013:** (3)(a) amended, (HB 13-1300), ch. 316, p. 1703, § 119, effective August 7.

**Editor's note:** This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

**39-3-108.5. Property - community corrections facility - exemption.** (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is owned and used by a nonprofit community corrections agency for a community correctional facility or program.

(2) As used in this section:

(a) "Community correctional facility or program" shall have the meaning set forth in section 17-27-102 (3), C.R.S., for community corrections program.

(b) "Nonprofit community corrections agency" means any person, agency, corporation, association, or entity that:

(I) Is exempt from federal income tax pursuant to the "Internal Revenue Code of 1986", as amended; and

(II) Operates a community correctional facility or program.

(3) The provisions of this section shall apply to property tax years beginning on or after January 1, 1993.

**Source: L. 93:** Entire section added, p. 614, § 2, effective April 30. **L. 95:** (2)(a) amended, p. 1108, § 54, effective May 31.

**39-3-109. Residential property - integral part of tax-exempt entities - charitable purposes - exemption - limitations.** (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is residential and the structure and the land upon which such structure is located are used as an integral part of a church, an eleemosynary hospital, an eleemosynary licensed health care facility, a school, or an institution whose property is otherwise exempt from taxation pursuant to the provisions of this part 1 and which is not leased or rented at any time to persons other than:

(a) Persons who are attending such school as students; or

(b) Persons who are actually receiving care or treatment from such hospital, licensed health care facility, or institution for physical or mental disabilities and who, in order to receive such care or treatment, are required to be domiciled within such hospital, licensed health care facility, or institution, or within affiliated residential units.

(2) Persons residing within residential units specified in paragraph (b) of subsection (1) of this section may submit to the administrator, on a form prescribed by the administrator, a certificate signed by a physician licensed to practice in the state of Colorado that the medical condition of such individual requires the individual to reside in such residential unit. If a person residing within such residential unit submits such signed certificate to the administrator pursuant to the provisions of this subsection (2), the portion of such residential property that is utilized by qualified occupants shall be deemed to be property used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit and such portion, but only such portion, shall be exempt under the provisions of subsection (1) of this section. The determination as to what portion of such structure is so utilized shall be made by the administrator on the basis of the facts existing on the annual assessment date for such property, and the administrator shall have the authority to determine a ratio which reflects the value of the nonexempt portion of such structure in relation to the total value of the whole structure and the land upon which such

structure is located and which is identical to the ratio of the number of residential units occupied by nonqualified occupants to the total number of occupied residential units in such structure.

(2.5) No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption.

(3) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

**Source: L. 89:** Entire article R&RE, p. 1472, § 1, effective April 23. **L. 90:** (2.5) added, p. 1712, § 3, effective June 9. **L. 2002:** IP(1) amended, p. 1032, § 67, effective June 1.

**Editor's note:** This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

**39-3-110. Property - integral part of child care center - charitable purposes - exemption - limitations.** (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is used as an integral part of a child care center:

(a) Which is licensed pursuant to article 6 of title 26, C.R.S.;

(b) Which is maintained for the whole or part of a day for the care of five or more children who are not sixteen years of age or older;

(c) Which is not owned or operated for private gain or corporate profit;

(d) The costs of operation of which, including salaries, are reasonable based upon the services and facilities provided and as compared with the costs of operation of any comparable public institution;

(e) Which provides its services to an indefinite number of persons free of charge or at reduced rates equal to five percent of the gross revenues of such child care center or equal to ten percent of the amount of tuition charged by such child care center to the financially needy or charges on the basis of ability to pay;

(f) The operation of which does not materially enhance, directly or indirectly, the private gain of any individual except as reasonable compensation for services rendered or goods furnished;

(g) The property of which is claimed for exemption does not exceed the amount of property reasonably necessary for the accomplishment of the exempt purpose; and

(h) The property of which is irrevocably dedicated to a charitable purpose.

(1.5) No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption.

(2) Any exemption claimed pursuant to the provisions of subsection (1) of this section shall comply with the provisions of section 39-2-117.

(3) The provisions of subsection (1) of this section shall not apply to any child care center which is operated for religious purposes and which is exempt from the levy and collection of property tax pursuant to the provisions of section 39-3-106 or 39-3-106.5.

**Source: L. 89:** Entire article R&RE, p. 1473, § 1, effective April 23; (1)(e) amended and (3) added, p. 1492, § 6, effective June 7. **L. 90:** (1.5) added, p. 1712, § 4, effective June 9.

**Editor's note:** This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

**39-3-111. Property - used by fraternal or veterans' organization - charitable purposes - exemption - limitations.** Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit, shall be exempt from the levy and collection of property tax if such property is used by any fraternal organization, as defined in section 24-21-602 (18), notwithstanding the requirement that such organization be in existence for a period of five years, or by any veterans' organization, as defined in section 24-21-602 (43), notwithstanding the requirement that such organization be in existence for a period of five years, and the net income derived from the use of such property is irrevocably dedicated to any of the purposes specified in sections 39-3-106 to 39-3-110, 39-3-112, or 39-3-113 and to the purpose of maintaining and operating such organization. As used in this section, the term "net income" means all items of revenue and gain minus all items of loss and expense, including amounts reasonably anticipated for future needs, as determined according to the usual method of accounting for such organization. No requirement shall be imposed that use of property which is otherwise exempt pursuant to this section shall benefit the people of Colorado in order to qualify for said exemption. Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

**Source: L. 89:** Entire article R&RE, p. 1473, § 1, effective April 23. **L. 90:** Entire section amended, p. 1712, § 5, effective June 9. **L. 2018:** Entire section amended, (HB 18-1375), ch. 274, p. 1725, § 93, effective May 29.

**Editor's note:** This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

**39-3-111.5. Property - health care services - charitable purposes - exemption - limitations.** (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if:

(a) Such property is owned by a nonprofit corporation, whether organized under the laws of this state or of another state;

(b) Such property is occupied or used by one or more physician or dentist, or both, licensed to practice medicine or dentistry, as applicable, under the laws of this state for the purpose of the practice of medicine or dentistry;

(c) Such health care services are provided to patients who request such services and the financially needy are only charged for such services based upon the ability to pay; and

(d) The board of county commissioners of the county in which such property is located certifies that a need exists for the provision of such health care services.

(2) The limitations set forth in section 39-3-116 (1) and (2) shall not apply to the use of property pursuant to the provisions of subsection (1) of this section.

(3) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

**Source: L. 91:** Entire section added, p. 1956, § 3, effective June 7.

**39-3-112. Definitions - residential property - orphanage - low-income elderly or individuals with disabilities - homeless or abused - low-income households - charitable purposes - exemption - limitations.** (1) As used in this section, unless the context otherwise requires:

(a) "Area median income" means the median income of the county in which the property is located in relation to family size, as published annually by the United States department of housing and urban development.

(a.3) "Disabled" means that an individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted for a continuous period of not less than twelve months.

(a.5) "Elderly or disabled low-income residential facility" means a facility, a portion of which is operated as a residential facility for elderly individuals or individuals with disabilities who meet the requirements of sub-subparagraph (A) of subparagraph (II) of paragraph (a) of subsection (3) of this section, which portion houses only such persons, exclusive of necessary housing facilities for resident managerial personnel, and the rest of which is operated as a health care facility which is licensed by the state of Colorado.

(b) "Family service facility" means a facility which is operated as a residential facility for single-parent families, which houses only such families, exclusive of necessary housing facilities for resident managerial personnel, which provides, in addition to housing, counseling in such areas as career development, parenting skills, and financial budgeting, and which is a child care center licensed pursuant to the provisions of section 26-6-104, C.R.S.

(b.3) "Low-income household" means an individual or family whose total income is no greater than thirty percent of the area median income.

(b.5) "Low-income household residential facility" means a facility:

(I) That is operated as a residential facility for low-income households;

(II) For which the published rent schedule includes rents that a low-income household can afford by expending no more than thirty percent of the low-income household's total income for rent and utilities; and

(III) For which the owner of the facility has shown that the rent for the facility for which the exemption authorized in subsection (2) of this section applies is lower than the rent for a comparable facility for which said exemption does not apply by an amount equal to at least the value of said exemption.

(c) "Transitional housing facility" means a facility that:

(I) Is operated as a residential facility for single individuals or families, or both, who are homeless, who have resided within the past six months in a shelter for the homeless, or who have been abused, and whose incomes are as specified in sub-subparagraph (A) of subparagraph (II) of paragraph (a) of subsection (3) of this section;

(II) Has as its purpose to facilitate the achievement of independent living by such individuals and families within a twenty-four-month period; and

(III) Provides counseling in such areas as career development, parenting skills, and financial budgeting, whether at such facility or at another location.

(2) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is residential and is occupied, owned, and operated in accordance with the requirements set forth in subsection (3) of this section.

(3) In order for property to be exempt from the levy and collection of property tax pursuant to the provisions of subsection (2) of this section, the administrator shall be required to find, pursuant to the provisions of section 39-2-117, that:

(a) The residential structure is:

(I) Occupied as an orphanage; or

(II) Occupied by:

(A) Single individuals who are sixty-two years of age or older or who are disabled, or a family, the head of which, or whose spouse, is sixty-two years of age or older or is disabled, and whose incomes are within one hundred fifty percent of the limits prescribed for similar individuals or families who occupy low-rent public housing operated by a city or county housing authority which is nearest in distance to such structure; or

(B) Single-parent families whose incomes are as specified in sub-subparagraph (A) of this subparagraph (II) and who occupy a family service facility which is owned and operated by an organization which is exempt from federal income tax pursuant to the provisions of section 501 (c)(3) of the "Internal Revenue Code of 1986", as amended; or

(C) Single individuals or families who occupy a transitional housing facility which is owned and operated by an organization which is exempt from federal income tax pursuant to the provisions of section 501 (c)(3) of the "Internal Revenue Code of 1986", as amended; or

(D) Low-income households who occupy a low-income household residential facility.

(b) The residential structure is efficiently operated. Efficient operation is determined by the following factors:

(I) That the costs of operation, including salaries, are reasonable based upon the services and facilities provided and as compared with the costs of operation of any comparable public institution;

(II) That such operations do not materially enhance, directly or indirectly, the private gain of any individual except as reasonable compensation for services rendered or goods furnished;

(III) That the property on which the exemption is claimed does not exceed the amount of property reasonably necessary for the accomplishment of the exempt purpose; and

(IV) That the owners and operators of such residential structure have no occupancy requirement that discriminates upon the basis of race, creed, color, religion, sex, sexual orientation, marital status, national origin, or ancestry; however, if the owner or sponsoring organization is a religious denomination, said owners or operators may give preference to members of that denomination.

(c) The property is owned:

(I) By a nonprofit corporation of which:

(A) No part of the net earnings of such corporation inures to the benefit of any private shareholder; and

(B) Property owned by such corporation is irrevocably dedicated to charitable, religious, or hospital purposes and no portion of its assets will inure to the benefit of any private person upon the liquidation, dissolution, or abandonment of such corporation; or

(II) (A) With respect to residential structures specified in sub-subparagraphs (A), (C), and (D) of subparagraph (II) of paragraph (a) of this subsection (3), during any compliance period, as defined by section 42 (i)(1) of the "Internal Revenue Code of 1986", as amended, by any domestic or foreign limited partnership of which any nonprofit corporation that satisfies the provisions of subparagraph (I) of this paragraph (c) is a general partner and that was formed for the purpose of obtaining, and has been allocated, low-income housing credits pursuant to section 42 of the "Internal Revenue Code of 1986", as amended.

(B) The provisions of this subparagraph (II) shall not apply if, during such compliance period, such domestic or foreign limited partnership which owns the residential structure distributes income or has income available for distribution to its partners or if the residential structure is sold or otherwise disposed of during such compliance period. If the administrator determines that, as specified in this sub-subparagraph (B), income has been distributed or has been available for distribution or the residential property has been sold or otherwise disposed of, the administrator shall revoke the property tax exemption for the residential property and property taxes shall be levied and collected against the residential property, which would have otherwise been levied and collected from the date on which the exemption was initially granted plus all delinquent interest as provided for by law.

(C) The provisions of this subparagraph (II) shall apply to applications for exemption made pursuant to section 39-2-117 which are filed on and after January 1, 1991, or which are pending on said date; or

(III) (A) With respect to residential structures specified in sub-subparagraphs (A), (C), and (D) of subparagraph (II) of paragraph (a) of this subsection (3), by any domestic or foreign limited partnership of which all of the general and limited partners are nonprofit corporations that satisfy the provisions of subparagraph (I) of this paragraph (c).

(B) The provisions of this subparagraph (III) shall apply to applications for exemption made pursuant to section 39-2-117 which are filed on or after January 1, 1993, or which are pending on said date; or

(IV) (A) With respect to elderly or disabled low-income residential facilities or low-income household residential facilities, during any compliance period, as defined by section 42 (i)(1) of the "Internal Revenue Code of 1986", as amended, by any domestic or foreign limited partnership so long as each of the general partners of such limited partnership is a for-profit corporation, seventy-five percent or more of the outstanding voting stock of which is owned by, and seventy-five percent or more of the members of the board of directors of which is elected by, one or more nonprofit corporations that satisfy the provisions of subparagraph (I) of this paragraph (c) and so long as such limited partnership was formed for the purpose of obtaining, and the structure that is owned by such limited partnership has been allocated, low-income housing credits pursuant to section 42 of the "Internal Revenue Code of 1986", as amended.

(B) The provisions of this subparagraph (IV) shall not apply if, during any compliance period: Any of the general partners of the domestic or foreign limited partnership which owns the residential structure specified in sub-subparagraph (A) of this subparagraph (IV) cease to meet the requirements specified in sub-subparagraph (A) of this subparagraph (IV); the domestic

or foreign limited partnership which owns such residential structure distributes cash or other property to its partners; or such residential structure is sold or otherwise disposed of.

(C) Upon a determination by the administrator that any of the events specified in sub-subparagraph (B) of this subparagraph (IV) have occurred, the administrator shall revoke the property tax exemption for the residential facility specified in sub-subparagraph (A) of this subparagraph (IV), and property taxes shall be levied and collected against such residential facility in the amount which would have otherwise been levied and collected from the date on which such exemption was initially granted, and all delinquent interest provided by law shall apply to such taxes.

(D) The provisions of this subparagraph (IV) shall apply to applications for exemption made pursuant to section 39-2-117 which are filed on or after January 1, 1993, or which are pending on such date.

(4) In the event the occupants of the residential structure include both persons who are qualified pursuant to paragraph (a) of subsection (3) of this section and persons who are not qualified, the portion of such residential structure that is utilized by qualified occupants shall be deemed to be property used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit, and such portion, but only such portion, shall be exempt pursuant to the provisions of subsection (2) of this section. The determination as to what portion of such structure is so utilized shall be made by the administrator on the basis of the facts existing on the annual assessment date for such property, and the administrator shall have the authority to determine a ratio which reflects the value of the nonexempt portion of such structure in relation to the total value of the whole structure and the land upon which such structure is located and which is identical to the ratio of the number of residential units occupied by nonqualified occupants to the total number of occupied residential units in such structure.

(4.5) No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption.

(5) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

(6) For purposes of processing applications received for the exemption authorized by subsection (2) of this section for low-income household residential facilities, the department of local affairs shall contract with an independent contractor for the performance of the application processing services in accordance with section 24-50-504, C.R.S. Said contract shall be limited to a term of one year and shall commence when the exemption for low-income household residential facilities first becomes available.

**Source: L. 89:** Entire article R&RE, p. 1473, § 1, effective April 23. **L. 90:** (4.5) added, p. 1713, § 6, effective June 9. **L. 91:** (1)(c) added and (3)(a) and (3)(c) amended, p. 1957, §§ 4, 5, effective June 7. **L. 92:** (3)(c)(II)(B) amended, p. 2223, § 3, effective April 9. **L. 93:** (1)(a.5), (3)(c)(III), and (3)(c)(IV) added and (3)(c)(II)(C) amended, p. 432, §§ 1, 2, effective April 19. **L. 95:** (1)(c), (3)(c)(II)(A), and (3)(c)(III)(A) amended, p. 1391, § 1, effective June 5. **L. 2001:** (1)(a), (3)(c)(II)(A), (3)(c)(III)(A), and (3)(c)(IV)(A) amended and (1)(a.3), (1)(b.3), (1)(b.5), (3)(a)(II)(D), and (6) added, pp. 1520, 1521, §§ 1, 2, 3, effective August 8. **L. 2008:** (3)(b)(IV) amended, p. 1604, § 34, effective May 29. **L. 2014:** (1)(a.5) amended, (SB 14-118), ch. 250, p. 986, § 24, effective August 6.

**Editor's note:** This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

**Cross references:** For the legislative declaration contained in the 2008 act amending subsection (3)(b)(IV), see section 1 of chapter 341, Session Laws of Colorado 2008.

**39-3-112.5. Residential property - homeless - charitable purposes - exempt - limitations.** (1) Property, real and personal, which is used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is residential, is owned by the United States, and is leased by a department or agency of the United States to any nonprofit organization, whether organized under the laws of this state or of another state, for the purpose of housing single individuals or families, or both, who are homeless.

(2) Any exemption shall be allowed pursuant to subsection (1) of this section only upon the delivery to the administrator of a copy of such lease between the agency of the United States and the nonprofit organization and a copy of the rental agreement between the nonprofit organization and the individuals or families to be housed in such property. Such exemption shall be allowed only for the period of time that such residential property is actually used for said purpose, and such nonprofit organization shall immediately notify the administrator when the use of such residential property has changed.

(3) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

**Source: L. 91:** Entire section added, p. 1959, § 6, effective June 7.

**39-3-113. Residential property - while being constructed - charitable purposes - exemption - limitations.** Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is residential and consists of land and one or more structures which are in the process of being constructed if such property is irrevocably committed to residential use in accordance with the requirements set forth in section 39-3-109 (1) or 39-3-112 (2) and (3). The exemption provided by this section shall terminate on the assessment date subsequent to the issuance of a permit or other authority to occupy such structure or structures. Thereafter, such property shall be subject to the provisions of sections 39-3-109 and 39-3-112. No requirement shall be imposed that use of property which otherwise is exempt pursuant to the provisions of this section shall benefit people of Colorado in order to qualify for said exemption. Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

**Source: L. 89:** Entire article R&RE, p. 1475, § 1, effective April 23. **L. 90:** Entire section amended, p. 1713, § 7, effective June 9.

**Editor's note:** This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

**39-3-113.5. Property acquired by nonprofit housing provider for low-income housing - use for charitable purposes - exemption - limitations - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Area median income" means the median income of any county in which property is located in relation to family size, as published annually by the United States department of housing and urban development.

(b) "Indicators of intent" means off-site activities of a nonprofit housing provider that establish the provider's specific intent to:

(I) Use property for the purpose of constructing or rehabilitating housing to be sold to low-income applicants; or

(II) Sell the property to low-income applicants for the purpose of constructing or rehabilitating housing for the low-income applicants.

(c) "Low-income applicant" means an individual or family whose total income is no greater than eighty percent of the area median income and who applies to a nonprofit housing provider to assist in the construction and purchase of housing to be constructed by the provider.

(d) "Nonprofit housing provider" means an organization that is exempt from federal income tax pursuant to section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and that has a primary organizational mission of:

(I) Working with low-income applicants to construct or rehabilitate housing that the organization then sells to the low-income applicants for their residential use; or

(II) Selling property to low-income applicants and then working with the low-income applicants to construct or rehabilitate housing for their residential use.

(2) Subject to the limitations specified in subsection (3) of this section, for property tax years commencing on or after January 1, 2011, real property acquired by a nonprofit housing provider upon which the provider intends to construct or rehabilitate housing to be sold to low-income applicants or which the provider intends to sell to low-income applicants for the purpose of constructing or rehabilitating housing for their residential use is deemed to be being used for strictly charitable purposes, regardless of whether or not there is actual physical use of the property, and shall be exempt from property taxation in accordance with section 5 of article X of the state constitution. In the case of property sold by a nonprofit housing provider to a low-income applicant, the property tax exemption pursuant to this subsection (2) shall be allowed until a certificate of occupancy is issued for the housing; except that the property tax exemption shall not be allowed for longer than one year after the nonprofit housing provider sells the property to the low-income applicant. In determining whether a nonprofit housing provider satisfies the intent requirement of this subsection (2) with respect to particular property, the administrator may consider indicators of intent, including but not limited to:

(a) The establishment by the nonprofit housing provider of a committee or other structure for the purpose of planning the construction or rehabilitation of housing on the property;

(b) Steps taken by the nonprofit housing provider to obtain any required local government approvals for the construction or rehabilitation of housing on the property;

(c) Steps taken by the nonprofit housing provider to develop and implement a financing plan for the construction or rehabilitation of housing on the property;

(d) The hiring of architects, contractors, or other professionals by the nonprofit housing provider in preparation for the actual construction or rehabilitation of housing on the property; and

(e) The solicitation or acceptance by the nonprofit housing provider of applications from low-income applicants for housing to be constructed or rehabilitated on the property.

(3) The property tax exemption allowed to a nonprofit housing provider by subsection (2) of this section is subject to the following limitations:

(a) The exemption may be allowed for a maximum of five consecutive property tax years, beginning with the property tax year in which the nonprofit housing provider obtained title to the property; and

(b) If the nonprofit housing provider is allowed an exemption for any property tax year and subsequently sells, donates, or leases the property to any person other than a low-income applicant who assisted or will assist in the construction of housing for the applicant's residential use on the property, the provider shall be liable for all property taxes that the provider did not previously pay due to the exemption.

**Source: L. 2011:** Entire section added, (HB 11-1241), ch. 248, p. 1082, § 1, effective August 10. **L. 2013:** (1)(b), (1)(c), (1)(d), IP(2), and (3)(b) amended, (HB 13-1246), ch. 203, p. 845, § 1, effective August 7.

**39-3-114. Burden - claim for charitable exemption.** The burden shall be on the owner and operator of any residential property for which an exemption is claimed pursuant to any of the provisions of sections 39-3-109 and 39-3-112 to show facts sufficient to support the exemption claimed. In determining whether or not a particular property is entitled to such an exemption provided for in any of said sections, the administrator may require the owner or operator of such property to annually submit a complete financial report on its operations and may require any occupants whose residential units are claimed to qualify for such exemption to submit copies of their federal or state income tax returns.

**Source: L. 89:** Entire article R&RE, p. 1475, § 1, effective April 23. **L. 2009:** Entire section amended, (SB 09-042), ch. 176, p. 781, § 4, effective August 5.

**Editor's note:** This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

**39-3-114.5. Charitable exemption - owner claiming federal tax credit - fee in lieu of school district tax. (Repealed)**

**Source: L. 2009:** Entire section added, (SB 09-042), ch. 176, p. 780, § 3, effective August 5. **L. 2014:** Entire section repealed, (HB 14-1349), ch. 230, p. 855, § 5, effective May 17.

**39-3-115. Statutes not applicable.** Nothing in sections 39-3-106 to 39-3-114 shall apply to parts 2 and 5 of article 4 of title 29, C.R.S.

**Source: L. 89:** Entire article R&RE, p. 1476, § 1, effective April 23.

**39-3-116. Combination use of property - charitable, religious, and educational purposes - exemption - limitations.** (1) Except as otherwise provided in this section, property, real and personal, which is owned and used by the owner thereof or by any other person or organization solely and exclusively for any combination of the purposes specified in sections 39-3-106 to 39-3-113.5, subject to the limitations and requirements in said sections, including but not limited to the requirement that property not be owned or used for private or corporate gain or profit, shall be exempt from the levy and collection of property tax. No requirement shall be imposed that use of property which is otherwise exempt pursuant to any of said sections shall benefit the people of Colorado in order to qualify for said exemption. Property which is otherwise exempt pursuant to the provisions of this section shall be subject to the provisions of section 39-3-129 relating to the proportional valuation of exempt property if such property is partially leased, loaned, or otherwise made available for a portion of any calendar year to any business conducted for profit.

(2) In the event that such property is used by any person or organization other than the owner:

(a) The use of the property by the owner, if any, must qualify pursuant to the provisions of this section or pursuant to any of the provisions of sections 39-3-106 to 39-3-113.5, and, in addition, the owner must qualify for an exemption pursuant to the provisions of section 39-2-117;

(b) The use of the property by the person or organization other than the owner is a use described in the provisions of this section or in any of the provisions of sections 39-3-106 to 39-3-113.5 or such person or organization is otherwise exempt from the payment of property taxes; and

(c) The amount received by the owner for the use of such property specified in sections 39-3-107 to 39-3-113.5, other than from any shareholder or member of the owner or from any person or organization controlled by an organization which also controls such shareholder or member, must not exceed one dollar per year plus an equitable portion of the reasonable expenses incurred in the operation and maintenance of the property so used. For purposes of this paragraph (c), reasonable expenses include interest expenses, depreciation, long-term maintenance expenses allowed in accordance with generally accepted accounting principles, capital expenses dedicated to refurbishing the property, and expenses incurred to allow the property to conserve energy, water, or other natural resources, but do not include any amount expended to reduce debt.

(3) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

**Source: L. 89:** Entire article R&RE, p. 1476, § 1, effective April 23; (2)(c) amended, p. 1486, § 3, effective June 7. **L. 90:** (1) amended, p. 1713, § 8, effective June 9. **L. 2013:** (1) and (2) amended, (HB 13-1300), ch. 316, p. 1704, § 120, effective August 7. **L. 2014:** (2)(c) amended, (HB 14-1074), ch. 26, p. 166, § 1, effective March 14.

**Editor's note:** This section is similar to former § 39-3-101 (1)(g.1) as it existed prior to 1989.

**39-3-117. Cemeteries - not-for-profit - exemption.** Cemeteries not used or held for private or corporate profit shall be exempt from the levy and collection of property tax.

**Source: L. 89:** Entire article R&RE, p. 1476, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-101 (1)(h) as it existed prior to 1989.

**39-3-118. Intangible personal property - exemption.** Intangible personal property shall be exempt from the levy and collection of property tax. For purposes of this section, "intangible personal property" shall include, but is not limited to, computer software.

**Source: L. 89:** Entire article R&RE, p. 1476, § 1, effective April 23. **L. 90:** Entire section amended, p. 1715, § 2, effective May 2.

**Editor's note:** This section is similar to former § 39-3-101 (1)(i) as it existed prior to 1989.

**Cross references:** For the legislative declaration contained in the 1990 act amending this section, see section 1 of chapter 281, Session Laws of Colorado 1990.

**39-3-118.5. Business personal property - exemption.** For property tax years commencing on and after January 1, 1996, business personal property shall be exempt from the levy and collection of property tax until such business personal property is first used in the business after acquisition.

**Source: L. 95:** Entire section added, p. 1213, § 1, effective May 31.

**39-3-118.7. Community solar garden - partial business personal property tax exemption - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Community solar garden" has the same meaning as set forth in section 40-2-127 (2)(b)(I)(A), C.R.S.

(b) "Subscriber" has the same meaning as set forth in section 40-2-127 (2)(b)(II), C.R.S.

(2) For property tax years commencing on and after January 1, 2015, but before January 1, 2021, there is exempt from the levy and collection of property tax the percentage of alternating current electricity capacity of a community solar garden that is attributed to residential or governmental subscribers, or to subscribers that are organizations that have been granted property tax exemptions pursuant to sections 39-3-106 to 39-3-113.5.

**Source: L. 2014:** Entire section added, (HB 14-1101), ch. 172, p. 627, § 1, effective August 6.

**39-3-119. Inventories - materials and supplies - held for consumption or primarily for sale - exemption.** Inventories of merchandise and materials and supplies that are held for consumption by any business or are held primarily for sale shall be exempt from the levy and

collection of property tax. The property tax administrator shall publish in the manuals, appraisal procedures, and instructions prepared and published pursuant to section 39-2-109 (1)(e) a definition or description of the types of personal property that are "held for consumption by any business" and therefore exempt from the levy and collection of property tax pursuant to this section.

**Source: L. 89:** Entire article R&RE, p. 1476, § 1, effective April 23. **L. 2000:** Entire section amended, p. 750, § 2, effective May 23.

**Editor's note:** This section is similar to former § 39-3-101 (1)(k) as it existed prior to 1989.

**39-3-119.5. Personal property - exemption - definitions.** (1) For property tax years commencing on and after January 1, 1997, personal property not otherwise exempt from property tax shall be exempt from the levy and collection of property tax if the personal property would otherwise be listed on a single personal property schedule and the actual value of such personal property is less than or equal to the amount set forth in subsection (2) of this section.

(2) (a) The exemption created in subsection (1) of this section shall be up to and including the following amounts:

(I) Two thousand five hundred dollars for property tax years commencing prior to January 1, 2009;

(II) Four thousand dollars for property tax years commencing on January 1, 2009, and January 1, 2010;

(III) Five thousand five hundred dollars for property tax years commencing on January 1, 2011, and January 1, 2012; and

(IV) Seven thousand dollars for property tax years commencing on January 1, 2013, and January 1, 2014.

(b) (I) Beginning with the property tax year commencing on January 1, 2015, the amount of the exemption created in subsection (1) of this section shall be adjusted biennially to account for inflation since the amount of the exemption last changed pursuant to this subsection (2). On or before November 1, 2014, and each even-numbered year thereafter, the administrator shall calculate the amount of the exemption for the next two-year cycle using inflation for the prior two calendar years as of the date of the calculation. The adjusted exemption shall be rounded upward to the nearest one hundred dollar increment. The administrator shall certify the amount of the exemption for the next two-year cycle and publish the amount on the website maintained by the division of property taxation in the department of local affairs.

(II) As used in subsection (2)(b)(I) of this section, "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its applicable predecessor or successor index.

**Source: L. 96:** Entire section added, p. 1847, § 1, effective August 7. **L. 2008:** Entire section amended, p. 947, § 1, effective August 5. **L. 2018:** (2)(b)(II) amended, (HB 18-1375), ch. 274, p. 1722, § 79, effective May 29.

**39-3-120. Livestock - exemption.** Livestock shall be exempt from the levy and collection of property tax.

**Source: L. 89:** Entire article R&RE, p. 1476, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-101 (1)(l) as it existed prior to 1989.

**39-3-121. Agricultural and livestock products - exemption.** Agricultural and livestock products shall be exempt from the levy and collection of property tax.

**Source: L. 89:** Entire article R&RE, p. 1477, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-101 (1)(m) as it existed prior to 1989.

**39-3-122. Agricultural equipment used in production of agricultural products - exemption.** Agricultural equipment which is used on any farm or ranch in the production of agricultural products shall be exempt from the levy and collection of property tax.

**Source: L. 89:** Entire article R&RE, p. 1477, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-101 (1)(n) as it existed prior to 1989.

**39-3-123. Works of art, literary materials, and artifacts - on loan - exemption - limitations - definitions.** (1) Works of art, literary materials, and artifacts shall be exempt from the levy and collection of property tax if such works of art, literary materials, and artifacts are loaned to and are in the custody and control of:

(a) The state or a political subdivision thereof; or

(b) A library or any art gallery or museum which is owned or operated by a charitable organization whose property is irrevocably dedicated to charitable purposes and whose assets shall not inure to the benefit of any private person upon the liquidation, dissolution, or abandonment by the owner, and which uses such works of art, literary materials, and artifacts for charitable purposes. This exemption shall apply only for the period of time during which such works of art, literary materials, and artifacts are actually on loan and shall be in addition to such exemptions provided for in sections 39-3-108 to 39-3-113.5.

(2) Any exemption claimed pursuant to the provisions of subsection (1) of this section shall comply with the provisions of section 39-5-113.5.

(3) For purposes of subsection (1) of this section:

(a) "Artifacts" means items of personal property which are objects of human workmanship and which have archaeological or historical significance.

(b) "Charitable organization" means a charitable organization as defined in section 39-26-102 (2.5).

(c) "Charitable purposes" means public display, research, educational study, maintenance of property, and preparation for display.

(d) "Literary materials" means items of personal property including, but not limited to, books, letters, diaries, records, documents, memoranda, journals, magazines, and notes.

(e) "Works of art" means works of art as defined in section 39-1-102 (18).

**Source: L. 89:** Entire article R&RE, p. 1477, § 1, effective April 23. **L. 2013:** (1)(b) amended, (HB 13-1300), ch. 316, p. 1704, § 121, effective August 7.

**Editor's note:** This section is similar to former § 39-3-101 (1)(o) as it existed prior to 1989.

**39-3-124. Property used by state entity - installment sales or lease agreement - lease-purchase or leveraged lease agreement - exemption.** (1) (a) Property, real and personal, that is used by the state or any of its political subdivisions pursuant to the provisions of any installment sales agreement, lease-purchase agreement, or any other agreement whereby the state or such political subdivision shall be entitled to acquire title to such property at the end of the agreement term without cost or for only nominal consideration shall be exempt from the levy and collection of property tax.

(b) (I) (A) Subject to the provisions of sub-subparagraph (B) of this subparagraph (I), on and after January 1, 2009, the part of real property that is used by the state, a political subdivision, or a state-supported institution of higher education pursuant to the provisions of any lease or rental agreement for at least a one-year term, with or without an option to purchase, and pursuant to which the subject real property is used for purposes of the state, political subdivision, or institution of higher education, as applicable, shall be exempt from the levy and collection of property tax. If the state or any political subdivision or state-supported institution of higher education enters into a lease or rental agreement or is already in a lease or rental agreement on or after January 1, 2009, and is exempt from the levy and collection of property tax pursuant to this section, the state, political subdivision, or state-supported institution of higher education, as applicable, shall file a copy of the lease or rental agreement with the county assessor's office. The state or a political subdivision or institution of higher education shall notify the county assessor's office in the event that the lease or rental agreement is terminated prior to the term stated in such lease or rental agreement. Nothing in this paragraph (b) shall affect property tax exemptions allowed pursuant to section 8-82-104, 22-32-127, 29-4-227, 30-11-104.2, 31-15-802, or 43-1-214, C.R.S.

(B) The state, a political subdivision, or a state-supported institution of higher education shall reduce, deduct, or offset property taxes from rent due under any lease or rental agreement pursuant to sub-subparagraph (A) of this subparagraph (I). Upon receipt of a lease or rental agreement for the state, a political subdivision, or a state-supported institution of higher education, the county assessor shall send a notice to the landlord acknowledging receipt of the lease or rental agreement. The notice shall identify the property, the property address, and the parties to the lease or rental agreement.

(C) To the extent that real property taxes are shared and payable by one or more tenants under the lease of property that are not the state, a political subdivision, or a state-supported institution of higher education, real property taxes otherwise due but for the application of this

paragraph (b) shall be deemed taxes paid by the property owner or the landlord of a property leased in part to the state, a political subdivision, or a state-supported institution of higher education.

(D) Only a tenant that is the state, a political subdivision, or a state-supported institution of higher education shall receive any benefit related to the tenant's property tax-exempt status pursuant to this paragraph (b).

(E) It is the general assembly's intent that the application of this paragraph (b) be cost-neutral in that the tax reduction and the rent reduction pursuant to this paragraph (b) are equal.

(II) For purposes of this paragraph (b), "state-supported institution of higher education" includes, but need not be limited to, all postsecondary institutions in the state supported in whole or in part by state funds, including community colleges, extension programs of the state-supported universities and colleges, local district colleges, area technical colleges, and the institutions governed by the regents of the university of Colorado.

(2) A leasehold interest in real or personal property that is owned by the state or by a political subdivision of the state and that has been leased to a private person, the use and possession of which has been leased back to the state or a political subdivision of the state, shall be exempt from the levy and collection of property tax during the term of the use and possession of the property by the state or a political subdivision of the state. Property that is the subject of a leveraged leasing agreement executed by the state or by a political subdivision of the state shall be treated as tax-exempt property owned by the state for purposes of any state or local tax.

(3) The lease of property by a political subdivision of the state to a private person and the sublease of the property back to the political subdivision of the state pursuant to a leveraged leasing agreement shall not cause the private person to whom the property has been leased to incur any liability in tort by virtue of the private person's status as a lessor under the leveraged leasing agreement.

**Source: L. 89:** Entire article R&RE, p. 1477, § 1, effective April 23. **L. 2003:** Entire section amended, p. 1720, § 3, effective May 14. **L. 2008:** (1) amended, p. 1631, § 1, effective August 5. **L. 2009:** (1)(b)(I) amended, (HB 09-1365), ch. 320, p. 1710, § 1, effective June 1. **L. 2016:** (1)(b)(II) amended, (HB 16-1082), ch. 58, p. 153, § 43, effective August 10.

**Editor's note:** This section is similar to former § 39-3-101 (1)(p) as it existed prior to 1989.

**39-3-125. Church property - used as residence - exemption - limitation. (Repealed)**

**Source: L. 89:** Entire article R&RE, p. 1478, § 1, effective April 23; entire section repealed, p. 1492, § 9, effective June 7.

**Editor's note:** Before its repeal, this section was similar to former § 39-3-102 as it existed prior to 1989.

**39-3-126. Horticultural improvements - exemption - limitation - exception.** Any increase in value of privately owned lands resulting from the planting of trees shall not be taken into account in determining the actual value of such lands for a period of thirty years from the

date of planting such trees. This section shall apply to all lands so planted; however, in the event that any trees become sufficiently mature as to be of economic use and value prior to the expiration of thirty years, any increase in use and value shall be thereafter taken into account in determining the actual value of such lands.

**Source: L. 89:** Entire article R&RE, p. 1478, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-103 as it existed prior to 1989.

**39-3-127. County fair property - exemption - limitation.** Property, real and personal, of any association duly organized pursuant to the laws of this state for the purpose of holding county fairs to promote and advance the interests of agriculture, horticulture, animal husbandry, home economics, and the mechanical attributes thereof shall be exempt from the levy and collection of property tax so long as such property is actually and exclusively used for said purpose and not for pecuniary profit.

**Source: L. 89:** Entire article R&RE, p. 1478, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-104 as it existed prior to 1989.

**39-3-127.5. Qualifying business entities - participation in federal tax credit transactions - exemption - requirements - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Qualified business entity" means a limited partnership or a limited liability company:

(I) That is formed for the purpose of obtaining federal tax credits and that does obtain such credits; and

(II) The general partner or managing member of which is an entity that would qualify for property tax exemption under sections 39-3-106 to 39-3-113.5.

(2) For property tax years beginning on or after January 1, 2014, real and personal property is exempt from the levy and collection of property tax if:

(a) The property tax is owed by a qualified business entity; and

(b) The property is used for the purposes described in sections 39-3-106 to 39-3-113.5 and 39-3-116.

(3) In addition to any other requirement specified in this section, any exemption claimed pursuant to the provisions of this section must also comply with section 39-2-117.

**Source: L. 2014:** Entire section added, (HB 14-1349), ch. 230, p. 853, § 1, effective May 17.

**39-3-128. Exempt property listed and valued.** It is the duty of the assessor to list, appraise, and value all real property exempted from the levy and collection of property tax pursuant to the provisions of sections 39-3-106 to 39-3-113.5 or 39-3-116, and such information shall be entered in the same detail as required for taxable property.

**Source: L. 89:** Entire article R&RE, p. 1478, § 1, effective April 23; entire section amended, p. 1492, § 8, effective June 7. **L. 2013:** Entire section amended, (HB 13-1300), ch. 316, p. 1705, § 122, effective August 7. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 792, § 106, effective June 6.

**Editor's note:** This section is similar to former § 39-3-105 as it existed prior to 1989.

**39-3-129. Proportional valuation - exempt property.** (1) Except as otherwise provided in subsection (2) of this section, whenever any real property that was previously taxable becomes legally exempt from the levy and collection of property tax or any real property that was previously legally exempt from the levy and collection of property tax becomes taxable, the valuation for assessment of the real property shall be a proportion of the valuation for assessment of the real property for the entire taxable year based upon the ratio of the portion of the taxable year in which the property is taxable to the entire taxable year. In the event the real property is partially leased, loaned, or otherwise made available to and used by a business conducted for profit, the determination as to what portion of the real property is so utilized shall be made by the administrator on the basis of the facts existing on the annual assessment date for the real property. The administrator shall have the authority to determine the actual value of the nonexempt portion of the property in relation to the actual value of the entire property by using the ratio of the square foot area of the property utilized by the business conducted for profit to the total square foot area of the property. Where shown to be more appropriate, in order to determine the relationship between the actual value of the nonexempt portion of the property and the actual value of the total property, the administrator may employ the ratio of the portion as measured in hours of any calendar year in which the property is leased, loaned, or otherwise made available to and used by any business conducted for profit to the entire calendar year.

(2) The provisions of subsection (1) of this section shall not be applicable to household furnishings.

**Source: L. 89:** Entire article R&RE, p. 1478, § 1, effective April 23. **L. 96:** (1) amended, p. 44, § 2, effective March 20; (1) amended, p. 1200, § 4, effective June 1.

**Editor's note:** (1) This section is similar to former § 39-3-106 as it existed prior to 1989.

(2) Amendments to subsection (1) by Senate Bill 96-006 and House Bill 96-1113 were harmonized.

**Cross references:** For the legislative declaration contained in the 1996 act amending subsection (1), see section 1 of chapter 16, Session Laws of Colorado 1996.

**39-3-130. Change in tax status of property - effective date - tax liability.** (1) (a) (I) Whenever any real property that was previously taxable becomes legally exempt from the levy and collection of property tax for any reason, the person conveying the real property shall be relieved from all further tax obligations with respect to the real property on the date title thereto is conveyed by agreement or on the date title thereto is conveyed pursuant to a court order.

(II) On and after January 1, 1996, whenever any personal property that was previously taxable becomes legally exempt from the levy and collection of property tax for any reason, the exempt status shall become effective on the assessment date following the change in status. If the change in status occurred due to the conveyance of the personal property, the person conveying the personal property shall not be relieved of any tax obligation with respect to the personal property for the property tax year in which the conveyance occurred.

(b) (I) Except as otherwise provided in subsection (2) of this section, whenever any real property that was previously exempt from the levy and collection of property tax becomes taxable, the person acquiring title to the real property shall be liable for subsequent tax obligations with respect to the real property on the date title thereto is acquired by the person.

(II) On and after January 1, 1996, except as otherwise provided in subsection (2) of this section, whenever any personal property that was previously exempt from the levy and collection of property tax becomes taxable, the taxable status shall become effective on the assessment date following the change in status. If the change in status occurred due to conveyance of the personal property, the person acquiring title to the personal property shall not be liable for any tax obligation with respect to the personal property for the property tax year in which the conveyance occurred.

(2) Whenever any personal property consisting of inventory, as defined in section 39-1-102 (7.2), becomes taxable because the personal property has become subject to a lease or rental agreement, the lessor shall not be responsible for any tax obligation on the property for the property tax year in which the agreement was executed.

**Source: L. 89:** Entire article R&RE, p. 1479, § 1, effective April 23. **L. 96:** Entire section amended, p. 45, § 3, effective March 20.

**Editor's note:** This section is similar to former § 39-3-107 as it existed prior to 1989.

**Cross references:** For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 1996.

**39-3-131. Entire property becomes tax-exempt.** Whenever any property which was previously taxable becomes exempt from the levy and collection of property tax, the treasurer shall accept payment of property taxes levied on such property for the current taxable year. The amount of such property taxes shall be calculated on the basis of the property tax levy on such property in the preceding taxable year and prorated to the date upon which title to such property was conveyed.

**Source: L. 89:** Entire article R&RE, p. 1479, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-108 as it existed prior to 1989.

**39-3-132. Portion of property becomes tax-exempt.** Whenever only a portion of a parcel, tract, or lot of real property which was previously taxable becomes exempt from the levy and collection of property tax for any reason, the treasurer may, upon the basis of an appraisal and computation of the valuation for assessment of such property by the assessor, either collect

the property taxes thereon for the current taxable year, calculated on the basis of the property tax levy on such property during the preceding taxable year and prorated to the date upon which title to such property was conveyed, or, if the treasurer is satisfied that there is sufficient taxable real property remaining to satisfy any lien for the amount of property taxes payable on such portion, he may defer collection of the property taxes until the following taxable year. In the event the prorated taxes on such portion are collected, the owner of the remainder of such real property shall be credited with the full amount of taxes collected when the property tax levy for the current taxable year has been fixed and made and the correct amount of property taxes determined.

**Source: L. 89:** Entire article R&RE, p. 1479, § 1, effective April 23.

**Editor's note:** This section is similar to former § 39-3-109 as it existed prior to 1989.

**39-3-133. Payment of property taxes extinguishes lien.** Payment to the treasurer of prorated property taxes for the current taxable year, as provided for in sections 39-3-131 and 39-3-132, together with payment of any other unpaid property taxes, delinquent interest, or charges thereon, shall extinguish the lien for property taxes on such property, or a portion thereof; however, if only a portion of any parcel, tract, or lot of real property becomes exempt from the levy and collection of property tax and no property taxes are collected at that time, the lien of property taxes levied or to be levied shall attach to the remaining portion of such real property.

**Source: L. 89:** Entire article R&RE, p. 1479, § 1, effective April 23. **L. 92:** Entire section amended, p. 2223, § 4, effective April 9.

**Editor's note:** This section is similar to former § 39-3-110 as it existed prior to 1989.

**39-3-134. Condemnation by tax-exempt agency - duties of treasurer.** In all cases where an entire property, or a portion of any parcel, tract, or lot of real property, is likely to become exempt from the levy and collection of property tax through exercise of the power of eminent domain, the treasurer shall be joined as a party respondent in any such eminent domain action, and, upon joinder and notice of the proceedings, the treasurer shall assert a claim for the amount of any prorated property taxes for the current taxable year on such property, and all other unpaid property taxes, delinquent interest, or charges thereon, with the clerk of the court in which the proceedings are filed. Upon institution of any such proceedings, the lien of property taxes levied and to be levied shall be transferred from the real property acquired or sought to be acquired to any money awarded or to be awarded for the taking of such real property. Nothing in this section shall require any treasurer to file a claim in any such proceedings involving acquisition of only a portion of any real property if the treasurer is satisfied that there is sufficient taxable real property remaining after the taking of such portion to satisfy any lien for the amount of property taxes payable on such portion taken.

**Source: L. 89:** Entire article R&RE, p. 1480, § 1, effective April 23. **L. 92:** Entire section amended, p. 2224, § 5, effective April 9.

**Editor's note:** This section is similar to former § 39-3-111 as it existed prior to 1989.

**39-3-135. Taxation of exempt property - taxes not to become lien. (Repealed)**

**Source: L. 89:** Entire article R&RE, p. 1480, § 1, effective April 23. **L. 96:** Entire section repealed, p. 1851, § 3, effective June 5.

**Editor's note:** Before its repeal, this section was similar to former § 39-3-112 as it existed prior to 1989.

**39-3-136. Legislative declaration - taxation of exempt property - possessory interests. (Repealed)**

**Source: L. 96:** Entire section added, p. 1849, § 1, effective June 5. **L. 2002:** (2) amended, p. 1032, § 68, effective June 1; entire section repealed, p. 1009, § 6, effective August 7.

**39-3-137. Organizations with tax-exempt status - forgiveness of taxes owed.** (1) Subject to the provisions of subsection (2) of this section, any organization that, as of August 5, 2008, owes taxes that have been levied on real or personal property shall not be required to pay the balance of the taxes owed on or after August 5, 2008, if the organization meets the following requirements:

(a) The organization is a religious, charitable, or educational organization exempt from general taxation on real and personal property pursuant to sections 39-3-106 to 39-3-113.5 and 39-3-116;

(b) The organization has, before August 5, 2008, filed an application for exemption and been granted an exemption from general taxation on real and personal property pursuant to section 39-2-117;

(c) The organization has, before August 5, 2008, and after receiving an exemption from property tax, filed an annual report required for the continuation of property tax-exempt status pursuant to section 39-2-117 (3), but the report was determined to be incomplete or otherwise incorrect when filed; and

(d) The organization, as a result of the incomplete or incorrect report referenced in paragraph (c) of this subsection (1), was denied tax-exempt status for one or more property tax years and received a property tax bill for such year or years.

(2) Any waiver of the balance of taxes owed by an organization pursuant to subsection (1) of this section shall be contingent upon the reestablishment of the organization's tax-exempt status by the property tax administrator, as authorized by the state board of equalization.

(3) The state board of equalization may authorize the property tax administrator to reestablish tax-exempt status for any organization that meets the criteria specified in paragraphs (a) to (d) of subsection (1) of this section and that paid all or any portion of a property tax bill for a year or years in which the organization was denied tax-exempt status.

**Source: L. 2008:** Entire section added, p. 457, § 1, effective August 5. **L. 2009:** (2) and (3) amended, (SB 09-042), ch. 176, p. 782, § 5, effective August 5. **L. 2013:** (1)(a) amended, (HB 13-1300), ch. 316, p. 1705, § 123, effective August 7.

PART 2

PROPERTY TAX EXEMPTION FOR QUALIFYING
SENIORS AND DISABLED VETERANS

**39-3-201. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) Section 3.5 of article X of the state constitution, which was approved by the registered electors of the state at the 2000 general election and amended by the registered electors of the state at the 2006 general election, provides property tax exemptions for qualifying seniors and qualifying disabled veterans;

(b) It is within the legislative prerogative of the general assembly to enact legislation to implement section 3.5 of article X of the state constitution that will ensure compliance with the requirements of said section and facilitate its operation;

(c) In enacting legislation to implement section 3.5 of article X of the state constitution the general assembly has attempted to interpret the provisions of section 3.5 of article X of the state constitution in a manner that gives its words their natural and obvious significance;

(d) This part 2 reflects the considered judgment of the general assembly regarding the meaning and implementation of the provisions of section 3.5 of article X of the state constitution.

**Source: L. 2001:** Entire part added, p. 460, § 1, effective April 25. **L. 2007:** (1)(a) amended, p. 476, § 1, effective April 15.

**39-3-202. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) "Division" means the division of veterans affairs in the department of military and veterans affairs.

(1.5) "Exemption" means the property tax exemptions for qualifying seniors and qualifying disabled veterans allowed by section 39-3-203.

(2) (a) "Owner-occupier" means an individual who:

(I) Is an owner of record of residential real property that he or she occupies as his or her primary residence;

(II) Is not an owner of record of the residential real property that he or she occupies as his or her primary residence, but is:

(A) The spouse of an individual who is an owner of record of the residential real property and who also occupies the residential real property as his or her primary residence; or

(B) The surviving spouse of an individual who was an owner of record of the residential real property and who occupied the residential real property with the surviving spouse as his or her primary residence until his or her death; or

(III) Is not an owner of record of the residential real property that he or she occupies as his or her primary residence, only because the property has been purchased by or transferred to a

trust, a corporate partnership, or any other legal entity solely for estate planning purposes and is the maker of the trust or a principal of the corporate partnership or other legal entity;

(IV) (A) Occupies residential real property as his or her primary residence; and

(B) Is the spouse of a person who also occupies the residential real property, who is not the owner of record of the property only because the property has been purchased by or transferred to a trust, a corporate partnership, or any other legal entity solely for estate planning purposes, and who is the maker of the trust or a principal of the corporate partnership or other legal entity; and

(V) (A) Occupies residential real property as his or her primary residence; and

(B) Is the surviving spouse of a person who occupied the residential real property with the surviving spouse until his or her death, who was not the owner of record of the property at the time of his or her death only because the property had been purchased by or transferred to a trust, a corporate partnership, or any other legal entity solely for estate planning purposes prior to his or her death, and who was the maker of the trust or a principal of the corporate partnership or other legal entity prior to his or her death.

(b) "Owner-occupier" also includes any individual who, but for the confinement of the individual to a hospital, nursing home, or assisted living facility, would occupy residential real property as his or her primary residence and would meet one or more of the ownership criteria specified in paragraph (a) of this subsection (2), if the residential real property:

(I) Is temporarily unoccupied; or

(II) Is occupied by the spouse or a financial dependent of the individual.

(3) "Owner of record" means an individual whose name appears on a valid recorded deed to residential real property as an owner of the property.

(3.5) "Qualifying disabled veteran" means an individual who has served on active duty in the United States armed forces, including a member of the Colorado National Guard who has been ordered into the active military service of the United States, has been separated therefrom under honorable conditions, and has established a service-connected disability that has been rated by the federal department of veterans affairs as a one hundred percent permanent disability through disability retirement benefits pursuant to a law or regulation administered by the department, the United States department of homeland security, or the department of the Army, Navy, or Air Force.

(4) "Surviving spouse" means an individual who was legally married to another individual at the time of the other individual's death and who has not remarried.

**Source: L. 2001:** Entire part added, p. 461, § 1, effective April 25. **L. 2007:** (1) amended and (1.5) and (3.5) added, p. 476, § 2, effective April 15. **L. 2016:** (3.5) amended, (HB 16-1444), ch. 193, p. 682, § 1, effective July 1.

**39-3-203. Property tax exemption - qualifications.** (1) For the property tax year commencing January 1, 2002, for property tax years commencing on or after January 1, 2006, but before January 1, 2009, and for property tax years commencing on or after January 1, 2012, fifty percent of the first two hundred thousand dollars of actual value of residential real property that as of the assessment date is owner-occupied and is used as the primary residence of the owner-occupier shall be exempt from taxation, and for property tax years commencing on or after January 1, 2003, but before January 1, 2006, and on or after January 1, 2009, but before

January 1, 2012, fifty percent of zero dollars of actual value of residential real property that as of the assessment date is owner-occupied and is used as the primary residence of the owner-occupier shall be exempt from taxation if:

(a) (I) The owner-occupier is sixty-five years of age or older as of the assessment date and has owned and occupied such residential real property as his or her primary residence for the ten years preceding the assessment date; or

(II) The owner-occupier is the surviving spouse of an owner-occupier who previously qualified for a property tax exemption for the same residential real property under subparagraph (I) of this paragraph (a); and

(b) The owner-occupier has completed and filed an exemption application in the manner required by section 39-3-205 and the circumstances that qualify the property for the exemption have not changed since the filing of the application. Under no circumstances shall an exemption be allowed for property taxes assessed during any property tax year prior to the year in which an owner-occupier first files an exemption application.

(1.5) (a) For property tax years commencing on or after January 1, 2007, fifty percent of the first two hundred thousand dollars of actual value of residential real property that as of the assessment date is owner-occupied and is used as the primary residence of an owner-occupier who is a qualifying disabled veteran shall be exempt from taxation if:

(I) The owner-occupier has completed and filed an exemption application in the manner required by section 39-3-205; and

(II) The circumstances that qualify the property for the exemption have not changed since the filing of the application.

(a.5) For property tax years commencing on or after January 1, 2015, fifty percent of the first two hundred thousand dollars of actual value of residential real property that as of the assessment date is owner-occupied and is used as the primary residence of an owner-occupier who is the surviving spouse of a qualifying disabled veteran who previously received an exemption under paragraph (a) of this subsection (1.5) is exempt from taxation.

(b) Under no circumstances shall an exemption be allowed for property taxes assessed during any property tax year prior to the year for which an owner-occupier first files an exemption application.

(2) Notwithstanding the provisions of paragraph (a) of subsection (1) and subsection (1.5) of this section, if ownership of residential real property that qualified for an exemption as of the assessment date changes after the assessment date, an exemption shall be allowed only if an owner-occupier whose status as an owner-occupier qualified the property for the exemption has filed an exemption application by the deadline for filing exemption applications specified in section 39-3-205 (1).

(3) An individual who owns and occupies a dwelling unit in a common interest community, as defined in section 38-33.3-103 (8), C.R.S., as his or her primary residence, or who owns residential real property consisting of multiple-dwelling units and occupies one of the dwelling units as his or her primary residence, shall be allowed an exemption only with respect to the dwelling unit that the individual occupies as his or her primary residence.

(4) No more than one exemption per property tax year shall be allowed for a single dwelling unit of residential real property, regardless of how many owner-occupiers use the dwelling unit as their primary residence or whether one or more owner-occupiers qualify for exemptions under both subsections (1) and (1.5) of this section. The full amount of the

exemption allowed by subsection (1) or (1.5) of this section shall be allowed with respect to any single dwelling unit of residential real property so long as any owner-occupier of the dwelling unit satisfies the requirements of subsection (1) or (1.5) of this section, and the fact that any other person who does not satisfy said requirements is also an owner of record of the dwelling unit shall not affect the amount of the exemption.

(5) For purposes of this part 2, two individuals who are legally married, but who own more than one piece of residential real property, shall be deemed to occupy the same primary residence and may claim no more than one exemption.

(6) (a) Notwithstanding the ten-year occupancy requirement set forth in subparagraph (I) of paragraph (a) of subsection (1) of this section, an owner-occupier who has not actually owned and occupied residential real property for which the owner-occupier has claimed an exemption under said subsection (1) for the ten years preceding the assessment date shall be deemed to have met the ten-year requirement and shall be allowed an exemption under said subsection (1) with respect to the property if:

(I) The owner-occupier would have qualified for the exemption with respect to other residential real property that the owner-occupier owned and occupied as his or her primary residence before moving to the residential real property for which an exemption is claimed but for the fact that the other property was condemned by a governmental entity through an eminent domain proceeding; or

(I.5) For property tax years commencing on or after January 1, 2015, the owner-occupier would have qualified for the exemption with respect to other residential real property that the owner-occupier owned and occupied as his or her primary residence before moving to the residential real property for which an exemption is claimed but for the fact that a natural disaster destroyed the former primary residence or otherwise rendered it uninhabitable; and

(II) The owner-occupier has not owned and occupied residential property as his or her primary residence other than the residential real property for which an exemption is claimed since the condemnation occurred.

(b) An owner-occupier who claims an exemption with respect to residential real property that he or she has not actually owned and occupied as his or her primary residence for the ten years preceding the assessment date as permitted by paragraph (a) of this subsection (6) shall provide to the assessor with whom the owner-occupier files the exemption application any information that the assessor may reasonably require to verify that the owner-occupier is entitled to an exemption.

**Source: L. 2001:** Entire part added, p. 462, § 1, effective April 25. **L. 2003:** IP(1) amended, p. 1476, § 1, effective May 1. **L. 2007:** IP(1), (2), (4), and IP(6)(a) amended and (1.5) added, p. 477, § 3, effective April 15. **L. 2009:** IP(1) amended, (SB 09-276), ch. 437, p. 2426, § 1, effective June 4. **L. 2010:** IP(1) amended, (SB 10-190), ch. 311, p. 1461, § 2, effective May 27. **L. 2014:** (1.5)(a.5) and (6)(a)(I.5) added and (6)(a)(I) amended, (HB 14-1373), ch. 266, p. 1066, § 1, effective May 26.

**39-3-204. Notice of property tax exemption.** No later than May 1, 2013, and no later than May 1 of each year thereafter in which an assessor sends a notice of valuation pursuant to section 39-5-121 (1)(a) that is not included with the tax bill, each assessor shall mail to each residential real property address in the assessor's county notice of the exemption allowed by

section 39-3-203 (1). As soon as practicable after January 1, 2014, and as soon as practicable after January 1 of each year thereafter, each county treasurer shall, at the treasurer's discretion, mail or electronically send to each person whose name appears on the tax list and warrant as an owner of residential real property notice of the exemption allowed by section 39-3-203 (1). The treasurer must mail or electronically send the notice in each year on or before the date on which the treasurer mails the property tax statement for the previous property tax year pursuant to section 39-10-103. No later than May 1, 2008, and no later than each May 1 thereafter, each assessor also shall mail to each residential property address in the assessor's county notice of the exemption allowed by section 39-3-203 (1.5). No later than May 1, 2007, the division shall mail to the residential property address of each person residing in the state who the division believes is a qualifying disabled veteran notice of the exemption allowed by section 39-3-203 (1.5) for the 2007 property tax year. However, the sending of notice to a person by the division does not constitute a determination by the division that the person sent notice is entitled to an exemption. The notice shall be in a form prescribed by the administrator, who shall consult with the division before prescribing the form of the notice of the exemption allowed by section 39-3-203 (1.5), and shall include a statement of the eligibility criteria for the exemptions and instructions for obtaining an exemption application. To reduce mailing costs, an assessor may coordinate with the treasurer of the same county to include notice with the tax statement for the previous property tax year mailed pursuant to section 39-10-103 or may include notice with the notice of valuation mailed pursuant to section 39-5-121 (1)(a).

**Source: L. 2001:** Entire part added, p. 464, § 1, effective April 25. **L. 2007:** Entire section amended, p. 478, § 4, effective April 15. **L. 2013:** Entire section amended, (HB 13-1145), ch. 98, p. 314, § 1, effective April 4.

**39-3-205. Exemption applications - penalty for providing false information - confidentiality.** (1) (a) To claim the exemption allowed by section 39-3-203 (1), an individual shall file with the assessor a completed exemption application no later than July 15 of the first property tax year for which the exemption is claimed. An application returned by mail shall be deemed filed on the date it is postmarked.

(b) To claim the exemption allowed by section 39-3-203 (1.5), an individual shall file with the division a completed exemption application no later than July 1 of the first property tax year for which the exemption is claimed. An application returned by mail shall be deemed filed on the date it is postmarked.

(2) (a) An exemption application shall be a form prescribed by the administrator, who shall consult with the division before prescribing the form of the application for the exemption allowed by section 39-3-203 (1.5), and shall require an applicant to provide the following information:

(I) The applicant's name, mailing address, date of birth, and social security number;

(II) The address and schedule or parcel number of the residential real property for which an exemption is claimed;

(III) The name and social security number of each individual who occupies as his or her primary residence the residential real property for which an exemption is claimed;

(IV) If a trust is the owner of record of the residential real property for which an exemption is claimed, the names of the maker of the trust, the trustee, and the beneficiaries of the trust;

(V) If a corporate partnership or other legal entity is the owner of record of the residential real property for which an exemption is claimed, the names of the principals of the corporate partnership or other legal entity;

(VI) An affirmation, in a form prescribed by the administrator, that the applicant believes, under penalty of perjury in the second degree, as defined in section 18-8-503, C.R.S., that all information provided by the applicant is correct; and

(VII) Any other information that the administrator may reasonably require as necessary for the proper and efficient administration of the exemption.

(b) The exemption application shall also contain a statement that an applicant, or in the case of residential real property for which the owner of record is a trust, the trustee, has a legal obligation to inform the assessor within sixty days of any change in the ownership or occupancy of residential real property for which an exemption has been applied for or allowed that would prevent an exemption from being allowed for the property.

(2.5) For the purpose of verifying the eligibility of each applicant for the exemption allowed to qualifying disabled veterans under section 39-3-203 (1.5) efficiently and with minimal inconvenience to each applicant, the division shall determine whether an applicant for the exemption is a qualifying disabled veteran. With respect to any application timely filed by July 1 pursuant to paragraph (b) of subsection (1) of this section, the division shall, if possible, determine whether the applicant is a qualifying disabled veteran and send notice of its determination to the applicant on or before the immediately succeeding August 1. If the division determines that the applicant is a qualifying disabled veteran, it shall also send notice of its determination and a copy of the exemption application to the assessor for the county where the property is located. If the division is unable to determine whether the applicant is a qualifying disabled veteran on or before said August 1, it shall send preliminary notice to both the applicant and the assessor that its determination is pending and shall follow up the preliminary notice by sending final notice of its ultimate determination to the applicant and, together with a copy of the exemption application, to the assessor as soon as possible thereafter.

(3) (a) In addition to any penalties prescribed by law for perjury in the second degree, an applicant who knowingly provides false information on an exemption application or files more than one exemption application in any property tax year:

(I) Shall not be entitled to an exemption;

(II) Shall be required to pay, to the treasurer of any county in which an exemption was improperly allowed due to the provision by the applicant of false information or the filing by the applicant of more than one exemption application, an amount equal to the amount of property taxes not paid as a result of the exemption being improperly allowed; and

(III) Shall, upon conviction of perjury, be required to pay to the treasurer of any county in which an invalid exemption application was filed an additional amount equal to twice the amount of the property taxes that would not have had to be paid had the exemption application been valid plus interest. Interest shall be calculated at the annual rate calculated pursuant to section 39-21-110.5 (2) and (3) from the date the invalid exemption application was filed until the date the applicant makes the payment required by this subparagraph (III).

(b) If an applicant or a trustee fails to inform the assessor within sixty days of any change in the ownership or occupancy of residential real property for which an exemption has been applied for or allowed that would prevent an exemption from being allowed for the property as required by paragraph (b) of subsection (2) of this section:

(I) An exemption shall not be allowed with respect to the residential real property; and

(II) The applicant or trustee shall be required to pay, to the treasurer of any county in which an exemption was improperly allowed due to the applicant's or trustee's failure to immediately inform the assessor of any change in the ownership or occupancy of residential real property, an amount equal to the amount of property taxes not paid as a result of the exemption being improperly allowed plus interest. Interest shall be calculated at the annual rate calculated pursuant to section 39-21-110.5 (2) and (3) from the date on which the change in the ownership or occupancy occurred until the date the applicant makes the payment required by this subparagraph (II).

(c) Any amount required to be paid to a treasurer pursuant to paragraph (a) or (b) of this subsection (3) shall be deemed part of the lien of general taxes imposed on the person required to pay the amount and shall have the priority specified in section 39-1-107 (2).

(4) (a) Completed exemption applications shall be kept confidential; except that:

(I) (A) An assessor or the division may release statistical compilations or informational summaries of any information contained in exemption applications and shall provide a copy of an exemption application to the applicant who returned the application, the treasurer of the same county as the assessor, the administrator, the state treasurer, or the state auditor upon request or as otherwise required by this part 2.

(B) An assessor or the division may introduce a copy of an exemption application as evidence in any administrative hearing or legal proceeding in which the accuracy or veracity of the exemption application is at issue so long as neither the applicant's social security number nor any other social security number set forth in the application are divulged.

(II) A treasurer, the administrator, the state treasurer, or the state auditor shall keep confidential each individual exemption application that it may receive from an assessor or the division but may release statistical compilations or informational summaries of any information contained in exemption applications and may introduce a copy of an exemption application as evidence in any administrative hearing or legal proceeding in which the accuracy or veracity of the exemption application is at issue so long as neither the applicant's social security number nor any other social security number set forth in the application are divulged.

(III) The administrator may share information contained in an exemption application, including any social security number set forth in the application, with the department of revenue to the extent necessary to enable the administrator to verify that the applicant satisfies legal requirements for claiming the exemption.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (4), an assessor, the division, a treasurer, the administrator, the state treasurer, or the state auditor shall not give any other person any listing of individuals who have applied for an exemption or any other information that would enable a person to easily assemble a mailing list of individuals who have applied for an exemption.

**Source: L. 2001:** Entire part added, p. 464, § 1, effective April 25. **L. 2007:** (1), IP(2)(a), and (4) amended and (2.5) added, p. 478, § 5, effective April 15. **L. 2011:** (2.5) amended, (HB

11-1226), ch. 73, p. 201, § 1, effective March 29. **L. 2016:** (4)(a)(III) added, (HB 16-1175), ch. 332, p. 1344, § 2, effective June 10.

**39-3-206. Notice to individuals returning incomplete or nonqualifying exemption applications - denial of exemption - administrative remedies.** (1) (a) Except as otherwise provided in paragraph (a.5) of subsection (2) of this section, an assessor shall only grant the exemption allowed to qualifying seniors under section 39-3-203 (1) to an applicant who has timely returned an exemption application in accordance with section 39-3-205 (1)(a) that establishes that the applicant is entitled to the exemption.

(b) If the information provided on or with an application for the exemption allowed to qualifying seniors under section 39-3-203 (1) indicates that the applicant is not entitled to the exemption, or is insufficient to allow the assessor to determine whether or not the applicant is entitled to the exemption, the assessor shall deny the application and mail to the applicant a statement providing the reasons for the denial and informing the applicant of the applicant's right to contest the denial pursuant to subsection (2) of this section. The assessor shall mail the statement no later than August 1 of the property tax year for which the exemption application was filed.

(1.5) (a) Except as otherwise provided in paragraph (a.7) of subsection (2) of this section, the division shall only accept an application for the exemption allowed to qualifying disabled veterans under section 39-3-203 (1.5) if the applicant timely returned the exemption application in accordance with section 39-3-205 (1)(b), and an assessor shall only grant the exemption if the division verifies that the applicant is a qualified disabled veteran and the exemption application forwarded by the division to the assessor pursuant to section 39-3-205 (2.5) establishes that the applicant meets the other requirements to be entitled to the exemption.

(b) If the information provided on or with an application for the exemption allowed to qualifying disabled veterans under section 39-3-203 (1.5) that is forwarded by the division to an assessor pursuant to section 39-3-205 (2.5) indicates that the applicant is not entitled to the exemption, or is insufficient to allow the assessor to determine whether or not the applicant is entitled to the exemption, the assessor shall deny the application and mail to the applicant a statement providing the reasons for the denial and informing the applicant of the applicant's right to contest the denial pursuant to subsection (2) of this section. The assessor shall mail the statement no later than August 1 of the property tax year for which the exemption application was filed.

(2) (a) An applicant whose exemption application has been denied pursuant to paragraph (b) of subsection (1) or paragraph (b) of subsection (1.5) of this section may contest the denial by requesting a hearing before the county commissioners sitting as the county board of equalization no later than August 15 of the property tax year for which the exemption application was filed. The hearing shall be held on or after August 1 and no later than September 1 of the property tax year for which the exemption application was filed, and the decision of the county board of equalization is not subject to further administrative appeal by either the applicant or the assessor. An applicant may not contest a determination by the division that the applicant is not a qualifying disabled veteran at a hearing requested pursuant to this paragraph (a).

(a.5) An individual who wishes to claim the exemption for qualifying seniors allowed by section 39-3-203 (1), but who has not timely filed an exemption application with the assessor by July 15, may file a late exemption application no later than the August 15 that immediately

follows that deadline. The assessor shall accept any such application but may not accept any late application filed after August 15. The assessor shall grant an exemption if an accepted late application establishes that the applicant is entitled to the exemption. A decision of an assessor to disallow the filing of a late application after August 15 or to grant or deny an exemption to an applicant who has filed a late application after July 15 but no later than August 15 is final, and an applicant who is denied late filing or an exemption may not contest the denial.

(a.7) An individual who wishes to claim the exemption for qualifying disabled veterans allowed by section 39-3-203 (1.5), but who has not timely filed an exemption application with the division, may request that the division waive the application deadline and allow the individual to file a late exemption application no later than the August 1 that immediately follows the original application deadline. The division may accept an application if, in the division's sole discretion, the applicant shows good cause for not timely filing an application. If the division accepts a late application, it shall determine whether the applicant is a qualifying disabled veteran and shall mail notice of its determination to the applicant no later than the August 25 that immediately follows the late application deadline. If the division determines that a veteran is a qualifying disabled veteran, it shall mail a copy of the notice of its determination to the assessor for the county in which the property for which the applicant has claimed the exemption is located and shall include with the notice a copy of the applicant's exemption application. The assessor shall grant an exemption if the notice and application forwarded by the division to the assessor establish that the applicant is entitled to the exemption. A decision of the division to allow or disallow the filing of a late application or of an assessor to grant or deny an exemption to an applicant who has filed a late application is final, and an applicant who is denied late filing or an exemption may not contest the denial.

(b) The county board of equalization may appoint independent referees to conduct hearings requested pursuant to paragraph (a) of this subsection (2) on behalf of the county board and to make findings and submit recommendations to the county board for its final action.

**Source: L. 2001:** Entire part added, p. 466, § 1, effective April 25. **L. 2002:** (2) amended, p. 842, § 1, effective August 7. **L. 2003:** (1)(a) amended and (2)(a.5) added, p. 2479, §§ 1, 2, effective June 5. **L. 2007:** (1), (2)(a), and (2)(a.5) amended and (1.5) and (2)(a.7) added, pp. 480, 481, §§ 6, 7, effective April 15. **L. 2011:** (1.5) and (2)(a.7) amended, (HB 11-1226), ch. 73, p. 202, § 2, effective March 29. **L. 2013:** (2)(a.5) amended, (HB 13-1145), ch. 98, p. 315, § 2, effective April 4. **L. 2016:** (1)(b), (1.5)(b), (2)(a), (2)(a.5), and (2)(a.7) amended, (HB 16-1175), ch. 332, p. 1345, § 3, effective January 1, 2017.

**39-3-207. Reporting of exemptions - reimbursement to local governmental entities - transfer of unencumbered balances.** (1) No later than October 10, 2002, and no later than each October 10 thereafter through October 10, 2016, and no later than September 10, 2017, and no later than each September 10 thereafter, each assessor shall forward to the administrator a report on the exemptions allowed in his or her county for the current property tax year. The report shall include:

(a) A statement of the total amount of actual value of residential real property within the county that is exempted from taxation;

(b) With respect to each unit of residential real property for which an exemption is allowed:

(I) The legal description of the property;

(II) The schedule or parcel number for the property;

(III) The name and social security number of the applicant who claimed an exemption for the property and each additional person who occupies the property; and

(IV) A statement of the taxable and tax exempt value of the property; and

(c) For reports issued for the 2007 property tax year and for each subsequent property tax year, separate identification, in such form as the administrator may require, of the units of residential real property within the county exempted from taxation under section 39-3-203 (1.5) and of the total amount of actual value of the property so exempted.

(2) (a) (I) The administrator shall examine the reports sent by each assessor pursuant to subsection (1) of this section to ensure that no applicant has claimed an exemption without meeting all legal requirements for claiming the exemption. No later than November 1, 2002, and no later than each November 1 thereafter, if the administrator determines that an applicant has claimed more than one exemption, the administrator shall provide written notice to the applicant that the applicant has claimed more than one exemption and is therefore not entitled to any exemption. No later than November 1, 2016, and no later than each November 1 thereafter, if the administrator determines that the applicant and the applicant's spouse have claimed separate exemptions in violation of section 39-3-203 (5), that the applicant has claimed an exemption for residential real property that the applicant does not own and occupy as the applicant's primary residence as required by section 39-3-203 (1), or that the applicant is otherwise ineligible to claim an exemption, the administrator shall provide written notice to the applicant that the applicant is ineligible for the exemption and specify the reasons for the determination of ineligibility. The notice shall also include a statement specifying the deadline and procedures for protesting the denial of the exemption or exemptions claimed.

(II) An applicant whose claims for exemption are denied by the administrator pursuant to subparagraph (I) of this paragraph (a) may file a written protest with the administrator no later than November 15 of the year in which the exemption or exemptions were denied. If the ground for the denial is that the applicant, or the applicant and the applicant's spouse, claimed multiple exemptions, the sole ground for a protest is that the applicant, or the applicant and the applicant's spouse, filed only one claim for an exemption and the protest shall specify property or properties identified by the administrator in the notice denying exemptions for which no exemption was claimed. The administrator shall request that any appropriate assessor check the assessor's records of exemption applications to determine whether the applicant filed a disputed exemption application and shall decide the protest accordingly. If the ground for the denial is that the applicant is not an owner-occupier of the residential real property for which an exemption is claimed, the sole grounds for a protest are that the applicant actually is an owner-occupier or that the applicant qualifies for an exemption for the property under section 39-3-203 (6). If a protest is denied, the administrator shall mail the applicant a written statement of the basis for the denial and a copy of each exemption application filed with an assessor that the applicant claimed had not been filed.

(b) No later than December 1, 2002, and no later than each December 1 thereafter, and after examining the reports sent by each assessor, denying claims for exemptions, and deciding protests in accordance with paragraph (a) of this subsection (2), the administrator shall provide written notice to the assessor of each county in which an exemption application has been denied because the applicant filed multiple exemption applications with the identity of the applicant

who filed multiple exemption applications and the denial of the exemption. No later than December 1, 2016, and no later than each December 1 thereafter, and after examining the reports sent by each assessor, denying claims for exemptions, and deciding protests in accordance with paragraph (a) of this subsection (2), the administrator shall also provide written notice to the assessor of each county in which an exemption application has been denied for any other reason with the identity of the applicant and the denial of the exemption, specifying the reason for the denial. No later than January 10, 2017, and no later than each January 10 thereafter, each assessor shall forward to the administrator a partial copy of the tax warrant for the assessor's county that includes only property for which the assessor has granted an exemption. The administrator shall examine the tax warrants to ensure that no additional exemptions have been allowed since the administrator examined the reports previously received from the assessors and that each assessor has removed from the tax warrant all exemptions that the administrator previously denied. No later than January 17, 2017, and no later than each January 17 thereafter, the administrator shall notify each assessor and each treasurer of any exemptions to be removed from the tax warrant.

(3) No later than April 1, 2003, and no later than each April 1 thereafter through April 1, 2016, to enable the state treasurer to issue a reimbursement warrant to each treasurer in accordance with subsection (4) of this section, each treasurer shall forward to the state treasurer a report on the exemptions allowed in his or her county for the previous property tax year. No later than March 1, 2017, and no later than March 1 of each year thereafter, each treasurer shall forward the report to the administrator, who shall cross-check it as specified in subsection (3.5) of this section before correcting it, if necessary, and forwarding it to the state treasurer to enable the state treasurer to issue a reimbursement warrant to each treasurer in accordance with subsection (4) of this section. The report shall include:

(a) A statement of the total amount of actual value of residential real property within the county that was exempted from taxation and the total amount of property tax revenues lost by local governmental entities within the county as a result of the exemption that must be reimbursed by the state;

(b) With respect to each unit of residential real property for which an exemption was allowed:

(I) The legal description of the property;

(II) The schedule or parcel number for the property;

(III) The name of the applicant who claimed an exemption for the property and each additional person who occupies the property; and

(IV) A statement of the taxable and tax exempt value of the property and the amount of taxes due on the property; and

(c) For reports issued for the 2007 property tax year and for each subsequent property tax year, separate identification, in such form as the administrator may require, of the units of residential real property within the county exempted from taxation under section 39-3-203 (1.5), the total amount of actual value of the property so exempted, and the total amount of property tax revenues lost by local government entities within the county as a result of the exemption.

(3.5) After receiving reports from each treasurer pursuant to subsection (3) of this section, the administrator shall cross-check the reports to identify any exemption allowed in a county that must be denied due to a failure of the individual allowed the exemption to satisfy all legal requirements for claiming the exemption. The administrator shall remove any exemption

that must be denied from the report in which it appears and shall forward all reports to the state treasurer no later than the April 1 immediately following the receipt of the reports by the administrator. In addition, if the administrator identifies any exemption improperly allowed for a prior property tax year commencing on or after January 1, 2016, for which the state treasurer reimbursed a treasurer pursuant to subsection (4) of this section or identifies any exemption properly allowed for such a prior property tax year for which the state treasurer did not reimburse a treasurer, the administrator shall advise the state treasurer to adjust the current year reimbursement to the treasurer to correct the error. No later than that April 1, the administrator shall also notify the treasurer and assessor of each county of the exemptions removed from the report for the county and any resulting and other adjustments to the amount of current year reimbursement to be paid by the state treasurer to the treasurer.

(3.7) In accordance with section 25-2-103 (4.5), C.R.S., the administrator shall annually provide to the state registrar of vital statistics of the department of public health and environment a list, by name and social security number, of every individual who received an exemption for the immediately preceding year so that the registrar can provide to the administrator a list of all such individuals who have died. No later than April 1, 2017, and no later than each April 1 thereafter, the administrator shall forward to the assessor of each county, the name and social security number of each deceased individual who received an exemption for the immediately preceding year for residential real property located within the county so that the assessor can terminate the exemption for the property.

(4) (a) (I) In accordance with section 3.5 of article X of the state constitution, no later than April 15, 2003, and no later than each April 15 thereafter, the state treasurer shall issue a warrant to each treasurer for the amount needed to fully reimburse all local governmental entities within the treasurer's county for the amount of property tax revenues lost as a result of the application of the exemption to property taxes that accrued during the previous property tax year and are payable during the year in which the state treasurer issues the warrant. The reimbursement shall be paid from the state general fund and shall not be subject to the statutory limitation on state general fund appropriations set forth in section 24-75-201.1, C.R.S.

(II) As used in this paragraph (a), with respect to exemptions allowed for property tax years commencing on or after January 1, 2016, "property tax revenues lost as a result of the application of the exemption" includes only those revenues lost as a result of exemptions properly allowed in accordance with the requirements of this part 2 and does not include any revenues lost as a result of an exemption being erroneously allowed.

(b) Each treasurer shall distribute the total amount received from the state treasurer pursuant to paragraph (a) of this subsection (4) to the local governmental entities within the treasurer's county as if the lost tax revenues had been regularly paid. When a treasurer distributes said amount, the treasurer shall provide each local governmental entity with a statement of the amount distributed to the local governmental entity that represents reimbursement received from the state for property tax revenues lost as a result of the exemption. In accordance with section 3.5 of article X of the state constitution, moneys distributed to a local governmental entity as reimbursement for property tax revenues lost as a result of the exemption shall not be included in the local governmental entity's fiscal year spending for purposes of section 20 of article X of the state constitution.

(4.5) In accordance with subsection (3.5) of this section, for any property tax year commencing on or after January 1, 2016, the state treasurer shall not reimburse a treasurer for

property tax revenues lost as a result of an exemption erroneously allowed in the treasurer's county. If, pursuant to subsection (3.5) of this section, the administrator advises the state treasurer that the state treasurer has provided either too much or too little reimbursement to a treasurer for exemptions allowed in the treasurer's county for any prior property tax year commencing on or after January 1, 2016, the state treasurer shall adjust the reimbursement for the current property tax year as directed by the administrator in order to correct the error.

(5) Notwithstanding any provision of law to the contrary, the reports required by this section and the contents thereof shall be kept confidential by an assessor, a treasurer, the administrator, the state treasurer, or the state auditor; except that said persons may provide the reports to each other as required or authorized by law.

(6) On June 30, 2016, and on each June 30 thereafter, of the amount by which the total estimated amount specified in the annual general appropriation act for the costs of this part 2 exceeds the total amount of all warrants issued by the state treasurer pursuant to paragraph (a) of subsection (4) of this section, the state treasurer shall transfer:

(a) Ninety-five percent to the senior services account within the older Coloradans cash fund, created pursuant to section 26-11-205.5 (5)(b), C.R.S.; and

(b) Five percent to the veterans assistance grant program cash fund created in section 28-5-712 (3), C.R.S.

**Source: L. 2001:** Entire part added, p. 467, § 1, effective April 25. **L. 2002:** IP(1) amended, p. 842, § 2, effective August 7. **L. 2007:** (1)(c) and (3)(c) added and (3)(b)(III) amended, p. 482, §§ 8, 9, effective April 15. **L. 2012:** (6) added, (HB 12-1326), ch. 195, p. 777, § 4, effective May 22. **L. 2016:** (6) amended, (HB 16-1161), ch. 35, p. 89, § 1, effective March 22; IP(1), (2), IP(3), and (4)(a) amended and (3.5), (3.7), and (4.5) added, (HB 16-1175), ch. 332, p. 1346, § 4, effective June 10.

**Cross references:** For the legislative declaration in the 2012 act adding subsection (6), see section 1 of chapter 195, Session Laws of Colorado 2012.

**39-3-208. Auditing of property tax exemption program.** The state auditor shall periodically audit the property tax exemption program administered pursuant to this part 2 to ensure that the program is operating in compliance with section 3.5 of article X of the state constitution and this part 2. In connection with an audit, the state auditor may suggest means of improving the administration of the program. Upon request, an assessor, a treasurer, the administrator, or the state treasurer shall provide the state auditor with any exemption applications, reports, or other documents relevant to the administration of the program.

**Source: L. 2001:** Entire part added, p. 469, § 1, effective April 25.

**39-3-209. State expenditure for property tax exemptions - mechanism for refunding of excess state revenue - legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) Although the exemptions allowed by this part 2 are exemptions from local government property taxes, the state must reimburse local governments for the net amount of

property tax revenues lost as a result of the exemptions and therefore bears the full cost of the exemptions;

(b) Section 3.5 of article X of the state constitution authorizes the general assembly to raise or lower the maximum amount of actual value of residential real property of which fifty percent is exempt pursuant to this part 2;

(c) In order to eliminate the cost of the exemption and fund other state needs, the general assembly, as authorized by section 3.5 of article X of the state constitution, has at times temporarily suspended the exemption for qualifying seniors allowed by this part 2 by lowering to zero the maximum amount of actual value of residential real property of which fifty percent is exempt;

(d) The general assembly intends to allow seniors to rely on predictable and sustainable exemptions by fully funding the property tax exemption for qualifying seniors in the future, and it is more likely to be able to do so if the cost of the exemption, which exclusively benefits taxpayers who reside in Colorado, constitutes a refund of excess state revenues for state fiscal years for which such refunds are required; and

(e) Section 20 of article X of the state constitution authorizes the state to use any reasonable method to make required refunds of excess state revenues, and the payment by the state of reimbursement to local governments for the net amount of property tax revenues lost as a result of the property tax exemptions allowed by this part 2, which exemptions directly reduce the tax liability of taxpaying Colorado residents throughout the state, is a reasonable method of making such refunds.

(2) For any state fiscal year commencing on or after July 1, 2017, for which state revenues, as defined in section 24-77-103.6 (6)(c), exceed the excess state revenues cap, as defined in section 24-77-103.6 (6)(b)(I)(C) or (6)(b)(I)(D), and are required to be refunded in accordance with section 20 of article X of the state constitution, the lesser of all reimbursement paid by the state treasurer to each treasurer as required by section 39-3-207 (4) for the property tax year that commenced during the state fiscal year or an amount of such reimbursement equal to the amount of excess state revenues for the state fiscal year that are required to be refunded is a refund of such excess state revenues.

**Source: L. 2017:** Entire section added, (SB 17-267), ch. 267, p. 1467, § 24, effective May 30.

**Cross references:** For the legislative declaration in SB 17-267, see section 1 of chapter 267, Session Laws of Colorado 2017.

## Deferrals

## ARTICLE 3.5

Tax Deferral for the Elderly
and Military Personnel

**Law reviews:** For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985); for article "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

**39-3.5-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Homestead" means the owner-occupied residence of the taxpayer and includes owner-occupied units in a condominium, townhouse, or similar structure and an owner-occupied mobile home.

(1.5) "Mobile home" means any wheeled vehicle, exceeding either eight feet in width or thirty-two feet in length, excluding towing gear and bumpers, without motive power, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which may be drawn over the public highways by a motor vehicle.

(1.8) "Person called into military service" means a member of the Army National Guard of the United States, the Army reserve, the Naval reserve, the Marine Corps reserve, the Air National Guard of the United States, the Air Force reserve, or the Coast Guard reserve who has been ordered to active duty pursuant to 10 U.S.C. sec. 12301 (a) or 12302 for a period of more than thirty consecutive days in a time of war or national emergency declared by the congress or the president of the United States. "Active duty" includes any period during which a person called into military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) "Real property taxes" means all ad valorem taxes levied on a homestead, including special assessments and all other charges which are recoverable by law at the annual real estate tax sale, and includes special assessments and all other charges which are recoverable by law at the personal property tax sale of a mobile home, as provided in section 39-10-111.

(3) "Tax-deferred property" means the property upon which real property taxes are deferred pursuant to this article.

(4) "Taxpayer" means a person who has filed or whose guardian, conservator, or attorney-in-fact has filed a claim for deferral pursuant to this article or persons who have jointly filed a claim for deferral under this article.

**Source: L. 78:** Entire article added, p. 471, § 1, effective February 28, 1979. **L. 79:** (1) and (4) amended, p. 1411, § 1, effective January 1, 1980. **L. 88:** (1) and (2) amended and (1.5) added, p. 1283, § 9, effective January 1, 1989. **L. 2003:** (1.8) added, p. 2112, § 1, effective May 22.

**39-3.5-102. Deferral of tax on homestead - qualifications - filing of claim.** (1) (a) Subject to the provisions of this article, a person who is sixty-five years of age or older or who is a person called into military service on January 1 of the year in which the person files a claim under this section may elect to defer the payment of real property taxes. To exercise this option, the taxpayer shall file a claim for deferral with the treasurer of the county in which the taxpayer's homestead is located. The claim shall be filed after January 1 and on or before April 1 of each year in which the taxpayer claims the deferral.

(b) Notwithstanding paragraph (a) of this subsection (1), a person called into military service at any time between January 1, 2003, and June 30, 2003, may defer the payment of real

property taxes for the property tax year 2002 by filing a claim pursuant to this section on or before June 30, 2003.

(2) When a taxpayer who is sixty-five years of age or older or who is a person called into military service files a valid claim for deferral under subsection (1) of this section, it shall have the effect of:

(a) Deferring the payment of his real property taxes for the calendar year previous to the year in which the claim is filed;

(b) Continuing the deferral of taxes which have been deferred under this article for previous years which have not become delinquent pursuant to section 39-3.5-111;

(c) Terminating and releasing the lien for the general taxes so deferred created by section 39-1-107 and substituting therefor the lien for said deferred taxes created by section 39-3.5-105.

(2.5) A person called into military service may defer only the real property taxes payable in a year in which the person is a person called into military service. A person who is no longer a person called into military service may file a valid claim in a subsequent year to continue the deferral of taxes payable in a year in which the person was a person called into military service.

(3) If a guardian, conservator, or attorney-in-fact has been appointed for a taxpayer otherwise qualified to claim deferral of taxes under this article, the guardian, conservator, or attorney-in-fact may act for such taxpayer in claiming the deferral.

**Source: L. 78:** Entire article added, p. 472, § 1, effective February 28, 1979. **L. 2003:** (1) and IP(2) amended and (2.5) added, p. 2112, § 2, effective May 22.

**39-3.5-103. Property entitled to deferral.** (1) In order to qualify for real property tax deferral under this article, the property shall meet all of the following requirements at the time the claim is filed and so long thereafter as payment is deferred:

(a) The property must be the homestead of the taxpayer claiming the deferral.

(b) The taxpayer claiming the deferral must, by himself or jointly with another person residing in the homestead, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument of sale or own the mobile home or be purchasing the mobile home under a recorded instrument of sale; except that nonresidence of the joint owner in the homestead because of ill health of the joint owner shall not prevent the taxpayer from meeting the requirement of this paragraph (b).

(c) The property for which the deferral is claimed must not be income-producing.

(d) Repealed.

(d.5) (I) On or after January 1, 2006, either of the following applies to the property:

(A) The owner of the property is a person who is sixty-five years of age or older, and the total value of all liens of mortgages and deeds of trust on the property, excluding any mortgage or deed of trust that the holder has agreed, on a form designated by the state treasurer, to subordinate to the lien of the state for deferred taxes, is less than or equal to seventy-five percent of the actual value of the property, as determined by the county assessor; or

(B) The owner of the property is a person called into military service, and the total value of all liens of mortgages and deeds of trust on the property, excluding any mortgage or deed of trust that the holder has agreed, on a form designated by the state treasurer, to subordinate to the lien of the state for deferred taxes, is less than or equal to ninety percent of the actual value of the property, as determined by the county assessor.

(II) For purposes of this paragraph (d.5), the actual value of the property shall be the most recent appraisal by the county assessor as of the time the claim for deferral is submitted to the county treasurer.

(e) All real property taxes for years prior to the year for which the election is made must be paid.

(f) The cumulative value of the deferral provided in this section plus the interest accrued on the deferral provided in section 39-3.5-105 (5) shall not exceed the market value of the property less the value of all mortgages which constitute liens upon the property and any other liens upon the property filed prior to the date of recordation of the certificate for deferral.

**Source: L. 78:** Entire article added, p. 472, § 1, effective February 28, 1979. **L. 79:** Entire section R&RE, p. 1411, § 2, effective January 1, 1980. **L. 88:** (1)(b) amended and (1)(f) added, p. 1283, § 10, effective January 1, 1989. **L. 2005:** (1)(d) amended and (1)(d.5) added, p. 877, § 1, effective June 1.

**Editor's note:** Subsection (1)(d)(II) provided for the repeal of subsection (1)(d), effective January 1, 2006. (See L. 2005, p. 877.)

**39-3.5-104. Claim form - contents.** (1) A taxpayer's claim for deferral shall be in writing on a form prescribed by the state treasurer and supplied by the county treasurer and shall:

(a) Describe the property;

(b) Recite facts which establish eligibility for deferral under the provisions of this article;

(c) List all mortgages and deeds of trust which constitute liens upon the property, together with the book and page number of the county records at which each is recorded and the date of recordation;

(d) List all mortgages which constitute liens upon a mobile home, together with the street address and county where the record of any such mortgage is on file with the authorized agent for the department of revenue;

(d.5) On or after January 1, 2006, list the actual value of the property based on the most recent appraisal by the county assessor;

(e) Demonstrate that the cumulative value of the deferral plus the interest accrued on the deferral does not exceed the market value of the property less the value of all mortgages which constitute liens upon the property and any other liens upon the property filed prior to the date of recordation of the certificate for deferral.

(2) The form prescribed by the state treasurer shall contain a statement, in bold-faced type, that states substantially as follows:

**IMPORTANT NOTICE TO PROPERTY OWNER: YOU COULD LOSE YOUR PROPERTY IF THE CUMULATIVE AMOUNT OF THE DEFERRAL PLUS INTEREST EXCEEDS THE MARKET VALUE OF YOUR PROPERTY LESS THE VALUE OF ANY LIENS.**

**Source: L. 78:** Entire article added, p. 472, § 1, effective February 28, 1979. **L. 79:** Entire section R&RE, p. 1412, § 3, effective January 1, 1980. **L. 88:** (1)(d), (1)(e), and (2)

added, p. 1284, §§ 12, 11, effective January 1, 1989. **L. 2005:** (1)(d.5) added, p. 878, § 2, effective June 1.

**39-3.5-105. Listing of tax-deferred property - tax as lien - interest accrual.** (1) If eligibility for deferral of homestead property is established as provided in this article, the county treasurer shall:

(a) Enter in his records a notation that the property is tax-deferred;

(b) (I) Promptly, upon designation of the property as tax-deferred, issue a certificate of deferral, which shall include the name of the taxpayer, the description of the property, the amount of tax deferred, and the year for which the deferral was granted. The certificate shall be recorded in the county records and thereafter sent to the state treasurer. One copy shall be given to the assessor, and one copy shall be retained in the county treasurer's office.

(II) Promptly, upon designation of a mobile home as tax-deferred, the owner of the mobile home shall surrender title to the property to the county clerk and recorder. The county clerk and recorder shall, pursuant to the provisions of article 29 of title 38, C.R.S., make application with the department of revenue for issuance of a new certificate of title with a record of the lien of the state treasurer. This procedure shall be followed for each subsequent year that the property is deferred. The county treasurer shall issue a certificate of deferral, which shall include the name of the taxpayer, the description of the property, the amount deferred, and the tax year for which the deferral was granted, and shall send such certificate to the state treasurer. One copy shall be given to the county assessor, and one copy shall be retained in the county treasurer's office. Upon satisfaction of said lien, the state treasurer shall release the lien from said title.

(2) Notwithstanding the requirements of section 39-1-119 (1), if a person holding escrow funds for the payment of ad valorem taxes receives a copy of the certificate of deferral relating to any tax-deferred property, he shall, no later than thirty days after receiving said certificate, refund to the owner of said property all funds held in escrow for the payment of ad valorem taxes on said property which have been deferred.

(3) Until otherwise required by this article, the county treasurer shall, in subsequent years, continue to list the property as tax-deferred in the manner provided in subsection (1) of this section.

(4) (a) The lien for deferred taxes and interest shall attach on the date of recordation of the certificate for deferral, shall be junior to any mortgage or deed of trust recorded prior to the date of recording of such certificate, shall have priority over all liens attaching subsequent to the date of recording of such certificate, and shall not be foreclosed except as provided in sections 39-3.5-110 to 39-3.5-112.

(b) The lien for deferred taxes and interest for 1978 deferred taxes shall attach on the date of recordation of the certificate of deferral, shall be junior to any mortgage or deed of trust recorded prior to the date of recording of such certificate, shall have priority over all liens attaching subsequent to the date of recording of such certificate, and shall not be foreclosed except as provided in sections 39-3.5-110 to 39-3.5-112.

(5) (a) Repealed.

(b) On and after May 1, 1999, interest shall accrue on all taxes deferred pursuant to deferrals claimed prior to the 1999 calendar year at the rate of seven percent per annum until the date on which such taxes are paid. Interest shall accrue on all taxes deferred pursuant to deferrals

claimed on and after January 1, 1999, but prior to January 1, 2001, at the rate of seven percent per annum, beginning May 1 of the calendar year in which the deferral is claimed, until the date on which such taxes are paid.

(c) Interest shall accrue on all taxes deferred pursuant to all deferrals claimed on and after January 1, 2001, at a rate equivalent to the rate per annum on the most recently issued ten-year United States treasury note, rounded to the nearest one-tenth of one percent, as reported by the "Wall Street Journal", as of February 1 of the calendar year in which such deferral is claimed. Interest shall accrue on taxes deferred at the rate specified in this paragraph beginning May 1 of the calendar year in which the deferral is claimed until the date on which such taxes are paid.

**Source: L. 78:** Entire article added, p. 473, § 1, effective February 28, 1979. **L. 79:** Entire section R&RE, p. 1412, § 4, effective January 1, 1980. **L. 88:** (1)(b) amended, p. 1284, § 13, effective January 1, 1989. **L. 98:** (5) amended, p. 679, § 1, effective August 5. **L. 2000:** (5)(b) amended and (5)(c) added, p. 905, § 1, effective May 25.

**Editor's note:** Subsection (5)(a)(II) provided for the repeal of subsection (5)(a), effective May 1, 1999. (See L. 98, p. 679.)

**39-3.5-105.5. Loan of state moneys to taxpayers.** (1) Upon approval by the state treasurer of a taxpayer's application to participate in the property tax deferral program, the state treasurer shall make a loan to the taxpayer in the amount certified as deferred in the taxpayer's certificate of deferral. The loan shall be disbursed to a county treasurer on behalf of the taxpayer pursuant to section 39-3.5-106 and shall be made from the moneys on deposit in the state treasury that are not immediately required to be disbursed.

(2) Interest on a loan for property tax deferral shall accrue at the rate specified in section 39-3.5-105 (5). The interest shall accrue beginning April 30 of the calendar year in which the deferral is claimed until the date on which such loan is repaid.

**Source: L. 2002:** Entire section added, p. 637, § 1, effective July 1.

**39-3.5-105.7. Prior deferrals to be treated as loans.** All deferred real property tax paid by the state treasurer to a county treasurer prior to July 1, 2002, shall be reclassified as an investment in a loan to a taxpayer that was disbursed to a county treasurer on behalf of the taxpayer, and all provisions of this article shall apply to the loan.

**Source: L. 2002:** Entire section added, p. 637, § 1, effective July 1.

**39-3.5-106. State treasurer to pay county treasurer an amount equivalent to deferred taxes.** (1) Pursuant to section 39-3.5-105.5, the state treasurer shall loan the amount certified as deferred in the certificate of deferral to a taxpayer deferring property taxes under this article. By April 30, 2003, and by each April 30 thereafter, the state treasurer shall pay the amount of each taxpayer's loan to the county treasurer in which the taxpayer's homestead property is located. The total amount paid by the state treasurer shall be distributed by the county treasurer in the same manner the tax would have been if regularly paid.

(2) The state treasurer shall maintain an account for each tax-deferred property and shall accrue interest, beginning May 1 of the calendar year in which the deferral was claimed, on the amount certified as deferred in the certificate of deferral. The state treasurer shall insure that each account for tax-deferred property complies with this article.

**Source: L. 78:** Entire article added, p. 474, § 1, effective February 28, 1979. **L. 79:** (2) R&RE, p. 1413, § 5, effective January 1, 1980. **L. 88:** (2) amended, p. 1285, § 14, effective January 1, 1989. **L. 91:** (1) and (2) amended, p. 1952, § 1, effective January 1, 1992. **L. 2002:** (1) amended, p. 638, § 2, effective July 1.

**39-3.5-107. Repayment of loans - release of liens - disposition of payments.** (1) On and after the date of payment by the state treasurer to the county treasurer as provided in section 39-3.5-106, the right to receive repayment of a loan for deferred taxes and to enforce the lien created by deferral shall be vested in the state treasurer.

(2) If repayment of a loan for deferred taxes is tendered to the county treasurer, he or she shall accept payment, give a receipt therefor, and forthwith transmit the money collected to the state treasurer.

(3) Promptly upon receiving repayment of a loan for deferred taxes, the state treasurer shall issue a release of the deferred tax lien, which release shall be given or sent to the person making payment. Copies of the release shall be sent to the treasurer and the assessor.

(4) All interest received in payment for a loan for deferred taxes shall be credited to the general fund by the state treasurer.

**Source: L. 78:** Entire article added, p. 474, § 1, effective February 28, 1979. **L. 2002:** Entire section amended, p. 638, § 3, effective July 1.

**39-3.5-108. Notice to taxpayer regarding duty to claim deferral annually.** At the time the treasurer sends the annual real property tax notice to any taxpayer who has claimed a deferral of property taxes in the previous calendar year, he shall enclose a deferral notice. The deferral notice shall be substantially in the following form:

To: (name of taxpayer)

If you want to defer the collection of ad valorem property taxes on your homestead for the assessment year ending on December 31, __, you must file a claim for deferral not later than April 1, __, in the office of the county treasurer. Forms for filing such claims are available at the county treasurer's office.

If you fail to file your claim for deferral on or before April 1, __, your real property taxes will be due and payable in accordance with the schedule set out in the enclosed tax notice.

If you change your permanent address at any time during the assessment year ending on December 31, __, you must notify the county assessor promptly.

**Source: L. 78:** Entire article added, p. 474, § 1, effective February 28, 1979.

**39-3.5-109. Failure to receive notices.** Failure to receive the notice provided for in this article is not a defense in any proceeding for the collection of taxes or for the foreclosure of a tax lien. The treasurer is not personally liable for failure to give such notices.

**Source: L. 78:** Entire article added, p. 475, § 1, effective February 28, 1979.

**39-3.5-110. Events requiring repayment of loans - notice to state treasurer.** (1) All loans for deferred real property taxes, including accrued interest, shall become payable subject to sections 39-3.5-111 and 39-3.5-112 when:

(a) The taxpayer who claimed the tax deferral dies;

(b) The property on which the taxes were deferred is sold or becomes subject to a contract of sale, or title to the property is transferred to someone other than the taxpayer who claimed the tax deferral;

(c) The property is no longer the homestead of the taxpayer who claimed the deferral, except in the case of a taxpayer required to be absent from such tax-deferred property by reason of ill health;

(d) The tax-deferred property no longer meets the requirements of section 39-3.5-103 (1)(c) or (1)(f);

(e) The location of the tax-deferred mobile home has changed either within the county or to another county.

(2) When the assessor or treasurer has reason to believe any of the circumstances enumerated in this section has occurred, he shall promptly notify the state treasurer.

**Source: L. 78:** Entire article added, p. 475, § 1, effective February 28, 1979. **L. 79:** (1)(d) amended, p. 1413, § 6, effective January 1, 1980. **L. 88:** (1)(d) amended and (1)(e) added, p. 1285, § 15, effective January 1, 1989. **L. 2002:** IP(1) amended, p. 638, § 4, effective July 1.

**39-3.5-111. Time for payment - delinquencies.** (1) Whenever any of the circumstances listed in section 39-3.5-110 occurs:

(a) No further tax deferrals may be claimed on the property until all loans for unpaid taxes, including previously deferred taxes and interest, have been paid.

(b) All loans for deferred taxes and accrued interest shall be due and payable ninety days after the circumstance occurs, except as provided in subsection (2) of this section and in section 39-3.5-112.

(2) Any provision of this section to the contrary notwithstanding, when the taxpayer dies a loan for deferred taxes and accrued interest shall be due and payable one year after the taxpayer's death.

(3) If a loan for deferred taxes and accrued interest is not paid on the due date, such amounts are delinquent as of that date, and the state treasurer shall foreclose the deferred tax lien.

(4) Foreclosure by the state treasurer of deferred tax liens shall be in the same manner as provided by law for the foreclosure of judgment liens. At the foreclosure sale, the state treasurer or his representative shall bid on behalf of the state of Colorado the amount of the deferred tax lien.

(5) If the owner of the tax-deferred property elects to do so, he or she may convey the property to the state of Colorado in lieu of paying a loan for deferred taxes and accrued interest. Upon completion of such conveyance, all deferred tax liens upon the property shall be extinguished, and all liability for payment of a loan for deferred taxes and accrued interest shall be released.

(6) The lien for deferred taxes shall be subject to and may be extinguished in a proper foreclosure of a mortgage or deed of trust recorded prior to the date of recording of the certificate of tax deferral. In any such foreclosure, any notice that is required to be sent to the state by reason of the state's holding of a lien for deferred taxes shall be sent to the state treasurer. All other procedural matters for such foreclosure, including notice and time limits, shall be as provided in the law pursuant to which the foreclosure is brought.

(7) Whenever the state forecloses a lien for deferred taxes, the interest in the property obtained thereby shall be subject to foreclosure proceedings by the holder of a mortgage or deed of trust recorded prior to the date of recording of the certificate of tax deferral.

**Source: L. 78:** Entire article added, p. 475, § 1, effective February 28, 1979. **L. 79:** (4) amended and (6) and (7) added, p 1666, § 139, effective July 19; (1)(b) amended and (5) added, p. 1413, § 7, effective January 1, 1980. **L. 2002:** (1), (2), (3), and (5) amended, p. 638, § 5, effective July 1.

**39-3.5-112. Election by spouse to continue tax deferral.** (1) Notwithstanding the provisions of section 39-3.5-110, when one of the circumstances listed in section 39-3.5-110 (1)(a) or (1)(c) occurs, the spouse of the taxpayer may elect to continue the property in its tax-deferred status if:

(a) The spouse of the taxpayer is or will be sixty years of age or older when the circumstance occurs; and

(b) The property is the homestead of the spouse of the taxpayer and meets the requirements of section 39-3.5-103 (1)(b) and (1)(c).

(1.5) (a) Notwithstanding the provisions of section 39-3.5-110 (1)(a), when a taxpayer who claimed a tax deferral pursuant to this article dies, the loan for deferred real property taxes, including accrued interest, shall not become payable if:

(I) The taxpayer was a person called into military service;

(II) The taxpayer is survived by a spouse; and

(III) The property is the homestead of the surviving spouse and meets the requirements of section 39-3.5-103 (1)(b) and (1)(c).

(b) If paragraph (a) of this subsection (1.5) applies, a loan for deferred real property taxes, including accrued interest, shall become payable when the spouse of the taxpayer dies, in addition to the events set forth in section 39-3.5-110.

(2) The election granted under subsection (1) of this section shall be filed in the same manner as a claim for deferral is filed under section 39-3.5-102, not later than ninety days from the date the circumstance occurs. Thereafter, the property shall continue to be treated as tax-deferred property, and the county treasurer and state treasurer shall withdraw any action taken under section 39-3.5-111. When the property has been continued in its tax-deferred status by the spouse of the taxpayer, the spouse may continue the property in its tax-deferred status in

subsequent years by filing a claim, as provided in section 39-3.5-104, annually if the property continues to be eligible for tax-deferred status.

**Source: L. 78:** Entire article added, p. 475, § 1, effective February 28, 1979. **L. 79:** IP(1) and (2) amended, p. 1414, § 8, effective January 1, 1980. **L. 2005:** (1.5) added, p. 878, § 3, effective June 1.

**39-3.5-113. Voluntary repayment of loans for deferred tax.** (1) Subject to subsection (2) of this section, all or part of a loan for deferred taxes and accrued interest may, at any time, be paid by the taxpayer, his or her spouse, guardian, conservator, attorney-in-fact, personal representative, next of kin, heir-at-law, or child, or any person having or claiming a legal or equitable interest in the property. If the deferred tax lien is paid, in whole or in part, by a mortgagee or the beneficiary of a deed of trust or seller under contract, the amount paid may be added to the unpaid balance of the mortgage or deed of trust but shall be added to the last payment due under said mortgage or deed of trust or contract, without amortization.

(2) Any payment made under this section shall be applied first to accrued interest and then to a loan for deferred taxes. Such payment does not affect the deferred tax status of the property. Voluntary payment does not give the person paying the taxes any interest in the property.

**Source: L. 78:** Entire article added, p. 476, § 1, effective February 28, 1979. **L. 2002:** Entire section amended, p. 639, § 6, effective July 1.

**39-3.5-114. Deferred tax certificates not to be included in reserve or surplus. (Repealed)**

**Source: L. 78:** Entire article added, p. 476, § 1, effective February 28, 1979. **L. 2002:** Entire section repealed, p. 639, § 7, effective July 1.

**39-3.5-115. Limitations on effect of article.** Nothing in this article is intended to or shall be construed to prevent the collection, by foreclosure or otherwise, of personal property or other taxes which become a lien against tax-deferred property.

**Source: L. 78:** Entire article added, p. 476, § 1, effective February 28, 1979.

**39-3.5-116. Deed or contract clauses preventing application for deferral prohibited - clauses void. (Repealed)**

**Source: L. 78:** Entire article added, p. 476, § 1, effective February 28, 1979. **L. 79:** Entire section repealed, p. 1414, § 11, effective January 1, 1980.

**39-3.5-117. Report. (Repealed)**

**Source: L. 78:** Entire article added, p. 477, § 1, effective February 28, 1979. **L. 79:** Entire section amended, p. 1414, § 9, effective January 1, 1980. **L. 88:** Entire section amended,

p. 1308, § 2, effective May 29. **L. 92:** Entire section amended, p. 2182, § 53, effective June 2. **L. 2002:** Entire section repealed, p. 862, § 4, effective August 7.

**39-3.5-118. Emergency property tax deferral for depositors of troubled industrial banks. (Repealed)**

**Source: L. 88:** Entire section added, p. 1307, § 1, effective May 29.

**Editor's note:** Subsection (7) provided for the repeal of this section, effective June 30, 1990. (See L. 88, p. 1307.)

**39-3.5-119. Release of information identifying individuals claiming deferral.** (1) Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., or any other provision of law to the contrary, county treasurers and the state treasurer shall deny requests from individuals, corporations, or other private entities to inspect or produce the names, addresses, phone numbers, social security numbers, or other information identifying individuals who claim deferrals pursuant to this article.

(2) Nothing in this section shall be construed to prohibit individuals from examining records recorded in county records by the county clerk and recorder nor shall it be construed to prohibit the disclosure of information:

(a) Required in connection with granting or denying a claim for deferral;

(b) Required in connection with an administrative, judicial, or other legal proceeding;

(c) Required in connection with the conveyance, sale, or encumbrance of a specific property;

(d) When the information is contained in a statistical compilation or other informational summary that does not disclose individual identifying information; or

(e) When the individual claiming the exemption has agreed to the disclosure.

**Source: L. 2001:** Entire section added, p. 296, § 1, effective August 8.

## ARTICLE 3.7

Property Tax Work-off Program for the Elderly

**39-3.7-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Homestead" means the owner-occupied residence of the taxpayer and includes owner-occupied units in a condominium, townhouse, or similar structure.

(1.5) "Person with a disability" means any person with a physical impairment or an intellectual and developmental disability as defined in section 25.5-10-202, C.R.S.

(2) "Property tax work-off program" means any program established pursuant to the provisions of this article.

(3) "Real property taxes" means all ad valorem taxes levied on a homestead, including special assessments and all other charges which are recoverable, by law, at the annual real estate tax sale.

(4) "Taxing entity" means any county, city and county, city, town, school district, or special district within the state of Colorado.

**Source: L. 91:** Entire article added, p. 1995, § 1, effective April 11. **L. 2003:** (1.5) added, p. 841, § 1, effective August 6. **L. 2013:** (1.5) amended, (HB 13-1314), ch. 323, p. 1813, § 54, effective March 1, 2014.

**39-3.7-102. Property tax work-off program - creation - terms.** (1) Any taxing entity that levies and collects real property taxes may establish a property tax work-off program in accordance with the provisions of this article that allows any taxpayer who is sixty years of age or older or who is a person with a disability to perform work for the taxing entity in lieu of the payment of any real property taxes, or any portion thereof, due and owing on the homestead of such taxpayer for any given property tax year.

(2) In order to qualify for participation in any property tax work-off program created pursuant to the provisions of this article, the following requirements shall be satisfied at the time the application is filed and so long thereafter as the taxpayer may participate in such property tax work-off program:

(a) The property on which the property taxes are due and owing is the homestead of the taxpayer making application.

(b) The taxpayer making application must, singly or jointly with another person residing in the homestead, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument of sale; except that nonresidence of the joint owner in the homestead because of ill health of the joint owner shall not prevent the taxpayer from meeting the requirements of this paragraph (b).

(c) The property on which the property taxes are due and owing is not income-producing.

(3) The number of hours of work to be performed by a taxpayer pursuant to any property tax work-off program shall be based upon the calculation of the amount of property taxes, or portion thereof, to be worked off divided by the minimum wage as set by federal law.

(4) A property tax work-off program shall be created upon the adoption of a resolution or ordinance, whichever is appropriate, by the governing body of such taxing entity. Such resolution or ordinance shall be in accordance with the provisions of this article and shall include, but shall not be limited to, the following: Procedures for application for participation in such property tax work-off program; the maximum number of taxpayers allowed to participate in such property tax work-off program; procedures for verification of work performed; procedures for the issuance of checks to taxpayers for the amount of property tax worked off by such taxpayers pursuant to such property tax work-off program; and such other provisions which such taxing entity deems reasonable and necessary for the implementation and operation of such property tax work-off program.

(4.5) For each property tax year in which a taxpayer participates in a property tax work-off program pursuant to the provisions of this section, the taxing entity which has established such program shall issue a check or checks to such taxpayer which shall be made payable only to the appropriate county treasurer. The taxpayer shall be responsible for the delivery of the check or checks to the county treasurer in order for such amount to be credited to the property tax which is due and owing on the homestead of the taxpayer for such property tax year.

(5) Any taxing entity which establishes a property tax work-off program pursuant to the provisions of this article shall make information regarding such program available to the taxpayers of the taxing entity.

(6) Any taxpayer who is a person with a disability and who applies to participate in a property tax work-off program pursuant to this article shall, upon application, submit a signed and dated letter from a Colorado licensed health care professional verifying that the taxpayer is a person with a disability. Any taxing entity that establishes a property tax work-off program pursuant to the provisions of this section shall have the authority to further define the term "person with a disability" for purposes of determining eligibility for the property tax work-off program. The definition may restrict, but shall not expand, the class of individuals who are eligible to participate in the property tax work-off program pursuant to this section.

**Source: L. 91:** Entire article added, p. 1995, § 1, effective April 11. **L. 92:** (4) amended and (4.5) added, p. 2242, § 1, effective March 16. **L. 2003:** (1) amended and (6) added, p. 841, § 2, effective August 6.

## ARTICLE 3.9

Optional Nongaming Property Tax Deferral Plan

**39-3.9-101 to 39-3.9-106. (Repealed)**

**Editor's note:** (1) This article was added in 1993 and was not amended prior to its repeal in 1996. For the text of this article prior to 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-3.9-106 provided for the repeal of this article, effective December 31, 1996. (See L. 93, p. 346.)

## Valuation and Taxation

## ARTICLE 4

Valuation of Public Utilities

**Editor's note:** This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

**39-4-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation or flight through the air and designed to carry at least one person.

(2) "Airline company" means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two or more points and publishes a flight

schedule. "Airline company" shall not include operators whose aircraft are all certified for a gross takeoff weight of twelve thousand five hundred pounds or less and who do not engage in scheduled or mail carriage service.

(2.3) "Biomass energy facility" means a new facility first placed in production on or after January 1, 2010, that uses real and personal property, including leaseholds and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy by combusting only biomass or biosolids derived from the treatment of wastewater and that is not primarily designed to supply electricity for consumption on site.

(2.4) "Geothermal energy facility" means a new facility first placed in production on or after January 1, 2010, that uses real and personal property, including but not limited to leaseholds and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy by harnessing the heat energy of groundwater or the ground and that is not primarily designed to supply electricity for consumption on site.

(2.5) Repealed.

(3) (a) "Public utility" means, for property tax years commencing on or after January 1, 1987, every sole proprietorship, firm, limited liability company, partnership, association, company, or corporation, and the trustees or receivers thereof, whether elected or appointed, that does business in this state as a railroad company, airline company, electric company, small or low impact hydroelectric energy facility, geothermal energy facility, biomass energy facility, wind energy facility, solar energy facility, rural electric company, telephone company, telegraph company, gas company, gas pipeline carrier company, domestic water company selling at retail except nonprofit domestic water companies, pipeline company, coal slurry pipeline, or private car line company.

(b) On and after January 1, 2010, for purposes of this article, "public utility" shall not include any affiliate or subsidiary of a sole proprietorship, firm, limited liability company, partnership, association, company, or corporation of any type of company described in paragraph (a) of this subsection (3) that is not doing business in the state primarily as a railroad company, airline company, electric company, small or low impact hydroelectric energy facility, geothermal energy facility, biomass energy facility, wind energy facility, solar energy facility, rural electric company, telephone company, telegraph company, gas company, gas pipeline carrier company, domestic water company selling at retail except nonprofit domestic water companies, pipeline company, coal slurry pipeline, or private car line company. Valuation and taxation of any such affiliate or subsidiary of a public utility as defined in paragraph (a) of this subsection (3) shall be assessed pursuant to article 5 of this title.

(3.3) (a) "Small or low impact hydroelectric energy facility" means a new facility first placed in production on or after January 1, 2010, that uses real and personal property, including but not limited to leaseholds and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy by harnessing the kinetic energy of water, that is not primarily designed to supply electricity for consumption on site, and that is:

(I) A new facility that is a small facility that has a nameplate rating of ten megawatts or less; or

(II) A new facility that has a nameplate rating of more than ten megawatts and that:

(A) Is an addition to water infrastructure such as a reservoir, a ditch, or a pipeline that existed before January 1, 2010;

(B) Does not result in any change in the quantity or timing of diversions or releases for purposes of peak power generation;

(C) Includes measures to prevent fish mortality in facilities on on-stream reservoirs and natural waterways; and

(D) Does not cause any violation of state water quality standards when operated; or

(III) A new facility that has a nameplate rating of more than ten megawatts and that:

(A) Is placed into production as part of new water infrastructure such as a reservoir, a ditch, or a pipeline constructed on or after January 1, 2010, and operated for primary beneficial uses of water other than solely for production of electricity;

(B) Includes measures to prevent fish mortality in facilities on reservoirs and natural waterways; and

(C) Does not cause any violation of state water quality standards when operated.

(b) For purposes of this subsection (3.3), "new facility" includes a combined facility that is a combination of a facility placed in production before January 1, 2010, that uses real and personal property to generate and deliver to the interconnection meter any source of electric or mechanical energy by harnessing the kinetic energy of water and that is not primarily designed to supply energy for consumption on site and an addition or energy efficiency improvement to the facility first placed in production on or after January 1, 2010, if the addition or efficiency improvement increases the electrical or mechanical energy-producing capacity of the combined facility by at least twenty-five percent over the capacity of the facility placed in production before January 1, 2010, alone.

(3.5) "Solar energy facility" means a new facility first placed in production on or after January 1, 2009, that uses real and personal property, including but not limited to one or more solar energy devices, as defined in section 38-32.5-100.3 (2), C.R.S., leaseholds, and easements, to generate and deliver to the interconnection meter any source of electrical, thermal, or mechanical energy in excess of two megawatts by harnessing the radiant energy of the sun and that is not primarily designed to supply electricity for consumption on site.

(4) "Wind energy facility" means a new facility first placed in production on or after January 1, 2006, that uses property, real and personal, including one or more wind turbines, leaseholds, and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy in excess of two megawatts by harnessing the kinetic energy of the wind.

**Source: L. 64:** R&RE, p. 688, § 1. **C.R.S. 1963:** § 137-4-1. **L. 76:** Entire section amended, p. 768, § 1, effective April 26; entire section amended, p. 759, § 16, effective July 1, 1977. **L. 81:** (2.5) added and (3) amended, p. 1854, §§ 3, 4, effective January 1, 1982; (3) amended, p. 1847, § 1, effective January 1, 1982. **L. 82:** (2.5) amended, p. 628, § 41, effective April 2. **L. 83:** (2.5) and (3) amended, p. 1496, § 3, effective April 28. **L. 84:** (2.5) and (3) amended, p. 989, § 2, effective February 23; (2.5) and (3) amended, p. 997, § 2, effective May 22. **L. 90:** (3) amended, p. 450, § 27, effective April 18. **L. 2000:** (3) amended, p. 1738, § 2, effective June 1. **L. 2006:** (3) amended and (4) added, p. 889, § 1, effective May 9. **L. 2008:** (4) amended, p. 1319, § 2, effective May 27. **L. 2009:** (3) amended and (3.5) added, (SB 09-177), ch. 186, p. 812, § 1, effective April 22. **L. 2010:** (3) amended and (3.3) added, (SB 10-019), ch. 382, p. 1784, § 1, effective June 8; (2.3) added and (3) amended, (SB 10-177), ch. 392, p. 1862,

§ 3, effective August 11; (2.4) added and (3) amended, (SB 10-174), ch. 189, p. 813, § 8, effective August 11.

**Editor's note:** (1) Subsection (2.5) provided for the repeal of subsection (2.5), effective January 1, 1987. (See L. 84, p. 989.)

(2) Amendments to this section by House Bill 76-1235 and House Bill 76-1025 were harmonized. Amendments to subsection (3) by House Bill 81-1309 and Senate Bill 81-025 were harmonized. Amendments to subsections (2.5) and (3) by House Bill 84-1051 and Senate Bill 84-214 were harmonized. Amendments to subsection (3) by Senate Bill 10-019, Senate Bill 10-174, and Senate Bill 10-177 were harmonized.

**Cross references:** For the legislative intent contained in the 2008 act amending subsection (4), see section 9 of chapter 302, Session Laws of Colorado 2008.

**39-4-102. Valuation of public utilities.** (1) The administrator shall determine the actual value of the operating property and plant of each public utility as a unit, giving consideration to the following factors and assigning such weight to each of such factors as in the administrator's judgment will secure a just value of such public utility as a unit:

(a) The tangible property comprising its plant, whether the same is situated within this state or both within and without this state, exclusive of any tangible property situated without this state which is not directly connected with the business in which such public utility is engaged within this state;

(b) Its intangibles, such as special privileges, franchises, contract rights and obligations, and rights-of-way; except that licenses granted by the federal communications commission to a wireless carrier, as defined in section 29-11-101, C.R.S., shall not be considered, nor shall the value of such licenses be reflected, in the administrator's valuation of the carrier's tangible property;

(c) Its gross and net operating revenues during a reasonable period of time not to exceed the most recent five-year period, capitalized at indicative rates;

(d) The average market value of its outstanding securities during the preceding calendar year, if such market value is determinable;

(e) (I) When determining the actual value of a renewable energy facility that primarily produces more than two megawatts of alternating current electricity, the administrator shall:

(A) Consider the additional incremental cost per kilowatt of the construction of the renewable energy facility over that of the construction cost of a comparable nonrenewable energy facility, inclusive of the cost of all property required to generate and deliver energy to the interconnection meter, that primarily produces alternating current electricity to be an investment cost and shall not include such additional incremental cost in the valuation of the facility; and

(B) Not add value to a renewable energy facility for any renewable energy credits created by the production of alternating current electricity.

(II) For purposes of this paragraph (e), "renewable energy" has the meaning provided in section 40-1-102 (11), C.R.S., but shall not include energy generated from a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility.

(III) (A) For purposes of determining the actual value of a renewable energy facility as specified in subparagraph (I) of this paragraph (e), an owner or operator of a facility shall provide a copy of the facility's current power purchase agreement to the administrator by April 1 of each assessment year as an attachment to the statement required as specified in section 39-4-103 (1); except that, if a copy of the current power purchase agreement was previously provided either by the owner or operator or by the purchaser of power and there is no material change in the facility's current power purchase agreement, the owner or operator of a facility shall not be required to provide a copy of the agreement.

(B) If the owner or operator of a facility does not provide a copy of the facility's current power purchase agreement as specified in sub-subparagraph (A) of this subparagraph (III), the administrator shall have the authority to request a copy of the current power purchase agreement from the purchaser of power generated at the facility; except that, if a copy of the current power purchase agreement was previously provided either by the owner or operator or by the purchaser of power and there is no material change in the facility's current power purchase agreement, the purchaser of power shall not be required to provide a copy of the agreement.

(C) All power purchase agreements provided to the administrator pursuant to this subparagraph (III) shall be considered private documents and shall be available only to the administrator and the employees of the division of property taxation in the department of local affairs.

(1.5) The administrator shall determine the actual value of a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility as follows:

(a) The general assembly hereby declares that consideration by the administrator of the cost approach and market approach to the appraisal of a wind energy facility or a solar energy facility results in valuations that are neither uniform nor just and equal because of wide variations in the production of energy from wind turbines and solar energy devices, as defined in section 38-32.5-100.3 (2), C.R.S., because of the uncertainty of wind and sunlight available for energy production, and because constructing a wind energy facility or a solar energy facility is significantly more expensive than constructing any other utility production facility. The general assembly further declares that it is also appropriate to value small or low impact hydroelectric energy facilities, geothermal energy facilities, and biomass energy facilities, which also have high construction costs relative to their ongoing operational costs, using the income approach. Therefore, in the absence of preponderant evidence shown by the administrator that the use of the cost approach and market approach results in uniform and just and equal valuation, a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility shall be valued based solely upon the income approach.

(b) (I) The actual value of a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility shall be at an amount equal to a tax factor times the selling price at the interconnection meter.

(II) As used in this article, "interconnection meter" means the meter located at the point of delivery of energy to the purchaser.

(III) As used in this paragraph (b), "selling price at the interconnection meter" means the gross taxable revenues realized by the taxpayer from the sale of energy at the interconnection meter.

(IV) As used in this paragraph (b), "tax factor" means a factor annually established by the administrator. The tax factor shall be a number that when applied to the selling price at the interconnection meter results in approximately the same tax revenue over a twenty-year period on a nominal dollar basis that would have been collected using the cost basis method of taxation as determined by the administrator for a renewable energy facility pursuant to paragraph (e) of subsection (1) of this section. For a renewable energy facility that begins generating energy before January 1, 2012, the administrator shall include only the cost of all property required to generate and deliver renewable energy to the interconnection meter that does not exceed the cost of property required to generate nonrenewable energy. For a renewable energy facility that begins generating energy on or after January 1, 2012, the administrator shall include only the cost of all property required to generate and deliver renewable energy to the interconnection meter that does not exceed the cost of property required to generate and deliver nonrenewable energy to the interconnection meter.

(V) For purposes of calculating the tax factor as required in subparagraph (IV) of this paragraph (b), an owner or operator of a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility shall provide a copy of the small or low impact hydroelectric energy facility's, geothermal energy facility's, biomass energy facility's, wind energy facility's, or solar energy facility's current power purchase agreement to the administrator by April 1 of each assessment year. The administrator shall also have the authority to request a copy of the current power purchase agreement from the purchaser of power generated at a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility. All agreements provided to the administrator pursuant to this subparagraph (V) shall be considered private documents and shall be available only to the administrator and the employees of the division of property taxation in the department of local affairs.

(c) The location of a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility on real property shall not affect the classification of that real property for purposes of determining the actual value of that real property as provided in section 39-1-103.

(d) Pursuant to section 39-3-118.5, no actual value for any personal property used in a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility shall be assigned until the personal property is first put into use by the facility. If any item of personal property is used in the facility and is subsequently taken out of service so that no small or low impact hydroelectric energy, geothermal energy, biomass energy, wind energy, or solar energy is produced from that facility for the preceding calendar year, no actual value shall be assigned to that item of more than five percent of the installed cost of the item for that assessment year.

(2) If, in the judgment of the administrator, the books and records of any public utility accurately reflect its tangible property, its intangibles, and its earnings within this state during the most recent five-year period, the administrator may determine from such books and records

the actual value of its property and plant within this state and need not determine the entire value of its property and plant both within and without this state.

(3) (a) For property tax years 1982 through 1986, there shall be applied to the actual value of each public utility an equalization factor to adjust the actual value for the current year of assessment as determined by the administrator pursuant to subsections (1) and (2) of this section to the public utility's level of value in 1981.

(b) For property tax years commencing on or after January 1, 1987, there shall be applied to the actual value of each public utility an equalization factor to adjust the actual value for the current year of assessment as determined by the administrator pursuant to subsections (1) and (2) of this section to the public utility's level of value in the appropriate year that is prescribed in section 39-1-104 (10.2) and that is used to determine the actual value of properties that are subject to said applicable subsection.

(c) Appraisal procedures, instructions, and factors utilized by the administrator in carrying out the provisions of this section shall be subject to legislative review, the same as rules and regulations, pursuant to section 24-4-103 (8)(d), C.R.S.

(d) The administrator shall certify to the public utility any difference in valuation resulting from the application of this section. Said certification shall be part of the evidence presented in determining rate structures by any applicable rate-setting body.

**Source: L. 64:** R&RE, p. 688, § 1. **C.R.S. 1963:** § 137-4-2. **L. 67:** p. 948, § 12. **L. 70:** p. 382, § 15. **L. 81:** (3) added, p. 1847, § 2, effective January 1, 1982. **L. 83:** (3)(a) and (3)(b) amended, p. 1496, § 4, effective April 28. **L. 84:** (3)(a) and (3)(b) amended, p. 989, § 3, effective February 23. **L. 91:** (3)(b) amended, p. 2005, § 4, effective June 6. **L. 95:** (3)(b) amended, p. 8, § 3, effective March 9. **L. 98:** (1)(b) amended, p. 1267, § 1, effective June 1. **L. 2001:** IP(1) amended and (1)(e) added, p. 1523, § 1, effective August 8. **L. 2004:** (1)(b) amended, p. 1208, § 87, effective August 4. **L. 2006:** (1)(e) amended and (1.5) added, p. 890, § 2, effective May 9. **L. 2008:** (1)(e) and (1.5)(b)(V) amended, p. 1319, § 3, effective May 27; (1)(b) amended, p. 685, § 5, effective August 5. **L. 2009:** (1)(e)(II), IP(1.5), (1.5)(a), (1.5)(b)(I), (1.5)(b)(IV), (1.5)(b)(V), (1.5)(c), and (1.5)(d) amended, (SB 09-177), ch. 186, p. 813, § 2, effective April 22. **L. 2010:** (1)(e)(II), IP(1.5), (1.5)(a), (1.5)(b)(I), (1.5)(b)(V), (1.5)(c), and (1.5)(d) amended, (SB 10-019), ch. 382, p. 1786, § 2, effective June 8; (1)(e)(I)(A) and (1.5)(b)(IV) amended, (HB 10-1431), ch. 372, p. 1743, § 1, effective August 11; (1)(e)(II), IP(1.5), (1.5)(a), (1.5)(b)(I), (1.5)(b)(V), (1.5)(c), and (1.5)(d) amended, (SB 10-174), ch. 189, p. 814, § 9, effective August 11; (1)(e)(II), IP(1.5), (1.5)(a), (1.5)(b)(I), (1.5)(b)(V), (1.5)(c), and (1.5)(d) amended, (SB 10-177), ch. 392, p. 1862, § 4, effective August 11.

**Editor's note:** Amendments to subsection (1)(e)(II), the introductory portion to subsection (1.5), and subsections (1.5)(a), (1.5)(b)(I), (1.5)(b)(V), (1.5)(c), and (1.5)(d) by Senate Bill 10-019, Senate Bill 10-174, and Senate Bill 10-177 were harmonized.

**Cross references:** For the legislative intent contained in the 2008 act amending subsections (1)(e) and (1.5)(b)(V), see section 9 of chapter 302, Session Laws of Colorado 2008.

**39-4-103. Schedules of property - confidential records - late filing penalties.** (1) (a) Except as otherwise provided in this paragraph (a), no later than April 1 of each year, each

public utility doing business in this state shall file with the administrator, on a form provided by the administrator, a statement, signed by an officer of such public utility under the penalties of perjury in the second degree, containing such information concerning itself and all of its property, wherever situated, as the administrator may reasonably require for the purpose of determining the actual value of such public utility in this state and for apportioning the valuation for assessment of such public utility among the several counties of this state. Upon good cause shown, the administrator may grant an extension for filing such statement to any public utility. Any extension granted pursuant to this paragraph (a) shall be for a reasonable amount of time as determined by the administrator.

(b) Such statement shall include a specific identification of each and every item of property owned, leased, or used which is not included in the rendition of the operating property and plant and the county in which each item is located.

(1.5) (a) If a public utility fails to complete a statement of property and legally postmark it for return by April 1, the administrator shall impose on such public utility a late filing penalty in the amount of one hundred dollars for each calendar day the statement of property remains delinquent; except that the late filing penalty shall not exceed three thousand dollars. If, by June 1, the public utility continues to be delinquent in filing a statement of property, the administrator shall, in addition to imposing a late filing penalty, determine the actual value of such utility on the basis of the best information available. All late filing penalties shall be credited to the general fund.

(b) If any public utility fails to file a completed statement of property, or includes in a filed statement of property any information concerning the public utility property which is false, erroneous, or misleading, or fails to include in the statement of property any taxable property owned by the public utility, then the administrator may determine the actual value of such taxable property on the basis of the best information available.

(c) If a public utility fails to file a statement of property and does not file a petition or complaint pursuant to section 39-4-108 regarding the actual value of its taxable property as determined on the basis of the best information available pursuant to this subsection (1.5), the public utility shall be deemed to have waived any right to file an abatement or refund petition regarding such actual value pursuant to section 39-10-114.

(2) All such statements filed with the administrator shall be considered private documents and shall be available only to the administrator and the employees of the division of property taxation and to assessors.

**Source: L. 64:** R&RE, p. 689, § 1. **C.R.S. 1963:** § 137-4-3. **L. 70:** p. 382, § 16. **L. 72:** p. 569, § 50. **L. 76:** (1) amended, p. 759, § 17, effective July 1, 1977. **L. 87:** (1.5) added, p. 1404, § 1, effective January 1, 1988. **L. 89:** (1)(a) amended, p. 1465, § 29, effective January 1, 1990. **L. 90:** (1.5)(a) amended, p. 1696, § 17, effective June 9. **L. 93:** (1.5)(a) amended, p. 1687, § 2, effective June 6. **L. 96:** (1.5)(c) added, p. 650, § 3, effective May 1.

**Cross references:** For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

**39-4-104. Inspection of records of utility.** The division of property taxation, through the administrator, and its employees, shall have the right at any time, upon demand, to inspect

the books, accounts, and records of any public utility doing business in this state for the purpose of verifying the information contained in its filed statement and to examine under oath any officer, employee, or agent of such public utility. Any person making such demand upon a public utility on behalf of the administrator shall produce and exhibit his authority to make such inspection or examination.

**Source: L. 64:** R&RE, p. 689, § 1. **C.R.S. 1963:** § 137-4-4. **L. 70:** p. 382, § 17.

**39-4-105. Production of records.** By order or subpoena, the administrator may require the production of any books, accounts, or records of any public utility doing business in this state, or verified copies of the same, for examination, and any public utility failing or refusing to comply with any such order or subpoena shall forfeit and pay to the state the sum of one hundred dollars for each day it so fails or refuses.

**Source: L. 64:** R&RE, p. 690, § 1. **C.R.S. 1963:** § 137-4-5. **L. 70:** p. 383, § 18.

**39-4-106. Valuation of utilities - apportionment.**

(1) Repealed.

(2) In the specific case of a telegraph company, the administrator shall:

(a) Determine, as of the last day of December of each year, the actual value of such company as a unit, or of its property and plant within this state, in the manner provided in section 39-4-102;

(b) Allocate to this state, if the actual value of such company is determined as a unit, that proportion of such actual value as in his judgment accurately represents the value of the property and plant of such company within this state, utilizing commonly recognized methods of allocation as in his judgment are just and equitable;

(c) Compute the valuation for assessment of such company in this state as provided in section 39-1-104;

(d) Apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as in his judgment will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as in his judgment are just and equitable.

(3) In the specific case of a telephone company, the administrator shall:

(a) Determine, as of the last day of December of each year, the actual value of such company as a unit, or of its property and plant within this state, in the manner provided in section 39-4-102;

(b) Allocate to this state, if the actual value of such company is determined as a unit, that proportion of such actual value as in his judgment accurately represents the value of the property and plant of such company within this state, utilizing commonly recognized methods of allocation as in his judgment are just and equitable;

(c) Compute the valuation for assessment of such company in this state as provided in section 39-1-104;

(d) Apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as in his judgment will fairly represent the

valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as in his judgment are just and equitable.

(4) Repealed.

(5) In the specific case of a pipeline company engaged in the transportation of gas, oil, or petroleum products or coal slurry or other coal products in pipelines through or in this state, the administrator shall:

(a) Determine, as of the last day of December of each year, the actual value of the property of such company within this state, either in the manner provided in section 39-4-102 or, with respect to its pipelines, on a diameter per inch per mile basis and its land, improvements, pump and compressor stations, and miscellaneous equipment, wherever situated, being valued separately in the same manner as all other real and personal property;

(b) Compute the valuation for assessment of such company in this state as provided in section 39-1-104;

(c) Apportion the valuation for assessment of such company in this state among the several counties of the state in such proportion as in his judgment will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as in his judgment shall be just and equitable.

(6) The administrator shall determine the actual value of all other public utilities doing business in this state in the manner provided in section 39-4-102 and shall apportion the valuation for assessment thereof, computed as provided in section 39-1-104, among the several counties of this state in which property of such public utilities is located in such proportion as in his judgment will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as in his judgment are just and equitable.

(7) (a) In the specific case of a railroad company, the administrator shall:

(I) Determine, as of the last day of December of each year, the actual value of such company as a unit or the actual value of its property and plant within this state, in the manner provided in section 39-4-102;

(II) Ascertain the total mileage of all railroad track of such company, wherever situated, if the actual value of such company is determined as a unit;

(III) Ascertain the total mileage of all railroad track of such company situated within this state and in the several counties thereof;

(IV) Ascertain the total mileage of all railroad main track of such company situated within this state and in the several counties thereof;

(V) Allocate to this state, if the actual value of such company is determined as a unit, that proportion of such actual value that the total mileage of all railroad track of such company situated within this state bears to the total mileage of all railroad track of such company, wherever situated;

(VI) Compute the valuation for assessment of such company in this state as provided in section 39-1-104;

(VII) Apportion the valuation for assessment of such company within this state among the several counties of this state in the proportion that the actual mileage of railroad main track within each such county bears to the total mileage of all railroad main track of such company within this state.

(b) This subsection (7) is effective January 1, 1987.

(8) (a) In the case of cars owned by a sleeping car company, a railroad express company, or a private car line company, the administrator shall:

(I) Ascertain the total railroad track miles made by all such cars within this state and in the several counties thereof during the preceding calendar year;

(II) Determine the actual value of all such cars, using commonly recognized methods of valuation;

(III) Compute the valuation for assessment of all such cars as provided in section 39-1-104;

(IV) Apportion the valuation for assessment of all such cars among the several counties of the state in such proportion as in his judgment will fairly represent the valuation for assessment within each such county.

(b) This subsection (8) is effective January 1, 1987.

**Source: L. 64:** R&RE, p. 690, § 1. **C.R.S. 1963:** § 137-4-6. **L. 70:** p. 383, § 19. **L. 76:** IP(5) amended, p. 768, § 2, effective April 26. **L. 81:** (1) and (4) repealed, p. 1855, § 7, effective January 1, 1982; (7) and (8) added, p. 1854, § 5, effective January 1, 1987. **L. 83:** (7)(b) and (8)(b) amended, p. 1497, § 5, effective April 28. **L. 84:** (7)(b) and (8)(b) amended, p. 990, § 4, effective February 23.

**39-4-107. Statement of valuation to counties.** No later than July 1 in each year, the administrator shall advise both the assessor of each county wherein property of a public utility is located and the public utility itself of the valuation of such public utility in such county, and such amount shall be entered on the tax roll of such county by the assessor in the same manner as though determined by the assessor.

**Source: L. 64:** R&RE, p. 692, § 1. **C.R.S. 1963:** § 137-4-7. **L. 70:** p. 384, § 20. **L. 89:** Entire section amended, p. 1465, § 30, effective June 7. **L. 93:** Entire section amended, p. 1687, § 3, effective June 6. **L. 96:** Entire section amended, p. 719, § 3, effective May 22.

**39-4-108. Complaint - hearing - decision.** (1) Any public utility, being of the opinion that the actual value of its property and plant as determined by the administrator is illegal, erroneous, or not uniform with the actual value of like property similarly situated, as determined by the administrator, may, no later than July 15, file a petition or complaint with the administrator, setting forth such illegality, error, or lack of uniformity.

(2) Any assessor or board of county commissioners, being of the opinion that the actual value of the property and plant of any public utility as determined by the administrator is illegal, erroneous, or not uniform with the actual value of like property similarly situated, as determined by the administrator, or that the amount of valuation of any public utility has not been correctly apportioned among the counties entitled thereto may, no later than July 15, file a petition or complaint with the administrator setting forth such illegality, error, lack of uniformity, or incorrect apportionment.

(3) Upon the filing of any petition or complaint provided for in this section, the administrator shall cause notice of such filing to be given to the assessor and the board of county commissioners of any county directly affected and to any public utility directly affected, as may

appear from such petition or complaint. Such notice shall be mailed at least five days prior to the meeting with the administrator at which such petition or complaint will be heard.

(4) The administrator shall, on the first working day after notices of valuation are mailed and on succeeding days if necessary, hear all such petitions and complaints. In case there are several petitions or complaints filed involving like questions, the same may be consolidated for the purpose of hearing and determination. The administrator shall hear all evidence presented and listen to arguments touching upon the matters concerning which the petition or complaint was filed. He shall have power to subpoena and compel the attendance of witnesses and to require the production of any books or records deemed necessary to arrive at a proper determination of the matter. Upon good cause, any hearing may be adjourned from time to time, but in no event beyond July 27. Hearings conducted under this section shall be informal, and a verbatim record need not be made, as required under section 24-4-105 (13), C.R.S.

(5) The administrator shall render his decision upon any petition or complaint, in writing, no later than August 1 and shall transmit a copy thereof to all parties affected.

(6) If the administrator grants the petition, in whole or in part, the administrator shall make the appropriate corrections or changes in the valuation of such public utility, or in the apportionment thereof, and shall certify the same to the assessor of the county affected thereby. Such decision shall control all proceedings thereafter, the same as though originally certified by the administrator.

(7) If the administrator denies the petition, in whole or in part, all costs and expenses incurred in conducting the hearing shall be chargeable to the petitioner and shall be enforceable and collectible as in the case of other claims and demands.

(8) Further proceedings brought by a party adversely affected by the administrator's decision shall be before the board of assessment appeals under the provisions of section 39-2-125 or before the Denver district court for a trial de novo with no presumption in favor of any pending valuation, and no judicial review shall be available to any party under the provisions of section 39-4-109 until the board or the district court has rendered its decision.

**Source: L. 64:** R&RE, p. 692, § 1. **C.R.S. 1963:** § 137-4-8. **L. 70:** p. 384, § 21. **L. 89:** (1), (2), (4), and (5) amended, p. 1465, § 31, effective June 7. **L. 93:** (1), (2), (4), and (5) amended, p. 1688, § 4, effective June 6. **L. 96:** (2), (6), and (8) amended, p. 720, § 4, effective May 22. **L. 2000:** (8) amended, p. 1739, § 3, effective June 1.

**39-4-109. Judicial review.** (1) Any petitioner or any other public utility, assessor, or board of county commissioners adversely affected or the administrator may appeal any decision of the board of assessment appeals or the district court denying a petition in whole or in part to the court of appeals. No new or additional evidence may be introduced in the court of appeals unless such other public utility, assessor, or board of county commissioners adversely affected has had no opportunity to present such evidence at the hearing before the board of assessment appeals or at the trial in the district court; otherwise, the cause shall be heard on the record of the board of assessment appeals or the district court, which shall be certified by it to the court in which the appeal was taken. Whenever any new or additional evidence is introduced, the court, in its discretion, may remand the case to the board of assessment appeals or the district court for rehearing.

(2) An appeal may be taken to the court of appeals according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S., after the decision of the board of assessment appeals or the district court is issued, but, if the appeal is taken by the public utility actually owning the property involved in the petition to the board of assessment appeals or the district court, such public utility shall pay the full amount of all taxes levied upon the valuation for assessment of its property and plant to the treasurer of the county in which the same is located prior to taking its appeal.

(3) If, upon appeal to the court of appeals, the petitioner is sustained, in whole or in part, then, upon presentation to the treasurer to whom the taxes were paid of a certified copy of the order modifying the valuation for assessment of its property and plant, the treasurer shall forthwith make the appropriate refund of taxes, together with refund interest at the same rate as delinquent interest as specified in section 39-10-104.5, and the petitioner shall also be entitled to a refund of costs incurred in the hearing before the board of assessment appeals or the trial in the district court and in the appeal to the court or such portion thereof as the court may decree; but, if judgment is for the board of assessment appeals, then the board of assessment appeals shall receive its costs from the appellant. Such refund interest shall only accrue from the date on which payment of taxes was received by the treasurer from the petitioner.

**Source: L. 64:** R&RE, p. 694, § 1. **C.R.S. 1963:** § 137-4-9. **L. 70:** p. 385, § 22. **L. 83:** (1) and (2) amended, p. 2086, § 3, effective October 13. **L. 90:** Entire section amended, p. 1690, § 7, effective June 9. **L. 92:** (3) amended, p. 2224, § 6, effective April 9; (3) amended, p. 2185, § 66, effective June 2. **L. 93:** (3) amended, p. 305, § 5, effective April 7. **L. 2000:** Entire section amended, p. 1739, § 4, effective June 1.

**Cross references:** For the legislative declaration contained in the 2000 act amending this section, see section 1 of chapter 358, Session Laws of Colorado 2000.

**39-4-110. Certification and assessment of pollution control property. (Repealed)**

**Source: L. 78:** Entire section added, p. 468, § 2, effective July 1. **L. 79:** (3) added, p. 1456, § 4, effective June 22. **L. 81:** (3) R&RE, p. 1872, § 5, effective June 29. **L. 88:** Entire section repealed, p. 1275, § 14, effective May 29, 1988.

## ARTICLE 4.1

Valuation and Assessment of Rail Transportation Property

**39-4.1-101 to 39-4.1-110. (Repealed)**

**Editor's note:** (1) This article was added in 1981. For amendments to this article prior to its repeal in 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-4.1-110 provided for the repeal of this article, effective January 1, 1987. (See L. 84, p. 990.)

## ARTICLE 5

Valuation and Taxation

PART 1

REAL AND PERSONAL PROPERTY

**Editor's note:** This part 1 was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

**39-5-101. Duties of assessor.** The assessor shall list all taxable real and personal property located within his county on the assessment date, other than that comprising the property and plant of public utilities.

**Source: L. 64:** R&RE, p. 694, § 1. **C.R.S. 1963:** § 137-5-1. **L. 73:** p. 237, § 19. **L. 75:** Entire section amended, p. 1467, § 12, effective July 18. **L. 81:** Entire section amended, p. 1855, § 6, effective January 1, 1982. **L. 94:** Entire section amended, p. 1646, § 80, effective July 1.

**39-5-102. When schedules required - nonresident owners listed.** (1) Ownership of real property shall be ascertained by the assessor from the records of the county clerk and recorder, and owners of real property shall not be required to file schedules listing the same; but any person having or claiming to have an undivided interest in any real property, or any inchoate, possessory, or equitable interest therein, or any other estate less than the fee, or any lien on any real property may file a schedule with the assessor, specifying such interest.

(2) When the ownership of any real or personal property cannot be ascertained by the assessor after due diligence, he may list such property under the legend "owner unknown".

(3) The assessor shall furnish annually by the first day of June to the executive director of the department of revenue a list of the names and addresses of all nonresidents of the state as shown by the assessor's records as of the previous assessment date to have owned real or personal property within the county.

**Source: L. 64:** R&RE, p. 695, § 1. **C.R.S. 1963:** § 137-5-2. **L. 69:** p. 1132, § 1.

**39-5-103. Property described.** In listing tracts or parcels of real property, the assessor shall identify the same by section, or part of a section, township, and range, and, if such part of a section is not a legal subdivision, then by some other description sufficient to identify the same. In listing town or city lots, he shall describe the same by number of lot and block, or otherwise, in accordance with the system of numbering or describing used by the town or city in which said lots are located.

**Source: L. 64:** R&RE, p. 695, § 1. **C.R.S. 1963:** § 137-5-3.

**39-5-103.5. Maps of parcels of land in the county.** (1) Prior to January 1, 1981, each assessor shall prepare and maintain full, accurate, and complete maps showing the parcels of

land in his county. The maps shall include a master county index map, together with applicable township, section, and quarter-section maps, depending on density. Guidelines shall be established by the administrator to produce uniformity throughout the state. The guidelines shall include the definition of a parcel, the development of a parcel numbering system, map size, map scale, and suggestions for minimum information to be plotted.

(2) In fulfilling the duty imposed upon him by subsection (1) of this section, the assessor may employ other mapping resources or maps available to him.

**Source: L. 76:** Entire section added, p. 770, § 1, effective July 1.

**39-5-104. Valuation of property.** Each tract or parcel of land and each town or city lot shall be separately appraised and valued, except when two or more adjoining tracts, parcels, or lots are owned by the same person, in which case the same may be appraised and valued either separately or collectively. When a single structure, used for a single purpose, is located on more than one town or city lot, the entire land area shall be appraised and valued as a single property.

**Source: L. 64:** R&RE, p. 695, § 1. **C.R.S. 1963:** § 137-5-4.

**39-5-104.5. Valuation of personal property.** (1) On and after January 1, 1996, personal property shall be valued as of the assessment date, and the tax shall apply for the full assessment year without regard to any destruction, conveyance, relocation, or change in tax status occurring after the assessment date. The owner of taxable personal property on the assessment date shall be responsible for the property tax assessed for the full property tax year without proration.

(2) Personal property tax obligations resulting from any conveyance, relocation, or change in tax status of the property during the property tax year that are not in the process of collection as of January 1, 1997, shall be waived, and the treasurer shall not commence any action to collect such obligations.

**Source: L. 96:** Entire section added, p. 45, § 5, effective March 20.

**Cross references:** For the legislative declaration contained in the 1996 act enacting this section, see section 1 of chapter 16, Session Laws of Colorado 1996.

**39-5-104.7. Valuation of real and personal property that produces alternating current electricity from a renewable energy source.** (1) (a) Except as provided in paragraph (b) of this subsection (1), on and after January 1, 2008, all real and personal property used to produce two megawatts or less of alternating current electricity from a renewable energy source shall be valued by the assessor in the county where the property is located in accordance with valuation procedures developed by the administrator.

(b) The valuation requirements specified in paragraph (a) of this subsection (1) shall not apply to small or low impact hydroelectric energy facilities, geothermal energy facilities, biomass energy facilities, solar energy facilities, or wind energy facilities, as those terms are defined in section 39-4-101.

(2) In developing the valuation procedures specified in paragraph (a) of subsection (1) of this section, the administrator shall utilize the procedures adopted for determining the actual value of a renewable energy facility as specified in section 39-4-102 (1)(e).

(3) A taxpayer shall notify the taxpayer's county assessor when the taxpayer installs real and personal property used to produce two megawatts or less of alternating current electricity from a renewable energy source; except that, if the taxpayer obtains a building permit under the jurisdiction of a local government for the installation, the notification required in this subsection (3) shall not be necessary.

**Source: L. 2008:** Entire section added, p. 1318, § 1, effective May 27. **L. 2009:** (1)(b) amended, (SB 09-177), ch. 186, p. 814, § 3, effective April 22. **L. 2010:** (1)(b) amended, (SB 10-019), ch. 382, p. 1787, § 3, effective June 8; (1)(b) amended, (SB 10-174), ch. 189, p. 815, § 10, effective August 11; (1)(b) amended, (SB 10-177), ch. 392, p. 1864, § 5, effective August 11.

**Editor's note:** Amendments to subsection (1)(b) by Senate Bill 10-019, Senate Bill 10-174, and Senate Bill 10-177 were harmonized.

**Cross references:** For the legislative intent contained in the 2008 act enacting this section, see section 9 of chapter 302, Session Laws of Colorado 2008.

**39-5-105. Improvements - water rights - valuation.** (1) Improvements shall be appraised and valued separately from land, except improvements other than buildings on land which is used solely and exclusively for agricultural purposes, in which case the land, water rights, and improvements other than buildings shall be appraised and valued as a unit.

(1.1) (a) (I) Water rights, together with any dam, ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or other associated structure or device as defined in article 92 of title 37, C.R.S., being used to produce water or held to produce or exchange water to support uses of any item of real property specified in section 39-1-102 (14), other than for agricultural purposes, shall not be appraised and valued separately but shall be appraised and valued with the item of real property served as a unit.

(II) For purposes of this section, valuing the water rights and the item of real property served by the water rights "as a unit" means that any increase in value of the property served with water made available directly, or by exchange, by the use of any dam, ditch, pipeline, canal, flume, reservoir, bypass, conduit, well, pump, or other associated structure or device, as defined in article 92 of title 37, C.R.S., shall be included in the valuation of the real property served by the water rights.

(b) The general assembly finds and declares that the value of water rights, and any dam, ditch, pipeline, canal, flume, reservoir, bypass, conduit, well, pump, or other associated structure or device, as defined in article 92 of title 37, C.R.S., used or held to produce or exchange water, for taxation purposes, should be recognized as a contribution to the value of all of the interests in the entire property served thereby and that the separate valuation of such water rights could result in double taxation. The provision of this subsection (1.1) shall not be construed to exempt any water rights from taxation but shall be construed as setting forth procedures for the valuation thereof.

(2) and (3) Repealed.

**Source: L. 64:** R&RE, p. 695, § 1. **C.R.S. 1963:** § 137-5-5. **L. 75:** Entire section amended, p. 1474, § 2, effective July 1. **L. 76:** Entire section amended, p. 771, § 1, effective May 26; (1) amended, p. 760, § 18, effective January 1, 1977. **L. 77:** (3) added, p. 1753, § 1, effective June 19. **L. 79:** (1) amended, p. 1404, § 2, effective July 1. **L. 83:** (1.1) added, p. 1503, § 1, effective May 25. **L. 87:** (2) and (3) repealed, p. 1304, § 1, effective May 20. **L. 96:** (1.1) amended, p. 468, § 1, effective April 23.

**Cross references:** For manner of determination of actual value of agricultural lands, see § 39-1-103 (5).

**39-5-106. Purchase of state land.** The equity in land purchased from the state under contract shall, during the term of such contract, be appraised and valued in the same manner as though held in fee by the purchaser, and any improvements on such land shall be appraised and valued in the same manner as other improvements.

**Source: L. 64:** R&RE, p. 695, § 1. **C.R.S. 1963:** § 137-5-6.

**39-5-107. Personal property schedule.** (1) All taxable personal property shall be listed on a form of schedule approved by the administrator and prepared and furnished by the assessor. Such schedule shall be so designed as to show the owner's name, address, social security number or federal employer identification number, and the location and general description of the owner's taxable personal property, divided into the various subclasses, and shall provide sufficient space for the furnishing of such information, derived from the books of account, records, or Colorado income tax returns of the owner of such property, as may be required by the assessor to determine the actual value of such property.

(2) There shall be subjoined to such schedule the following declaration:

"I declare, under the penalty of perjury in the second degree, that this schedule, together with any accompanying exhibits or statements, has been examined by me and to the best of my knowledge, information, and belief sets forth a full and complete list of all taxable personal property owned by me, or in my possession, or under my control, located in .... county, Colorado, on the assessment date of this year; that such property has been reasonably described and its value fairly represented; and that no attempt has been made to mislead the assessor as to its age, quality, quantity, or value.

..... Owner

..... Date
..... Agent"

**Source: L. 64:** R&RE, p. 695, § 1. **C.R.S. 1963:** § 137-5-7. **L. 72:** p. 569, § 51. **L. 73:** p. 238, § 20. **L. 75:** (1) amended, p. 1468, § 13, effective July 18. **L. 84:** (1) amended, p. 984, § 2, effective May 8. **L. 89:** (1) amended, p. 1483, § 7, effective April 23. **L. 96:** (1) amended, p. 46, § 4, effective March 20. **L. 99:** (1) amended, p. 276, § 1, effective August 4.

**Cross references:** (1) For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

(2) For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 1996.

**39-5-108. Schedule sent to taxpayer - return.** As soon after the assessment date as may be practicable, the assessor shall mail or deliver one copy of the personal property schedule to the place of business or to the residence of each person known or believed to own taxable personal property located in the county, or to the agent of such person. Such person or his or her agent shall list in such schedule all taxable personal property owned by him or her, or in his or her possession, or under his or her control located in said county on the assessment date, attaching such exhibits or statements thereto as may be necessary, and shall sign and return the original copy thereof to the assessor no later than the April 15 next following. Exhibits and statements attached to the personal property schedule shall be deemed sufficient for the purposes of the schedule if such exhibits or statements clearly list the property, the cost of the property, and the date the property was acquired.

**Source: L. 64:** R&RE, p. 696, § 1. **C.R.S. 1963:** § 137-5-8. **L. 67:** pp. 948, 952, §§ 13, 26. **L. 79:** Entire section amended, p. 1416, § 1, effective June 21. **L. 81:** Entire section amended, p. 1831, § 5, effective June 12. **L. 2000:** Entire section amended, p. 751, § 3, effective May 23. **L. 2008:** Entire section amended, p. 948, § 2, effective August 5.

**39-5-108.5. Furnished residential real property rental advertisements - information to be provided to the assessor - legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) Each assessor is required by law to discover and assess taxable personal property in the assessor's county and to provide each person known or believed to own taxable personal property in the county with a personal property schedule;

(b) Each owner of taxable personal property is required by law to list the owner's taxable personal property on the personal property schedule, and the receipt of a personal property schedule from the assessor provides notice to a property owner that the property owner may own taxable personal property, which helps to ensure that:

(I) More property owners comply with state property tax laws;

(II) The property tax burden is more fairly distributed; and

(III) The amount of property tax revenues lost by local governments due to property owners' lack of knowledge regarding the taxable status of certain personal property is minimized;

(c) Personal property that is used to furnish residential real property is exempt from property taxation so long as it is not used for the production of income at any time, but generally becomes subject to taxation if the residential real property is offered for rent on a furnished basis or otherwise used for business purposes;

(d) In certain areas of the state, a high proportion of residential real property is advertised for rent on a furnished basis directly by property owners or by real estate agents, property management companies, lodging companies, and internet and print-based listing services that act as agents for multiple property owners and advertise multiple properties for rent,

and because the advertisements typically do not precisely identify the property offered for rent by address or the owner's name:

(I) It is difficult for each assessor to accurately identify which parcels of furnished residential real property are being offered for rent and to which owners of furnished residential real property the assessor should provide personal property schedules; and

(II) This difficulty impairs the fairness and efficiency of the property tax system and reduces property tax collections by making it more likely that owners of furnished residential real property rented to others will, in some cases deliberately and in many other cases due to a lack of notice regarding state property tax laws, fail to pay property taxes due on personal property used to furnish the residential real property; and

(e) It is therefore necessary and appropriate to require the owner of furnished residential real property or an agent of the owner who advertises the property for rent to provide identifying information regarding the property to the assessor of the county in which the property is located upon the request of the assessor made no more than twice during any year as specified in this section or as mutually agreed to by the assessor and the owner or agent pursuant to paragraph (b) of subsection (2) of this section.

(2) (a) Upon the request of the assessor of any county or city and county made no more than twice during any year:

(I) A property owner who advertises for rent furnished residential real property that is located within the county or city and county shall provide to the assessor a list that identifies each property so advertised by address; and

(II) An agent who advertises for rent on behalf of a property owner furnished residential real property that is located within the county or city and county shall provide to the assessor a list that identifies each property so advertised by owner and address.

(b) An assessor and a property owner or agent may mutually agree that the owner or agent shall annually provide to the assessor by a specified date the information that an assessor may require to be provided pursuant to paragraph (a) of this subsection (2).

(3) For purposes of this section, "agent" means a real estate broker, as defined in section 12-61-101 (2)(a), C.R.S., a property management company, a lodging company, an internet website listing service, a print-based listing service, or any other person that either separately or as part of a package of services advertises furnished residential real property in the state for rent on behalf of the owner of the property in exchange for compensation.

**Source: L. 2009:** Entire section added, (HB 09-1110), ch. 162, p. 698, § 1, effective August 5.

**39-5-109. Inventory schedules - valuation. (Repealed)**

**Source: L. 64:** R&RE, p. 697, § 1. **C.R.S. 1963:** § 137-5-9. **L. 65:** p. 1096, § 3. **L. 67:** p. 801, § 1. **L. 73:** p. 1439, § 1. **L. 75:** (5)(b) amended, p. 225, § 86, effective July 16. **L. 76:** (6)(b) amended p. 760, § 19, effective January 1, 1977. **L. 83:** Entire section repealed, p. 1485, § 11, effective April 22.

**39-5-110. Property brought into state after assessment date - removal before next assessment date.** (1) Whenever any taxable personal property is brought from outside the state

into any county of the state at any time after the assessment date in any year, the owner shall list the property on the personal property schedule sent to the taxpayer pursuant to section 39-5-108.

(2) If any taxable personal property located in the state on the assessment date or brought into the state at any time after the assessment date is removed from the state before the next following assessment date, the owner of the property shall not be relieved of any tax obligation with respect to the property as a result of the transfer of the property for the property tax year in which the transfer occurred.

(3) Repealed.

(4) Notwithstanding any other provision of this section, oil and gas drilling rigs shall be valued pursuant to section 39-5-113.3.

**Source: L. 64:** R&RE, p. 698, § 1. **C.R.S. 1963:** § 137-5-10. **L. 67:** p. 949, § 14. **L. 83:** (3) repealed, p. 1485, § 11, effective April 22. **L. 87:** (2) amended, p. 1412, § 1, effective April 23. **L. 96:** (1) and (2) amended, p. 47, § 6, effective March 20; (4) added, p. 1200, § 5, effective June 1.

**Cross references:** (1) For the assessment date, see § 39-1-105.

(2) For the legislative declaration contained in the 1996 act amending subsections (1) and (2), see section 1 of chapter 16, Session Laws of Colorado 1996.

**39-5-111. Livestock, agricultural products - not valued, when. (Repealed)**

**Source: L. 64:** R&RE, p. 699, § 1. **C.R.S. 1963:** § 137-5-11. **L. 75:** (2) amended and (3) added, p. 1476, § 1, effective April 9. **L. 76:** (2) amended, p. 760, § 20, effective January 1, 1977. **L. 83:** Entire section repealed, p. 1485, § 11, effective April 22.

**39-5-112. Livestock - apportionment of value. (Repealed)**

**Source: L. 64:** R&RE, p. 699, § 1. **C.R.S. 1963:** § 137-5-12. **L. 67:** p. 949, § 15. **L. 76:** Entire section repealed, p. 765, § 33, effective January 1, 1977.

**39-5-113. Movable equipment - apportionment of value.** (1) Any person owning any portable or movable equipment which is apt to be located or maintained in two or more counties of the state during any calendar year shall indicate in a statement accompanying his personal property schedule the kind and description and a serial number, if available, of such equipment, the counties in which such equipment is apt to be located or maintained, and the estimated period of time during the calendar year in which such equipment is apt to be so located and maintained.

(2) The assessor of the county in which such equipment is located on the assessment date shall determine its value and shall apportion such value between the counties affected and the school districts thereof, in the proportion that the periods of time during which such equipment may be located or maintained in such counties bear to the full calendar year. He shall furnish a copy of such valuation and apportionment to the owner of such equipment or to his agent and shall also transmit a copy thereof to the assessor of each county affected as his authority to list the apportioned value of such equipment on the assessment roll of his county. For purposes of

making such apportionment, the valuation of the portable or movable equipment made by the assessor of the county of original assessment shall be used by all county assessors involved.

(3) If, subsequent to the making of such apportionment of value, any such equipment is removed to a county not initially included in such apportionment or if any such equipment is located or maintained in any county for a period of time different from that used in the initial apportionment, then an amended apportionment of value shall be requested by the assessor of any county so affected. Such assessor shall furnish a copy of such requested amended apportionment to the owner of such equipment or to his agent and shall also transmit a copy thereof to the assessor of each county affected, as his authority to list such reapportioned value on the assessment roll of his county. Failure of a county assessor to request such an amended apportionment shall permit the original apportionment of value to stand, and no other county assessor shall assess such equipment as is listed in the original apportionment for any period during the year of the original assessment. If such amended apportionment of value is received by any assessor after he has filed his annual abstract of assessment with the administrator, then either an abatement or an additional assessment shall be made, as the case may be.

(4) Repealed.

**Source: L. 64:** R&RE, p. 700, § 1. **C.R.S. 1963:** § 137-5-13. **L. 65:** p. 1099, § 1. **L. 76:** (4) repealed, p. 765, § 33, effective January 1, 1977. **L. 90:** (2) amended, p. 1696, § 18, effective June 9.

**39-5-113.3. Oil and gas drilling rigs - apportionment of value.** (1) As soon after the assessment date as may be practicable, the assessor shall determine those oil or gas drilling rigs that were operating, stored, or maintained in the county during the preceding calendar year and shall mail or deliver two copies of a declaration to the place of business or drilling operation or to the residence of each person known or believed to own such rigs, or to the agent of such person. Such person or his agent shall list in such declaration all oil or gas drilling rigs owned by him, or in his possession, or under his control that were located in said county during the previous calendar year, attaching thereto the drilling logs of the respective rigs showing their various locations and corresponding dates. In addition, such person or his agent shall provide to the assessor of the first county in Colorado listed on each rig's log an inventory of that rig's equipment sufficient to determine a valuation for assessment. The original copy of the declaration shall be signed and returned to the assessor no later than the April 15 next following.

(2) The assessor, upon receiving such inventory and notification that his county was the first location of the rig in Colorado, shall determine its value and shall apportion such value between the counties in which the drilling rig was located during the preceding year and the districts thereof, in the proportion that the periods of time during which such equipment was located or maintained in such counties bear to the full calendar year. On or before June 15, the assessor shall furnish a copy of such valuation and apportionment to the owner of such equipment or to his agent and shall also transmit a copy thereof to the assessor of each county affected, together with a copy of the drilling log for that rig. For purposes of making such apportionment, the valuation of the oil or gas drilling rig made by the assessor of the first Colorado county on the log shall be used by all county assessors involved. In the subsequent counties, the assessor shall accept the returned declaration with the rig's name and location data as a proper filing.

(3) The values so apportioned shall be included in the affected counties' abstracts of assessment filed pursuant to section 39-5-123.

(4) This section shall apply to the apportionment of value of oil or gas drilling rigs and not the provisions of section 39-5-113.

(5) For purposes of this section "oil and gas drilling rigs" shall be defined by the property tax administrator pursuant to section 39-2-109 (1)(e), which definitions shall be uniform and consistent throughout the state.

**Source: L. 86:** Entire section added, p. 1107, § 1, effective January 1, 1987. **L. 88:** (2) amended, p. 1297, § 4, effective April 29. **L. 90:** (2) amended, p. 1696, § 19, effective June 9.

**39-5-113.5. Works of art - apportionment of value.** (1) Any persons owning any works of art which are apt to be displayed in any county of the state during any calendar year shall indicate in a statement accompanying their personal property schedule the kind and description of such works of art and the estimated period of time during the calendar year in which such works of art are to be so displayed and shall provide to the assessor proof of exemption pursuant to the provisions of sections 39-3-123 and 39-26-102 (2.5). Failure to file a statement results in forfeiture of a claim for exemption in that calendar year.

(2) The assessor of the county in which such works of art are displayed shall determine its value in the proportion that the periods of time during which such works of art may be displayed bear to the full calendar year. He shall furnish a copy of such valuation to the owner of such works of art or to his agent.

**Source: L. 84:** Entire section added, p. 999, § 2, effective January 1. **L. 89:** (1) amended, p. 1484, § 8, effective April 23. **L. 90:** (2) amended, p. 1697, § 20, effective June 9.

**39-5-114. Unclassified property shown on schedule.** If any person owns, holds, or controls any kind or character of taxable personal property which is not specifically classified on the personal property schedule, he shall note such property therein, and such notation shall be held to be a sufficient description thereof for purposes of valuing the same, without further enumeration or description; but if the assessor so requests, such person shall disclose of what said property consists and its uses in detail.

**Source: L. 64:** R&RE, p. 702, § 1. **C.R.S. 1963:** § 137-5-14.

**39-5-115. Taxpayer to furnish information - affidavit on mineral leases.** (1) At any time prior or subsequent to April 15 of each year, the assessor may request any person known or believed to own taxable property located in his county to furnish such information or to make available for examination such records as may be required by him to determine the actual value of such property.

(2) Within ten days after the execution of a mineral lease, a lessor shall file with the assessor an affidavit stating the annual net rental payable under such lease for the purposes of determining the actual value of such mineral interest where the income approach to appraisal is utilized by the assessor. Such affidavit shall constitute a private document and shall be available on a confidential basis as provided in section 39-5-120.

**Source: L. 64:** R&RE, pp. 315, 702, §§ 294, 1. **C.R.S. 1963:** § 137-5-15. **L. 75:** Entire section amended, p. 226, § 87, effective July 16. **L. 79:** Entire section amended, p. 1416, § 2, effective June 21. **L. 81:** Entire section amended, p. 1832, § 6, effective June 12. **L. 85:** Entire section amended, p. 1213, § 11, effective May 9.

**39-5-116. Failure to file schedule - failure to fully and completely disclose.** (1) If any person owning taxable personal property to whom one or more personal property schedules have been mailed, or upon whom the assessor or his deputy has called and left one or more schedules, fails to complete and return the same to the assessor by the April 15 next following, unless by such date such person has requested an extension of filing time as provided for in this section, the assessor shall impose a late filing penalty in the amount of fifty dollars or, if a lesser amount, fifteen percent of the amount of tax due on the valuation for assessment determined for the personal property for which any delinquent schedule or schedules are required to be filed. Any person who is unable to properly complete and file one or more of such schedules by April 15 may request an extension of time for filing, for a period of either ten or twenty days, which request shall be in writing and shall be accompanied by payment of an extension fee in the amount of two dollars per day of extension requested. A single request for extension shall be sufficient to extend the filing date for all such schedules which a person is required to file in a single county. Any person who fails to file one or more schedules by the end of the extension time requested shall be subject to a late filing penalty as though no extension had been requested. Further, if any person fails to complete and file one or more schedules by April 15 or, if an extension is requested, by the end of the requested extension, then the assessor may determine the actual value of such person's taxable personal property on the basis of the best information available to and obtainable by him and shall promptly notify such person or his agent of such valuation. Extension fees and late filing penalties shall be fees of the assessor's office. Penalties, if unpaid, shall be certified to the treasurer for collection with taxes levied upon the person's property.

(2) (a) If any person owning taxable personal property to whom two successive personal property schedules have been mailed or upon whom the assessor or his deputy has called and left one or more schedules fails to make a full and complete disclosure of his personal property for assessment purposes, the assessor, after notifying the person of his failure to make such a full and complete disclosure and allowing such person ten days from the date of notification to comply, shall, upon discovery, determine the actual value of such person's taxable property on the basis of the best information available to and obtainable by him and shall promptly notify such person or his agent of such valuation. The assessor shall impose a penalty in an amount of up to twenty-five percent of the valuation for assessment determined for the omitted personal property. Penalties, if unpaid, shall be certified to the treasurer for collection with taxes levied upon the person's personal property. A person fails to make a full and complete disclosure of his personal property pursuant to this paragraph (a) if he includes in a filed schedule any information concerning his property which is false, erroneous, or misleading or fails to include in a schedule any taxable property owned by him.

(b) Any person who makes full and complete disclosure on the first personal property schedules issued to him on or after August 1, 1987, shall not be assessed a penalty for property previously omitted from the assessment rolls under this article.

(c) Any person subject to paragraph (a) of this subsection (2) shall have the right to pursue the administrative remedies available to taxpayers under this title, dependent upon the basis of his claim.

**Source: L. 64:** R&RE, p. 702, § 1. **C.R.S. 1963:** § 137-5-16. **L. 76:** p. 761, § 21. **L. 79:** p. 1416, § 3. **L. 80:** p. 498, § 2. **L. 81:** p. 1832, § 7. **L. 82:** p. 549, § 14. **L. 87:** Entire section amended, p. 1414, § 1, effective August 1. **L. 88:** (2)(a) amended, p. 1273, § 8, effective August 1.

**39-5-117. Property improvements destroyed after assessment date.** Whenever any improvements are destroyed or demolished subsequent to the assessment date in any year, it is the duty of the owner thereof or the owner's agent to promptly notify the assessor of such destruction or demolition and the date upon which the same occurred. In all such cases, such improvements shall be valued by the assessor at the proportion of its valuation for the full calendar year that the period of time in such year prior to its destruction or demolition bears to the full calendar year. Failure of the owner thereof or of the owner's agent to so notify the assessor prior to the date taxes are levied shall be considered a waiver, and no proportionate valuation by the assessor shall then be required.

**Source: L. 64:** R&RE, p. 702, § 1. **C.R.S. 1963:** § 137-5-17. **L. 96:** Entire section amended, p. 47, § 7, effective March 20.

**Cross references:** (1) For the assessment date, see § 39-1-105.

(2) For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 1996.

**39-5-118. Failure to receive schedule - validity of valuation.** No determination of the actual value of any taxable personal property made by the assessor shall be rendered invalid by reason of his failure to secure or receive the personal property schedule required to be completed and returned to him prior to his determination of such value.

**Source: L. 64:** R&RE, p. 702, § 1. **C.R.S. 1963:** § 137-5-18.

**39-5-119. Refusal to answer - court order.** Whenever any person refuses to be interviewed by the assessor or his deputy or refuses to answer any pertinent questions relative to taxable property owned by him, or in his possession, or under his control, then, in the discretion of the district court having jurisdiction in the county and upon affidavit of the assessor or his deputy showing such refusal to be interviewed or to answer such questions, such person shall be cited before such court and shall be required by the court then and there to submit to such interview and to answer such questions. All costs of such proceedings shall be assessed by the court against such person, and judgment and execution shall be entered therefor as in other civil cases.

**Source: L. 64:** R&RE, p. 703, § 1. **C.R.S. 1963:** § 137-5-19. **L. 67:** p. 949, § 16.

**39-5-120. Tax schedules endorsed and filed - availability for inspection.** All personal property schedules and exhibits or statements attached thereto returned to or secured by the assessor shall be endorsed with the name of the person whose taxable personal property is listed therein and shall be filed in either alphabetical or numerical order and retained for a period of six years, after which time they may be destroyed. Such schedules and accompanying exhibits or statements shall be considered private documents and shall be available on a confidential basis only to the assessor and the employees of his office, the treasurer and the employees of his office, the annual study contractor hired pursuant to section 39-1-104 (16) and his employees, the executive director of the department of revenue and the employees of his office, the administrator and the employees of his office, and the person whose taxable personal property is listed therein. Such exhibits or statements shall be available on a confidential basis to the board and the county board of equalization when information contained in such documents is pertinent to an appeal or protest.

**Source: L. 64:** R&RE, p. 703, § 1. **C.R.S. 1963:** § 137-5-20. **L. 70:** p. 389, § 1. **L. 75:** Entire section amended, p. 226, § 88, effective July 16. **L. 76:** Entire section amended, p. 761, § 22, effective January 1, 1977. **L. 87:** Entire section amended, p. 1417, § 2, effective March 13.

**39-5-121. Notice of valuation - legislative declaration.** (1) (a) (I) No later than May 1 in each year, the assessor shall mail to each person who owns land or improvements a notice setting forth the valuation of such land or improvements. For agricultural property, the notice shall separately state the actual value of such land or improvements in the previous year, the actual value in the current year, and the amount of any adjustment in actual value. For all other property, the notice shall state the total actual value of such land and improvements together in the previous year, the total actual value in the current year, and the amount of any adjustment in total actual value. The notice shall not state the valuation for assessment of such land or improvements or combination of land and improvements. Based upon the classification of such taxable property, the notice shall also set forth either the ratio of valuation for assessment to be applied to said actual value of all taxable real property other than residential real property prior to the calculation of property taxes for the current year or the projected ratio of valuation for assessment to be applied to said actual value of residential real property prior to the calculation of property taxes for the current year and that any change or adjustment of the projected ratio of valuation for assessment for residential real property shall not constitute grounds for the protest or abatement of taxes. With the approval of the board of county commissioners, the assessor may include in the notice an estimate of the taxes that shall be owed for the current property tax year. If such estimate is included, the notice shall clearly state that the tax amount is merely an estimate based upon the best available information. The notice shall state, in bold-faced type, that the taxpayer has the right to protest any adjustment in valuation but not the estimate of taxes if such an estimate is included in the notice, the classification of the property that determines the assessment percentage to be applied, and the dates and places at which the assessor will hear such protest. Except as otherwise provided in subparagraph (II) of this paragraph (a), such notice shall also set forth the following: That, to preserve the taxpayer's right to protest, the taxpayer must notify the assessor either in writing or in person of the taxpayer's objection and protest; that such notice must be delivered, postmarked, or given in person no later than June 1; and that, after such date, the taxpayer's right to object and protest the adjustment in valuation is lost. The

notice shall be mailed together with a form that, if completed by the taxpayer, allows the taxpayer to explain the basis for the taxpayer's valuation of the property. Such form may be completed by the taxpayer to initiate an appeal of the assessor's valuation. However, in accordance with section 39-5-122 (2), completion of this form shall not constitute the exclusive means of appealing the assessor's valuation. For the years that intervene between changes in the level of value, if the difference between the actual value of such land or improvements in the previous year and the actual value of such land or improvements in the intervening year as set forth in such notice constitutes an increase in actual value of more than seventy-five percent, the assessor shall mail together with the notice an explanation of the reasons for such increase in actual value.

(II) For the city and county of Denver only, if the city and county of Denver elects to use the pilot alternate protest procedure established in section 39-5-122.8, the notice mailed pursuant to subparagraph (I) of this paragraph (a) shall state that, to preserve the taxpayer's right to object and protest, the taxpayer must notify the board of county commissioners in writing of the taxpayer's objection and protest; that such notice must be delivered or postmarked no later than November 15 of the year in which the notice of valuation was mailed; and that after such date, the taxpayer's right to object and protest the adjustment in valuation is lost.

(b) (I) Commencing as provided in subparagraph (II) of this paragraph (b), the notice of valuation for the first year of each reassessment cycle that is mailed to each person who owns land or improvements pursuant to paragraph (a) of this subsection (1) shall include, in addition to the information specified in paragraph (a) of this subsection (1), an itemized listing of the land and improvements and the characteristics that are germane to the value of such land and improvements.

(II) In a county with a population in excess of fifty thousand people, the information specified in subparagraph (I) of this paragraph (b) shall be included in notices of valuation mailed on or after January 1, 2001. In a county with a population of twenty-five thousand people or more but not more than fifty thousand people, the information specified in subparagraph (I) of this paragraph (b) shall be included in notices of valuation mailed on or after January 1, 2003. In a county with a population of less than twenty-five thousand people, the information specified in subparagraph (I) of this paragraph (b) shall be included in notices of valuation mailed on or after January 1, 2005.

(1.2) A notice of valuation included with the tax bill shall fulfill the requirements of subsection (1) of this section. The general assembly hereby finds and declares that the notice procedure set forth in this subsection (1.2) facilitates the efficient and economic operation of local governments, consistent with the expressed purpose of section 20 of article X of the state constitution to reasonably restrain most the growth of government, and still fulfills the purposes of section 20 (8)(c) of said article X in the intervening year of each reassessment cycle when there is no change in value for the property in such year.

(1.5) (a) (I) Except as otherwise provided in sub-subparagraph (A) of subparagraph (II) of this paragraph (a), no later than June 15 each year, the assessor shall mail to each person who owns taxable personal property a notice setting forth the valuation of the personal property. The notice shall state the actual value of such personal property in the previous year, the actual value in the current year, and the amount of any adjustment in actual value. The notice shall not state the valuation for assessment of the personal property. The notice shall also set forth the ratio of valuation for assessment to be applied to said actual value prior to the calculation of property

taxes for the current year. With the approval of the board of county commissioners, the assessor may include in the notice an estimate of the taxes that shall be owed for the current property tax year. If such an estimate is included, the notice shall clearly state that the tax amount is merely an estimate based upon the best available information. The notice shall state, in bold-faced type, that the taxpayer has the right to protest any adjustment in valuation but not the estimate of taxes if such an estimate is included in the notice, and the dates and places at which the assessor will hear protests. Except as otherwise provided in subparagraph (II) of this paragraph (a), the notice shall also set forth the following: To preserve the taxpayer's right to protest, the taxpayer must notify the assessor either by mail or in person of the taxpayer's objection and protest; that the notice must be postmarked or physically delivered no later than June 30; and that, after such date, the taxpayer's right to object and protest the adjustment in valuation is lost. The notice shall be mailed together with a form that, if completed by the taxpayer, allows the taxpayer to explain the basis for the taxpayer's valuation of the property. The form may be completed by the taxpayer to initiate an appeal of the assessor's valuation. However, in accordance with section 39-5-122 (2), completion of this form shall not constitute the exclusive means of appealing the assessor's valuation.

(II) For the city and county of Denver only, if the city and county of Denver elects to use the pilot alternate protest procedure established in section 39-5-122.8, the notice required pursuant to subparagraph (I) of this paragraph (a) shall be modified as follows:

(A) The assessor shall mail to each person who owns taxable personal property the notice setting forth the valuation of the personal property no later than July 15 each year; and

(B) The notice shall state that, to preserve the taxpayer's right to object and protest, the taxpayer must notify the board of county commissioners in writing of the taxpayer's objection and protest; that such notice must be delivered or postmarked no later than November 15 of the year in which the notice of valuation was mailed; and that after such date, the taxpayer's right to object and protest the adjustment in valuation is lost.

(b) Notwithstanding paragraph (a) of this subsection (1.5), for taxable personal property on oil and gas leaseholds or lands for which the operator has filed the statement required by section 39-7-101 (1), the assessor shall send the notice of valuation only to the operator, who shall accept it. The acceptance of the notice of valuation by the operator shall not be construed as an indication that the operator agrees with the amount of the actual value of the property stated in the notice or as obligating the operator to pay the tax attributable to property in which the operator has no ownership interest. Upon the written request of the county treasurer, the operator shall submit to the treasurer a written statement containing the name and address of each person who has an ownership interest in the property. If the operator fails to submit the statement within thirty days after receiving the request, the operator shall pay a penalty to the treasurer in the amount of one hundred dollars or the amount of tax due on the property, whichever is less.

(1.7) Notwithstanding any other provision of law, a taxpayer may request to receive by electronic transmission the notices of valuation required by subsections (1) and (1.5) of this section. The taxpayer shall submit along with the request an electronic address to which the assessor may send future notices of valuation. The assessor, upon receipt of such request by a taxpayer to receive notices of valuation electronically, may send all future notices of valuation by electronic transmission to the electronic address supplied by the taxpayer; except that, if a taxpayer subsequently requests to cease the electronic transmission of such notices and requests to receive future notices of valuation by mail, the assessor shall comply with the request. Failure

of a taxpayer to receive the electronic notice of valuation shall not preclude collection by the treasurer of the amount of taxes due from and payable by the taxpayer.

(2) (a) The assessor shall, no later than August 25 of each year, notify each taxing entity subject to the provisions of section 29-1-301, C.R.S., the division of local government, and the department of education of the total valuation for assessment of land and improvements within the entity and shall also report: The amount of the total valuation for assessment attributable to annexation or inclusion of additional land, and the improvements thereon, and personal property connected therewith, within the taxing entity for the preceding year; the amount attributable to new construction and personal property connected therewith, as defined by the administrator in manuals prepared pursuant to section 39-2-109 (1)(e), within the taxing entity for the preceding year; the amount attributable to increased volume of production for the preceding year by a producing mine if said mine is wholly or partially within the taxing entity and if such increase in volume of production causes an increase in the level of services provided by the taxing entity; and the amount attributable to previously legally exempt federal property that becomes taxable if such property causes an increase in the level of services provided by the taxing entity.

(b) In addition to the information specified in paragraph (a) of this subsection (2), the assessor shall, no later than August 25 of each year, notify each taxing entity except school districts of the total actual value of all real property within the taxing entity and the total actual value of all real property within the taxing entity from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property, in accordance with the manner prescribed by the administrator in manuals prepared pursuant to section 39-2-109 (1)(e).

**Source: L. 64:** R&RE, p. 703, § 1. **C.R.S. 1963:** § 137-5-21. **L. 67:** p. 952, § 26. **L. 76:** Entire section amended, p. 687, § 4, effective July 1; (1) amended, p. 762, § 23, effective January 1, 1977. **L. 81:** (1) amended and (1.5) added, p. 1833, § 8, effective June 12; (2) amended, p. 1395, § 3, effective January 1, 1985. **L. 83:** (2) amended, p. 2073, § 4, effective October 13; (2) amended, p. 2052, § 24, effective October 14; (2) amended, pp. 2074, 2052, §§ 5, 25, effective January 1, 1985. **L. 87:** (2) amended, p. 1188, § 4, effective March 12. **L. 88:** (1) and (1.5) amended, p. 1298, § 5, effective April 29; (1) and (1.5) amended, p. 1285, § 17, effective May 23. **L. 89:** Entire section amended, p. 1453, § 9, effective June 7. **L. 90:** (1) amended, p. 1690, § 8, effective January 1, 1991. **L. 92:** (2) amended, p. 2182, § 54, effective June 2; (1) and (1.5) amended, p. 2207, § 4, effective January 1, 1993. **L. 93:** (2) amended, pp. 1282, 1688, §§ 2, 5, effective June 6. **L. 96:** (1), (1.5), and (2)(a) amended, p. 113, § 1, effective March 25; (1) and (1.5) amended and (1.2) added, p. 720, § 5, effective May 22. **L. 99:** (1) amended, p. 704, § 1, effective May 20. **L. 2002:** (1)(a) amended, p. 41, § 1, effective August 7. **L. 2006:** (1.5) amended, p. 33, § 1, effective March 13. **L. 2008:** (1.5)(a) amended, p. 948, § 3, effective August 5. **L. 2010:** (1.7) added, (HB 10-1117), ch. 195, p. 842, § 2, effective August 11. **L. 2013:** (1)(a) and (1.5)(a) amended, (HB 13-1113), ch. 11, p. 26, § 1, effective March 8.

**Editor's note:** Amendments to subsection (2) by House Bill 83-1580 and Senate Bill 83-414 were harmonized. Amendments to subsection (2) by Senate Bill 93-255 and House Bill 93-1321 were harmonized. Amendments to subsections (1) and (1.5) by House Bill 96-1131 and House Bill 96-1063 were harmonized.

**39-5-121.5. Valuation - inspection of data by taxpayers.** At the written request of any taxpayer or any agent of such taxpayer and subject to such confidentiality requirements as provided by law, the assessor shall, within seven working days after receipt of said request, make available to the taxpayer or agent the data used by the assessor in determining the actual value of any property owned by such taxpayer. At the assessor's election, the assessor may either mail, fax, or send by electronic transmission to the address, phone number, or electronic address supplied by said taxpayer or agent such data. Such data shall include but shall not be limited to the data derived from the declarations filed pursuant to the provisions of article 14 of this title and confidential data, provided that such confidential data shall be presented in such a manner that the source cannot be identified. Upon receipt of such request, the assessor shall notify the taxpayer or agent of the estimated cost of providing such information, payment of which shall be made prior to providing such information. Upon providing such information, the assessor may include a bill for the reasonable cost above the estimated cost and up to the statutory maximum which shall be due and payable upon receipt by the taxpayer or agent.

**Source: L. 89:** Entire section added, p. 1466, § 33, effective June 7. **L. 90:** Entire section amended, p. 1700, § 29, effective June 9. **L. 2000:** Entire section amended, p. 1500, § 3, effective August 2.

**39-5-122. Taxpayer's remedies to correct errors.** (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), on or before May 1 of each year, the assessor shall give public notice in at least one issue of a newspaper published in his or her county that, beginning on the first working day after notices of adjusted valuation are mailed to taxpayers, the assessor will sit to hear all objections and protests concerning valuations of taxable real property determined by the assessor for the current year; that, for a taxpayer's objection and protest to be heard, notice must be given to the assessor; and that such notice must be postmarked, delivered, or given in person by June 1. The notice shall also state that objections and protests concerning valuations of taxable personal property determined by the assessor for the current year will be heard commencing June 15; that, for a taxpayer's objection and protest to be heard, notice must be given to the assessor; and that such notice must be postmarked or physically delivered by June 30. If there is no such newspaper, then such notice shall be conspicuously posted in the offices of the assessor, the treasurer, and the county clerk and recorder and in at least two other public places in the county seat. The assessor shall send news releases containing such notice to radio stations, television stations, and newspapers of general circulation in the county.

(b) For the city and county of Denver only, if the city and county of Denver elects to use the pilot alternate protest procedure established in section 39-5-122.8, the notice required pursuant to paragraph (a) of this subsection (1) shall be modified to state that the city and county of Denver has elected to use the pilot alternate protest procedure established in section 39-5-122.8; that all objections and protests will be determined by the board of county commissioners in accordance with the protest procedures set forth in section 39-5-122.8; that, to preserve the taxpayer's right to object and protest, the taxpayer must notify the board of county commissioners in writing of the taxpayer's objection and protest; that such notice must be delivered or postmarked no later than November 15 of the year in which the notice of valuation was mailed; and that after such date, the taxpayer's right to object and protest the adjustment in valuation is lost.

(2) If any person is of the opinion that his or her property has been valued too high, has been twice valued, or is exempt by law from taxation or that property has been erroneously assessed to such person, he or she may appear before the assessor and object, complete the form mailed with his or her notice of valuation pursuant to section 39-5-121 (1) or (1.5), or file a written letter of objection and protest by mail with the assessor's office before the last day specified in the notice, stating in general terms the reason for the objection and protest. Reasons for the objection and protest may include, but shall not be limited to, the installation and operation of surface equipment relating to oil and gas wells on agricultural land. Any change or adjustment of any ratio of valuation for assessment for residential real property pursuant to the provisions of section 39-1-104.2 shall not constitute grounds for an objection. If the form initiating an appeal or the written letter of objection and protest is filed by mail, it shall be presumed that it was received as of the day it was postmarked. If the form initiating an appeal or the written letter of objection and protest is hand-delivered, the date it was received by the assessor shall be stamped on the form or letter. As stated in the public notice given by the assessor pursuant to subsection (1) of this section, the taxpayer's notification to the assessor of his or her objection and protest to the adjustment in valuation must be delivered, postmarked, or given in person by June 1 in the case of real property. In the case of personal property, the notice must be postmarked or physically delivered by June 30. All such forms and letters received from protesters shall be presumed to be on time unless the assessor can present evidence to show otherwise. The county shall not prescribe the written form of objection and protest to be used. The protester shall have the opportunity on the days specified in the public notice to present his or her objection in writing or protest in person and be heard, whether or not there has been a change in valuation of such property from the previous year and whether or not any change is the result of a determination by the assessor for the current year or by the state board of equalization for the previous year. If the assessor finds any valuation to be erroneous or otherwise improper, the assessor shall correct the error. If the assessor declines to change any valuation that the assessor has determined, the assessor shall state his or her reasons in writing on the form described in section 39-8-106, shall insert the information otherwise required by the form, and shall mail two copies of the completed form to the person presenting the objection and protest so denied on or before the last regular working day of the assessor in June in the case of real property and on or before July 10 in the case of personal property; except that, if a county has made an election pursuant to section 39-5-122.7 (1), the assessor shall mail the copies on or before the last working day of the assessor in August in the case of both real and personal property.

(3) Any person whose objection and protest has been denied in writing by the assessor may appeal to the county board of equalization in the manner provided in article 8 of this title.

(4) The assessor shall continue his hearings from day to day until all objections and protests have been heard, but all such hearings shall be concluded by June 1 in the case of real property and July 5 in the case of personal property.

(5) (a) Any written statement given by any assessor which consists only of a denial of any objection and protest or which consists of a statement referring to compliance by the county with the requirements of valuation for assessment study shall not be sufficient to satisfy the requirements of subsection (2) of this section concerning the statement of reasons why an objection and protest is denied.

(b) Any information presented by the taxpayer regarding the value of his property shall be considered by the assessor in determining whether an adjustment in value is warranted.

**Source: L. 64:** R&RE, p. 703, § 1. **C.R.S. 1963:** § 137-5-22. **L. 73:** p. 1441, § 1. **L. 76:** (1), (2), and (4) amended, p. 762, § 24, effective January 1, 1977. **L. 77:** (2) amended, p. 1735, § 16, effective June 20. **L. 81:** (1), (2), and (4) amended, p. 1833, § 9, effective June 12. **L. 84:** (2) amended, p. 1000, § 1, effective March 5. **L. 88:** (1), (2), and (4) amended, p. 1300, § 6, effective April 29; (2) amended, p. 1287, § 18, effective May 23. **L. 89:** (1) and (2) amended, p. 1455, § 10, effective June 7. **L. 90:** (1), (2), and (4) amended and (5) added, p. 1691, § 9, effective January 1, 1991. **L. 92:** (2) amended, pp. 2209, 2213, §§ 5, 11, effective June 3. **L. 98:** (2) amended, p. 468, § 2, effective July 1. **L. 2002:** (1) and (2) amended, p. 42, § 2, effective August 7. **L. 2005:** (2) amended, p. 390, § 1, effective April 27. **L. 2008:** (1) and (2) amended, p. 949, § 4, effective August 5. **L. 2013:** (1) amended, (HB 13-1113), ch. 11, p. 28, § 2, effective March 8.

**Editor's note:** Amendments to subsection (2) by sections 5 and 11 of Senate Bill 92-50 were harmonized.

**39-5-122.1. Appeal from illegal increase in valuation of property resulting from order of state board. (Repealed)**

**Source: L. 77:** Entire section added, p. 1736, § 17, effective June 20; entire section repealed, p. 1736, § 17, effective January 1, 1978.

**39-5-122.5. Taxpayer's remedies - property tax credit for incorrect valuations used for property tax levied in 1987 for collection in 1988. (Repealed)**

**Source: L. 88:** Entire section added, p. 1288, § 21, effective May 23. **L. 94:** (3) amended, p. 824, § 54, effective April 27. **L. 97:** Entire section repealed, p. 1032, § 71, effective August 6.

**39-5-122.7. Alternate protest and appeal procedure for specified counties.** (1) The governing body of any county may, at the request of the assessor, elect to use an alternate protest and appeal procedure to determine objections and protests concerning valuations of taxable property. The election shall not be made unless the assessor has requested the use of the alternative protest and appeal procedure. The election shall be made on or before May 1 of each year and shall be effective for all objections and protests concerning valuations of taxable property for the year. The governing body of the county shall provide notice of the election to the board of assessment appeals and to the district court in such county.

(2) In the event that a county elects to follow an alternative protest and appeal procedure as authorized by subsection (1) of this section, the assessor shall issue any written determination regarding the objection and protest by the date specified in section 39-5-122 (2).

(3) For purposes of this section, "county" shall include a city and county.

**Source: L. 98:** Entire section added, p. 467, § 1, effective July 1. **L. 2005:** (1) and (2) amended, p. 391, § 2, effective April 27.

**39-5-122.8. Pilot alternate protest procedure - city and county of Denver - repeal.** (1) At the request of the assessor, the governing body of the city and county of Denver may elect to use the pilot alternate protest procedure described in subsection (2) of this section to determine objections and protests concerning valuations of taxable property rather than use other provisions of this article. The election shall not be made unless the assessor has requested the use of an alternate protest procedure. The election shall be made on or before May 1 and shall be effective for all objections and protests concerning valuations of taxable property for that year and for all future years until the governing body elects not to follow the pilot alternate protest procedure or this section is repealed pursuant to subsection (3) of this section. A governing body that elects not to follow the pilot alternate protest procedure, after previously electing to follow such procedure, must do so on or before March 1. The governing body of the city and county of Denver shall provide notice of an election pursuant to this subsection (1) to the board of assessment appeals and to the district court in such county.

(2) (a) The city and county of Denver shall amend the notices required by sections 39-5-121 and 39-5-122 to provide notice that all objections and protests concerning valuation of taxable property shall be determined in accordance with this section.

(b) If any taxpayer is of the opinion that his or her property has been valued too high, has been twice valued, or is exempt by law from taxation or that the property has been erroneously assessed to such person, the taxpayer may file a written objection and protest with the board of county commissioners by delivering or mailing the written objection and protest no later than November 15 of the year in which the notice of valuation was mailed.

(c) Except as otherwise provided in paragraph (d) of this subsection (2), no decision on any written objection and protest concerning valuation of taxable property shall be made by the board of county commissioners unless a hearing is held thereon, at which hearing the assessor and the taxpayer or the taxpayer's authorized representative shall have the opportunity to be present. The board may appoint independent referees who are experienced in property valuation to conduct the hearing on behalf of the board, to make findings, and to submit recommendations to the board for its final decision. All decisions shall be mailed to the taxpayer or the taxpayer's authorized representative within five business days after the date on which such decision is rendered. If requested by the board of county commissioners, the taxpayer or the taxpayer's authorized representative shall be present at a hearing held pursuant to this paragraph (c) and shall produce information to support the written objection and protest. In the event the board of county commissioners requests the taxpayer or the taxpayer's authorized representative to be present at a hearing, the board of county commissioners shall provide at least thirty days' notice of the hearing, unless the taxpayer or the taxpayer's authorized representative requests a hearing at an earlier date. The board of county commissioners shall provide written notice of the hearing by certified mail, and such written notice shall contain the date, time, and place of the hearing. Upon request of the taxpayer or the taxpayer's authorized representative, the board of county commissioners may reschedule the hearing. If the taxpayer or the taxpayer's authorized representative fails to be present at the hearing when requested by the board of county commissioners, absent good cause, the board of county commissioners shall dismiss the written

objection and protest, and the taxpayer or the taxpayer's authorized representative shall not have the right to appeal the dismissal.

(d) Upon authorization by the board of county commissioners, the assessor may review written objections and protests concerning valuation of taxable property and settle by written mutual agreement any such written objection and protest. Any reduction agreed upon and settled pursuant to this paragraph (d) is not subject to the requirements of paragraph (c) of this subsection (2).

(e) Every written objection and protest concerning the valuation of taxable property shall be acted upon pursuant to the provisions of this section by the board of county commissioners or the assessor, as appropriate, within six months of the date of filing such petition.

(f) If the board of county commissioners grants an objection and protest, in whole or in part, the assessor shall adjust the valuation accordingly; but, if the objection and protest is denied, in whole or in part, the taxpayer or the taxpayer's authorized representative may appeal the valuation set by the assessor or, if the valuation is adjusted as a result of a decision of the board of county commissioners, may appeal the adjusted valuation to the board of assessment appeals or to the Denver district court for a trial de novo, or the taxpayer may submit the case to arbitration pursuant to the provisions of section 39-8-108.5. Such appeal or submission to arbitration shall be taken no later than thirty days after the date such denial is mailed pursuant to paragraph (c) of this subsection (2).

(g) If the board of county commissioners does not issue a written decision on an objection or protest for valuation of taxable property before December 1 of the year in which the notice of valuation was mailed, the taxpayer's written objection and protest shall be deemed to be a petition for abatement or refund and shall be determined in accordance with section 39-10-114. If the board of county commissioners, pursuant to section 39-10-114 (1), or the property tax administrator, pursuant to section 39-2-116, denies the petition for abatement or refund of taxes in whole or in part, the taxpayer or the taxpayer's authorized representative may appeal to the board of assessment appeals or to the Denver district court for a trial de novo, or may submit the case to arbitration pursuant to section 39-8-108.5. Such appeal or submission to arbitration shall be taken no later than thirty days after the entry of any such decision.

(3) This section is repealed, effective December 31, 2018.

**Source: L. 2013:** Entire section added, (HB 13-1113), ch. 11, p. 29, § 3, effective March 8.

**39-5-123. Abstract of assessment or amended abstract of assessment.** (1) (a) Upon conclusion of hearings by the county board of equalization, as provided in article 8 of this title, the assessor shall complete the assessment roll of all taxable property within the assessor's county, and, no later than August 25 in each year or no later than November 21 in each year in any county that has made an election pursuant to section 39-5-122.7, the assessor shall prepare therefrom three copies of the abstract of assessment and in person, and not by deputy, shall subscribe his or her name, under oath, to the following statement, which shall be a part of such abstract:

I, ....., the assessor of ..... county, Colorado, do solemnly swear that in the assessment roll of such county I have listed and valued all taxable property located therein and

that such property has been assessed for the current year in the manner prescribed by law and that the foregoing abstract of assessment is a true and correct compilation of each schedule.

.....

(b) Upon completion by the assessor of the abstract of assessment, the chairman of the board of county commissioners shall examine such abstract and shall sign the following statement, which shall be a part of such abstract:

I, ....., chairman of the ..... county board of county commissioners, certify that the county board of equalization has concluded its hearings, pursuant to the provisions of article 8 of this title, that I have examined the abstract of assessment, and that all valuation changes ordered by the county board of equalization have been incorporated therein.

.....

(2) The assessor shall file two copies of the abstract of assessment with the administrator, and, appended thereto, the assessor shall also file the aggregate valuation for assessment of all taxable property in the county, each municipality, and each school district within the county, by classes and subclasses, on a form prescribed by the administrator.

(3) Along with the abstract of assessment, the assessor shall file with the property tax administrator information relating to the valuation for assessment for residential real property, including new construction, increased volume of mineral and oil and gas production, and any other data determined by the administrator as necessary to determine the valuation for assessment for such property.

**Source: L. 64:** R&RE, p. 704, § 1. **C.R.S. 1963:** § 137-5-23. **L. 67:** p. 949, § 17. **L. 76:** Entire section amended, p. 773, § 1, effective April 30. **L. 88:** (3) added, p. 1288, § 19, effective May 23. **L. 89:** (1) amended, p. 1457, § 11, effective June 7. **L. 93:** (1) and (2) amended, p. 1283, § 5, effective June 6. **L. 2000:** (1)(a) amended, p. 1500, § 4, effective August 2.

**39-5-124. Property tax administrator to examine abstract.** (1) When the abstract of assessment has been subscribed and sworn to by the assessor and by the chairman of the board of county commissioners, the assessor shall transmit two copies thereof to the administrator and shall retain the third copy for endorsement of the tax warrant thereon.

(2) Upon receipt of such abstract, the administrator shall examine the same without delay and, if it is found correct as to form, shall certify such fact to the assessor, and such certification shall be conclusive evidence of the fact, time, and place of filing such abstract. If such abstract is found incorrect as to form, the administrator shall return the same to the assessor for correction.

**Source: L. 64:** R&RE, p. 705, § 1. **C.R.S. 1963:** § 137-5-24. **L. 93:** (1) amended, p. 1284, § 6, effective June 6.

**39-5-125. Omission - correction of errors.** (1) Except as otherwise provided in subsection (3) of this section, whenever it is discovered that any taxable property has been omitted from the assessment roll of any year or series of years, the assessor shall immediately

determine the value of such omitted property and shall list the same on the assessment roll of the year in which the discovery was made and shall notify the treasurer of any unpaid taxes on such property for prior years.

(2) Omissions and errors in the assessment roll, when it can be ascertained therefrom what was intended, may be supplied or corrected by the assessor at any time before the tax warrant is delivered to the treasurer or by the treasurer at any time after the tax warrant has come into his hands.

(3) If taxable personal property that has been omitted from the assessment roll of any year or series of years is discovered due to a property owner or an agent of a property owner who advertises for rent furnished residential real property providing information to the assessor pursuant to section 39-5-108.5 (2), the assessor shall not notify the treasurer of any unpaid taxes on the taxable personal property for prior years and the property owner or agent shall not be liable for any such unpaid taxes for prior years.

(4) If omitted property is added by the assessor or the treasurer for a prior assessment year, then a petition for abatement or refund may be filed at any time after the taxes are levied and an amended tax bill has been generated, but before two years after January 1 of the year following the year in which the taxes are levied.

**Source: L. 64:** R&RE, p. 705, § 1. **C.R.S. 1963:** § 137-5-25. **L. 2009:** (1) amended and (3) added, (HB 09-1110), ch. 162, p. 700, § 2, effective August 5. **L. 2017:** (4) added, (HB 17-1049), ch. 148, p. 495, § 2, effective August 9.

**39-5-126. Wrongful return by assessor.** Whenever any assessor willfully and knowingly omits any taxable property in his county from the assessment roll, or willfully and knowingly values any taxable property in his county contrary to the manner prescribed by law, and willfully and knowingly subscribes and swears to an abstract of assessment reflecting such omissions and containing such unlawful valuations, he is guilty of perjury in the second degree and, upon conviction thereof, shall be punished according to law.

**Source: L. 64:** R&RE, p. 705, § 1. **C.R.S. 1963:** § 137-5-26. **L. 67:** p. 950, § 18. **L. 72:** p. 570, § 52.

**Cross references:** For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

**39-5-127. Correction of assessments.** Whenever the state board of equalization makes any change in the abstract of assessment of any county or orders an increase or decrease in the valuation of any class or subclass of property located therein, the assessor shall make the necessary changes in the abstract of assessment of the next succeeding taxable year required to carry out such order; except that, whenever the state board of equalization changes the valuation of any class or subclass of property pursuant to section 39-9-103 (7), the assessor shall make the necessary changes in the abstract of assessment of the current taxable year required to carry out such order.

**Source: L. 64:** R&RE, p. 705, § 1. **C.R.S. 1963:** § 137-5-27. **L. 77:** Entire section amended, p. 1755, § 1, effective July 23. **L. 83:** Entire section amended, p. 2092, § 1, effective September 23.

**39-5-128. Certification of valuation for assessment.** (1) No later than August 25 of each year, the assessor shall certify to the department of education, to the clerk of each town and city, to the secretary of each school district, and to the secretary of each special district within the assessor's county the total valuation for assessment of all taxable property located within the territorial limits of each such town, city, school district, or special district and shall notify each such clerk, secretary, and board to officially certify the levy of such town, city, school district, or special district to the board of county commissioners no later than December 15. The assessor shall also certify to the secretary of each school district the actual value of the taxable property in the district.

(2) Repealed.

(3) If the valuation for assessment for all or part of any such political subdivision has been divided for an urban renewal area, pursuant to section 31-25-107 (9)(a), C.R.S., any certification under this section shall be based upon that portion of the valuation for assessment under subparagraph (I) of said section 31-25-107 (9)(a), C.R.S., so long as such division remains in effect.

**Source: L. 64:** R&RE, p. 705, § 1. **C.R.S. 1963:** § 137-5-28. **L. 67:** p. 950, § 19. **L. 75:** (3) added, p. 1278, § 6, effective July 16. **L. 76:** (1) amended, p. 687, § 5, effective July 1. **L. 86:** (1) amended, p. 1030, § 15, effective January 1, 1987. **L. 87:** (1) amended and (2) repealed, p. 1411, §§ 14, 15, effective April 22. **L. 88:** (1) amended, p. 1288, § 20, effective May 23. **L. 89:** (1) amended, p. 1457, § 12, effective June 7. **L. 93:** (1) amended, p. 1689, § 6, effective June 6. **L. 94:** (1) amended, p. 807, § 10, effective April 27. **L. 96:** (1) amended, p.115, § 2, effective March 25.

**39-5-129. Delivery of tax warrant - public inspection.** As soon as practicable after the requisite taxes for the year have been levied but in no event later than January 10 of each year, the assessor shall deliver the tax warrant under his hand and official seal to the treasurer, which shall be made readily available to the general public during the collection year in a convenient location in the courthouse. The assessor shall retain one or more true copies thereof, which shall be made readily available to the general public during the collection year in a convenient location in the courthouse. Such tax warrant shall set forth the assessment roll, reciting the persons in whose names taxable property in the county has been listed, the class of such taxable property and the valuation for assessment thereof, the several taxes levied against such valuation, and the amount of such taxes extended against each separate valuation. At the end of the warrant, the aggregate of all taxes levied shall be totaled, balanced, and prorated to the several funds of each levying authority, and the treasurer shall be commanded to collect all such taxes.

**Source: L. 64:** R&RE, p. 706, § 1. **C.R.S. 1963:** § 137-5-29. **L. 67:** p. 950, § 20. **L. 88:** Entire section amended, p. 1097, § 2, effective April 6. **L. 89:** Entire section amended, p. 1457, § 13, effective June 7.

**39-5-130. Informality not to invalidate.** No informality in complying with the requirements of section 39-5-129 shall render any proceedings for the collection of taxes invalid. The assessor shall take the receipt of the treasurer for the tax warrant, and such warrant shall be full and complete authority for the treasurer to collect all taxes therein set forth.

**Source: L. 64:** R&RE, p. 706, § 1. **C.R.S. 1963:** § 137-5-30.

**39-5-131. Certification and valuation of pollution control property. (Repealed)**

**Source: L. 78:** Entire section added, p. 468, § 3, effective July 1. **L. 79:** (1), (3), (4), and (8) amended and (9) added, pp. 1455, 1456, §§ 2, 4, effective June 22. **L. 81:** (9) R&RE, p. 1872, § 6, effective June 29. **L. 88:** Entire section repealed, p. 1275, § 14, effective May 29.

**39-5-132. Assessment and taxation of new construction.** (1) The general assembly hereby finds and declares that it is a matter of statewide concern that revenues from property taxes on newly constructed buildings may need to be put to special use in order to accommodate the capital needs resulting from such new construction, especially to accommodate the capital needs of the public schools in this state. The general assembly further declares that it is essential that such revenue be available as soon as possible after the time such new construction is put to use. The general assembly further finds and declares that the board of county commissioners is the appropriate governmental unit to determine the extent of the growth within the county and the finding of severe growth impact shall be at the sole discretion of the board.

(2) (a) (I) (A) If the board of county commissioners determines that a county is becoming severely impacted by residential growth, the board of county commissioners shall make a finding of severe growth impact based upon the rate of increase in the county of the number of residential units being constructed within the county and an increase in pupil enrollment in school districts within the county such that at least one school district in the county meets the growth criteria described in sub-subparagraph (E) of this subparagraph (I), and other factors which indicate patterns of growth and growth impact, and shall, on or before January 1, resolve to implement the assessment and levy procedures required under this section. When a board of county commissioners makes such resolution, the provisions of this section shall apply countywide notwithstanding any law to the contrary. The board of county commissioners shall not make a finding of severe growth impact unless the number of residential units in the county will increase by over two percent during the county's current fiscal year. The board of county commissioners may negotiate with taxing authorities in the county to provide the costs of implementing the assessment and levy procedures required under this section. Notwithstanding any other provision of law to the contrary, any such taxing authority is hereby authorized to use moneys from its general fund to provide the costs specified in this subparagraph (I) and to deposit any moneys received as reimbursement pursuant to subsection (4) of this section into its general fund.

(B) Whenever construction occurs on any new taxable building within the boundaries of a county after January 1 of a given year, the assessor shall value the building on July 1 of that year, and the assessor shall add the valuation for assessment thereof to the abstract of assessment for such tax year, except that portion of the valuation for assessment as is excluded by paragraph (b) of this subsection (2). If the building is complete on July 1, such valuation for assessment

shall be prorated at the same ratio as the number of months it is completed bears to the full year. Otherwise, the valuation added to the abstract shall be one-half of the difference between the valuation for assessment on January 1 and the valuation for assessment on July 1. For the purposes of this section, the total valuation for assessment of all newly constructed taxable buildings in a county as calculated pursuant to this subsection (2) shall be known as the "growth valuation for assessment" for such county. For purposes of this section, completion shall be considered to be when a certificate of occupancy is issued, when the building is ready for use, or after the final inspection, at the sole discretion of the county assessor. As used in this section, "building" means a roofed and walled real property improvement, and any uncertainty concerning whether or not a particular real property improvement is a building within the meaning of this definition shall be resolved by the property tax administrator.

(C) The assessor shall give written notification of the valuation of such newly constructed taxable building to the taxpayer. The notice shall, at a minimum, set forth the valuation on the assessment date, the prorated valuation of the newly constructed taxable building, and the total valuation for the property tax year. The notice shall also advise the taxpayer that he may protest and appeal the valuation of the newly constructed taxable building at the same time and in the same manner, pursuant to section 39-5-122, as the total valuation of his property for the next property tax year may be appealed. If the taxpayer is successful in the protest or appeal, the amount in excess shall be refunded directly to the taxpayer by the county treasurer.

(D) In order to promote the most efficient administration of this section, each county or municipality shall ensure that any office or agency that received information relative to the state of completion of new taxable buildings shall promptly transmit such information to the county assessor. After January 1, 1987, the property tax administrator shall transmit to the assessor in August of each year both the assessed value of any newly constructed buildings owned by public utility companies and their state of completion on July 1 as well as their value on the previous January 1.

(E) The growth criteria for school districts for purposes of sub-subparagraph (A) of this subparagraph (I) shall be whether the commissioner of education or the commissioner's designee certifies that the pupil enrollment of the district for the past three years, as determined on October 1 of each year in accordance with former section 22-53-103 (7) or section 22-54-103 (10), has increased by three percent or more over each preceding year for those districts with pupil enrollments of at least one thousand pupils or by twenty-five or more pupils each year for those districts with pupil enrollments of less than one thousand pupils.

(II) All general property taxes which are levied on all other taxable real and personal property within a county in the tax year during which such construction occurs shall also be levied against the growth valuation for assessment of such county for collection the following year. Revenues raised from taxes levied on such growth valuation for assessment shall be credited to the county's capital growth fund, which each board of county commissioners shall establish, for use and distribution pursuant to subsection (4) of this section. The actual value and valuation for assessment of such newly constructed taxable building for subsequent years shall be the actual value and valuation for assessment as determined by the provisions of law other than this section, and tax revenues attributable thereto shall be distributed as provided by law without regard to this section.

(b) The provisions of this section shall not apply to that portion of the valuation for assessment of a newly constructed taxable building and the land underlying such building which is contained in the abstract of assessment on the assessment date.

(c) If the newly constructed taxable building is a residential unit, the assessment percentage to be applied to the land underlying such building shall be based on a residential classification of the land. If the land underlying such building was classified as vacant land, the classification shall be changed to residential on the abstract of assessment for the tax year in which the assessor added the valuation of the newly taxable residential building to the abstract for assessment.

(3) By August 25 of each year, the assessor shall notify the board of county commissioners of the amount of the growth valuation for assessment of the county for that tax year, the percentage that such growth valuation for assessment bears to the total valuation for assessment of the county for such tax year, the portion of such growth valuation for assessment that is attributable to newly constructed taxable buildings within the boundaries of each taxing authority in the county, and the percentage that such portion bears to the total valuation for assessment of each taxing authority in which such newly constructed taxable buildings are located.

(4) Upon collection of taxes on the growth valuation for assessment in the first year, the board of county commissioners shall reimburse the county general fund and the taxing authorities which contributed to the costs of implementing the procedures specified pursuant to this section and shall also pay into the county general fund the projected budgeted costs of implementation in this second year. The remaining moneys shall be distributed to the taxing authorities as next specified in this subsection (4). In the second and subsequent years that procedures are implemented pursuant to this section, the board of county commissioners, after depositing into the county general fund the projected budgeted costs of administering this section in the current year, shall distribute the moneys in the county's capital growth fund to the taxing authorities where the newly constructed taxable building is actually located in the same manner as all other property tax revenues collected on similar taxable buildings are distributed; except that such moneys shall be used by the taxing authority for capital expenditures only and not for operating expenses. Every taxing authority receiving funds pursuant to this subsection (4) shall make capital expenditures so that they benefit the taxing authority within the county levying on the growth valuation for assessment pursuant to this section, unless such governing body finds a compelling reason for making expenditures so that they benefit the taxing authority within another county.

(5) Moneys received by a school district pursuant to this section shall be deposited in the district's capital reserve fund and shall not be included in calculating the amount of revenue which a district is entitled to receive from the property tax levy for the general fund of the district under the "Public School Finance Act of 1994", article 54 of title 22, C.R.S.

(6) When the board of county commissioners determines that a county is no longer being severely impacted by residential growth, the board of county commissioners shall so find and shall, on or before January 1, resolve to end implementation of the assessment and levy procedures required under this section.

(7) Nothing in this section shall be construed to affect tax increment financing as said financing is implemented pursuant to sections 31-25-107 (9) and 31-25-807 (3), C.R.S., nor the distribution of specific ownership taxes pursuant to section 42-3-107 (24), C.R.S.

**Source: L. 85:** Entire section added, p. 1223, § 1, effective July 1. **L. 88:** (5) amended, p. 824, § 37, effective May 24. **L. 90:** (2)(a)(I)(C), (2)(a)(I)(D), and (3) amended, p. 1693, § 10, effective June 9. **L. 94:** (2)(a)(I)(A) and (5) amended and (2)(a)(I)(E) added, pp. 807, 825, §§ 11, 55, effective April 27; (7) amended, p. 2568, § 87, effective January 1, 1995. **L. 96:** (3) amended, p.17, § 3, effective February 22. **L. 2002:** (2)(c) added, p. 843, § 3, effective August 7. **L. 2005:** (7) amended, p. 1183, § 35, effective August 8.

**39-5-133. 2011 modification of statutory definition of "agricultural land" - TABOR election - adjustment of district mill levy.** (1) (a) The requirements of paragraph (b) of this subsection (1) shall only apply:

(I) To a district, as defined in section 20 (2)(b) of article X of the state constitution, that has not obtained voter approval to retain and spend revenues in excess of the fiscal year spending and property tax revenue limits imposed on the district by section 20 (7)(b) and (7)(c) of article X of the state constitution sufficient to allow the retention of all additional property tax revenues; and

(II) Where the district has additionally determined, on the basis of the best available information, that implementation of the modification of the definition of "agricultural land" required by House Bill 11-1146, enacted in 2011, will cause a net property tax revenue gain to the district sufficient to cause the district to exceed such limits.

(b) In the case of a district that meets the requirements specified in paragraph (a) of this subsection (1), the district may place before the voters of the district at any election at which such ballot issue may be placed on the ballot the question of whether the district may retain and spend revenues in excess of the limits imposed on the district by section 20 (7)(b) and (7)(c) of article X of the state constitution sufficient to allow the retention of the net property tax revenue gain to the district resulting from the implementation of the modification of the definition of "agricultural land" required by House Bill 11-1146, enacted in 2011.

(c) If a majority of the voters of the district fail to approve the ballot issue specified in paragraph (b) of this subsection (1), or if no ballot issue has been submitted to the voters, the district shall adjust the number of mills levied by the district to eliminate any net property tax revenue gain to the district resulting from the modification of the definition of "agricultural land" required by House Bill 11-1146, enacted in 2011.

(2) Notwithstanding any other provision of law, the provisions of subsection (1) of this section shall not apply to any district, regardless of whether or not it satisfies the requirements of paragraph (a) of subsection (1) of this section, that has determined, on the basis of the best available information, that implementation of the modification of the definition of "agricultural land" required by House Bill 11-1146, enacted in 2011, will not cause a net property tax revenue gain to the district.

**Source: L. 2011:** Entire section added, (HB 11-1146), ch. 166, p. 572, § 2, effective January 1, 2012.

PART 2

MOBILE HOMES

**Editor's note:** This part 2 was repealed in 1975 and was subsequently recreated and reenacted in 1977, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 1975, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**39-5-201. Legislative declaration.** (1) The general assembly hereby finds and declares that the present method of taxation of mobile homes, the specific ownership tax, is inappropriate; that mobile homes are more properly taxed by a change from such method to an ad valorem method of taxation similar to the method of taxation of conventional housing.

(2) Uniform treatment of mobile homes is hereby declared to be an exclusive matter of statewide concern. No home rule city, city, county, or other local government shall impose a license or any other special fees on the ownership or occupancy of mobile homes that is not similarly imposed on conventional homes.

(3) Repealed.

**Source: L. 77:** Entire part RC, p. 1740, § 3, effective January 1, 1978. **L. 78:** (3) added, p. 478, § 1, effective March 10. **L. 79:** (1) amended, p. 1640, § 51, effective July 19. **L. 83:** (3) repealed, p. 1485, § 11, effective April 22.

**39-5-202. Taxation of mobile homes - effective date.** Commencing January 1, 1978, mobile homes shall be subject to ad valorem taxation under the provisions of articles 1 to 9 of this title as if they were real property but shall be subject to the provisions of article 10 of this title concerning the collection of taxes as if they were personal property.

**Source: L. 77:** Entire part RC, p. 1741, § 3, effective January 1, 1978.

**39-5-203. Mobile homes - determination of value.** (1) For the property tax year beginning January 1, 1983, and for each property tax year thereafter, the actual value of a mobile home shall be determined by the assessor in accordance with the provisions of sections 39-1-103 (5) and 39-1-104 (10.2) for the determination of the actual value of real property.

(2) Repealed.

(3) (a) The valuation for assessment of each mobile home shall be computed on the same basis as the valuation for assessment of all taxable property; except that mobile homes shall be exempt from property taxation while located on sales display lots of mobile home dealers and listed as inventories of merchandise by such mobile home dealers. It is the duty of the seller of a mobile home to provide to the buyer a tax certificate and an itemized list of household furnishings, as defined in section 39-3-102 and which are included in the selling price of the mobile home, at the time of sale.

(b) A person who knowingly fails to provide an itemized list of household furnishings as required by this subsection (3) commits a class 2 petty offense and, upon conviction thereof, shall be fined two hundred dollars; except that, upon conviction of a second or subsequent such offense, such person commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source: L. 77:** Entire part RC, p. 1741, § 3, effective January 1, 1978. **L. 78:** (3) amended, p. 478, § 2, effective March 10. **L. 80:** (2)(b) and (3) amended, p. 498, § 3, effective July 1. **L. 82:** (2)(a) amended, p. 557, § 1, effective January 1, 1983; (1) amended and (2) repealed, pp. 555, 556, §§ 2, 3, effective January 1, 1984. **L. 83:** (1) R&RE and (2) repealed, pp. 1498, 1499, §§ 2, 3, effective April 12; (3) amended, p. 1484, § 9, effective April 22. **L. 87:** (1) amended, p. 1388, § 8, effective January 1, 1991. **L. 88:** (1) amended, p. 1274, § 9, effective January 1, 1993. **L. 89:** (3)(a) amended, p. 1484, § 9, effective April 23. **L. 94:** (3) amended, p. 707, § 15, effective April 19. **L. 95:** (1) amended, p. 9, § 4, effective March 9. **L. 2002:** (3)(b) amended, p. 1555, § 345, effective October 1.

**Cross references:** (1) For the power of county commissioners to levy taxes, see § 39-1-111; for household furnishings being exempt from taxation, see § 39-3-102.

(2) For the legislative declaration contained in the 2002 act amending subsection (3)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

**39-5-204. Notification concerning mobile homes in a county for part of a year.** (1) (a) Any person who brings a mobile home into a county after the assessment date of any year shall immediately notify the assessor of the location of the mobile home within the county.

(b) Repealed.

(c) For property tax years commencing on or after January 1, 1999:

(I) The assessor shall list and value a mobile home brought into a county from another county in this state after the assessment date for any year as of the assessment date of the following year.

(II) The assessor shall list and value a mobile home brought into a county from outside this state after the assessment date at such proportion of its value for the full calendar year as the number of calendar months remaining in such year bears to twelve; but, if the mobile home is brought into the county from outside this state before the sixteenth day of any calendar month, such month shall be considered as a full calendar month, and, if the mobile home is brought into the county from outside this state on or after the sixteenth day of any calendar month, such month shall be disregarded.

**Source: L. 77:** Entire part RC&RE, p. 1741, § 3, effective January 1, 1978. **L. 98:** Entire section amended p. 439, § 1, effective August 5.

**Editor's note:** Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective January 1, 2000. (See L. 98, p. 439.)

**39-5-205. Relocation of a mobile home - collection of taxes.** (1) Any person who intends to remove his or her mobile home from a county or from one location in a county to a new location in the same county shall notify the treasurer of this fact, and all property taxes levied or assessed on such mobile home shall thereupon become due and payable if the mobile home is to be removed from the county. Upon the request of the treasurer, the assessor shall certify to such person the valuation for assessment of the mobile home for the current year.

(2) Repealed.

(3) For property tax years commencing on or after January 1, 1999:

(a) If a mobile home located in a county on the assessment date is to be removed from the county to another county in this state before the next following assessment date, all property taxes levied or assessed on such mobile home shall, upon the mobile home owner providing notice of such removal to the treasurer pursuant to subsection (1) of this section, become due and payable for the current property tax year without proration.

(b) If a mobile home located in a county on the assessment date is to be removed from this state before the next following assessment date, all property taxes levied or assessed on such mobile home shall, upon the mobile home owner providing notice of such removal to the treasurer pursuant to subsection (1) of this section, become due and payable. The value to be placed on the property by the assessor pursuant to this paragraph (b) shall be such proportion of its value for the full calendar year as the number of calendar months in such year the mobile home was located in the original location bears to twelve; but, if the mobile home is to be removed from its original location before the sixteenth day of any calendar month, such month shall be disregarded, and, if the mobile home is to be removed from its original location on or after the sixteenth day of any calendar month, such month shall be considered as a full calendar month.

(4) If the levy for the current year has not then been fixed and made, the levy for the previous year shall be used by the treasurer to determine the amount of taxes due pursuant to this section. At such time as the levy for the current year has been fixed and made, the amount of any taxes collected on the property in excess of the amount correctly due and payable shall be refunded by the treasurer to the owner of the property forthwith; but, in all cases where the amount of taxes so collected is less than the amount correctly due and payable, the amount uncollected shall be considered an erroneous assessment and shall be reported with other erroneous assessments in the manner prescribed by law.

**Source: L. 77:** Entire part RC&RE, p. 1741, § 3, effective January 1, 1978. **L. 91:** Entire section amended, p. 1697, § 7, effective July 1. **L. 98:** Entire section amended, p. 440, § 2, effective August 5.

**Editor's note:** Subsection (2)(b) provided for the repeal of subsection (2), effective January 1, 2000. (See L. 98, p. 440.)

**39-5-206. Payments to counties, cities, towns, and special districts in lieu of taxes for calendar year 1978. (Repealed)**

**Source: L. 77:** Entire part RC, p. 1741, § 3, effective January 1, 1978. **L. 79:** Entire section repealed, p. 1641, § 52, effective July 19.

## ARTICLE 6

Valuation of Mines

**Editor's note:** This article was repealed and reenacted in 1964 and was subsequently repealed and reenacted in 1965, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article prior to 1965, consult the Colorado

statutory research explanatory note beginning on page vii in the front of this volume and the editor's note before the article 1 heading.

**39-6-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Mine" means one or more mining claims or acres of other land, including all excavations therein from which ores, metals, or mineral substances of every kind are removed, except drilled wells producing sulfur and oil, gas, and other liquid or gaseous hydrocarbons, and all mining improvements within such excavations, together with all rights and privileges thereunto appertaining.

(2) "Mining claims" means lode, placer, millsite, and tunnelsite claims, whether entered for patent, patented, or unpatented, regardless of size or shape.

(3) "Ore" includes, without limitation, metallic and nonmetallic mineral substances of every kind, except those specifically excluded under section 39-6-104.

(4) "Other land" means any parcel of real property which is not a mining claim.

**Source: L. 65:** R&RE, p. 1101, § 1. **C.R.S. 1963:** § 137-6-1. **L. 85:** (4) added, p. 1211, § 5, effective May 9.

**39-6-102. Abstract and map of mining claims. (Repealed)**

**Source: L. 65:** R&RE, p. 1101, § 1. **C.R.S. 1963:** § 137-6-1. **L. 93:** Entire section repealed, p. 440, § 7, effective July 1.

**39-6-103. Listing of mining claims and mines.** (1) The assessor shall list all mining claims and mines located within his county on the assessment date, including for each claim the name of the lode, placer, millsite, or tunnelsite, the United States mineral survey number, if any, the name of the mining district in which such claim is located, and the number of acres contained in such claim. If a claim is not patented, the numbers of the book and page at which the location of such claim is recorded in the county records shall be used in place of the United States mineral survey number. If two or more mining claims are included in one patent with one United States survey number, the assessor shall list together such mining claims with the one survey number and the total number of acres contained therein. In listing mining claims, abbreviations of words and figures may be used. If other land is part of such mine, then the numbers of the book and page at which the conveyance deed is recorded on the legal description of such other land shall be used in place of the United States mineral survey number.

(2) Whenever, to the knowledge of the assessor, contiguous mining claims are worked or operated through or by means of the same shafts, tunnels, or other openings, they shall be listed as one unit; and whenever, to the knowledge of the assessor, contiguous placer claims are worked or operated by means of the same ditch or other works, they shall be listed as one unit, including such ditch or other works; and whenever, to the knowledge of the assessor, contiguous other land is used in the same manner as the claims referred to in this subsection (2), it shall also be listed as one unit.

(3) The mining property of a mine shall include mining claims and all other lands and interests therein, whether owned by federal, state, or lesser governmental subdivisions or otherwise and whether owned in fee or held by discovery and location or under easement, lease,

license, or other arrangement with the owner thereof, unless otherwise provided for in this article.

**Source: L. 65:** R&RE, p. 1102, § 1. **C.R.S. 1963:** § 137-6-2. **L. 85:** (1) and (2) amended, p. 1211, § 6, effective May 9.

**39-6-104. Classification of mines.** All mines, except mines worked or operated primarily for coal, asphaltum, rock, limestone, dolomite, or other stone products, sand, gravel, clay, or earths, shall, for the purpose of valuation for assessment, be divided into two classes: Producing and nonproducing.

**Source: L. 65:** R&RE, p. 1102, § 1. **C.R.S. 1963:** § 137-6-3.

**39-6-105. Producing mines defined.** All mines whose gross proceeds during the preceding calendar year have exceeded the amount of five thousand dollars shall be classified as producing mines, and all others shall be classified as nonproducing mines. Mines shall be classified in the manner provided for in this article regardless of the processing method, the ultimate use, or the consumption of the ores or minerals for which they are primarily worked or operated.

**Source: L. 65:** R&RE, p. 1102, § 1. **C.R.S. 1963:** § 137-6-4.

**39-6-106. Valuation for assessment of producing mines.** (1) Every person owning or operating any mine classified as a producing mine shall, no later than April 15 of each year, prepare, sign under the penalty of perjury in the second degree, and file with the assessor of the county wherein such mine is located a statement showing:

(a) The name of such mine and a list of mining claims and any other lands comprising the mining property of such mine, together with the total number of acres contained in each claim or parcel so listed;

(b) The name of the owner thereof, together with the name of the operator thereof, and the address of each;

(c) The total number of acres contained in such mine and, if such mine is located in more than one county, the total number of acres contained in such mine in each county;

(d) The number of tons of ore extracted therefrom during the calendar year immediately preceding and, if the value of the products derived from the ore is used in determining gross value, the number of tons, pounds, or ounces of products derived from the ore;

(e) The gross value from production of the ore extracted during said calendar year, which means and includes the amount for which ore or the first salable products derived therefrom were or could be sold by the owner or operator of a mine, as determined using actual gross selling prices;

(f) The costs of extracting such ore, excluding the compensation of any officer or agents not actively and continuously engaged in or about the mine;

(g) The costs of treatment, reduction, transportation, and sale of such ore or the first salable products derived therefrom;

(h) The gross proceeds from production of such ore, which means and includes the value of the ore immediately after extraction, which value may be determined by deducting from gross value all costs of treatment, reduction, transportation, and sale of such ore or the first salable products derived therefrom;

(i) The net proceeds from production of such ore, which means and includes the amount determined by deducting from the gross proceeds all costs of extracting such ore.

(1.4) (a) The owner or operator of a producing mine may request permission to state an average figure for the items required by paragraphs (d) to (i) of subsection (1) of this section based on any three-year, five-year, or ten-year period immediately preceding January 1 of the year in which the statement must be filed. The same reporting method shall be used for all annual statements filed in a single year pertaining to a particular mine.

(b) (I) The owner or operator may make an initial request pursuant to this subsection (1.4) by filing the request with the board of county commissioners of each county in which the mine is located at least forty-five days prior to the reporting date specified in the introductory portion to subsection (1) of this section and attaching a copy of the request to the annual statement filed pursuant to subsection (1) of this section with the county assessor of each county in which the mine is located.

(II) The owner or operator may make subsequent changes in the reporting method pursuant to this subsection (1.4) by filing a request for a change in the reporting method with the board of county commissioners and the county assessor of every county in which the mine is located at least forty-five days prior to the reporting date specified in the introductory portion to subsection (1) of this section.

(III) The board of county commissioners of each county which receives a request pursuant to this subsection (1.4) shall approve or deny the request at least thirty days prior to the reporting date specified in the introductory portion to subsection (1) of this section. Failure of a board of county commissioners to approve or deny the request within the thirty days shall be deemed an approval of the request.

(c) Once an owner or operator has made the initial election allowed by this subsection (1.4), the owner or operator shall file all subsequent annual statements pursuant to subsection (1) of this section using the same reporting method. The owner or operator shall not alter the reporting method until the board of county commissioners for every county in which the mine is located authorizes the use of the alternate method.

(d) The fact that authorization to alter the reporting method has not been received from all or any of the boards of county commissioners for the counties in which the mine is located shall not relieve the owner or operator from the obligation to file the annual statement pursuant to subsection (1) of this section with all counties in which the mine is located.

(1.7) As used in subsection (1) of this section, unless the context otherwise requires:

(a) (I) "Costs" means those costs directly attributable to the operation of the producing mine and to the treatment, reduction, transportation, or sale of the ore and includes, but is not limited to, allocation of:

(A) The costs of capital assets, which only include those expenditures listed on the fixed asset records of the mine;

(B) Preproduction development costs amortized over the life of the mine; and

(C) Off-site costs directly attributable to the operation of the producing mine or to the treatment, reduction, transportation, or sale of the ore; however, in no event shall off-site costs

include compensation of any officer or agent not actively and continuously engaged in or about the mine.

(II) Allocation of the costs of capital assets pursuant to this paragraph (a) shall be done in accordance with generally accepted accounting principles. No change in the allocation method may be made without the prior approval of the county boards of equalization in all counties in which the mine is located.

(b) "Costs" does not include:

(I) Any amounts designated as profit or margin which are attributable to any part of the treatment, reduction, transportation, or sale of the ore; or

(II) Any amounts which have been or could have been deducted previously as part of the valuation of the producing mine pursuant to this section.

(2) On the basis of the information contained in such statement, the assessor shall value such mine for assessment at an amount equal to twenty-five percent of the gross proceeds, but if the net proceeds exceed twenty-five percent of the gross proceeds, then such mine shall be valued for assessment at the amount of such net proceeds.

(3) If any mining claim or other land is owned by the same person operating a producing mine which is contiguous to said claim and if, during the preceding calendar year, ore was actually extracted from said claim or other land or transported through such claim or other land by cut or tunnel or if any phase of the operation of said producing mines was conducted on such claim or other land, then such claim or other land shall be deemed to be a part of such producing mine and assessed therewith. All other claims or other land under the same ownership shall be valued in the same manner as other real property, on an acreage basis, regardless of surface contiguity.

(4) If any mining claim comprising part of the mining property of a producing mine is not patented or entered for patent, then the possessory interest therein shall be the subject of taxation.

(5) Any increase in the valuation of a producing mine shall constitute an addition to taxable real property for purposes of the definition of "local growth" contained in section 20 (2)(g) of article X of the state constitution.

(6) This section shall apply to and affect only the valuation of producing mines pursuant to this article.

**Source: L. 65:** R&RE, p. 1103, § 1. **C.R.S. 1963:** § 137-6-5. **L. 72:** p. 570, § 53. **L. 85:** (3) amended, p. 1212, § 7, effective May 9. **L. 94:** (1)(c) to (1)(e), (1)(g), and (1)(h) amended and (1.4), (1.7), (5), and (6) added, p. 1203, § 1, effective May 19. **L. 2000:** (1.4)(a) amended, p. 671, § 1, effective August 2.

**Cross references:** For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

**39-6-107. Valuation of improvements - machinery.** All machinery and equipment and personal property shall be listed on a personal property schedule which shall be submitted as set forth in section 39-5-107 and valued for assessment by the assessor. Improvements, except mining improvements within a mine excavation, shall be listed separately and valued for assessment by the assessor.

**Source: L. 65:** R&RE, p. 1104, § 1. **C.R.S. 1963:** § 137-6-6. **L. 94:** Entire section amended, p. 1206, § 2, effective May 19.

**39-6-108. Failure to file statement.** If any person owning, operating, or managing any producing mine fails or refuses to prepare and file the statement required in section 39-6-106 or 39-6-113, or both, then the assessor shall list such property and shall value the same for assessment on the basis of the best information available to and obtainable by him.

**Source: L. 65:** R&RE, p. 1104, § 1. **C.R.S. 1963:** § 137-6-7.

**39-6-109. Assessor to examine books - records.** (1) The assessor has the authority and right at any time to examine the books, accounts, and records of any person owning, managing, or operating a producing mine in order to verify the statement filed by such person, and, if from such examination the assessor finds such statement or any material part thereof to be willfully false or misleading, the assessor shall proceed to value such producing mine for assessment as though no statement had been filed.

(2) Upon the request of the assessor, the owner or operator of a producing mine shall provide to the assessor all documentation supporting the amounts reported on the statement filed by such owner or operator.

(3) The division of property taxation shall set forth guidelines for the implementation of this section.

**Source: L. 65:** R&RE, p. 1104, § 1. **C.R.S. 1963:** § 137-6-8. **L. 94:** Entire section amended, p. 1206, § 3, effective May 19.

**39-6-110. False statements - penalty.** If any person required to file such statements willfully and knowingly subscribes to any false statement contained therein, he is guilty of perjury in the second degree and upon conviction shall be punished according to law.

**Source: L. 65:** R&RE, p. 1104, § 1. **C.R.S. 1963:** § 137-6-9. **L. 72:** p. 570, § 54.

**Cross references:** For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

**39-6-111. Valuation of mines other than producing mines.** (1) Mines excepted from the provisions of section 39-6-104 shall be valued for assessment in the same manner as other real property.

(2) All mines which are classified as nonproducing mines shall be valued for assessment in the same manner as other real property.

(3) Such valuation shall be determined under this section by the assessing officer only upon preponderant evidence shown by such officer that the cost approach, market approach, and income approach result in uniform and just and equal valuation.

**Source: L. 65:** R&RE, p. 1105, § 1. **C.R.S. 1963:** § 137-6-10. **L. 70:** p. 392, § 1. **L. 85:** (2) amended and (3) added, p. 1213, § 9, effective May 9.

**39-6-111.5. Calendar for notice of valuation and appeals for mines.** Notwithstanding any other provision, all producing and nonproducing mines valued pursuant to this article shall follow the schedule for personal property set forth in this title regarding notices of valuation and appeals of valuation.

**Source: L. 2000:** Entire section added, p. 1501, § 5, effective August 2.

**39-6-112. Valuation of tunnels.** (1) A tunnel excavated for the mere purpose of exploration and discovery of mines on the public domain shall be deemed to be real property and shall be listed and valued for assessment by the name thereof unless it becomes a part of a producing mine, in which case it shall be considered a parcel thereof. A tunnel excavated for the drainage of, or the exploration of, or for giving access to the mines of those excavating such tunnel shall be deemed an appurtenance to such mines. A tunnel excavated for the drainage of, or the operation of, or for giving access to mines of persons other than those excavating such tunnel shall be deemed real property and shall be listed and valued for assessment by the name thereof.

(2) Whenever any such tunnel not appurtenant to or a parcel of a mine is situated partly in one county and partly in another county or counties or in lesser political subdivisions, the valuation thereof shall be apportioned between such counties by allocating the total value thereof between such counties or lesser political subdivisions in the proportion that the length of the center line thereof within each such county or lesser political subdivision bears to the total length thereof.

**Source: L. 65:** R&RE, p. 1105, § 1. **C.R.S. 1963:** § 137-6-11.

**39-6-113. Mine in more than one county.** (1) (a) Whenever a mine is situated partly in one county and partly in another county or counties or in lesser political subdivisions, a copy of the statement provided for in section 39-6-106, together with a copy of a list of all machinery and equipment located within the mine, if the mine is a producing mine, shall be filed with the assessor of each such county. Any such producing mine shall be valued for assessment in accordance with the provisions of section 39-6-106 (2) at an amount agreed upon by the assessors of such counties, and, in the case of any appeal of a protest of such valuation in either or both counties, the county boards of equalization of such counties shall confer and attempt to reach agreement on the valuation.

(b) If the mine is not a producing mine, all machinery and equipment located within the mine shall nevertheless be valued at an amount agreed upon by the assessors of such counties and apportioned between such counties by allocating the total value thereof between such counties or lesser political subdivisions in the proportion that the acreage of all the mining property of the mine, determined as provided for in sections 39-6-103 and 39-6-106, within such county or lesser political subdivision bears to the total acreage thereof as so determined, as if the mine were itself a producing mine.

(2) Whenever any producing mine, worked or operated by means of an integrated mining system and comprised of consolidated mining property, is situated partly in one county and partly in another county or counties or in lesser political subdivisions, the valuation thereof and of all machinery and equipment located within or upon the mine shall be apportioned between such counties or lesser political subdivisions in the proportion that the acreage of all the

mining property of the mine, determined as provided for in sections 39-6-103 and 39-6-106, within such county or lesser political subdivision bears to the total acreage thereof as so determined. The assessor of each county shall list and value for assessment the portion of such mine which is situated in such county at the amount determined for such portion by such apportionment, and taxes levied on such valuation for assessment by the board of county commissioners of such county shall be collected by the treasurer of such county as provided by law.

(3) Where a mine is situated partly in one county and partly in another county or counties or in lesser political subdivisions, the owner, operator, or manager thereof shall, no later than April 15 of each year, prepare and file with the assessor of each such county a statement showing the number of acres within each such county contained in the lands comprising the mining property of the mine, determined as provided for in sections 39-6-103 and 39-6-106, but the statement need not be filed if no changes have occurred since such a statement was filed.

(4) (a) Nothing in subsection (3) of this section shall be construed to require the owner, operator, or manager of a mine to file an additional statement if the statement filed pursuant to section 39-6-106 sets forth the number of acres of the mine in each county.

(b) Nothing in subsection (3) of this section shall be construed to relieve the owner, operator, or manager of a mine from any reporting responsibilities imposed under section 39-6-106, including the required contents of the statement filed with the assessor.

**Source: L. 65:** R&RE, p. 1105, § 1. **C.R.S. 1963:** § 137-6-12. **L. 92:** (1) amended, p. 971, § 14, effective June 1. **L. 93:** (1)(b), (2), and (3) amended, p. 441, § 10, effective July 1. **L. 94:** (3) amended and (4) added, p. 1206, § 4, effective May 19.

**39-6-114. Mines and tunnels in more than one subdivision of a county.** Whenever any mine or tunnel is situated partly in one lesser political subdivision of a county and partly in another such subdivision of the same county, the assessor of the county shall apportion the value thereof between such lesser political subdivisions in the manner provided for in sections 39-6-112 and 39-6-113.

**Source: L. 65:** R&RE, p. 1106, § 1. **C.R.S. 1963:** § 137-6-13.

**39-6-115. Collection.** Beginning January 1, 1980, when taxes on mines and mining claims are due, such taxes shall be a debt due from the owner or user and shall be recoverable by the treasurer by direct action in debt. The treasurer may also collect such debt as if the property were personal property.

**Source: L. 79:** Entire section added, p. 1418, § 1, effective April 25.

**39-6-116. Nonproducing unpatented mining claims - definitions.** "Unpatented mining claims", as used in section 3 (1)(b) of article X of the state constitution, includes mining claims located under the federal mining laws, 30 U.S.C. sec. 22 et seq., for which a patent has not been issued; and such term also includes leasehold interests in real property obtained under the federal "Mineral Lands Leasing Act of 1920", 30 U.S.C. sec. 181 et seq.

**Source: L. 89:** Entire section added, p. 1495, § 1, effective May 1.

**39-6-117. County boards of equalization - authority.** Nothing in this article shall be construed to affect the authority of county boards of equalization to raise, lower, or adjust any valuation for assessment appearing in the assessment roll as provided in section 39-8-102 (1).

**Source: L. 94:** Entire section added, p. 1207, § 5, effective May 19.

## ARTICLE 7

Valuation of Oil and Gas
Leaseholds and Lands

**Editor's note:** This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

**Law reviews:** For article, "Implied Covenants in Oil and Gas Leases", see 14 Colo. Law. 1216 (1985); for article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests", see 16 Colo. Law. 798 (1987).

**39-7-101. Statement of owner or operator.** (1) Every operator of, or if there is no operator, every person owning any oil or gas leasehold or lands within this state, either as a single lease or as a unit, that are producing or are capable of producing oil or gas on the assessment date of any year, shall, no later than the fifteenth day of April of each year, prepare, sign under the penalty of perjury in the second degree, and file in person or by mail with the assessor of the county in which the wellhead producing the oil and gas leaseholds or lands is located a statement for the lease or unit. For purposes of this article, irrespective of the physical location of the producing leaseholds or lands, the point of taxation is the same as the point of valuation, which is the wellhead. The statement must be made on a form prescribed by the administrator, showing:

(a) The wellhead location thereof and the name thereof, if there is a name;

(b) The name, address, and fractional interest of the operator thereof;

(c) The number of barrels of oil, or the quantity of gas measured in thousands of cubic feet, sold or transported from the wellhead during the calendar year immediately preceding, after separately reporting the number of barrels of oil, or the quantity of gas measured in thousands of cubic feet, delivered to the United States government or any agency thereof, the state of Colorado or any agency or political subdivision thereof, or any Indian tribe as royalty during the calendar year immediately preceding;

(d) The selling price at the wellhead. As used in this article, "selling price at the wellhead" means the net taxable revenues realized by the taxpayer for sale of the oil or gas, whether such sale occurs at the wellhead or after gathering, transportation, manufacturing, and processing of the product. The net taxable revenues shall be equal to the gross lease revenues, minus deductions for gathering, transportation, manufacturing, and processing costs borne by the taxpayer pursuant to guidelines established by the administrator.

(e) The name, address, and fractional interest of each interest owner taking production in kind and the proportionate share of total unit revenue attributable to each interest owner who is taking production in kind;

(f) A declaration made under the penalty of perjury in the second degree that includes the following:

(I) A statement that the owner or operator has personally examined the statement described in this section and that such statement sets forth, to the best of the owner's or operator's knowledge and belief, the information required by this section; and

(II) A statement by the owner or operator as follows:

No representations are made as to the accuracy of the value of any portion of the production from subject property that is taken in kind by any owner other than the undersigned.

(1.5) Any nonoperating interest owner in an oil or gas well may, on or before the fifteenth day of March each year, submit to the operator by certified mail a report of the actual net taxable revenues received at the wellhead and the actual exempt revenues received at the wellhead by such owner for production taken in kind from the property during the calendar year immediately preceding. Operators shall use the information reported pursuant to this subsection (1.5) to determine the selling price at the wellhead. If any nonoperating interest owner fails to provide to the unit operator the information required under this subsection (1.5) by March 15 of each year, such operator shall use the selling price at the wellhead received by such operator for such operator's share of production from such unit in place of such nonreported information, and the amount of tax for which such nonreporting, nonoperating interest owner is liable shall be calculated based on the selling price at the wellhead reported by the operator.

(2) (a) If a statement of an owner or operator is not received or postmarked on or before the fifteenth day of April of each year, the assessor may impose on such owner or operator a late filing penalty in the amount of one hundred dollars for each calendar day the statement is delinquent; except that such late filing penalty shall not exceed three thousand dollars in any calendar year. The assessor may grant an extension of time for filing a statement to any operator or owner. Any extension, and its length, shall be granted solely at the discretion of the assessor.

(b) This subsection (2) is effective January 1, 1997.

(3) (a) The assessor may require the owner or operator to submit written documentation supporting the information provided in the statement. Such documentation shall be supplied within thirty days after either the date of the postmark on the assessor's written request for such documentation or the date that an owner or operator is required to file a statement pursuant to subsection (1) of this section, whichever is later. Any owner or operator who willfully fails or refuses to comply with the assessor's request for written documentation may be assessed a fine of one hundred dollars for each day of such willful failure or refusal. The total amount of all fines that may be assessed by an assessor against an owner or operator in any calendar year shall not exceed three thousand dollars, regardless of the number of leases or units owned or operated by such owner or operator or the number and length of such willful failures or refusals by such owner or operator.

(b) This subsection (3) is effective January 1, 1997.

(4) All statements and documentation filed with the assessor shall be considered private documents and shall be available on a confidential basis only to the assessor, the administrator, the annual study contractor hired pursuant to section 39-1-104, the executive director of the

department of revenue, and their employees. Such statements and documentation shall be available on a confidential basis to the board of assessment appeals and the county board of equalization when information in such statements and documentation is pertinent to an appeal or protest.

(5) (a) Fines imposed pursuant to this section shall be fees of the office of the county assessor. Any unpaid fines imposed pursuant to this section shall be certified to the county treasurer by January 1 of each year and shall be included in the delinquent owner's or operator's property tax statement issued pursuant to section 39-10-103.

(b) This subsection (5) is effective January 1, 1997.

**Source: L. 64:** R&RE, p. 710, § 1. **C.R.S. 1963:** § 137-7-1. **L. 69:** p. 1120, § 1. **L. 72:** p. 570, § 55. **L. 81:** (1)(c) and (1)(d) amended, p. 1857, § 1, effective January 1, 1982. **L. 93:** (1)(d) amended and (1)(e) and (2) added, pp. 241, 242, §§ 1, 2, effective March 31. **L. 96:** Entire section amended, p. 107, § 1, effective March 25. **L. 2007:** (4) amended, p. 498, § 1, effective April 16. **L. 2009:** (3)(a) amended, (HB 09-1161), ch. 44, p. 166, § 1, effective August 5. **L. 2014:** IP(1), (1)(a), and (1)(c) amended, (HB 14-1371), ch. 400, p. 2012, § 1, effective August 6.

**Cross references:** For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

**39-7-102. Valuation for assessment.** (1) Except as provided in subsection (2) of this section, on the basis of the information contained in such statement, the assessor shall value such oil and gas leaseholds and lands for assessment, as real property, at an amount equal to eighty-seven and one-half percent of:

(a) The selling price of the oil or gas sold from each wellhead during the preceding calendar year, after excluding the selling price of all oil or gas delivered to the United States government or any agency thereof, the state of Colorado or any agency thereof, or any political subdivision of the state as royalty during the preceding calendar year;

(b) The selling price of oil or gas sold in the same field area for oil or gas transported from the premises which is not sold during the preceding calendar year, after excluding the selling price of all oil or gas delivered to the United States government or any agency thereof, the state of Colorado or any agency thereof, or any political subdivision of the state as royalty during the preceding calendar year.

(2) In order to promote the initiation or continuation of secondary recovery, tertiary recovery, or recycling projects which conserve and avoid waste of oil and gas, the assessor shall value oil and gas leaseholds and lands employing such projects for assessment as provided in subsection (1) of this section but at an amount equal to seventy-five percent of:

(a) The selling price of the oil or gas sold therefrom during the preceding calendar year, after excluding the selling price of all oil or gas delivered to the United States government or any agency thereof, the state of Colorado or any agency thereof, or any political subdivision of the state as royalty during the preceding calendar year;

(b) The selling price of oil or gas sold in the same field area for oil or gas transported from the premises which is not sold during the preceding calendar year, after excluding the selling price of all oil or gas delivered to the United States government or any agency thereof,

the state of Colorado or any agency thereof, or any political subdivision of the state as royalty during the preceding calendar year.

**Source: L. 64:** R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-2. **L. 69:** p. 1120, § 2. **L. 77:** Entire section amended, p. 1852, § 2, effective January 1, 1978. **L. 81:** Entire section amended, p. 1857, § 2, effective January 1, 1982. **L. 2014:** (1)(a) amended, (HB 14-1371), ch. 400, p. 2013, § 2, effective August 6.

**39-7-102.5. Calendar for notice of valuation and appeals.** Notwithstanding any other provisions to the contrary, lands and leaseholds valued pursuant to this article shall follow the schedule for personal property set forth in this title regarding notices of valuation and appeals of valuation.

**Source: L. 88:** Entire section added, p. 1301, § 7, effective April 29.

**39-7-102.7. Notice of valuation - public record.** The assessor shall retain a copy of all notices of valuation for lands and leaseholds valued pursuant to this article, and such copies shall be public records that are available for inspection in accordance with part 2 of article 72 of title 24, C.R.S.

**Source: L. 2007:** Entire section added, p. 498, § 2, effective April 16.

**39-7-103. Surface and subsurface equipment valued separately.** All surface oil and gas well equipment and submersible pumps and sucker rods located on oil and gas leaseholds or lands shall be separately valued for assessment as personal property, and such valuation may be at an amount determined by the assessors of the several counties of the state, approved by the administrator, and uniformly applied to all such equipment wherever situated in the state. All other subsurface oil and gas well equipment, including casing and tubing, shall be valued as part of the leasehold or land under section 39-7-102.

**Source: L. 64:** R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-3. **L. 76:** Entire section amended, p. 775, § 1, effective January 1, 1977.

**39-7-104. Failure to file statement.** If any person owning or operating any oil and gas leaseholds or lands producing or capable of producing oil or gas on the assessment date fails or refuses to prepare and file the statement required by the provisions of section 39-7-101, then the assessor shall list such property and value the same for assessment on the basis of the best information available to and obtainable by him.

**Source: L. 64:** R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-4.

**39-7-105. Assessor to examine books, records.** The assessor has the authority and right at any time to examine the books, accounts, and records of any person owning or operating such oil and gas leaseholds and lands in order to verify the statement filed by such person, and, if from such examination he finds such statement or any material part thereof to be willfully false

and misleading, he shall proceed to value such oil and gas leaseholds or lands for assessment as though no statement had been filed.

**Source: L. 64:** R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-5.

**39-7-106. False statement - penalty.** If any person required to file such statement willfully and knowingly subscribes to any false statement contained therein, he is guilty of perjury in the second degree and upon conviction shall be punished according to law.

**Source: L. 64:** R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-6. **L. 72:** p. 570, § 56.

**Cross references:** For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

**39-7-107. Oil and gas lands in more than one county.** (1) Whenever any oil and gas leaseholds or lands appear to be situated in more than one county, the production value is assigned to the county in which the wellhead is located.

(2) Whenever the wellheads of a group of contiguous oil and gas leaseholds or lands operated as a unit are situated in more than one county, the person making the statement required by section 39-7-101 shall assign to each wellhead that portion of the production value from the unit as is assigned by the unit agreement.

(3) Whenever unit production occurs from wellheads in more than one county, a copy of the statement required by the provisions of section 39-7-101 shall be filed with the assessor of each affected county.

**Source: L. 64:** R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-7. **L. 2014:** Entire section amended, (HB 14-1371), ch. 400, p. 2013, § 3, effective August 6.

**39-7-108. Collection.** Beginning January 1, 1980, when taxes on oil and gas leaseholds and lands are due, such taxes shall be a debt due from the owner or the unit operator as the case may be and shall be recoverable by the treasurer by direct action in debt; except that such taxes treated as debt due from a fractional interest owner shall not exceed the amount of taxes for which the fractional owner is liable, as provided in section 39-10-106. The treasurer may also collect such debt as if the property were personal property.

**Source: L. 79:** Entire section added, p. 1418, § 2, effective April 25.

**39-7-109. Valuation of severed nonproducing oil or gas mineral interests.** (1) The actual value of severed nonproducing oil or gas or oil and gas mineral interests shall be determined by the income approach capitalizing the annual net rental income for such nonproducing mineral interests at an appropriate market rate. If such severed mineral interests are unleased, the assessor shall use the average per acre annual rental of all such mineral interests under lease in the county or in the area to determine the actual value thereof.

(2) For the purposes of this section, "annual rental" means annual rental payments, or other compensatory payments payable for the right to hold a mineral interest, which payments

are fixed and certain in amount and payable periodically over a fixed period calculated on a twelve-month basis. "Annual rental" shall be the representative annual rental for such mineral interests leased within the county or the area, and "annual rental" does not include royalty payments, advanced royalty payments, bonus payments, or minimum royalty payments covering periods when the mineral interests are not in production, even though said payments may be fixed and certain in amount and payable periodically. For the purposes of this subsection (2), "royalty payments", "advanced royalty payments", and "minimum royalty payments" are payments attributable to a portion of the current or future mineral production of a mineral interest, paid for the privilege of producing minerals, and "bonus payments" means compensation paid as consideration for the granting of a mineral lease or other compensatory payments which are payable regardless of the extent of use of the mineral interest and which are fixed and certain in amount and may be payable in one or more periodical increments over a fixed period.

**Source: L. 85:** Entire section added, p. 1213, § 10, effective May 9.

## Equalization

## ARTICLE 8

County Boards of Equalization

**Editor's note:** This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

**39-8-101. County board of equalization - quorum.** The board of county commissioners of each county of the state, except the city and county of Denver and the city and county of Broomfield, shall comprise the board of equalization of such county. In the city and county of Denver, the board of equalization shall be comprised of such of its officers as may be provided by its charter. In the city and county of Broomfield, the board of equalization shall be the city council or a board or commission appointed by the city council. A majority of the board shall constitute a quorum, and no official action shall be taken at any meeting of the board unless a quorum is present.

**Source: L. 64:** R&RE, p. 712, § 1. **C.R.S. 1963:** § 137-8-1. **L. 2001:** Entire section amended, p. 269, § 16, effective November 15.

**Cross references:** For constitutional grant of powers to county boards of equalization, see § 15 of article X of the state constitution.

**39-8-102. Duties of county board of equalization.** (1) The county board of equalization shall review the valuations for assessment of all taxable property appearing in the assessment roll of the county, directing the assessor to supply any omissions which may come to its attention. It shall correct any errors made by the assessor, and, whenever in its judgment

justice and right so require, it shall raise, lower, or adjust any valuation for assessment appearing in the assessment roll to the end that all valuations for assessment of property are just and equalized within the county.

(2) (a) to (h) Repealed.

(i) The county board of equalization shall have the authority to appoint independent referees who are experienced in property valuation to conduct hearings pursuant to subsection (1) of this section on behalf of the county board of equalization and to make findings and submit recommendations to the county board of equalization for its final action. However, no person shall be appointed as an independent referee pursuant to the provisions of this paragraph (i) in any county during any property tax year in which such person represents or has represented any taxpayer in such county in any matter relating to the protest and appeal of property valuation or to the abatement or refund of property taxes. In addition, no person appointed as an independent referee pursuant to the provisions of this paragraph (i) shall represent any taxpayer who appeared in any hearing before such independent referee in any matter subsequent to such hearing relating to the protest and appeal of property valuation or to the abatement or refund of property taxes.

(j) and (k) Repealed.

(3) (Repeal provision deleted by revision.)

(4) Repealed.

**Source: L. 64:** R&RE, p. 714, § 1. **C.R.S. 1963:** § 137-8-8. **L. 77:** Entire section amended, p. 1758, § 1, effective June 1; (4) added, p. 1736, § 18, effective June 20. **L. 79:** (2)(i) amended, p. 1641, § 53, effective July 19. **L. 81:** (4) repealed, p. 1835, § 14, effective June 12. **L. 92:** (2)(i) amended, p. 2209, § 6, effective June 3.

**Editor's note:** Subsection (3) provided for the repeal of subsections (2)(a) to (2)(h), (2)(j), and (2)(k), effective January 1, 1978, and is therefore deleted by revision as obsolete. (See L. 77, p. 1758.)

**39-8-103. Notice of change in valuation.** The county clerk and recorder shall notify each person affected of any change in the valuation of his property ordered by the board and shall furnish the assessor with a copy of such notice.

**Source: L. 64:** R&RE, p. 714, § 1. **C.R.S. 1963:** § 137-8-9. **L. 90:** Entire section amended, p. 1697, § 21, effective June 9.

**39-8-104. Notice of meeting.** (1) Except as provided in subsection (2) or (2.5) of this section, prior to July 1 of each year, the county clerk and recorder shall give notice in at least one issue of a newspaper published in his or her county that beginning on July 1, the county board of equalization will sit in the county's regular public meeting location or other appropriate public meeting place to review the assessment roll of all taxable property located in the county, as prepared by the assessor, and to hear appeals from determinations of the assessor.

(2) (a) Prior to a date established by the county board of equalization, but no later than September 1, the county clerk and recorder in a county that has made an election pursuant to section 39-5-122.7 (1) shall give notice in at least one issue of a newspaper published in his or her county that beginning such date the county board of equalization will sit in the county's

regular public meeting location or other appropriate public meeting place to review the assessment roll of all taxable property located in the county, as prepared by the assessor, and to hear appeals from determinations of the assessor.

(b) Prior to August 1, 2017, and prior to each August 1 thereafter, the county clerk and recorder shall give notice in at least one issue of a newspaper published in his or her county of any date or dates between August 1 and September 1 on which the county commissioners, sitting as the county board of equalization, shall hear contests of property tax exemption denials as required by section 39-3-206 (2).

(2.5) If the city and county of Denver elects to use the pilot alternate protest procedure established in section 39-5-122.8, the county clerk and recorder shall give notice in at least one issue of a newspaper published in the city and county of Denver and on the website for the city and county of Denver that the city and county of Denver has made such election; that all objections and protests will be determined in accordance with the protest and appeal procedures set forth in section 39-5-122.8; and that to preserve the taxpayer's right to protest, the taxpayer must notify the board of county commissioners in writing of the taxpayer's objection and protest; that such notice must be delivered or postmarked no later than November 15 of the year in which the notice of valuation was mailed; and that after such date, the taxpayer's right to object and protest the adjustment in valuation is lost.

(3) If there is no newspaper, then such notice shall be conspicuously posted in the offices of the county clerk and recorder, the treasurer, and the assessor and in at least two other public places in the county seat.

**Source: L. 64:** R&RE, p. 712, § 1. **C.R.S. 1963:** § 137-8-2. **L. 81:** Entire section amended, p. 1834, § 10, effective June 12. **L. 89:** Entire section amended, p. 1458, § 14, effective June 7. **L. 98:** Entire section amended, p. 469, § 3, effective July 1. **L. 2001:** (2) amended, p. 469, § 2, effective April 25. **L. 2009:** (1) and (2)(a) amended, (SB 09-292), ch. 369, p. 1986, § 134, effective August 5. **L. 2013:** (1) amended and (2.5) added, (HB 13-1113), ch. 11, p. 31, § 4, effective March 8. **L. 2016:** (2)(b) amended, (HB 16-1175), ch. 332, p. 1349, § 5, effective January 1, 2017.

**39-8-105. Reports of assessor.** (1) At a meeting of the county board of equalization on or before each September 15 in a county that has made an election pursuant to section 39-5-122.7 (1), or on or before each July 15 in all other counties, the assessor shall report the valuation for assessment of all taxable real property in the county. The assessor shall submit a list of all persons who have appeared before him or her to present objections or protests concerning real property and the action taken in each case.

(2) At the meeting of the board described in subsection (1) of this section, the assessor shall also report the valuation of all taxable personal property in the county and shall note any valuations for assessment of portable or movable equipment which have been apportioned pursuant to section 39-5-113. The assessor shall submit a list of all persons in the county who have failed to return any schedules and shall report the action taken in each case. The assessor shall also submit a list of persons who have appeared before him or her to present objections or protests and the action taken in each case.

**Source: L. 64:** R&RE, p. 712, § 1. **C.R.S. 1963:** § 137-8-3. **L. 67:** p. 951, § 21. **L. 76:** Entire section amended, p. 763, § 25, effective January 1, 1977. **L. 81:** Entire section R&RE, p. 1834, § 11, effective June 12. **L. 88:** (2) amended, p. 1301, § 8, effective April 29. **L. 90:** (1) amended, p. 1694, § 11, effective January 1, 1991. **L. 98:** (1) amended, p. 469, § 4, effective July 1. **L. 2009:** (2) amended, (SB 09-292), ch. 369, p. 1987, § 135, effective August 5. **L. 2014:** Entire section amended, (HB 14-1020), ch. 5, p. 86, § 1, effective February 19.

**39-8-106. Petitions for appeal.** (1) The county board of equalization shall receive and hear petitions from any person whose objections or protests have been refused or denied by the assessor; except that, if the city and county of Denver elects to use the pilot alternate protest procedure established in section 39-5-122.8, petitions shall be filed with the board of county commissioners. A petition shall be in a form approved by the property tax administrator pursuant to section 39-2-109 (1)(d), the contents of which shall include the following:

(a) A statement informing the person of his or her right to appeal, the time and place at which the county board of equalization will hear appeals from determinations of the assessor, and that, by mailing or delivering one copy of the form to the county board of equalization that is received or postmarked on or before July 15 of that year for real property and July 20 of that year for personal property or, if a county has made an election pursuant to section 39-5-122.7 (1), on or before September 15 of that year for both real and personal property, the person will be deemed to have filed his or her petition for hearing with the county board of equalization. The date the form is received by the county board of equalization shall be stamped on the form. All forms shall be presumed to be on time unless the county board of equalization can present evidence to show otherwise.

(b) A requirement that the assessor's office set forth the following information on the face of the form:

(I) A description of the property claimed to be excessively, erroneously, or illegally valued;

(II) The actual value placed upon it by the assessor;

(III) A specific and detailed statement of the grounds delineated in this subparagraph (III), upon which the assessor relied to justify such valuation. The grounds are appropriate consideration of the approaches to appraisal set forth in section 39-1-103 (5)(a) and classification of the property. For agricultural lands, the grounds are: Earning or productive capacity; classification; and capitalization rate.

(IV) The assessor's written statement refusing to change such valuation; and

(V) The actual value placed upon it by the person whose objection and protest has been denied.

(c) Space for the person whose objection and protest has been denied to state the grounds on which he relied and to indicate the manner, if any, in which he disagrees with the assessor's statement of the information described in paragraph (b) of this subsection (1).

(1.5) In addition to any other requirements set forth in subsection (1) of this section, any petition for appeal relating to real property shall contain the actual value of such real property, stated in terms of a specific dollar amount, which is being offered as the correct valuation. Nothing in this subsection (1.5) shall be construed to exempt paid representatives of taxpayers from the requirements of part 7 of article 61 of title 12, C.R.S., if applicable.

(1.7) Any person who objects to the application of the term "integral to an agricultural operation" to their property in accordance with section 39-1-102 (1.6)(a)(I) and (14.4) and whose objections or protests have been denied by the assessor may submit a petition for appeal to the county board of equalization to the same extent as any other protest or objection for which an appeal to the board is provided under law and shall satisfy all requirements for the prosecution of such appeal as provided by law.

(2) (a) Upon receiving a petition in the form described in subsection (1) of this section, the county board of equalization or its authorized agent shall note the filing of the petition, set a time for hearing of said petition, and, except as provided in paragraph (b) of this subsection (2), notify the petitioner by mail of such time for hearing.

(b) A board of county commissioners may authorize by resolution a petitioner or a petitioner's agent to elect to receive the notice required in paragraph (a) of this subsection (2) by fax or electronic mail at a phone number or electronic mail address supplied by the petitioner or the petitioner's agent. If no election is made by the petitioner or the petitioner's agent, the county board of equalization shall mail the required notice.

(3) If the assessor fails or refuses to comply with the provisions of section 39-5-122, this section, or both, relating to said form, the objecting person shall not be deprived of his right of appeal to the county board of equalization. The objecting person may present his objections and protests in person or by counsel, orally or by letter or other informal writing, on any day during the meeting of the county board of equalization held for the purpose of hearing appeals. The said failure or refusal of the assessor shall not, in any manner, deprive the objecting person of his right to a full, fair, and complete hearing of his objections and protests by the county board of equalization.

**Source: L. 64:** R&RE, p. 713, § 1. **C.R.S. 1963:** § 137-8-4. **L. 73:** p. 1441, § 2. **L. 75:** (1)(b)(III) amended, p. 1455, § 2, effective July 30. **L. 76:** (1)(a) and (1)(b)(III) amended, p. 763, §§ 26, 27, effective January 1, 1977. **L. 81:** (1)(a) amended, p. 1834, § 12, effective June 12. **L. 83:** (1)(b)(III) amended, p. 2087, § 4, effective October 13. **L. 88:** (1)(a) amended, p. 1301, § 9, effective April 29. **L. 89:** (1)(a) amended, p. 1458, § 15, effective June 7. **L. 90:** (1)(a), (1)(b)(II), and (1)(b)(V) amended, p. 1694, § 12, effective January 1, 1991. **L. 92:** (1)(a) amended and (1.5) added, p. 2210, § 7, effective June 3. **L. 98:** IP(1) and (1)(a) amended, p. 469, § 5, effective July 1. **L. 2005:** IP(1) and (1)(a) amended, p. 391, § 3, effective April 27. **L. 2011:** (1.7) added, (HB 11-1146), ch. 166, p. 573, § 3, effective January 1, 2012. **L. 2013:** IP(1) amended, (HB 13-1113), ch. 11, p. 31, § 5, effective March 8. **L. 2016:** (2) amended, (SB 16-172), ch. 280, p. 1148, § 2, effective June 10.

**39-8-107. Hearings on appeal.** (1) At the hearing upon a petition, the assessor or the assessor's authorized representative shall be present and shall produce information to support the basis and amount of the assessor's valuation of the property. The board shall hear and consider all testimony and examine all exhibits produced or introduced by either the petitioner or the assessor, with no presumption in favor of any pending valuation, and may subpoena witnesses to testify. The costs of producing the petitioner's witnesses shall be paid by the petitioner, and the costs of producing the assessor's witnesses shall be paid by the county. On the basis of the testimony produced and the exhibits introduced, the board shall grant or deny the petition, in whole or in part, and shall notify the petitioner and the assessor in writing. If the board denies

the petition, in whole or in part, such written notice shall inform the petitioner of the right to appeal within the thirty-day period following the denial to the district court or the board of assessment appeals pursuant to the provisions of section 39-8-108 (1) or within the thirty-day period following the denial to submit the case to arbitration pursuant to the provisions of section 39-8-108.5. Such notice shall state that, if the appeal is to the board of assessment appeals, the hearing before the board of assessment appeals shall be the last hearing at which testimony, exhibits, or any other type of evidence may be introduced by either party and that, if there is an appeal to the court of appeals pursuant to section 39-8-108 (2), the record from the hearing before the board of assessment appeals and no new evidence shall be the basis for the court's decision. The phone number and address of the board of assessment appeals shall also be included on the notice. The notice shall also state, in general terms, how to pursue arbitration and that, if a taxpayer submits the case to arbitration, the decision reached under such process shall be final and not subject to review. If a referee heard the case, the board shall, at the written request of any taxpayer or any agent of such taxpayer within seven working days after receipt of said request, make available to the taxpayer or agent the referee's findings and recommendations. At the board's election, the board may either mail, fax, or send by electronic transmission such findings and recommendations to the address, phone number, or electronic address supplied by said taxpayer or agent. Upon receipt of such request, the board shall notify the taxpayer or agent of the estimated cost of providing such findings and recommendations, payment of which shall be made prior to providing such findings and recommendations. Upon providing such findings and recommendations, the board may include a bill for the reasonable cost above the estimated cost and up to the statutory maximum which shall be due and payable upon receipt by the taxpayer or agent.

(2) (a) The county board of equalization shall continue its hearings from time to time until all petitions have been heard, but all such hearings shall be concluded and decisions rendered thereon by the close of business on August 5 of that year; except that, in a county that has made an election pursuant to section 39-5-122.7 (1), all such hearings shall be concluded and decisions rendered thereon by the close of business on November 1 of that year. Except as authorized in paragraph (b) of this subsection (2), any decision shall be mailed to the petitioner within five business days of the date on which such decision is rendered.

(b) A board of county commissioners may authorize by resolution a petitioner or a petitioner's agent to elect to receive the decision rendered by the board as required in paragraph (a) of this subsection (2) by fax or electronic mail at a phone number or electronic mail address supplied by the petitioner or the petitioner's agent. If no election is made by the petitioner or the petitioner's agent, the county board of equalization shall mail the decision.

(3) At the written request of any taxpayer or any agent of such taxpayer and subject to such confidentiality requirements as provided by law, the assessor shall, within three working days after receipt of said request, make available to the taxpayer or agent the data used by the assessor in determining the actual value of any property owned by such taxpayer. At the assessor's election, the assessor may either mail, fax, or send by electronic transmission to the address, phone number, or electronic address supplied by said taxpayer or agent such data. Such data shall include but shall not be limited to the data derived from the declarations filed pursuant to the provisions of article 14 of this title and confidential data, provided that such confidential data shall be presented in such a manner that the source cannot be identified. Upon receipt of such request, the assessor shall notify the taxpayer or agent of the estimated cost of providing

such information, payment of which shall be made prior to providing such information. Upon providing such information, the assessor may include a bill for the reasonable cost above the estimated cost and up to the statutory maximum which shall be due and payable upon receipt by the taxpayer or agent.

(4) The assessor may not rely on any confidential information which is not available for review by the taxpayer, unless such confidential data is presented in such a manner that the source cannot be identified.

(5) (a) (I) On and after August 10, 2011, in addition to any other requirements under law, any petitioner appealing either a valuation of rent-producing commercial real property to the board of assessment appeals pursuant to section 39-8-108 (1) or a denial of an abatement of taxes pursuant to section 39-10-114 shall provide to the county board of equalization or to the board of county commissioners of the county in the case of an abatement, and not to the board of assessment appeals, the following information, if applicable:

(A) Actual annual rental income for two full years including the base year for the relevant property tax year;

(B) Tenant reimbursements for two full years including the base year for the relevant property tax year;

(C) Itemized expenses for two full years including the base year for the relevant property tax year; and

(D) Rent roll data, including the name of any tenants, the address, unit, or suite number of the subject property, lease start and end dates, option terms, base rent, square footage leased, and vacant space for two full years including the base year for the relevant property tax year.

(II) The petitioner shall provide the information required by subparagraph (I) of this paragraph (a) within ninety days after the appeal has been filed with the board of assessment appeals.

(b) (I) The assessor, the county board of equalization, or the board of county commissioners of the county, as applicable, shall, upon request made by the petitioner, provide to a petitioner who has filed an appeal with the board of assessment appeals not more than ninety days after receipt of the petitioner's request, the following information:

(A) All of the underlying data used by the county in calculating the value of the subject property that is being appealed, including the capitalization rate for such property; and

(B) The names of any commercially available and copyrighted publications used in calculating the value of the subject property.

(II) The party providing the information to the petitioner pursuant to subparagraph (I) of this paragraph (b) shall redact all confidential information contained therein.

(c) If a petitioner fails to provide the information required by subparagraph (I) of paragraph (a) of this subsection (5) by the deadline specified in subparagraph (II) of said paragraph (a), the county may move the board of assessment appeals to compel disclosure and to issue appropriate sanctions for noncompliance with such order. The motion may be made directly by the county attorney and shall be accompanied by a certification that the county assessor or the county board of equalization has in good faith conferred or attempted to confer with such petitioner in an effort to obtain the information without action by the board of assessment appeals. If an order compelling disclosure is issued under this paragraph (c) and the petitioner fails to comply with such order, the board of assessment appeals may make such orders in regard to the noncompliance as are just and reasonable under the circumstances,

including an order dismissing the action or the entry of a judgment by default against the petitioner. Interest due the taxpayer shall cease to accrue as of the date the order compelling disclosure is issued, and the accrual of interest shall resume as of the date the contested information has been provided by the taxpayer.

(d) In the notice of determination, the county board of equalization shall inform a taxpayer of the taxpayer's obligation to provide the information required by paragraph (a) of this subsection (5).

(e) The county board of equalization and the board of county commissioners receiving any information provided by a petitioner pursuant to subparagraph (I) of paragraph (a) of this subsection (5) that is exempt from disclosure under either section 24-72-204 (3)(a)(IV), C.R.S., or another provision of the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S., shall keep such information confidential; except that such information may be disclosed to the administrator and the employees of his or her office, the board of assessment appeals, the county board of equalization, the board of county commissioners of the county in which the subject property is located, the office of the county assessor, or a person retained to appraise or provide value consultation in connection with the subject property where such information is pertinent to an appeal.

(f) Nothing in this subsection (5) shall be construed to apply to a public utility whose valuation for property tax purposes is determined by the administrator in accordance with the provisions of article 4 of this title.

(6) If the city and county of Denver elects to use the pilot alternate protest procedure established in section 39-5-122.8, all hearings shall be conducted in accordance with that section.

**Source: L. 64:** R&RE, p. 713, § 1. **C.R.S. 1963:** § 137-8-5. **L. 67:** p. 951, § 22. **L. 88:** (1) amended, p. 1302, § 10, effective April 29. **L. 89:** (2) amended, p. 1458, § 16, effective June 7. **L. 90:** (1) amended and (3) and (4) added, pp. 1701, 1700, §§ 32, 30, effective June 9. **L. 93:** (2) amended, p. 1689, § 7, effective June 6. **L. 96:** (1) amended, p. 722, § 6, effective May 22. **L. 98:** (2) amended, p. 470, § 6, effective July 1. **L. 2000:** (1) and (3) amended, p. 1501, § 6, effective August 2. **L. 2011:** (5) added, (SB 11-119), ch. 130, p. 453, § 1, effective August 10. **L. 2013:** (6) added, (HB 13-1113), ch. 11, p. 32, § 6, effective March 8. **L. 2016:** (2) amended, (SB 16-172), ch. 280, p. 1149, § 3, effective June 10.

**39-8-108. Decision - review - opportunity to submit case to arbitration.** (1) If the county board of equalization grants a petition, in whole or in part, the assessor shall adjust the valuation accordingly; but, if the petition is denied, in whole or in part, the petitioner may appeal the valuation set by the assessor or, if the valuation is adjusted as a result of a decision of the county board of equalization, the adjusted valuation to the board of assessment appeals or to the district court of the county wherein the petitioner's property is located for a trial de novo, or the petitioner may submit the case to arbitration pursuant to the provisions of section 39-8-108.5. Such appeal or submission to arbitration shall be taken no later than thirty days after the date such denial was mailed pursuant to section 39-8-107 (2). Any decision rendered by the county board of equalization shall state that the petitioner has the right to appeal the decision of the county board to the board of assessment appeals or to the district court of the county wherein the petitioner's property is located or to submit the case to arbitration and, to preserve such right, the

time by which such appeal or submission to arbitration must be made. Any request by a taxpayer for a hearing before the board of assessment appeals shall be accompanied by a nonrefundable filing fee in an amount specified in section 39-2-125 (1)(h). In addition, any request by a taxpayer for a hearing before the board of assessment appeals shall be stamped with the date on which such request was received by the board. All such requests shall be presumed to be on time unless the board can present evidence to show otherwise.

(2) If the petitioner has appealed to the board of assessment appeals and the decision of the board of assessment appeals is against the petitioner, the petitioner may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. If the decision of the board is against the respondent, the respondent, upon the recommendation of the board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. In addition, on and after June 7, 1989, if the decision of the board is against the respondent, the respondent may petition the court of appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when the respondent alleges procedural errors or errors of law by the board of assessment appeals. If the board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, the respondent may petition the court of appeals for judicial review of such questions within thirty days of such decision. Any decision issued by the board of assessment appeals shall inform the petitioner or respondent, as may be appropriate, of the right to petition the court of appeals for judicial review.

(3) If the decision of the county board of equalization has been appealed to the district court, the decision of the court shall be subject to appellate review according to the Colorado appellate rules and the provisions of section 24-4-106 (9), C.R.S.

(4) If the taxpayer submits his case to arbitration pursuant to the provisions of section 39-8-108.5, the decision reached under such process shall be final and not subject to review.

(5) In any appeal authorized by this section or by section 39-5-122, 39-5-122.7, or 39-10-114:

(a) The valuation shall not be adjusted to a value higher than the valuation set by the county board of equalization pursuant to section 39-8-107, except as specifically permitted pursuant to section 39-5-125;

(b) The assessor's valuation of similar property similarly situated shall be credible evidence;

(c) The respondent may not rely on any confidential information which is not available for review by the taxpayer unless such confidential data is presented in such a manner that the source cannot be identified;

(d) Upon request, the respondent shall make available to the taxpayer two working days prior to any appeal hearing data supporting the assessor's valuation. Such request shall be accompanied by data supporting the taxpayer's valuation. Nothing in this paragraph (d) shall be construed to prohibit the introduction at such appeal hearing of any data discovered as a result of the exchange of data required by this paragraph (d).

(e) In using the market approach to determine the value of residential real property, if the assessor has knowledge of the conversion from one residential use to a different residential use,

such conversion shall create a rebuttable presumption that the sale of such property is not a comparable sale for purposes of establishing the value of a property having a similar prior residential use.

(6) In any appeal or submission to arbitration authorized by this section, there shall be no presumption in favor of any pending valuation.

**Source: L. 64:** R&RE, p. 713, § 1. **C.R.S. 1963:** § 137-8-6. **L. 70:** p. 386, § 23. **L. 77:** (2) amended, p. 1736, § 19, effective June 20. **L. 83:** (2) amended, p. 2087, § 5, effective October 13. **L. 85:** Entire section amended and (2) amended, pp. 1228, 1230, §§ 2, 1, effective July 1. **L. 88:** (1) and (2) amended, (3) R&RE, and (4) added, pp. 1302, 1303, §§ 11, 12, effective April 29. **L. 89:** (1) and (2) amended, p. 1458, § 17, effective June 7. **L. 90:** (2) amended and (5) added, pp. 1694, 1700, §§ 13, 31, effective June 9. **L. 92:** (1), (2), and (5)(d) amended, p. 2210, § 8, effective June 3. **L. 96:** (1), (2), and (5)(a) amended and (6) added, p. 723, § 7, effective May 22. **L. 2002:** IP(5) amended and (5)(e) added, p. 843, § 4, effective August 7. **L. 2003:** (1) amended, p. 1467, § 4, effective July 1.

**Editor's note:** Amendments to subsection (2) by House Bill 85-1106 and Senate Bill 85-85 were harmonized.

**Cross references:** For right to judicial review under the "State Administrative Procedure Act", see § 24-4-106.

**39-8-108.5. Arbitration of property valuations - arbitrators - qualifications - procedures.** (1) (a) In order to give taxpayers an alternative to pursuing an appeal of the county board of equalization's decision through either the board of assessment appeals or the district court, an arbitration process shall be established. The board of county commissioners shall develop a list of persons who shall be qualified to act as arbitrators of property valuation disputes. Such list shall be kept in the office of the county clerk and recorder.

(b) Except as otherwise provided in paragraph (c) of this subsection (1), persons on the list maintained pursuant to paragraph (a) of this subsection (1) must be, in addition to any other qualifications deemed necessary by the board, experienced in the area of property taxation and licensed or certificated pursuant to part 7 of article 61 of title 12, C.R.S.

(c) No person shall act as an arbitrator of property valuation disputes in any county during any property tax year in which such person represents or has represented any taxpayer in any matter relating to the protest and appeal of property valuation or to the abatement or refund of property taxes.

(2) (a) Within thirty days of the county board of equalization's decision, any taxpayer who plans to pursue arbitration shall notify the board of his intent. The taxpayer and the county board of equalization shall select an arbitrator from the list prepared pursuant to subsection (1) of this section within forty-five days of the county board of equalization's decision or within thirty days from the date the list of arbitrators is made available in any given year, whichever is later. In the absence of agreement by the taxpayer and the county board of equalization within said specified time period, the district court of the county in which the property is located shall select an arbitrator from said list.

(b) If a taxpayer acts pursuant to paragraph (a) of this subsection (2), the county board of equalization shall be required to participate in arbitration and to accept the arbitrator selected.

(3) (a) Arbitration hearings shall be at a time and place set by the arbitrator with the mutual consent of the taxpayer and the county board of equalization. The arbitration hearing shall be held within sixty days from the date the arbitrator was selected.

(b) Procedure at arbitration hearings shall be informal, and strict rules of evidence shall not be applied except as necessitated in the opinion of the arbitrator by the requirements of justice. All questions of law and fact shall be determined by the arbitrator.

(b.5) The taxpayer shall produce information to support his contention that the property should be valued differently. The assessor shall produce information to support the basis and amount of his valuation of the property. Both the information of the assessor and the information of the taxpayer shall be considered by the arbitrator in making his decision.

(c) The arbitrator may issue or cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and, upon application to the district court by the taxpayer or the county board of equalization or the arbitrator, enforced in the manner provided by law for the service and enforcement of subpoenas in civil actions.

(d) The taxpayer and the county board of equalization shall be entitled to attend, personally or with counsel, and participate in the proceedings. Such participation may include the filing of briefs and affidavits. Upon agreement of both parties, the proceedings may be confidential and closed to the public.

(e) No record of the proceedings is required.

(f) The arbitrator's decision shall be made in accordance with applicable Colorado property tax laws. The arbitrator's decision shall be in writing and signed by the arbitrator.

(g) The arbitrator shall deliver a copy of his decision to the parties personally or by registered mail within ten days of the hearing. Such decision shall be final and not subject to review.

(4) An arbitrator shall be immune from civil liability arising from participation as an arbitrator and for all communications, findings, opinions, and conclusions made in the course of his duties under this section.

(5) (a) An arbitrator's expenses and fees shall not exceed one hundred fifty dollars per case concerning residential real property. For cases concerning any taxable property other than residential real property, an arbitrator's expenses and fees shall be an amount agreed upon by the taxpayer and the county board of equalization.

(b) The arbitrator's fees and expenses, not including counsel fees, incurred in the conduct of the arbitration shall be paid as provided in the decision.

(6) Any decision of the county board of equalization regarding a 1987 property valuation which has been appealed to either the board of assessment appeals or the district court and which has not been heard or adjudicated may be submitted to arbitration pursuant to this section at the request of the taxpayer.

**Source: L. 88:** Entire section added, p. 1303, § 13, effective April 29; (6) amended, p. 1274, § 11, effective May 29. **L. 90:** (3)(b.5) added and (3)(f) amended, p. 1697, § 23, effective June 9. **L. 92:** IP(1)(b) and (2)(a) amended and (1)(c) added, p. 2212, § 9, effective June 3. **L.**

**2013:** IP(1)(b) amended, (SB 13-155), ch. 392, p. 2284, § 16, effective July 1. **L. 2014:** (1)(b) amended, (SB 14-080), ch. 89, p. 336, § 1, effective August 6.

**39-8-108.7. Review of decision - effect of stipulation by taxpayer - repeal. (Repealed)**

**Source: L. 88:** Entire section added, p. 1274, § 10, effective May 29.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective July 1, 1989. (See L. 88, p. 1274.)

**39-8-109. Effects of board of assessment appeals or district court decision.** (1) If upon appeal the appellant is sustained, in whole or in part, then the appellant shall provide a copy of the order or judgment of the board of assessment appeals or district court, as the case may be, to the county assessor. If the order or judgment has been appealed, then the appellant shall present to the county assessor a copy of the original order or judgment of the board of assessment appeals or district court and copies of all further decisions of the board of assessment appeals, district court, court of appeals, and supreme court. Upon presentation to the treasurer by the county assessor of a copy of the order or judgment of the board of assessment appeals or district court, as the case may be, and, if the case has been appealed, copies of all further decisions of the board of assessment appeals, district court, court of appeals, and supreme court, modifying the valuation for assessment of the property, the appellant, identified as the petitioner or plaintiff on the order or judgment of the board of assessment appeals or district court, shall forthwith receive the appropriate refund of taxes and delinquent interest thereon, together with refund interest at the same rate as delinquent interest as specified in section 39-10-104.5. Such refund interest shall only accrue from the date on which payment of taxes and delinquent interest thereon was received by the treasurer. Such refund shall be paid to the appellant even if the appellant is not the current owner of the property. The appellant and the county shall each be responsible for their respective costs in said court or board of assessment appeals, as the case may be.

(2) In the event that the treasurer refunds taxes and interest to the appellant based on a modification of the valuation for assessment of the property pursuant to subsection (1) of this section, the treasurer shall be entitled to reimbursement for the refund of taxes and interest pro rata by all jurisdictions receiving payment thereof and may request reimbursement from the jurisdictions or offset the reimbursements against subsequent payments. The provisions of this subsection (2) shall not apply to a city and county.

**Source: L. 64:** R&RE, p. 713, § 1. **C.R.S. 1963:** § 137-8-7. **L. 70:** p. 386, § 24. **L. 89:** Entire section amended, p. 1466, § 32, effective June 7. **L. 90:** Entire section amended, p. 1719, § 7, effective June 7; entire section amended, p. 1087, § 55, effective July 1. **L. 92:** Entire section amended, p. 2224, § 7, effective April 9; entire section amended, p. 2185, § 67, effective June 2. **L. 93:** Entire section amended, p. 306, § 6, effective April 7. **L. 2002:** Entire section amended, p. 843, § 5, effective August 7. **L. 2005:** Entire section amended, p. 153, § 1, effective April 5. **L. 2008:** Entire section amended, p. 1247, § 6, effective August 5. **L. 2010:** (1) amended, (SB 10-138), ch. 155, p. 533, § 1, effective August 11.

## ARTICLE 9

State Board of Equalization

**Editor's note:** This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

**39-9-101. State board of equalization.** (1) The state board of equalization shall consist of the governor or his designee, the speaker of the house of representatives or his designee, the president of the senate or his designee, and two members appointed by the governor with the consent of the senate. Each of the appointed members shall be a qualified appraiser or a former assessor or a person who has knowledge and experience in property taxation. Said board shall elect a chairman and a vice-chairman; the vice-chairman shall act as chairman in the absence of the chairman.

(2) No more than three members of the state board of equalization shall be affiliated with the same political party. Except as otherwise provided in section 2-2-326, C.R.S., each member shall receive a per diem allowance of fifty dollars for each day spent attending meetings or hearings of the state board of equalization or otherwise spent discharging his duties as a member of said board; except that no member shall receive the per diem allowance provided for in this subsection (2) for any day for which he receives a per diem allowance from the state under any other statute and except that no member shall receive the per diem allowance provided for in this subsection (2) if he receives a salary from the state for a full-time position with the state. Except as otherwise provided in section 2-2-326, C.R.S., each member of said board shall receive actual and necessary expenses incurred in performing his duties as a member of said board. The members appointed by the governor shall serve at the pleasure of the governor but shall not serve for more than four consecutive years unless reappointed by the governor and reconfirmed by the senate at the conclusion of said four years. Vacancies in either of the appointed positions on the state board of equalization shall be filled by appointment by the governor with the consent of the senate for the unexpired term.

**Source: L. 64:** R&RE, p. 715, § 1. **C.R.S. 1963:** § 137-9-1. **L. 83:** Entire section amended, p. 1504, § 1, effective June 2. **L. 2014:** (2) amended, (SB 14-153), ch. 390, p. 1965, § 29, effective June 6.

**Cross references:** For constitutional grant of powers to the state board of equalization, see § 15 of article X of the state constitution.

**39-9-102. Meetings of state board of equalization.** (1) The state board of equalization shall meet at a place designated by the chairman, at such times as the chairman may deem necessary.

(2) All sessions of said board shall be conducted in public, and a full and correct record of its proceedings shall be kept, which record shall be a public document and available for public inspection. Opportunity shall be afforded any person to appear before said board to present facts and information for its consideration.

(3) Two weeks before each meeting of the state board of equalization, a news release stating the time and location of the meeting shall be sent throughout the state to radio stations, television stations, and newspapers of general circulation. Not later than two weeks before each meeting, the board shall also mail notice to each assessor and board of county commissioners of a county with regard to the nature of any action it may take pertaining to current year valuations for assessment.

**Source: L. 64:** R&RE, p. 714, § 1. **C.R.S. 1963:** § 137-9-2. **L. 76:** (3) added, p. 763, § 28, effective January 1, 1977. **L. 83:** (1) amended, p. 2092, § 2, effective September 23. **L. 84:** (3) amended, p. 1001, § 2, effective March 5. **L. 86:** (1) amended, p. 1102, § 4, effective March 26.

**39-9-103. Duties of state board - enforcement - reappraisal orders.** (1) The state board of equalization shall order reappraisals of classes as provided in section 39-1-105.5, make other orders as provided in said section, and perform such other duties as are provided for in said section.

(2) The state board of equalization shall conduct hearings on petitions filed by the administrator for the reappraisal of one or more classes or subclasses of taxable property pursuant to section 39-2-114. The state board of equalization shall also conduct hearings upon complaints filed by the administrator, upon his own motion or upon petition by any tax-levying authority in this state, concerning valuation for assessment of one or more classes or subclasses of taxable property if a reappraisal has not been conducted or ordered pursuant to the provisions of section 39-2-114. Decisions of the state board of equalization shall be subject to judicial review as provided in section 24-4-106, C.R.S.

(3) Said board may compel compliance with its orders by proceedings in the nature of mandamus, by injunction, or by other appropriate civil remedies.

(4) It is the duty of the state board of equalization to examine and review the valuations for assessment of taxes upon the various classes and subclasses of taxable real and personal property located in the several counties of the state as reflected in the abstract of assessment of each county, the decisions of the board of assessment appeals, the recommendations of the administrator, and, effective January 1, 1983, the study conducted by the director of research of the legislative council pursuant to section 39-1-104 (16).

(5) The decisions of the board of assessment appeals which affect the valuation of classes or subclasses of property may be reversed or modified by the state board of equalization, and such action shall be taken only if a written appeal has, within thirty days of the board of assessment appeals' decision, been lodged with the state board of equalization by one of the parties to the proceedings before the board of assessment appeals. Decisions of the state board of equalization shall be subject to judicial review as provided in section 24-4-106, C.R.S.

(6) The state board of equalization shall conduct hearings upon complaints filed by the property tax administrator, upon his own motion or upon petition by any tax-levying authority in this state, concerning alleged dereliction of duty on the part of a county assessor.

(7) The state board of equalization shall review abstracts of assessment and may, by order, change the valuation for assessment of any class or subclass of property which was changed by a county board of equalization.

(8) The state board of equalization may promulgate such rules and regulations as are necessary for the implementation of its duties and responsibilities. Such rules and regulations shall be promulgated pursuant to and be subject to the provisions of section 24-4-103, C.R.S.

(9) Repealed.

(10) (a) It is the function of the state board of equalization and it shall have and exercise the authority, prior to publication but subsequent to review by the advisory committee to the property tax administrator pursuant to section 39-2-131 (1), to review and approve or disapprove, within thirty days after receipt from said advisory committee to the property tax administrator:

(I) Manuals or any part thereof, appraisal procedures, instructions, and guidelines prepared and published by the administrator pursuant to section 39-2-109 (1)(e) and based upon the approaches to appraisal set forth in section 39-1-103 (5)(a) and pursuant to section 39-2-109 (1)(k); and

(II) Forms, notices, and records approved or prescribed pursuant to the authority of the property tax administrator set forth in section 39-2-109 (1)(d).

(b) Any manuals, appraisal procedures, instructions, guidelines, forms, notices, or records which are not approved or disapproved by the state board of equalization within said thirty days shall be automatically approved; except that, if within said thirty days the state board of equalization schedules a hearing on such manuals, appraisal procedures, instructions, guidelines, forms, notices, or records, such automatic approval shall not occur unless the state board of equalization does not approve or disapprove such manuals, appraisal procedures, instructions, guidelines, forms, notices, or records within thirty days after the conclusion of such hearing.

**Source: L. 64:** R&RE, p. 714, § 1. **C.R.S. 1963:** § 137-9-3. **L. 70:** p. 386, § 25. **L. 76:** (5) added, p. 763, § 29, effective June 10. **L. 77:** (3) amended, (5) R&RE, and (6), (7), and (8) added, pp. 1736, 1738, §§ 20, 21, effective June 20; (3) amended, p. 1755, § 2, effective July 23. **L. 81:** (5) amended, p. 1834, § 13, effective June 12; (1) amended, p. 1398, § 12, effective January 1, 1983. **L. 83:** Entire section R&RE, p. 1505, § 2, effective June 2; (7) and (8) added, p. 2093, § 3, effective September 23. **L. 88:** (9) added, p. 1290, § 22, effective May 23. **L. 90:** (10) added, p. 1699, § 28, effective June 9. **L. 91:** (10) amended, p. 1954, § 3, effective January 1, 1992. **L. 93:** (9) repealed, p. 1690, § 9, effective June 6. **L. 96:** (10) amended, p. 948, § 2, effective July 1.

**Editor's note:** Amendments to subsection (3) by House Bill 77-1242 and House Bill 77-1452 were harmonized.

**Cross references:** For right of judicial review under the "State Administrative Procedure Act", see § 24-4-106.

**39-9-104. Correction of errors.** The state board of equalization shall correct any obvious error appearing in any county abstract of assessment, whether made by the assessor or by the administrator. The state board of equalization shall not change any matter pertaining to the actual value of any class or subclass except as provided in section 39-9-103 (7); except that, in the taxable year following the year of reappraisal ordered by the state board of equalization,

such board may change any matter pertaining to the actual value, and such change shall be made by the assessor in the abstract of assessment of such current taxable year.

**Source: L. 64:** R&RE, p. 715, § 1. **C.R.S. 1963:** § 137-9-4. **L. 70:** p. 387, § 26. **L. 77:** Entire section amended, p. 1756, § 3, effective July 23. **L. 83:** Entire section amended, p. 2093, § 4, effective September 23.

**39-9-105. Certification of valuations for assessment.** (1) No later than December 20 of each year, the state board of equalization shall complete its review of the abstracts of assessment of the several counties of the state, and the chair of the state board of equalization shall thereupon certify to the assessor of each county a statement of the changes, if any, ordered by said board in the abstract of his or her county for the current taxable year and for the next succeeding taxable year and shall also return the abstract of assessment for the current taxable year to each county.

(2) Repealed.

**Source: L. 64:** R&RE, p. 715, § 1. **C.R.S. 1963:** § 137-9-5. **L. 77:** (1) amended, p. 1756, § 4, effective July 23. **L. 83:** (1) amended, p. 1506, § 3, effective June 2. **L. 86:** (1) amended, p. 1102, § 5, effective March 26. **L. 89:** (1) amended, p. 1459, § 18, effective June 7. **L. 93:** (2) repealed, p. 444, § 1, effective April 19. **L. 2000:** (1) amended, p. 1502, § 7, effective August 2.

**39-9-106. Supervision and administration of property tax laws.** The state board of equalization shall have supervision of the administration of all laws concerning the valuation and assessment of taxable property and the levying of property taxes.

**Source: L. 64:** R&RE, p. 715, § 1. **C.R.S. 1963:** § 137-9-6.

**39-9-107. Assessment roll to conform.** Whenever the state board of equalization orders any change in the valuation for assessment of any class or subclass of taxable real or personal property located in a county, the assessor thereof shall make the proper adjustment in individual schedules so that the assessment roll of his county conforms with the statement of changes ordered by said board and certified by the chairman of said board.

**Source: L. 64:** R&RE, p. 715, § 1. **C.R.S. 1963:** § 137-9-7. **L. 77:** Entire section amended, p. 1756, § 5, effective July 23. **L. 83:** Entire section amended, p. 2093, § 5, effective September 23.

**39-9-108. Judicial review - interest during review.** Decisions of the state board of equalization shall be subject to judicial review, as provided in section 24-4-106, C.R.S. Such review shall include the issues of compliance with applicable law and constitutional provisions governing valuation for assessment for property tax purposes and the validity of any valuation for assessment study conducted pursuant to the provisions of section 39-1-104 (16). Parties adversely affected or aggrieved shall include any taxpayer or assessor or the governing body of any taxing jurisdiction. In any case in which excess state equalization payments are made to school districts within the county during the time such review is pending, interest shall be paid to

the state on the amount of such excess. Such interest shall be paid for the period of time from the date of the decision of the state board of equalization to the date of the final determination of all judicial review. Such interest shall be computed at the rate determined by the state bank commissioner pursuant to section 39-21-110.5.

**Source: L. 83:** Entire section added, p. 2093, § 6, effective September 23. **L. 88:** Entire section amended, p. 1282, § 7, effective May 23. **L. 2001:** Entire section amended, p. 1288, § 85, effective June 5.

**39-9-109. Power of state board - waiver of deadline.**

(1) to (4) Repealed.

(5) Acting by majority vote and when the state board of equalization determines that the interests of justice and equity would be served, the board may authorize the waiver of the July 1 filing deadline described in section 39-2-117 (3)(a) for any annual report required to be filed pursuant to section 39-2-117 if the report is not filed by the filing deadline or if the report is filed by the filing deadline but is incomplete or otherwise incorrect when filed. When authorizing a waiver, the state board may determine a deadline for filing the report, after which the waiver is invalid. The deadline for filing the report must not be sooner than thirty days after the date that the state board authorizes the waiver.

(6) Notwithstanding the provisions of section 39-2-117 (1)(a), acting by majority vote, the state board of equalization may authorize the property tax administrator to make an exemption effective for not more than the time allowed pursuant to section 39-10-101 (2)(b)(II) when the property has been added back to the tax roll as omitted property and would otherwise have met all criteria for exemption during that time.

**Source: L. 89:** Entire section added, p. 1491, § 5, effective June 7. **L. 95:** (5) added, p. 602, § 1, effective May 22. **L. 2003:** (1) to (4) repealed, p. 867, § 2, effective April 7. **L. 2008:** (5) amended, p. 458, § 2, effective August 5. **L. 2013:** (5) amended and (6) added, (HB 13-1246), ch. 203, p. 846, § 2, effective August 7.

## Collection and Redemption

## ARTICLE 10

Collection

**Editor's note:** This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

**Law reviews:** For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

**39-10-101. Collection of taxes.** (1) Upon receipt of the tax list and warrant from the assessor, the treasurer shall proceed to collect the taxes therein levied, and such tax list and

warrant shall be his authority and justification against any illegality in procedure prior to his receiving the same.

(2) (a) (I) If, after the tax list and warrant has been received by the treasurer, the treasurer discovers that any taxable property then located in the treasurer's county has been omitted from the tax list and warrant for the current year or for any prior year and has not been valued for assessment, the treasurer shall forthwith list and value such property for assessment in the same manner as the assessor might have done and shall enter such valuation for assessment on the tax list and warrant and extend the levy. Such entry shall be designated as an additional assessment and shall be valid for all purposes, the same as though performed by the assessor.

(II) Notwithstanding subparagraph (I) of this paragraph (a) or section 39-5-125, neither the assessor nor the treasurer shall treat any possessory interest in exempt property as taxable property omitted from the tax list and warrant for any property tax year prior to 2001.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), the taxes for any period, together with interest thereon, imposed by this section shall not be assessed, nor shall any lien be filed or distraint warrant issued or suit for collection be instituted or any other action to collect the same be commenced, more than six years after the date on which the tax was or is payable. Except as otherwise provided in paragraph (d) of this subsection (2), interest shall not be charged prior to the date on which additional assessment is made.

(II) Effective January 1, 1996, the taxes for any period, together with interest thereon, imposed by this section shall not be assessed, nor shall any lien be filed or distraint warrant issued or suit for collection be commenced, more than two years after the date on which the tax was or is payable when the failure to collect the tax is due to an error or omission of a governmental entity. The provisions of this subparagraph (II) shall not apply to taxes imposed on oil and gas leaseholds and lands.

(c) In the case of fraudulent action with intent to evade tax, the tax, together with interest thereon, may be assessed, or proceedings for the collection of such taxes may be begun, at any time.

(d) Taxes levied upon additional assessments on mines and on oil and gas leaseholds and lands which had been previously omitted from the tax list and warrant due to the failure of an owner or operator of any mine or of any oil and gas leaseholds and lands to comply with section 39-6-106, 39-6-113, or 39-7-101 shall be subject to the delinquent interest provisions of section 39-10-104.5. Delinquent interest shall be calculated to accrue from the date the taxes were due pursuant to section 39-1-105 and section 39-6-106, 39-6-113, or 39-7-101. This paragraph (d) shall apply to omitted property or production but shall not apply to valuation disputes, protests, or appeals therefrom filed pursuant to section 39-5-122.

(3) If on the tax list and warrant there is any error in the name of a person owing taxes, the treasurer may correct such error and collect the taxes from the person intended.

(4) and (5) Repealed.

**Source: L. 64:** R&RE, p. 715, § 1. **C.R.S. 1963:** § 137-10-1. **L. 73:** p. 238, § 21. **L. 75:** (4) repealed, p. 1473, § 30, effective July 18; (2) amended, p. 1478, § 2, effective July 30. **L. 90:** (5) added, p. 1719, § 9, effective June 7. **L. 92:** (2)(b) amended and (2)(d) added, p. 2238, § 1, effective April 10. **L. 94:** (5) repealed, p. 753, § 1, effective April 20. **L. 95:** (2)(b) amended, p. 35, § 1, effective March 17. **L. 96:** (2)(b)(II) amended, p. 18, § 4, effective February 22; (2)(a)

amended p. 1855, § 5, effective June 5. **L. 2002:** (2)(a)(II) amended, p. 1009, § 4, effective August 7.

**39-10-102. When taxes payable.**

(1) (a) Repealed.

(b) (I) Except as otherwise provided in article 1.5 of this title, all property taxes shall become due and payable on January 1 of the year following that in which they are levied and shall become delinquent on June 16 of said year.

(II) This paragraph (b) is effective January 1, 1992.

(2) Except as otherwise provided in article 1.5 of this title, the treasurer shall accept payment of taxes tendered by any person and issue a receipt therefor at any time after the tax list and warrant have come into his hands.

**Source: L. 64:** R&RE, p. 716, § 1. **C.R.S. 1963:** § 137-10-2. **L. 81:** Entire section amended, p. 1841, § 3, effective May 28. **L. 90:** (1) amended, p. 1716, § 1, effective June 7; (1) amended, p. 1085, § 49, effective July 1.

**Editor's note:** Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective January 1, 1992. (See L. 90, p. 1716.)

**39-10-103. Tax statement.** (1) (a) As soon as practicable after January 1, the treasurer shall, at the treasurer's discretion, mail or send electronic notification to each person whose name appears on the tax list and warrant a statement or true and actual notice of electronic statement availability, as applicable, showing the total amount of taxes payable by such person, which statement shall separately list the amount of taxes levied on real and personal property and shall recite the actual value of the property and the amount of valuation for assessment upon which such taxes were levied. If any of the personal property upon which taxes are to be levied is a mobile home, the tax statement shall contain the following notice: "This property may not be moved without a valid permit or prorated tax receipt and a transportable manufactured home permit from the county treasurer's office. Violators shall be prosecuted." Failure of any person to receive such statement or true and actual notice of an electronic statement, as applicable, shall not preclude collection by the treasurer of the amount of taxes due from and payable by such person. Such statement shall include a notice that, if such person desires a receipt for payment of taxes, the person shall request such receipt. The statement may also state what each mill levy would have been for each taxing district for the prior tax year based upon the current year's valuation for assessment.

(b) On and after January 1, 1988, each taxpayer's statement required by paragraph (a) of this subsection (1) shall also separately list the mill levies and the amount of taxes to be credited to the county, municipalities, school districts, special districts, and other districts within the county which are applicable to his property. This paragraph (b) shall be applicable for statements for 1987 taxes payable in 1988 and for each statement thereafter.

(2) Each person whose name appears on the tax list and warrant shall be informed in writing of the actual school district general fund mill levy and the school district general fund mill levy in absence of funds estimated to be received by school districts pursuant to the "Public

School Finance Act of 1994", article 54 of title 22, C.R.S., and the estimated funds to be received for the general funds of districts from the state.

(3) Repealed.

(4) Notwithstanding any other provision of law, a taxpayer may request to receive by electronic transmission the statement required by subsection (1) of this section. The taxpayer shall submit along with the request an electronic address to which the treasurer may send future statements. The treasurer, upon receipt of such request by a taxpayer to receive statements electronically, may send all future statements by electronic transmission to the electronic address supplied by the taxpayer; except that, if a taxpayer subsequently requests to cease the electronic transmission of such statements and requests to receive future statements by mail, the treasurer shall comply with the request. Failure of a taxpayer to receive the electronic statement shall not preclude collection by the treasurer of the amount of taxes due from and payable by the taxpayer.

**Source: L. 64:** R&RE, p. 716, § 1. **C.R.S. 1963:** § 137-10-3. **L. 77:** Entire section amended, p. 1761, § 2, effective June 2; entire section amended, p. 1739, § 22, effective June 20. **L. 78:** Entire section amended, p. 373, § 10, effective July 1. **L. 85:** (1) amended, p. 1232, § 1, effective April 5. **L. 88:** (2) amended, p. 824, § 38, effective May 24. **L. 89:** (2) amended, p. 971, § 23, effective June 7. **L. 90:** (3) added, p. 1716, § 2, effective June 7; (3) added, p. 1085, § 50, effective July 1, 1990. **L. 91:** (1)(a) amended, p. 1695, § 2, effective July 1. **L. 94:** (2) amended, p. 825, § 56, effective April 27; (2) amended, p. 1646, § 81, effective May 31. **L. 96:** (1)(a) amended, p. 724, § 8, effective May 22. **L. 2004:** (3) repealed, p. 207, § 30, effective August 4. **L. 2010:** (1)(a) amended and (4) added, (HB 10-1117), ch. 195, p. 842, § 3, effective August 11. **L. 2015:** (1)(b) amended, (SB 15-264), ch. 259, p. 967, § 87, effective August 5.

**Editor's note:** Amendments to this section by House Bill 77-1324 and House Bill 77-1452 were harmonized. Amendments to subsection (3) by Senate Bill 90-211 superseded by House Bill 90-1314. Amendments to subsection (2) by House Bill 94-1001 and Senate Bill 94-206 were harmonized.

**39-10-104. Payment dates - optional payment dates - failure to pay - penalty - repeal. (Repealed)**

**Source: L. 64:** R&RE, p. 716, § 1. **C.R.S. 1963:** § 137-10-4. **L. 71:** p. 327, § 3. **L. 73:** p. 1433, § 3. **L. 77:** (1), (2), (3), and (5) amended and (6) added, p. 1763, § 1, effective April 7; (1)(b), (2)(b), (3)(b), and (5)(b) repealed, p. 1763, § 1, effective March 1, 1978. **L. 79:** (6) repealed, p. 1641, § 54, effective July 19; (2)(a), (3)(a), and (5)(a) amended and (7) and (8) added, pp. 1420, 1421, 1423, §§ 1, 2, 3, effective January 1, 1980. **L. 81:** (9) added, p. 1860, § 1, effective March 20; (7) amended, p. 1859, § 1, effective March 27. **L. 83:** (1)(a) amended and (5.5) added, p. 1509, § 1, effective May 23. **L. 90:** (10) added, p. 1717, § 3, effective June 7; (10) added, p. 1085, § 51, effective July 1.

**Editor's note:** Subsection (10) provided for the repeal of this section, effective January 1, 1992. (See L. 90, pp. 1085, 1717.)

**39-10-104.5. Payment dates - optional payment dates - failure to pay - delinquency.** (1) The provisions of this section, as amended, are effective January 1, 1994.

(2) Except as provided in subsections (6) and (7) of this section, at the option of the taxpayer, property taxes may be paid in full or in two equal installments, the first such installment to be paid on or before the last day of February and the second installment to be paid no later than the fifteenth day of June.

(3) (a) If the first installment is not paid on or before the last day of February, then delinquent interest on the first installment shall accrue at the rate of one percent per month from the first day of March until the date of payment; except that, if payment of the first installment is made after the last day of February but not later than thirty days after the mailing by the treasurer of the tax statement, or true and actual notification of an electronic statement, pursuant to section 39-10-103 (1)(a), no such delinquent interest shall accrue. If the second installment is not paid by the fifteenth day of June, delinquent interest on the second installment shall accrue at the rate of one percent per month from the sixteenth day of June until the date of payment. Interest on the first installment shall continue to accrue at the same time that interest is accruing on the unpaid portion of the second installment. The taxpayer shall continue to have the option of paying delinquent property taxes in two equal installments until one day prior to the sale of the tax lien on such property pursuant to article 11 of this title.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), if the full amount of taxes is paid in a single payment on or before the last day of April, then no delinquent interest shall accrue on any portion of the taxes. If the full amount of taxes is paid in a single payment after the last day of April, interest shall be added to the full amount of taxes due in the amount of one percent per month which shall accrue from the first day of May until the date of payment.

(c) Interest shall be calculated on delinquent taxes as provided in paragraphs (a) and (b) of this subsection (3) as specified in the following table:

| **Required Date of Payment** | **Last Day of February** | **June 15April 30** | |
|---|---|---|---|
| Month Paid | | Half Tax Option | Full Tax |
| | 1st Installment | 2nd Installment | Option* |
| March | 1% | _____ | |
| April | 2% | _____ | |
| May | 3% | _____ | 1% |
| June 1 - 15 | 4% | _____ | 2% |
| June 16 - 30 | 4% | 1% | 2% |
| July | 5% | 2% | 3% |

| | | | |
|---|---|---|---|
| August | 6% | 3%4% | |
| September | 7% | 4%5% | |
| October | 8% | 5% | 6% |
| November | 9% | 6%7% | |
| December | 10% | 7%8% | |

*Total taxes less than $25.00 must be paid using the Full Tax Option.

(4) (Deleted by amendment, L. 93, p. 303, § 1, effective April 7, 1993.)

(5) In computing the amount of delinquent interest due under this section, portions of months shall be counted as whole months.

(6) There shall be no installment payment of property taxes totaling less than twenty-five dollars, and such taxes shall be paid in full no later than the last day of April. If such taxes are not paid prior to the last day of April, delinquent interest on the amount thereof shall accrue at the rate of one percent per month from the first day of May until the date of payment.

(7) The treasurer shall be authorized to accept funds paid by the seller and accepted by the dealer as a partial payment of taxes which have not yet been levied and which are not yet due but which have been prorated between the buyer and the seller at the time of the sale of a mobile home. A dealer shall remit taxes collected under this subsection (7) to the treasurer within ten days.

(8) Any payment under this section shall be deemed received by the treasurer on the date that the installment or full payment, including any penalties or fees due, is actually received in the treasurer's office, and actual receipt will be presumed as of the date of the United States postal service postmark. Where a payment is received through the mail or a common carrier but has no United States postal service postmark and the payment is actually received in the treasurer's office no later than five days after the due date, the treasurer shall record the date of payment as the due date of the payment. Where the payment is received through the mail or a common carrier but has no United States postal service postmark and the payment is actually received in the treasurer's office six or more days after the due date, the treasurer shall record the date of payment as the date the payment was received. If the date for filing any tax return or remittance falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

(9) An additional charge may be added to any delinquent taxes totaling less than fifty dollars including all delinquent interest and other charges. Such charge shall be for the purpose of covering the administrative costs and fees incurred by the county in collecting such delinquencies and shall be determined by the board of county commissioners or such other body as authorized by the city and county of Denver or as authorized by the city council of the city and county of Broomfield. Such charge shall not exceed twenty-five dollars in any case and shall be limited to such amount less than twenty-five dollars as may be necessary to limit the total charges against such property, including taxes, delinquent interest, and the charge authorized by this subsection (9), to no more than fifty dollars. Charges imposed under the authorization of this subsection (9) shall be a lien under section 39-1-107.

(10) The treasurer may refrain from collecting any penalty, delinquent interest, or costs where the amount to be collected is fifty dollars or less. Nothing in this subsection (10) shall be construed as releasing any person from the payment of any tax, assessment, penalty, delinquent interest, or costs or any other moneys which are due and owing and which the treasurer is authorized by law to collect.

(11) Repealed.

**Source: L. 90:** Entire section added, pp. 1085, 1717, §§ 52, 4, effective January 1, 1992. **L. 92:** (3) to (6), (9), and (10) amended, p. 2226, § 9, effective April 9. **L. 93:** (1) to (4) amended, p. 303, § 1, effective April 7; (2) amended and (11) added, p. 346, § 3, effective April 12. **L. 94:** (8) amended, p. 753, § 2, effective April 20. **L. 98:** (11) repealed, p. 829, § 52, effective August 5. **L. 2000:** (3)(a) amended, p.81, § 1, effective March 10. **L. 2001:** (9) amended, p. 269, § 17, effective November 15. **L. 2005:** (8) amended, p. 254, § 1, effective April 14. **L. 2006:** (10) amended, p. 26, § 1, effective March 13. **L. 2010:** (8) amended, (HB 10-1046), ch. 16, p. 77, § 1, effective March 5; (3)(a) amended, (HB 10-1117), ch. 195, p. 843, § 4, effective August 11. **L. 2016:** (2) amended, (SB 16-189), ch. 210, p. 793, § 107, effective June 6.

**Editor's note:** (1) Amendments to subsection (2) by Senate Bill 93-90 and House Bill 93-1040 were harmonized.

(2) Subsection (11), referenced in subsection (2), was repealed, effective August 5, 1998, but has been left in for historical purposes.

**39-10-105. Receipt for taxes.** (1) Upon request of an individual taxpayer or the taxpayer's agent, the treasurer shall issue and shall mail, if additionally requested, a receipt for each payment of taxes received, which shall state the amount of taxes paid and any delinquent interest thereon, the year or portion thereof for which such taxes apply, the property upon which such taxes are paid, and a notation of any taxes levied thereon for prior years which are unpaid and delinquent. A copy of the statement specified in section 39-10-103, when stamped "paid" by the treasurer, shall suffice for such receipt. The apportionment of the total tax levy may be printed or stamped on the reverse side of each tax receipt issued or may be separately furnished to the taxpayer. The mortgagee or beneficiary of a deed of trust is not required to retain a tax receipt for the property which is the subject of the mortgage or the deed of trust.

(1.5) In lieu of issuing and mailing individual receipts, the treasurer may issue and mail a certified listing of taxes paid and any delinquent interest thereon, the year or portion thereof for which such taxes apply, and sufficient identification of the property upon which such taxes are paid to those taxpayers or their agents for combined tax payments on ten or more assessed parcels.

(2) The treasurer shall retain in the office as part of the records thereof a copy of every receipt issued by the treasurer for taxes paid, which copies shall be recorded or filed in the order of issuance. The original tax receipt, or a copy thereof, or a copy of any entry in the treasurer's records concerning the same shall, when certified by the treasurer or the treasurer's deputy, be received in all places as prima facie evidence of payments of the taxes. For purposes of this section, "copy" means a reproduction of the original by any means, including, but not limited to, a photograph, a microfilm or optical imaging record, a computer disk image, or any other means of record retention chosen by the treasurer.

(3) When request is made of the treasurer for copies of tax receipts, a fee shall be collected for each copy of a receipt issued, as provided in section 30-1-102, C.R.S.

**Source: L. 64:** R&RE, p. 717, § 1. **C.R.S. 1963:** § 137-10-5. **L. 71:** p. 327, § 4. **L. 75:** (1.5) added, p. 1479, § 3, effective July 1. **L. 77:** (1) and (1.5) amended, p. 1761, § 3, effective June 2. **L. 92:** (1) and (1.5) amended, p. 2226, § 10, effective April 9. **L. 94:** (1) and (2) amended, p. 754, § 3, effective April 20.

**39-10-106. Payment of taxes on fractional interests in lands.** (1) Where oil, gas, or other hydrocarbon wells or fields belonging to multiple owners are operated as a unit, the owner of each fractional interest in such units shall be liable for the same proportion of the tax levied against the total unit that his net taxable revenues received therefrom bears to the total net taxable revenues received from such unit. In the event a fractional interest owner who takes production in kind does not provide the information to the operator which is required under section 39-7-101 (1.5), such fractional interest owner's tax liability shall be calculated using the net taxable revenues reported by the operator.

(2) The unit operator shall collect from the owners of the fractional interests and remit to the treasurer of the county in which the unit is located the tax levied against the entire unit. The unit operator may deduct and withhold from royalty payments or any other payments made to any fractional interest owner, either in kind or in money, the estimated amount of the tax to be paid by such fractional interest owner. Any difference between the estimated tax so withheld and the actual tax payable by any owner of a fractional interest may be accounted for by adjustments in royalty or other payments made to such owner subsequent to the time the actual tax is determined. Failure of the unit operator to remit to the treasurer the tax levied against the entire unit shall make the unit operator liable for such tax.

(3) At the request of any unit operator who does not disburse payments to fractional interest owners, the first purchaser shall collect the tax from the fractional interest owners as provided for in this section and transfer such proceeds to the unit operator who shall in turn be responsible for remitting to the treasurer the total tax levied against the entire unit.

(3.5) (a) Except as otherwise provided in paragraph (b) of this subsection (3.5), the unit operator shall place in an account in a federally insured bank or savings and loan association located in the state of Colorado which requires two signatures, one of which shall be the signature of the county treasurer of the county in which the unit is located, in order to make a withdrawal, an amount equal to the tax collected from the owners of fractional interests in the unit by the unit operator pursuant to the provisions of this section plus the proportional share of tax levied on the fractional interest in the unit owned by the unit operator. Such account shall be owned by the owners of fractional interests in the unit, but the unit operator shall be responsible for managing such account. The moneys shall be deposited in such account within thirty days from the date the unit operator receives payment for the sale of any oil or gas from such lease.

(b) The treasurer may waive the requirement of placing the tax in such account or fund as required in paragraph (a) of this subsection (3.5) and allow the unit operator to file a statement with the treasurer declaring that a sufficient amount of moneys or other assets is available to ensure the payment of the tax if:

(I) The unit operator has made timely payment of the tax to the treasurer during the previous three property tax years;

(II) The unit operator has been in operation in the county for less than three property tax years and has made timely payment of the tax to the treasurer during such period of time; or

(III) The unit operator has been in operation in the county for less than one property tax year.

(c) Upon the completion of all production of oil and gas from the unit and after all wells within the unit are plugged and abandoned, all moneys remaining in the account after full payment of all ad valorem taxes due on the unit shall be distributed to the owners of fractional interests in the unit based upon each owner's proportional contribution to the moneys remaining in the account. Any interest accruing to the account shall be credited to the account and shall be distributed with such other moneys in the account as specified in this paragraph (c).

(4) (a) Failure of the unit operator or first purchaser to collect the tax as provided in this section shall not preclude the treasurer from utilizing lawful collection and enforcement remedies and procedures against the owner of any fractional interest to collect the tax owed by such owner; but an owner shall not be subject to penalty or interest upon the tax owed unless he fails to remit such tax within twenty days after notification to him by the treasurer of the default of the first purchaser or unit operator.

(b) (I) When the tax has been collected from the owners of fractional interests by the unit operator pursuant to the provisions of this section but the unit operator fails to remit such tax collected, the unit operator shall remain liable for the amount of tax owed. The treasurer shall send a notice by registered mail to the first purchaser of the amount of such delinquent taxes and the name of the unit operator owing such delinquent tax. After receiving such notice, the first purchaser shall withhold payments to the unit operator owing the taxes of any of the proceeds of the sale of any oil and gas from such lease. The first purchaser shall remit such withheld payments to the treasurer until the amount of such taxes and penalties are paid in full, after which the first purchaser may resume such payments to the unit operator for such oil and gas.

(II) If the first purchaser fails to collect the tax after receiving notice from the treasurer pursuant to the provisions of this paragraph (b) or when the tax has been collected by the first purchaser pursuant to the provisions of this section but the first purchaser fails to transfer the tax to the unit operator pursuant to subsection (3) of this section or to the treasurer pursuant to subparagraph (I) of this paragraph (b), the first purchaser shall remain liable for the amount of tax owed. The treasurer may utilize lawful collection and enforcement remedies and procedures against any first purchaser to collect the amount of such taxes and penalties owed by such first purchaser.

(III) The tax liability of the owner of any fractional interest in such unit whose proportionate share of tax was withheld from royalty or working interest payments by the unit operator or the first purchaser but was not remitted by the unit operator or by the first purchaser to the treasurer shall be deemed satisfied to the extent of the amount withheld, and such owner shall not be subject to any collection and enforcement remedies and procedures provided by law for the collection of such delinquent tax for which an amount was withheld from royalty or working interest payments pursuant to the provisions of this section. Any unit operator or first purchaser who has collected the tax from the fractional interest owners pursuant to the provisions of this section but has failed to remit such tax collected commits embezzlement, as defined in sections 18-4-401 and 18-4-403, C.R.S.

(IV) Upon audit, the unit operator shall not be liable for any tax or any penalty interest levied against any amount of production taken in kind from the property for which the fractional

interest owner taking production in kind provided inaccurate information regarding net taxable revenues to be used for tax reporting.

(4.5) (a) If the unit operator fails to remit the proportional share of tax levied on the fractional interest in the unit owned by the unit operator, the treasurer shall send a notice by registered mail to the first purchaser of the name of the unit operator owing such tax and the amount the first purchaser shall withhold from any of the unit operator's proceeds of the sale of any oil and gas from such lease. After receiving such notice, the first purchaser shall withhold payments to the unit operator of any of the proceeds of the sale of any oil and gas from such lease. The first purchaser shall remit such withheld payments to the treasurer until the amount of such tax and penalties are paid in full, after which the first purchaser may resume such payments to the unit operator for such oil and gas.

(b) The tax liability of the unit operator whose proportional share of tax levied on the fractional interest in the unit owned by the unit operator was withheld from payments by the first purchaser pursuant to paragraph (a) of this subsection (4.5) but was not remitted by the first purchaser to the treasurer shall be deemed satisfied to the extent of the amount withheld, and such unit operator shall not be subject to any collection and enforcement remedies and procedures provided by law for the collection of such delinquent tax for which an amount was withheld by a first purchaser from oil and gas sale proceeds pursuant to the provisions of this section.

(c) If the first purchaser fails to collect the tax or when the tax has been collected by the first purchaser pursuant to the provisions of this subsection (4.5) but the first purchaser fails to transfer the tax to the treasurer pursuant to paragraph (a) of this subsection (4.5), the first purchaser shall remain liable for the amount of tax owed. The treasurer may utilize lawful collection and enforcement remedies and procedures against any first purchaser to collect the amount of such taxes and penalties owed by such first purchaser.

(5) For the purposes of this section, "unit" means any single oil, gas, or other hydrocarbon well or field which has multiple ownership, or any combination of oil, gas, or other hydrocarbon wells, fields, and properties consolidated into a single operation, whether by a formal agreement or otherwise; "owner" means the holder of any interest or interests in such properties or units, including royalty interest; and "first purchaser" means either the first purchaser to buy oil or gas from a new producing well or the current purchaser of oil or gas from a producing well.

**Source: L. 64:** R&RE, p. 717, § 1. **C.R.S. 1963:** § 137-10-6. **L. 69:** p. 1121, § 3. **L. 71:** p. 1247, § 1. **L. 79:** p. 1418, § 3. **L. 87:** (3.5) and (4.5) added and (4) amended, p. 1419, § 1, effective May 20. **L. 88:** (3.5)(a), (3.5)(c), and (4)(b)(III) amended and (3.5)(b) R&RE, p. 1309, §§ 2, 1, effective April 14; (4)(b)(III) amended, p. 1437, § 38, effective June 11. **L. 93:** (1) and (3.5)(c) amended and (4)(b)(IV) added, pp. 242, 243, §§ 3, 4, effective March 31. **L. 99:** (1) amended, p. 629, § 41, effective August 4.

**39-10-107. Apportionment of taxes, delinquent interest - payment.** (1) (a) Notwithstanding any other provision of law, all taxes collected by the treasurer shall be apportioned, credited, and distributed to the county and the several towns, cities, school districts, and special districts within the county on the tenth day of each month for all taxes collected during the immediately preceding month; except that:

(I) If the amount of taxes collected for the month equals less than one hundred dollars for any town, city, school district, or special district, the treasurer may elect to distribute the amount on a quarterly basis to the town, city, school district, or special district; and

(II) If the amount of taxes collected for the month equals less than fifty dollars for any town, city, school district, or special district, the treasurer may elect to distribute the amount on an annual basis to the town, city, school district, or special district.

(b) Any prior years' taxes collected during any given year on oil and gas leaseholds and lands that had previously been omitted from the assessment roll due to underreporting of the selling price or the quantity of oil and gas sold therefrom shall be placed in escrow by the treasurer to be apportioned, credited, and distributed during January of the subsequent year.

(c) Prior to being apportioned, credited, and distributed, all taxes collected by the treasurer shall be reduced by an amount equal to the costs incurred by the treasurer and the assessor; except that such costs shall not include any contingency fee paid to any person for the audit review and collection of such prior years' taxes as such contingency fees are prohibited. Prior to being apportioned, credited, and distributed, all taxes shall be reduced by an amount equal to an entity's pro rata share of any tax refunds granted subsequent to distribution by the treasurer if the amount has not otherwise been returned by the entity; except that this requirement to reduce taxes shall not apply to a city and county. All delinquent interest shall be apportioned, credited, and distributed in the same manner.

(2) Repealed.

(3) Whenever any school district elects, pursuant to law, to have the moneys of such district paid over to the district treasurer, the treasurer of any county wherein such school district is located shall, no later than the tenth day of each month, pay over to the district treasurer all taxes collected for said school district during the month immediately preceding; except that, on and after January 1, 1992, the county treasurer shall make an additional payment to the district treasurer during the months of March, May, and June, which payment shall consist of all taxes collected through the twentieth day of the respective month if the county has a population of at least five thousand persons and which payment shall consist of all taxes collected through the eighteenth day of the respective month if the county has a population of less than five thousand persons. Such additional payment shall be made no later than the twenty-fourth day of said month.

(4) No later than the tenth day of each month, the treasurer shall prepare and submit to the board of county commissioners and to the proper officer of each town, city, school district, and special district within his county a statement showing the amount collected by him for each such entity during the month immediately preceding from each separate levy imposed for such entity. No later than the tenth day of January of each year, he shall prepare and submit a similar statement showing the amount collected during the entire calendar year immediately preceding from each separate levy imposed for such entity.

**Source: L. 64:** R&RE, p. 718, § 1. **C.R.S. 1963:** § 137-10-7. **L. 79:** (1) amended, p. 1421, § 4, effective January 1, 1980. **L. 84:** (1) amended, p. 1002, § 3, effective March 16. **L. 90:** (3) amended, p. 1718, § 5, effective June 7; (1) amended, p. 1704, § 40, effective June 9; (3) amended, p. 1087, § 53, effective July 1. **L. 91:** (1) amended, p. 1954, § 4, effective January 1, 1992. **L. 91, 2nd Ex. Sess.:** (3) amended, p. 57, § 2, effective October 11. **L. 92:** (1) amended, p. 2227, § 11, effective April 9. **L. 2008:** (1) amended, p. 26, § 1, effective August 5; (1) amended,

p. 1248, § 7, effective August 5. **L. 2015:** IP(1)(a) amended and (2) repealed, (SB 15-264), ch. 259, p. 967, § 88, effective August 5.

**Editor's note:** Amendments to subsection (1) by House Bill 08-1059 and House Bill 08-1349 were harmonized.

**39-10-108. Treasurer responsible for state tax levies. (Repealed)**

**Source: L. 64:** R&RE, p. 719, § 1. **C.R.S. 1963:** § 137-10-8. **L. 2015:** Entire section repealed, (SB 15-264), ch. 259, p. 967, § 89, effective August 5.

**Editor's note:** For the levy of taxes for state purposes, see § 11 of article X of the Colorado constitution. As of the adjournment of the Second Regular Session of the Fifty-ninth General Assembly on May 11, 1994, no such tax was being levied. For the prohibition against the levy of taxes on real property for state purposes, see section 20 (8)(a) of article X of the Colorado constitution.

**39-10-109. Delinquent tax list - notice.**

(1) Repealed.

(2) (a) As soon as practicable after June 15, the treasurer shall prepare a list of all persons delinquent in the payment of taxes on personal property and shall notify each such person by mail of the amount of delinquent personal property taxes and delinquent interest due and owing thereon to and including the last day of the month in which such notice is mailed. Such notice shall also state that, unless payment of the amount of such unpaid personal property taxes and delinquent interest thereon are paid by August 31, publication of such delinquency will be made during the month of September.

(b) This subsection (2) is effective January 1, 1992.

**Source: L. 64:** R&RE, p. 719, § 1. **C.R.S. 1963:** § 137-10-9. **L. 65:** p. 1108, § 1. **L. 90:** Entire section amended, p. 1718, § 6, effective June 7; entire section amended, p. 1087, § 54, effective July 1. **L. 92:** (2)(a) amended, p. 2227, § 12, effective April 9. **L. 94:** (2)(a) amended, p. 754, § 4, effective April 20.

**Editor's note:** Subsection (1)(b) provided for the repeal of subsection (1), effective January 1, 1992. (See L. 90, p. 1087.)

**39-10-110. Publication of delinquent taxes.** During the month of September, the treasurer shall publish for one time only in a newspaper published in his county a notice listing the names and addresses of all persons whose taxes on personal property are unpaid and delinquent, with the amount of such taxes and delinquent interest thereon to and including the last day of September, plus the fee prescribed in section 30-1-102, C.R.S. Such notice shall recite that, if the amount of such delinquent taxes, delinquent interest, and fee is not paid by the last day of September, the personal property upon which such taxes were levied shall be subject to distraint, seizure, and sale. If there is no newspaper published in the county, then the treasurer

shall conspicuously post copies of such notice in the county courthouse, in the treasurer's office, and in at least one other public place in the county seat.

**Source: L. 64:** R&RE, p. 719, § 1. **C.R.S. 1963:** § 137-10-10. **L. 65:** p. 1108, § 2. **L. 71:** p. 327, § 5. **L. 92:** Entire section amended, p. 2228, § 13, effective April 9. **L. 93:** Entire section amended, p. 305, § 2, effective April 7.

**39-10-110.5. Partial payment of delinquent personal property taxes.** (1) Notwithstanding any other provision of law to the contrary, the treasurer may accept partial payments for delinquent personal property taxes so long as the owner of the personal property has entered into a written payment plan with the treasurer. The payment plan shall specify the total amount due, including the amount of tax levied and any applicable interest, penalties, or fees; the amount of each payment; and payment due dates. The total amount due under a payment plan shall be paid in full no later than twenty-four months from the date the owner of the personal property enters into a written payment plan with the treasurer.

(2) The treasurer shall keep a copy of the payment plan until the owner of the personal property has paid the total amount identified in the payment plan. Once the owner of the personal property has paid the total amount due, the treasurer shall mark the plan "paid in full".

(3) The treasurer may terminate the payment plan if the owner of the personal property fails to abide by the terms and conditions of the plan.

**Source: L. 98:** Entire section added, p. 238, § 1, effective April 10.

**39-10-111. Distraint, sale of personal property.** (1) (a) At any time after the first day of October, the treasurer shall enforce collection of delinquent taxes on personal property by commencing a court action for collection or employing a collection agency as provided in section 39-10-112 or by distraining, seizing, and selling the property; except that this section does not apply to the collection of delinquent taxes on mobile homes or manufactured homes. The treasurer shall enforce the collection of delinquent taxes on mobile homes or manufactured homes pursuant to section 39-10-111.5. Whenever a distraint warrant is issued, it shall be served by the sheriff or a commissioned deputy or, at the discretion of the sheriff, by a private server of process hired for the purpose. Any cost incurred as a result of hiring a private server of process shall be paid by the sheriff's office, and the cost shall not exceed the amount specified in section 30-1-104 (1)(a).

(b) When personal property upon which a distraint warrant has been issued or which is subject to such warrant by reason of delinquency has been removed to another county in the state, the treasurer of the county levying the tax may issue a certificate to the treasurer of the county to which the property has been removed, reciting the amount of taxes and delinquent interest unpaid and a description of the property to be distrained.

(c) The treasurer receiving such certificate shall thereupon proceed to distrain, seize, and sell such property in the same manner as if the property were originally taxed in his county and shall remit the net proceeds, after payment of any sheriff's fees and other costs of seizure and sale, to the treasurer who certified the delinquency to him.

(2) Whenever any personal property is distrained and seized, the treasurer or his deputy shall make a list of such property and deliver a copy thereof to the owner of such property or to

his or her agent, together with a statement of the amount demanded and notice of the time and place fixed for the sale of such property.

(3) No later than one hundred eighty days after the seizure of any personal property pursuant to this section, the treasurer shall publish a notice containing a description of the seized property, the reason for its being offered for sale, and the time and place fixed for the sale in a newspaper published in the county. If there is no such newspaper, the treasurer shall conspicuously post copies of such notice in the county courthouse and in at least two other public places in the county seat.

(4) The time fixed for the sale shall be not more than ten days from the date the notice is first published, but the sale may be adjourned from time to time if there are no bidders or if the treasurer deems such adjournment advisable for any reason, but in no event shall the sale be postponed for more than thirty days from the date the notice is first published.

(5) At the time and place fixed for the sale, the treasurer or deputy treasurer shall proceed to sell such property at public auction, offering it at a minimum price, which shall include the taxes, delinquent interest, and costs of making the seizure and advertising the sale. If the amount bid at the sale is not equal to the fixed minimum price, the treasurer or deputy treasurer may declare the property purchased by the county at the fixed minimum price, and it shall thereafter be sold within one hundred fifty days in such manner as may be determined by the board of county commissioners.

(6) (a) In any county wherein the treasurer has insufficient personnel to conduct said sale, upon demand of the treasurer, the sheriff shall conduct such sale, collect the proceeds thereof, and pay the same over to the treasurer. In such event, the sheriff shall receive such fees as are provided in section 30-1-104, C.R.S.

(b) The treasurer may enter into a contract to employ the services of any professional auctioneer or auction company to conduct such sale, collect the proceeds thereof, and pay the same over to the treasurer, when the treasurer deems such services to be appropriate and to be in the best interests of the public. Such contract shall be awarded by competitive bid, but the treasurer may reject any or all bids or parts of bids. The auctioneer or auction company conducting such sale shall provide the treasurer with an itemized list of all property sold, the amount paid for such property sold, and each purchaser's name and address. The fees of the auctioneer or auction company shall be paid by the treasurer from the proceeds of the sale.

(7) In all cases of sale, the treasurer shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the treasurer to make such sale and conclusive evidence of the regularity of the proceedings in conducting and making such sale. The treasurer's certificate shall transfer to the purchaser all right, title, and interest of the owner in and to the property sold.

(8) Any surplus of the sale proceeds remaining over and above the taxes, delinquent interest, and costs of making the seizure and advertising the sale shall be paid over to the owner and a written account of the sale furnished him.

(9) If, prior to the time fixed for the sale, the amount demanded is paid to the treasurer, the property distrained upon and seized shall be restored to the owner thereof.

(10) Repealed.

(11) If taxes become delinquent upon the personal property of any public utility, as defined in article 4 of this title, the treasurer of the county in which the taxes are delinquent shall commence a court action for collection or employ a collection agency as provided in section 39-

10-112 or distrain and sell any of the personal property of the utility wherever found in the manner that other personal property is to be distrained and sold for the nonpayment of taxes; except that, for taxes imposed pursuant to article 1 of title 32, C.R.S., that equal or exceed one hundred mills in any one year, only the personal property that is the subject of the taxes and located within the special district at the time of assessment of the taxes shall be subject to levy or distraint for the payment of the delinquent taxes.

(12) Repealed.

(13) When a county seizes property that is used in a business, the county shall not continue to operate the business.

**Source: L. 64:** R&RE, p. 719, § 1. **C.R.S. 1963:** § 137-10-11. **L. 67:** p. 212, § 2. **L. 70:** p. 389, § 2. **L. 77:** (7) amended and (10) added, p. 1742, § 4, effective January 1, 1980. **L. 78:** (2) and (10) amended, pp. 478, 480, §§ 3, 4, effective March 10. **L. 79:** (11) added, p. 1421, § 5, effective January 1, 1980. **L. 80:** (10) amended, p. 499, § 4, effective July 1. **L. 82:** (10) amended, p. 550, § 15, effective July 1. **L. 90:** (10) amended, p. 1698, § 24, effective June 9. **L. 91:** (5) and (6) amended, p. 1972, § 3, effective March 27; (10) amended and (12) added, p. 1697, § 8, effective July 1. **L. 92:** (1)(b), (5), (8), and (10) amended, p. 2228, § 14, effective April 9. **L. 93:** (1)(a) amended, p. 305, § 3, effective April 7. **L. 94:** (4) amended, p. 754, § 5, effective April 20. **L. 95:** (11) amended, p. 128, § 2, effective April 7. **L. 96:** (1)(a) and (11) amended, p. 13, § 1, effective February 22. **L. 2000:** (10) amended, p. 1637, § 15, effective June 1. **L. 2004:** (3) and (5) amended and (13) added, p. 158, § 1, effective August 4. **L. 2017:** (1)(a), (2), and (7) amended and (10) and (12) repealed, (HB 17-1354), ch. 215, pp. 837, 840, §§ 1, 3, effective August 9.

**Cross references:** For recordation of tax sales of mobile homes by the county treasurer and the fee therefor as part of redemption cost, see § 39-11-114.

**39-10-111.5. Distraint - sale - redemption - mobile homes.** (1) This section applies to the collection of delinquent taxes on mobile homes for which a certificate of title has been issued pursuant to part 1 of article 29 of title 38 and that does not have a certificate of permanent location pursuant to section 38-29-202. For purposes of this section, "mobile home" includes a manufactured home.

(2) (a) At any time after the first day of October, the treasurer may enforce collection of delinquent taxes on mobile homes by commencing a court action for collection or employing a collection agency as provided in section 39-10-112 or by distraining, seizing, and selling the mobile home. Whenever a distraint warrant is issued, it shall be served by the sheriff or a commissioned deputy or, at the discretion of the sheriff, by a private server of process hired for the purpose. Any cost incurred as a result of hiring a private server of process shall be paid by the sheriff's office, and the cost shall not exceed the amount specified in section 30-1-104 (1)(a).

(b) When a mobile home upon which a distraint warrant has been issued or which is subject to such warrant by reason of delinquency has been removed to another county in the state, the treasurer of the county levying the tax shall issue a certificate to the treasurer of the county to which the mobile home has been removed, reciting the amount of taxes and delinquent interest unpaid and a description of the mobile home to be distrained.

(c) The treasurer receiving such certificate shall proceed to distrain, seize, and sell such mobile home in the same manner as if it were originally taxed in his or her county and if the treasurer proceeds, he or she shall remit the net proceeds, after payment of any sheriff's fees and other costs of seizure and sale, to the treasurer who certified the delinquency.

(3) Whenever a mobile home is distrained and seized, the treasurer, the treasurer's deputy, or an authorized agent of the treasurer shall deliver to the owner of the mobile home or to his or her agent, and to any lienholder of record, a statement of the amount demanded and notice of the time and place fixed for the sale of the mobile home.

(4) The treasurer, in his or her discretion, may sell tax liens on mobile homes or may strike off to the county the tax liens by declaring them county-held. If a tax lien on a mobile home will be sold, the sale shall be in accordance with article 11 of this title 39.

(5) Redemptions of mobile homes shall be in accordance with article 12 of this title 39; except that, at the discretion of the treasurer, liens on mobile homes may be withheld from sales to investors.

(6) (a) (I) A mobile home that is located on leased land or other land not owned by the owner of the mobile home, including, but not limited to, land that was previously owned by the owner of the mobile home and the ownership of which was subsequently acquired by foreclosure, and that is sold under the provisions of this section may be redeemed by the owner thereof within one year after the date of the sale upon payment to the treasurer of the proceeds of the sale, interest on such amount at the rate that is determined pursuant to section 39-12-103 (3), and all taxes due and payable on the mobile home subsequent to the tax sale, except as provided in subsection (7) of this section.

(II) A mobile home that is located on land owned by the owner of a mobile home and that is sold under the provisions of this section may be redeemed by the owner thereof within three years after the date of the sale upon payment to the treasurer of the proceeds of the sale, interest on such amount at the rate that is determined pursuant to section 39-12-103 (3), and all taxes due and payable on the mobile home subsequent to the tax sale, except as provided in subsection (7) of this section.

(b) The treasurer shall return the proceeds of the sale, interest, and all taxes due and payable on the mobile home subsequent to the tax sale to the purchaser or lawful holder of the certificate of sale. On or before thirty days prior to the close of the redemption period, the treasurer shall notify the owner of the mobile home and any lienholder of record in the department of revenue and secretary of state, by personal delivery or by certified or registered mail to his or her last-known address, that a treasurer's certificate of ownership for the mobile home may be issued to the purchaser or lawful holder of the certificate of sale at the close of the redemption period unless such payment is made. Upon redemption, the treasurer shall notify the department of revenue that redemption has been made and thereafter release the tax sale lien filed against the mobile home.

(c) If the owner has not exercised his or her right of redemption and after the close of the redemption period, the purchaser or lawful holder of the certificate of sale may apply to the treasurer for a treasurer's certificate of ownership for the mobile home. Upon receipt of such application, the treasurer shall issue a treasurer's certificate of ownership to such purchaser or holder, and such certificate of ownership shall transfer to him or her all right, title, and interest in and to the mobile home. Such certificate of ownership shall, upon application, entitle the

purchaser or holder thereof to a certificate of title to be issued and filed pursuant to part 1 of article 6 of title 42.

(d) Any surplus of the sale proceeds over and above the taxes, delinquent interest, and costs of making the seizure and advertising the sale of a mobile home shall be credited to the county general fund, and a written account of the sale shall be furnished to the owner.

(7) Where a mobile home has been declared to be purchased by the county at the tax sale and where the actual value of the mobile home as shown on the assessment roll has been determined by the assessor to be less than one thousand dollars, the redemption period for such mobile home shall be sixty days. The assessor's determination of value shall be deemed accurate absent a showing of negligence on the part of the assessor. On or before ten days prior to the close of the redemption period, the treasurer shall notify the owner of the mobile home and any lienholder of record in the department of revenue and secretary of state, by personal delivery or by certified or registered mail to the last-known address, that the mobile home shall be declared condemned and shall be disposed of at the end of the redemption period. The treasurer has the authority to so declare a mobile home condemned after the redemption period has terminated. After the titled mobile home is declared condemned, it may be disposed of as the treasurer deems appropriate.

**Source: L. 2017:** Entire section added, (HB 17-1354), ch. 215, p. 838, § 2, effective August 9.

**39-10-112. Action to collect unpaid taxes.** (1) (a) In order to collect delinquent personal property taxes and any delinquent interest thereon, the treasurer may, at the treasurer's option, sue the owner of the personal property in any court in the treasurer's county having jurisdiction, enter into a contract to employ the services of any collection agency that is duly licensed pursuant to section 5-16-119 or 5-16-120, or distrain, seize, and sell the personal property as provided in section 39-10-111.

(b) Any contract to employ the services of any duly licensed collection agency shall be awarded by competitive bid, but the treasurer may reject any or all bids or parts of bids. The fees of the collection agency shall be paid by the treasurer from the moneys recovered by the collection agency, but in no event shall the fees paid to the collection agency exceed one-third of the amount recovered.

(2) (Deleted by amendment, L. 96, p. 14, § 2, effective February 22, 1996.)

(3) Upon the trial of any court action brought pursuant to subsection (1) of this section, a certificate from the treasurer, reciting the amount of the taxes and any delinquent interest thereon and that the same has not been paid, shall be prima facie evidence that the amount claimed is due and unpaid, and judgment shall be given for the amount thereof, together with all costs, and execution shall issue as in other cases. Whenever the treasurer sues in court, the county attorney shall perform all legal work involved if requested by the treasurer, and the costs of the action shall be paid by the county.

(4) Nothing in this section shall be construed as relieving the treasurer of the duties of the office of county treasurer.

**Source: L. 64:** R&RE, p. 721, § 1. **C.R.S. 1963:** § 137-10-12. **L. 91:** Entire section amended, p. 1973, § 4, effective March 27. **L. 92:** (1)(a)(I)(A) and (2) amended, p. 2229, § 15,

effective April 9. **L. 94:** Entire section amended, p. 755, § 6, effective April 20. **L. 96:** Entire section amended, p. 14, § 2, effective February 22. **L. 2017:** (1)(a) amended, (HB 17-1238), ch. 260, p. 1175, § 24, effective August 9.

**39-10-113. Removal or transfer of personal property - collection of taxes.** (1) (a) If at any time after the lien of general taxes has attached the treasurer believes for any reason that any taxable personal property may be removed from the state of Colorado or may be dissipated or distributed, so that taxes to be levied for the current year may not be collectible, the treasurer may at once proceed to collect the taxes and, if the treasurer deems it necessary, may distrain, seize, and sell the personal property to enforce collection. Upon the treasurer's request, the assessor shall certify to the treasurer the valuation for assessment of the personal property for the current year. If the levy for the current year has not then been fixed and made, the levy for the previous year shall be used to determine the amount of taxes due.

(b) Repealed.

(2) Whenever the assessor notifies the treasurer of the valuation of any taxable personal property, as provided in section 39-5-110 (2), which property the assessor believes might be removed from the county, the treasurer shall proceed to collect the taxes on the property by commencing a court action for collection or employing a collection agency as provided in section 39-10-112 or by distraining, seizing, and selling the personal property as provided in section 39-10-111 if either the treasurer or the assessor deems it necessary. If the levy for the current year has not then been fixed and made, the levy for the previous year shall be used to determine the amount of taxes due.

(3) At such time as the levy for the current year has been fixed and made, the amount of any taxes collected on personal property pursuant to the provisions of subsection (1) of this section in excess of the amount correctly due and payable shall be refunded to the owner of such property forthwith; but in all cases where the amount of taxes so collected is less than the amount correctly due and payable, the amount uncollected shall be considered an erroneous assessment and shall be reported with other erroneous assessments in the manner prescribed by law.

**Source: L. 64:** R&RE, p. 721, § 1. **C.R.S. 1963:** § 137-10-13. **L. 67:** p. 951, § 23. **L. 70:** p. 390, § 3. **L. 83:** (2) amended, p. 1484, § 8, effective April 22. **L. 91:** (1)(b) repealed, p. 270, § 9, effective July 1. **L. 96:** (1) and (2) amended, p. 14, § 3, effective February 22.

**39-10-113.5. Improvements valued and taxed separately - collection of taxes.** (1) Notwithstanding any law to the contrary and except as otherwise provided in this section, if taxes become delinquent upon improvements that have been valued and taxed separately from land, the treasurer of the county in which such taxes are delinquent may proceed to collect such taxes pursuant to the provisions of sections 39-10-111, 39-10-112, and 39-10-113 as if such improvements were personal property. The provisions of this section shall not apply to mobile homes, improvements other than buildings on land that is used solely and exclusively for agricultural purposes, and water rights, together with any dam, ditch, pipeline, canal, flume, reservoir, bypass, conduit, well, pump, or other associated structure or device, as defined in article 92 of title 37, C.R.S., being used to produce water or held to produce or exchange water

to support uses of any item of real property specified in section 39-1-102 (14), including water rights used for agricultural purposes.

(2) (a) The provisions of this section shall not apply to any property classified by the assessor for property tax purposes as commercial property unless the treasurer:

(I) Finds that the improvements may be moved, dissipated, or distributed;

(II) Determines that the taxes may be uncollectible;

(III) Sets forth the reasons for such finding and determination in writing and either serves such writing upon the owner of such improvements or, if the owner cannot be located within the state, posts such writing conspicuously upon such improvements.

(b) Upon compliance with the requirements set forth in paragraph (a) of this subsection (2), the treasurer may proceed to collect such taxes pursuant to the provisions of subsection (1) of this section.

**Source: L. 92:** Entire section added, p. 2235, § 1, effective April 10. **L. 96:** (1) amended, p. 469, § 2, effective April 23.

**39-10-114. Abatement - cancellation of taxes.** (1) (a) (I) (A) Except as otherwise provided in subsections (1)(a)(I)(D) and (1)(a)(I)(E) of this section, if taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation, the treasurer shall report the amount thereof to the board of county commissioners, which shall proceed to abate such taxes in the manner provided by law. The assessor shall make such report if the assessor discovers that taxes have been levied erroneously or illegally. If such taxes have been collected by the treasurer, the board of county commissioners shall authorize refund of the same in the manner provided by law. Except as provided in subsections (1)(a)(I)(E) and (1)(a)(I)(F) of this section and section 39-5-125 (4), in no case shall an abatement or refund of taxes be made unless a petition for abatement or refund is filed within two years after January 1 of the year following the year in which the taxes were levied. For purposes of this subsection (1)(a)(I)(A), "clerical error" shall include, but shall not be limited to, any clerical error made by a taxpayer in completing personal property schedules pursuant to the provisions of article 5 of this title. Notwithstanding any other law to the contrary, for purposes of this subsection (1)(a)(I)(A), "erroneous valuation" shall include, but shall not be limited to: Any reclassification of property from agricultural land to any other classification of property for the property tax year commencing January 1, 1996, if the property in question qualifies for classification as agricultural land as determined pursuant to section 39-1-102 (1.6), as amended by Senate Bill 97-039, enacted at the first regular session of the sixty-first general assembly; and any denial of exemption from taxation for property claimed as agricultural and livestock products for the property tax year commencing January 1, 1996, if the property in question qualifies as agricultural and livestock products as determined pursuant to section 39-1-102 (1.1), as amended by Senate Bill 97-039, enacted at the first regular session of the sixty-first general assembly.

(B) The assessor shall certify the proportional amount of the total amount of abatements and refunds granted pursuant to the provisions of this section to the appropriate taxing entities at the same time that the certification of valuation for assessment is made pursuant to the provisions of section 39-5-128. Any taxing entity may adjust the amount of its tax levy authorized pursuant to the provisions of section 29-1-301, C.R.S., by an additional amount which

does not exceed the proportional share of the total amount of abatements and refunds made pursuant to the provisions of this section. After calculating the amount of property tax revenues necessary to satisfy the requirements of the "Public School Finance Act of 1994", article 54 of title 22, C.R.S., any school district shall add an amount equal to the proportional share of the total amount of abatements and refunds granted pursuant to the provisions of this section prior to the setting of the mill levy for such school district. Any additional amount added pursuant to the provisions of this subsection (1) shall not be included in the total amount of revenue levied in said year for the purposes of computing the limit for the succeeding year pursuant to the provisions of section 29-1-301, C.R.S. Where a final determination is made granting an abatement or refund pursuant to the provisions of this section, the abatement or refund granted shall be payable at such time as determined by the board of county commissioners after consultation with affected taxing entities but no later than upon the payment of property taxes for the property tax year in which said final determination was made. For the purposes of this sub-subparagraph (B), a taxing entity's proportional share of the total amount of abatements and refunds granted shall be based upon the amount of tax levied by a taxing entity on such real property in proportion to the total amount of tax levied on such real property by such taxing entities.

(B.5) Notwithstanding the provisions of sub-subparagraph (B) of this subparagraph (I), no school district shall be required to levy additional amounts for abatements and refunds which are the result of any protests or appeals of valuation upon which final orders or judgments rendered by a court of competent jurisdiction have been issued and which reduce the valuation for assessment of the district by more than twenty percent. Any school district which is currently levying for abatements, refunds, or both and which would not be required to levy such amounts if this sub-subparagraph (B.5) had been in effect for the tax year in which the court orders or judgments were issued shall have no further obligation to levy for uncollected amounts.

(C) The change or adjustment of any ratio of valuation for assessment for residential real property pursuant to the provisions of section 39-1-104.2 shall not constitute grounds for abatement of taxes as provided in sub-subparagraph (A) of this subparagraph (I).

(D) No abatement or refund of taxes shall be made based upon the ground of overvaluation of property if an objection or protest to such valuation has been made and a notice of determination has been mailed to the taxpayer pursuant to section 39-5-122 or a written decision has been issued pursuant to section 39-5-122.8; except that this prohibition shall not apply to personal property when a notice of determination has been mailed to the taxpayer, an objection or protest is withdrawn or not pursued, and the county assessor has undertaken an audit of such personal property that shows that a reduction in value is warranted.

(E) Notwithstanding the periods of limitation for filing a petition for and determining the amount of an abatement or refund of taxes provided in sub-subparagraphs (A) and (D) of this subparagraph (I), when an audit of prior years' taxes for the period described in section 39-10-101 (2)(b) discloses that taxes are due and owing on personal property or on mines and on oil and gas leaseholds, such taxes shall be subtracted from any overpayment of such taxes determined to be due pursuant to this subparagraph (I) for any years during such period and prior to computing delinquent interest.

(F) Notwithstanding the periods of limitation for filing a petition for and determining the amount of an abatement or refund of taxes provided in sub-subparagraph (A) or (D) of this subparagraph (I), an abatement or refund of taxes may be made to any common interest

community for property taxes levied for property tax years commencing on or after January 1, 1985, but prior to January 1, 1996, on property not valued in accordance with section 39-1-103 (10), if a petition for abatement or refund is filed on or before June 1, 1997.

(II) Repealed.

(b) Any taxes illegally or erroneously levied and collected, and delinquent interest thereon, are refunded pursuant to this section, together with refund interest at the same rate as that provided for delinquent interest set forth in section 39-10-104.5; except that refund interest shall not be paid if the taxes were erroneously levied and collected as a result of an error made by the taxpayer in completing personal property schedules pursuant to the provisions of article 5 of this title 39. For abatements or refunds made pursuant to a petition for abatement or refund filed prior to January 1, 2018, refund interest accrues from the date payment of taxes and delinquent interest thereon was received by the treasurer from the taxpayer; except that refund interest accrues from the date a complete abatement petition is filed if the taxes were erroneously levied and collected as a result of an error or omission made by the taxpayer in completing the statements required pursuant to the provisions of article 7 of this title 39 and the county pays the abatement or refund within the time frame set forth in subsection (1)(a)(I)(B) of this section. For abatements or refunds made pursuant to a petition for abatement or refund filed on or after January 1, 2018, refund interest accrues from the date a complete abatement petition is filed.

(c) Notwithstanding any other provision of this section, if a county, board of assessment appeals, court of competent jurisdiction, or the property tax administrator determines that a property is exempt from taxation under sections 39-3-106 to 39-3-113.5 or section 39-3-116, and if the county, board, court, or administrator finds competent evidence that said property became or remained subject to taxation for a period as a result of an error or omission made by the taxpayer, then the county, the board of assessment appeals, court of competent jurisdiction, or the property tax administrator may award refund interest or any other type of interest for not greater than two property tax years. Any interest awarded pursuant to this paragraph (c) shall be at the same rate as provided in section 39-10-104.5.

(2) (a) Any taxes levied on personal property, including but not limited to mobile homes, which are determined to be uncollectible after a period of one year after the date of their becoming delinquent may be cancelled by the board of county commissioners.

(b) When any real property has been stricken off to a county by virtue of a tax sale and there has been no transfer by the county of a certificate of purchase thereon, the taxes on such property may be determined to be uncollectible after a period of six years from the date of becoming delinquent, and they may be cancelled by the board of county commissioners. Such cancellation shall not affect the rights of the county under article 11 of this title to subsequently transfer any tax sale certificate nor its right to receive a tax deed and to exercise its rights thereunder with respect to such property.

(3) The treasurer shall keep a complete record of all taxes abated, refunded, or determined to be uncollectible and cancelled by the board of county commissioners as provided in subsection (2) of this section. The treasurer shall file an annual report with the administrator by August 25 of each year that shall include all taxes abated, refunded, or determined to be uncollectible and cancelled. Such report shall include the name of each owner of taxable property granted such abatement, refund, or cancellation of property taxes, the amount of property taxes abated, refunded, or cancelled, and the date such abatement, refund, or cancellation was granted. The treasurer shall also file an annual report with the department of

revenue by August 10 of each year that shall include all taxes on personal property abated or refunded. Such report shall include the name of each owner of taxable personal property granted such abatement or refund of personal property taxes, the schedule number that was the basis for the imposition of the taxes abated or refunded, if applicable, the amount of personal property taxes abated or refunded, and the date such abatement or refund was granted.

**Source: L. 64:** R&RE, p. 722, § 1. **C.R.S. 1963:** § 137-10-14. **L. 70:** p. 390, § 4. **L. 80:** (2)(a) amended, p. 500, § 5, effective July 1. **L. 81:** (1) amended, p. 1837, § 2, effective January 1, 1982. **L. 88:** (1)(a) and (3) amended, p. 1290, § 24, effective May 23. **L. 89:** (1)(a)(I)(A) amended, p. 1459, § 19, effective June 7. **L. 90:** (1)(b) amended, p. 1719, § 8, effective June 7; (1)(a)(I)(B) amended and (1)(a)(I)(D) added, p. 1702, § 36, effective June 9; (1)(b) amended, p. 1088, § 56, effective July 1. **L. 91:** (1)(a)(I)(A), (1)(a)(I)(B), and (1)(a)(I)(D) amended, p. 1963, § 3, effective June 5. **L. 92:** (1)(b) and (2)(a) amended, pp. 2230, 2236, §§ 16, 2, effective April 9; (1)(a)(I)(A) and (1)(a)(I)(D) amended and (1)(a)(I)(E) added, p. 2239, § 2, effective April 10; (1)(b) amended, p. 2186, § 68, effective June 2. **L. 93:** (1)(b) amended, p. 306, § 7, effective April 7; (1)(a)(I)(B.5) added, p. 998, § 1, effective June 2. **L. 94:** (1)(a)(I)(B) amended, p. 825, § 57, effective April 27. **L. 96:** (1)(a)(I)(A) and (3) amended, p. 115, § 3, effective March 25; (1)(a)(I)(A) and (1)(b) amended and (1)(a)(I)(F) added, p. 573, § 1, effective April 25; (1)(a)(I)(D) and (1)(a)(I)(E) amended, p. 650, §§ 4, 5, effective May 1. **L. 97:** (1)(a)(I)(A) amended, p. 511, § 2, effective April 24. **L. 2000:** (3) amended, p. 751, § 4, effective May 23. **L. 2002:** (1)(b) amended, p. 843, § 6, effective August 7. **L. 2003:** (1)(b) amended, p. 919, § 1, effective August 6. **L. 2009:** (1)(c) added, (HB 09-1265), ch. 47, p. 170, § 1, effective August 5. **L. 2013:** (1)(a)(I)(D) amended, (HB 13-1113), ch. 11, p. 32, § 7, effective March 8; (1)(c) amended, (HB 13-1300), ch. 316, p. 1705, § 124, effective August 7. **L. 2017:** (1)(a)(I)(A) and (1)(b) amended, (HB 17-1049), ch. 148, p. 494, § 1, effective August 9.

**Editor's note:** (1) Subsection (1)(a)(II)(B) provided for the repeal of subsection (1)(a)(II), effective January 1, 1989. (See L. 88, p. 1290.)

(2) Amendments to subsection (1)(a)(I)(A) by House Bill 96-1131 and House Bill 96-1290 were harmonized.

**Cross references:** For the authorization for school districts to apply to the state contingency reserve for assistance relating to abatements and refunds of taxes, see § 22-54-117; for the administrative procedure for abatement of taxes, see § 39-1-113; for approval of tax abatements and rebates by the property tax administration, see § 39-2-116.

**39-10-114.5. Decision - review - judicial review.** (1) If the board of county commissioners, pursuant to section 39-10-114 (1), or the property tax administrator, pursuant to section 39-2-116, denies the petition for refund or abatement of taxes in whole or in part, the petitioner may appeal to the board of assessment appeals pursuant to the provisions of section 39-2-125 within thirty days of the entry of any such decision.

(2) If the petitioner has appealed to the board of assessment appeals and the decision of the board of assessment appeals is against the petitioner, the petitioner may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. If the decision of the board is against the respondent, the

respondent, upon the recommendation of the board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. In addition, if the decision of the board is against the respondent, the respondent may petition the court of appeals for judicial review of alleged procedural errors or errors of law when the respondent alleges procedural errors or errors of law by the board of assessment appeals. If the board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, the respondent may petition the court of appeals for judicial review of such questions.

**Source: L. 90:** Entire section added, p. 1695, § 14, effective June 9. **L. 96:** (2) amended, p. 651, § 6, effective May 1.

**39-10-115. Certificate of taxes due.** (1) Upon request, the treasurer shall certify in writing the full amount of taxes due upon any parcel of real property or mobile home in his or her county, and all outstanding sales for unpaid taxes as shown by the records of his or her office or the records of the department of revenue, with the amount required for redemption of such sales, if the same still are redeemable. The treasurer shall include on such certificate of taxes due an itemized list of the mill levies and amount of taxes and assessments imposed by each taxing jurisdiction and a statement that information regarding special taxing districts and the boundaries of such districts may be on file or deposit with the board of county commissioners, the county clerk and recorder, or the county assessor. A fee shall be collected for each such certificate issued by him or her, as provided in section 30-1-102, C.R.S.

(2) When signed by the treasurer, such certificate, showing payment of all taxes due and the redemption of all outstanding tax sales, shall be conclusive evidence for all purposes and against all persons that the parcel of real property or mobile home therein described was, at the time, free and clear of all taxes due and from all tax sales except tax sales whereon the time for redemption had already expired and the purchaser had received a deed.

(3) Any loss resulting to any person from an error in a tax certificate issued by the treasurer shall be paid by the county represented by the treasurer issuing such certificate.

(4) No person other than the treasurer or an authorized agent of the treasurer shall issue any property tax certificate.

**Source: L. 64:** R&RE, p. 722, § 1. **C.R.S. 1963:** § 137-10-15. **L. 69:** p. 1122, § 1. **L. 71:** p. 327, § 6. **L. 82:** (1) amended, p. 551, § 16, effective July 1. **L. 83:** (2) amended, p. 2053, § 26, effective October 14. **L. 90:** (4) added, p. 1643, § 2, effective May 22. **L. 91:** (1) amended, p. 794, § 23, effective January 1, 1992. **L. 2000:** (1) amended, p. 1638, § 16, effective June 1.

**39-10-116. Civil penalty for checks not paid upon presentment.** The treasurer shall assess a penalty up to the amount authorized in section 13-21-109 (1)(b), C.R.S., against any person who issues a check to the treasurer in payment of taxes, interest, fees, or other charges collectible by the treasurer that is not paid upon its presentment. The penalty provided in this section shall be assessed in addition to any other penalties or interest provided by law.

**Source: L. 79:** Entire section added, p. 1421, § 6, effective January 1, 1980. **L. 88:** Entire section amended, p. 1106, § 2, effective January 1, 1989. **L. 95:** Entire section amended, p. 36, § 2, effective March 17.

## ARTICLE 11

Sale of Tax Liens

**Editor's note:** This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

**Law reviews:** For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

**39-11-100.3. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Date of sale" means the date on which a public auction begins.

(2) "Electronic funds transfer" means a transfer of funds initiated by using an electronic terminal, telephonic instrument, or computer or magnetic tape to order or authorize a financial institution to credit or debit an account. "Electronic funds transfer" does not include a transaction originated by check, draft, or similar paper instrument.

(3) "Negotiable paper" means a bank check, draft, express or post office money order, or cashier's checks approved by the treasurer.

(4) "Public auction" means the sale of lands or town lots under this article at a venue or through a medium that allows members of the public to bid and purchase the lands or town lots.

**Source: L. 2005:** Entire section added, p. 1234, § 1, effective June 3.

**39-11-101. Notice to delinquent owner.** The treasurer shall make a list of all lands and town lots the tax liens on which are subject to sale, describing such land and town lots as the same are described on the tax roll. Except as otherwise provided in section 39-2-117 (1)(a), no later than September 1 of each year, the treasurer shall send a notice by mail, at the person's last-known address, to each person by whom taxes for the previous year are known to be due and unpaid. The notice shall indicate the amount of the person's delinquency and state that if the amount of the delinquency is not paid by the date specified in the notice, which shall not be less than fifteen days from the date of mailing of the notice, the treasurer will advertise and sell a tax lien on the person's property on the date specified in the notice at public auction for the delinquent taxes, interest, and applicable fees. If such list is not made until after September 1, the sale held thereunder shall not be void by reason thereof.

**Source: L. 64:** R&RE, p. 723, § 1. **C.R.S. 1963:** § 137-11-1. **L. 85:** Entire section amended, p. 1234, § 1, effective July 1. **L. 88:** Entire section amended, p. 1293, § 26, effective May 23. **L. 92:** Entire section amended, p. 2230, § 17, effective April 9. **L. 94:** Entire section amended, p. 756, § 7, effective April 20. **L. 96:** Entire section amended, p. 116, § 4, effective

March 25. **L. 2005:** Entire section amended, p. 1234, § 2, effective June 3. **L. 2007:** Entire section amended, p. 18, § 1, effective February 20.

**Cross references:** For time when tax lien attaches, see § 39-1-107.

**39-11-102. Treasurer to publish and post notice.** (1) The treasurer shall cause the notice described in subsection (2) of this section to be published in the newspaper selected pursuant to section 39-11-105, the first publication being at least four weeks before the date of sale, and shall post a written or printed notice in a conspicuous place in the office of the treasurer for not less than four weeks before the date of sale. If there is no newspaper published in the county, a like notice shall be given by posting one written or printed notice for the above length of time on or near the outer door of the treasurer's office. When publication is made in a weekly newspaper, the notice shall be published in three successive weekly issues. When publication is made in a daily newspaper, the notice shall be published only three times, once each week, on the same day of the week.

(2) The notice of sale at public auction shall contain:

(a) A description of the lands and town lots on which the tax liens are subject to sale;

(b) The date, time, and place of the tax lien sale, including the electronic address if the public auction is conducted by means of the internet or other electronic medium;

(c) The location of computer workstations that are available to the public and information about how to obtain instructions on accessing the public auction and submitting bids if the public auction is conducted by means of the internet or other electronic medium; and

(d) If the public auction is conducted by means of the internet or other electronic medium, a statement that the bidding rules for the public auction will be posted on the internet or other electronic medium used to conduct the public auction at least two weeks before the date of sale.

**Source: L. 64:** R&RE, p. 723, § 1. **C.R.S. 1963:** § 137-11-2. **L. 94:** Entire section amended, p. 756, § 8, effective April 20. **L. 2005:** Entire section amended, p. 1235, § 3, effective June 3.

**39-11-103. Treasurer to make affidavit of posting.** The treasurer shall also make, or cause to be made, an affidavit showing the posting of such list and notice, all of which affidavits shall be deposited by the treasurer with the county clerk and recorder to be filed and entered by the county clerk and recorder in the reception book or other permanent record of said office and there carefully preserved.

**Source: L. 64:** R&RE, p. 723, § 1. **C.R.S. 1963:** § 137-11-3. **L. 94:** Entire section amended, p. 756, § 9, effective April 20.

**39-11-104. Publisher's affidavit - form.** (1) Every publisher or printer who publishes such list and notice, immediately after the last publication thereof, shall transmit to the treasurer of the proper county an affidavit of such publication made by such publisher, printer, or some other person to whom the fact of publication is known, and no publisher or printer shall be paid

for such publication if he fails to transmit such affidavit within fourteen days after the last publication.

(2) Such affidavit shall be substantially in the following form:

"I, ....., publisher (or printer) of the ....., a ..... newspaper, printed and published in the county of ..... and state of Colorado, do hereby certify that the foregoing notice and list were published in said newspaper, once in each week, for ..... successive weeks, the last of which publications was made prior to the ..... day of ....., A.D. 20...., and that copies of each number of said paper in which said notice and list were published were delivered by carriers or transmitted by mail to each of the subscribers of said paper, according to the accustomed mode of business in this office.

.....,
Publisher (or Printer) of the .....
STATE OF COLORADO )
) ss.
County of .....)

The above certificate of publication was subscribed and sworn to before me by the above named ....., who is personally known to me to be the identical person described in the above certificate, on the ..... day of ....., A.D. 20.... .
.....
(SEAL)"

**Source: L. 64:** R&RE, p. 723, § 1. **C.R.S. 1963:** § 137-11-4.

**39-11-105. Selection of newspaper publishing notice.** It is the duty of the board of county commissioners of each county to select a newspaper of general circulation published or having general circulation in said county, in which the treasurer shall publish the delinquent tax list of his county, and for such service the board shall allow payment not exceeding the rate as provided by law.

**Source: L. 64:** R&RE, p. 724, § 1. **C.R.S. 1963:** § 137-11-5.

**39-11-106. Advertising and auction fees.** (1) To the amount of delinquent taxes there shall be added a fee to cover the cost of advertising, as provided in section 30-1-102, C.R.S. If the public auction is conducted by means of the internet or other electronic medium, the treasurer may add a fee to cover the cost of conducting the public auction.

(2) The treasurer of each county shall deliver his list of all lots or tracts of land for which tax liens are to be advertised for sale to the publisher or printer at least ten days before the date of the first publication.

**Source: L. 64:** R&RE, p. 724, § 1. **L. 65:** p. 1110, § 1. **C.R.S. 1963:** § 137-11-6. **L. 67:** p. 212, § 3. **L. 71:** p. 328, § 7. **L. 85:** (2) amended, p. 1234, § 2, effective July 1. **L. 91:** (2) amended, p. 1972, § 2, effective March 27. **L. 2005:** (1) amended, p. 1236, § 4, effective June 3.

**39-11-107. Erroneous assessments - abatement.** It is the duty of the treasurer of each county, before making sale of tax liens on any lots or land for unpaid taxes, to carefully examine and compare the delinquent list with the assessment roll and block books in his office, and to omit from such sale the tax liens on all lots and lands doubly or erroneously assessed, insofar as he is able to ascertain the same, and to make an itemized report to the board of county commissioners of his county showing such double or erroneous assessment. The board of county commissioners, on receipt of such itemized report, by resolution to be entered in its proceedings, shall abate the taxes levied upon such double or erroneous assessments.

**Source: L. 64:** R&RE, p. 725, § 1. **C.R.S. 1963:** § 137-11-7. **L. 85:** Entire section amended, p. 1235, § 3, effective July 1.

**39-11-108. Manner of conducting public auction - definitions.** (1) On the day designated in the notice of sale, the treasurer shall commence the public auction of the tax liens on those lands and town lots on which the taxes, interest, and fees have not been paid and shall continue the same from day to day, Saturdays and Sundays excepted, until the tax liens on each parcel are sold. Where two or more lots or tracts of land are valued and assessed as one parcel, the treasurer shall sell a single tax lien on such land or tract. The public auction shall be held at the treasurer's office or at another location in the county designated by the treasurer, and all lands and town lots offered at the public auction on the same date of sale shall be offered for public auction at the same location; except that the public auction may be conducted by means of the internet or other electronic medium.

(2) A public auction conducted by means of the internet or other electronic medium to sell lands and town lots under this article shall allow members of the public to submit bids by computer and permit the treasurer to accept bids for as long as the treasurer deems necessary. The county and its employees acting in their official capacity in preparing, conducting, and executing a sale of lands and town lots under this article are not liable for the failure of a device that prevents a person from participating in a sale under this article. As used in this subsection (2), "device" includes, but is not limited to, computer hardware, a computer network, a computer software application, and an internet website.

(3) If there is no bid for any tax lien offered, the offering of such tax lien shall remain open until all the tax liens are offered for sale and the sale is ended or until the treasurer is satisfied that no more sales can be effected, whereupon it is the treasurer's duty to strike off to the county, city, town, or city and county the tax liens on those lands and town lots remaining unsold, for the amount of such taxes, delinquent interest, and fees thereon. When the treasurer strikes off a tax lien on any tract of land or town lot, the treasurer shall issue to the county, city, town, or city and county a certificate of purchase. No taxes levied against any lands for which a county has purchased a tax lien under the provisions of this section shall be payable until the same have been derived by the county from the sale of a tax lien on such lands or from the redemption of such lands.

**Source: L. 64:** R&RE, p. 725, § 1. **C.R.S. 1963:** § 137-11-8. **L. 85:** Entire section amended, p. 1235, § 4, effective July 1. **L. 92:** Entire section amended, p. 2230, § 18, effective April 9. **L. 2005:** Entire section amended, p. 1236, § 5, effective June 3.

**39-11-109. Time of public auction.** The public auction of tax liens on lands upon which taxes remain delinquent shall commence on or before the second Monday in December of each year.

**Source: L. 64:** R&RE, p. 725, § 1. **C.R.S. 1963:** § 137-11-9. **L. 85:** Entire section amended, p. 1235, § 5, effective July 1. **L. 2005:** Entire section amended, p. 1237, § 6, effective June 3.

**39-11-110. When public auction can be held.** If, from any cause, the tax lien on real property cannot be duly advertised and offered for sale at public auction on or before the second Monday of December, it is the duty of the treasurer to hold the public auction on any subsequent day in which it can be held, allowing time for the publication of notice as provided in section 39-11-102.

**Source: L. 64:** R&RE, p. 725, § 1. **C.R.S. 1963:** § 137-11-10. **L. 85:** Entire section amended, p. 1236, § 6, effective July 1. **L. 2005:** Entire section amended, p. 1237, § 7, effective June 3.

**39-11-111. Method of payment.** When the treasurer sells any tax lien on any lands or lots for delinquent taxes, the treasurer may accept payment of the purchase price in the form of cash, negotiable paper, or electronic funds transfer, subject to the treasurer's bidding rules.

**Source: L. 64:** R&RE, p. 726, § 1. **C.R.S. 1963:** § 137-11-11. **L. 85:** Entire section amended, p. 1236, § 7, effective July 1. **L. 2005:** Entire section amended, p. 1237, § 8, effective June 3.

**39-11-112. Erroneous name or assessment in wrong county - effect.** (1) When tax liens on any lands or town lots are offered for sale for any delinquent taxes, it shall not be necessary to sell the same as the property of any person. No sale of any tax lien on any land or town lots for delinquent taxes shall be considered invalid because charged on the roll in any other name than that of the rightful owner, or charged as unknown; but the tax lien and such land or lots in other respects shall be sufficiently described on the tax roll to identify the same, and the taxes for such land or lots shall be due and unpaid at the time of such sale.

(2) When any land lying in one county is erroneously taxed and a tax lien on such land is sold for delinquent taxes in another county, the county so erroneously taxing and selling a tax lien on such land for delinquent taxes shall be liable to the owner of such land for any expense or damage caused to such owner by such erroneous sale.

**Source: L. 64:** R&RE, p. 726, § 1. **C.R.S. 1963:** § 137-11-12. **L. 85:** Entire section amended, p. 1236, § 8, effective July 1.

**39-11-113. Abbreviations, letters, and figures may be used.** In all advertisements for the sale of tax liens on real property for delinquent taxes and in entries required to be made by the assessor, county clerk and recorder, treasurer, or other officers in lists, books, rolls, certificates, receipts, deeds, or notices, letters, figures, and abbreviations may be used to denote

townships, ranges, sections, parts of sections, lots, blocks, dates and amounts of taxes, delinquent interest, and costs.

**Source: L. 64:** R&RE, p. 726, § 1. **C.R.S. 1963:** § 137-11-13. **L. 85:** Entire section amended, p. 1236, § 9, effective July 1. **L. 92:** Entire section amended, p. 2231, § 19, effective April 9.

**39-11-114. Record of sales of tax liens on real estate and mobile homes.** (1) The treasurer shall make a correct record of all sales of tax liens on real estate for delinquent taxes in a well-bound book or other permanent record to be kept by the treasurer for that purpose. Said book shall contain:

(a) The date of sale;

(b) The description of each tract of land or town lot for which a tax lien is sold;

(c) The name of the owner thereof, if known;

(d) The name of the purchaser;

(e) The total amount of taxes, delinquent interest, and costs at time of sale;

(f) Columns for amount of subsequent taxes paid by the purchaser and the date of payment;

(g) To whom assigned and the date of assignment;

(h) The name of person redeeming and date of redemption;

(i) The total amount paid for redemption;

(j) The name of person to whom conveyed and date of deed.

(2) The treasurer shall also note in the tax list, opposite the description of the property for which a tax lien is sold, the fact and date of such sale.

(3) (a) Upon recordation of the tax sale, the treasurer shall also make a separate list of all mobile homes for which tax liens are sold at the sale and file such list with the department of revenue. Such list shall include the mobile home's identification number, year and make, parcel number, and all pertinent tax sale information. For maintaining this recorded tax sale information on mobile homes, the executive director of the department of revenue may impose a fee of five dollars which shall become part of the mobile home tax sale redemption cost.

(b) Notwithstanding the amount specified for the fee in this section, the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

**Source: L. 64:** R&RE, p. 726, § 1. **C.R.S. 1963:** § 137-11-14. **L. 82:** (3) added, p. 551, § 17, effective July 1. **L. 85:** IP(1), (1)(b), (2), and (3) amended, p. 1237, § 10, effective July 1. **L. 92:** (1)(e) amended, p. 2231, § 20, effective April 9. **L. 94:** IP(1) and (2) amended, p. 756, § 10, effective April 20. **L. 96:** (2) amended, p. 1393, § 12, effective July 1. **L. 98:** (3) amended, p. 1347, § 81, effective June 1. **L. 2000:** (3)(a) amended, p. 1638, § 17, effective June 1.

**Cross references:** For tax sale procedure and redemption of a mobile home, see § 39-10-111.5.

**39-11-115. To whom tax lien shall be sold.** (1) When the taxes levied for the preceding year or years on any lands remain unpaid, the tax liens on such lands offered at public auction at the times provided by law shall be sold to the persons who pay therefor the taxes, delinquent interest, and fees then due thereon or who further pay the largest amount in excess of said taxes, delinquent interest, and fees. The excess amount shall be credited to the county general fund. Each tax lien shall be sold for an entire piece of property. The taxes, delinquent interest, and fees shall draw interest at the rates fixed by law, and, when the tax liens on any lands are bid in by the county, city, town, or city and county, the amount for which they are bid in shall draw interest at the same rates. Real property for which a tax lien is sold may be redeemed in the manner provided by law.

(2) In order that the public auction may be conducted in an efficient and equitable manner, the treasurer is hereby granted broad powers to set bidding rules governing the public auction. Such powers shall include, but need not be limited to, the following:

(a) Recognition of buyers in numerical sequence, in rotation, or in the order in which bids are made;

(b) Determining the order in which tax liens are sold, without regard to the order in which they appear in the published notice of sale;

(c) Setting minimum bid increases; and

(d) Setting a minimum total of taxes, delinquent interest, and costs below which competitive bids will not be accepted.

(3) The treasurer may combine and sell as a unit parcels which are contiguous or are contained within one subdivision.

(4) The treasurer shall announce bidding rules at the beginning of the public auction, and the rules announced shall apply to all bidders throughout the public auction. If the public auction is conducted by means of the internet or other electronic medium, the treasurer shall cause the internet bidding rules to be posted on the medium for at least two weeks before the date of sale. The internet bidding rules posted shall apply to all bidders throughout the public auction.

**Source: L. 64:** R&RE, p. 727, § 1. **L. 65:** p. 1112, §§ 1, 2. **C.R.S. 1963:** § 137-11-15. **L. 67:** p. 213, § 4. **L. 85:** Entire section amended, p. 1237, § 11, effective July 1. **L. 87:** Entire section amended, p. 1422, § 1, effective May 8. **L. 92:** (1) and (2)(d) amended, p. 2231, § 21, effective April 9. **L. 2005:** (1), IP(2), and (4) amended, p. 1237, § 9, effective June 3.

**39-11-116. Procedure when purchaser fails to pay.** If a person bidding fails to pay the amount due, the treasurer may again offer the tax lien on such land for sale if the public auction has not closed, and, if it has closed, the treasurer may again advertise it specially in the same manner as in the original advertisement and for not less than one week, after which the treasurer may again offer and sell the tax liens on such lands or lots as provided in section 39-11-115; or at the treasurer's option, the treasurer may recover the amount bid by civil action brought in the name of the county in any court of competent jurisdiction. In a public auction conducted by means of the internet or other electronic medium, if a person bidding fails to pay the amount due, the treasurer may offer the tax lien, without additional advertisement, to another bidder, whether

or not the public auction has closed; or at the treasurer's option, the treasurer may recover the amount bid by civil action brought in the name of the county in any court of competent jurisdiction. The treasurer may prohibit a person who fails to pay the amount due from bidding on sales under this article for up to five years.

**Source: L. 64:** R&RE, p. 727, § 1. **C.R.S. 1963:** § 137-11-16. **L. 85:** Entire section amended, p. 1238, § 12, effective July 1. **L. 2005:** Entire section amended, p. 1238, § 10, effective June 3.

**39-11-117. Certificate of purchase.** The treasurer shall prepare, sign, and retain for safekeeping or deliver to the purchaser of a tax lien on any real property sold for the payment of delinquent taxes a certificate of purchase describing the property on which the taxes and fees were paid by the purchaser, as the same was described in the record of sales, and also stating the rate of interest and the total amount of all taxes, delinquent interest, and fees on each tract or lot for which the tax lien was sold, as described in the record of sales, and that payment thereof has been made, with columns for subsequent taxes. For each certificate so delivered, the purchaser shall pay a fee to the treasurer as provided in section 30-1-102, C.R.S.

**Source: L. 64:** R&RE, p. 727, § 1. **C.R.S. 1963:** § 137-11-17. **L. 69:** p. 1122, § 2. **L. 71:** p. 328, § 8. **L. 75:** Entire section amended, p. 1479, § 4, effective July 1. **L. 85:** Entire section amended, p. 1238, § 13, effective July 1. **L. 92:** Entire section amended, p. 2231, § 22, effective April 9. **L. 96:** Entire section amended, p. 1393, § 13, July 1. **L. 2005:** Entire section amended, p. 1238, § 11, effective June 3.

**Cross references:** For certificate of sale for personal property, see § 39-10-111. For certificate of sale for a mobile home, see § 39-10-111.5.

**39-11-118. Certificate of purchase assignable.** Such certificate of purchase shall be assignable by endorsement, and an assignment thereof, when entered upon the record of sales in the offices of the county clerk and recorder and the treasurer, shall vest in the assignee or his legal representative all the right and title of the original purchaser.

**Source: L. 64:** R&RE, p. 728, § 1. **C.R.S. 1963:** § 137-11-18.

**39-11-119. Subsequent payment by holder.** Any person desiring to pay any subsequent taxes on any lands or town lots for which such person holds the tax certificates shall produce such certificates to the treasurer, or, if certificates are retained by the treasurer, the person shall be notified by the treasurer of the amount due. Upon receipt of payment, the treasurer shall record the amount of the subsequent tax and the date of payment on the permanent record. The treasurer may receive a fee for such services, as provided in section 30-1-102 (1)(j), C.R.S.

**Source: L. 64:** R&RE, p. 728, § 1. **C.R.S. 1963:** § 137-11-19. **L. 69:** p. 1122, § 3. **L. 71:** p. 328, § 9. **L. 75:** Entire section amended, p. 1479, § 5, effective July 1. **L. 83:** Entire section amended, p. 1230, § 20, effective July 1. **L. 94:** Entire section amended, p. 757, § 11, effective April 20. **L. 96:** Entire section amended, p. 1393, § 14, effective July 1.

**39-11-120. Presentation of certificates for deed.** (1) At any time after the expiration of the term of three years from the date of the sale of any tax lien on any land, or interest therein or improvements thereon, for delinquent taxes, on demand of the purchaser or lawful holder of the certificate of such tax lien, other than the county wherein such property is situated, and on presentation of such certificate of purchase or properly authenticated order of the board of county commissioners, where the certificate has been lost or wrongfully withheld from the owner, and upon proof of compliance with section 39-11-128, the treasurer shall make out a deed for each such lot, parcel, interest, or improvement for which a tax lien was sold and which remains unredeemed and deliver the same to such purchaser or lawful holder of such certificate or order.

(2) The treasurer shall be entitled to a fee for each such deed made and acknowledged by him and a fee for the acknowledgment thereof, as provided in section 30-1-102, C.R.S.

(3) Whenever any certificate given by the treasurer for a tax lien on any land, interest, or improvement sold for delinquent taxes is lost or wrongfully withheld from the rightful owner thereof and such land, interest, or improvement has not been redeemed, the board of county commissioners may receive evidence of such loss or wrongful detention and, upon satisfactory proof of such fact, may cause a certificate of such proof and finding, properly attested by the county clerk and recorder under the seal of the county, to be delivered to such rightful claimant, and a record thereof shall be duly made by the county clerk and recorder in the recorded proceedings of such board.

(4) Whenever any tax lien on any lot or parcel of land, interest therein, or improvement thereon is bid in by or for the county, city, town, or city and county at any tax sale, and a certificate of purchase is made to such county, city, town, or city and county therefor, the treasurer of such county, city, town, or city and county may sell, assign, and deliver any such certificate to any person who desires to purchase the same upon payment to the treasurer of the amount for which said tax lien was bid in by the county, city, town, or city and county with interest and costs accrued thereon from the date of sale, together with a fee for making such assignment, as provided in section 30-1-102, C.R.S., and the taxes assessed thereon since the date of such sale or, in case of a county, city, town, or city and county, for such sum as the board of county commissioners or other board authorized to perform the duties of a board of county commissioners at any regular or special meeting may decide and authorize by order duly entered in the recorded proceedings of such board. Whenever any tax lien on any lot or parcel of land, interest therein, or improvement thereon is bid in by or for a city, town, or city and county, as the case may be, such city, town, or city and county shall be entitled to a deed, as provided for purchasers at tax sales.

**Source: L. 64:** R&RE, p. 728, § 1. **C.R.S. 1963:** § 137-11-20. **L. 71:** p. 329, § 10. **L. 75:** (2) amended, p. 1480, § 6, effective July 1. **L. 85:** (1), (3), and (4) amended, p. 1238, § 14, effective July 1.

**39-11-121. Municipalities, prior sales validated.** All sales of such certificates made by any treasurer or ex officio treasurer of any city, town, or city and county, antecedent to or without the passage of any ordinance prescribing the terms of such sales, are hereby approved, affirmed, ratified, and validated as of their respective dates.

**Source: L. 64:** R&RE, p. 729, § 1. **C.R.S. 1963:** § 137-11-21.

**39-11-122. Transfer of certificates by counties.** Any county in this state having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of general taxes may assign, sell, or transfer such certificates in such manner, at such times, and on such terms as may be determined by resolution of the board of county commissioners of such county. Thereafter such county shall execute and deliver such instruments as may be necessary fully to convey all of the right, title, and interest of the county in or to such certificates; but no sale of any certificate of purchase issued upon any real estate upon which taxes in excess of ten thousand dollars are then due shall be valid unless and until the sale of said certificate and the terms of said sale are approved by the administrator after notice of said proposed sale and the terms thereof have been published in at least one issue of a newspaper published regularly in the county where said real estate is located, or if no newspaper is published in said county, then by posting notice of said proposed sale and the terms thereof at the county courthouse and two other public places in said county.

**Source: L. 64:** R&RE, p. 730, § 1. **C.R.S. 1963:** § 137-11-22. **L. 85:** Entire section amended, p. 1239, § 15, effective July 1.

**39-11-123. Transfer of certificates - irrigation or drainage district taxes.** Any county in this state having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of irrigation or drainage district taxes or assessments, by agreement with the board of directors of the district involved, may assign, sell, or transfer such certificates as provided in section 39-11-122.

**Source: L. 64:** R&RE, p. 730, § 1. **C.R.S. 1963:** § 137-11-23. **L. 85:** Entire section amended, p. 1239, § 16, effective July 1.

**39-11-124. Counties, prior sales validated.** All assignments, sales, or transfers of certificates of purchase by counties made before August 1, 1964, are validated and confirmed.

**Source: L. 64:** R&RE, p. 730, § 1. **C.R.S. 1963:** § 137-11-24.

**39-11-125. Disposal of certificates by districts.** Any irrigation or drainage district in this state having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of irrigation or drainage district taxes or assessments may assign, sell, or transfer such certificates in such manner, at such times, and on such terms as may be determined by resolution adopted by the board of directors of such district, and thereupon such district shall execute and deliver such instruments as may be necessary fully to convey all of its right, title, and interest in or to such certificates.

**Source: L. 64:** R&RE, p. 730, § 1. **C.R.S. 1963:** § 137-11-25. **L. 85:** Entire section amended, p. 1239, § 17, effective July 1.

**39-11-126. Agreement with county commissioners.** Any irrigation or drainage district having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of general taxes may, by agreement with the board of county commissioners of the county in which the land is situated, assign, sell, or transfer such certificates as provided in section 39-11-125.

**Source: L. 64:** R&RE, p. 731, § 1. **C.R.S. 1963:** § 137-11-26. **L. 85:** Entire section amended, p. 1240, § 18, effective July 1.

**39-11-127. Irrigation or drainage districts, prior sales validated.** All assignments, sales, or transfers of certificates of purchase by irrigation or drainage districts made before August 1, 1964, are validated and confirmed.

**Source: L. 64:** R&RE, p. 731, § 1. **C.R.S. 1963:** § 137-11-27.

**39-11-128. Condition precedent to deed - notice.** (1) Before any purchaser, or assignee of such purchaser, of a tax lien on any land, town or city lot, or mining claim sold for taxes or special assessments due either to the state or any county or incorporated town or city within the same at any sale of tax liens for delinquent taxes levied or assessments authorized by law is entitled to a deed for the land, lot, or claim so purchased, he shall make request upon the treasurer, who shall then comply with the following:

(a) The treasurer shall serve or cause to be served, by personal service or by either registered or certified mail, a notice of such purchase on every person in actual possession or occupancy of such land, lot, or claim, and also on the person in whose name the same was taxed or specially assessed if, upon diligent inquiry, such person can be found in the county or if his residence outside the county is known, and upon all persons having an interest or title of record in or to the same if, upon diligent inquiry, the residence of such persons can be determined, not more than five months nor less than three months before the time of issuance of such deed. In such notice the treasurer shall state when the applicant or his assignor purchased the tax lien on such land, lot, or claim, in whose name such property was taxed, the description of the land, lot, or claim for which a tax lien was purchased, for what year taxed or specially assessed, and when the time of redemption will expire or when the tax deed shall be issued.

(b) In all cases or instances where the valuation for assessment of the property is five hundred dollars or more, the treasurer shall publish such notice, three times, at intervals of one week, in some daily, weekly, or semiweekly newspaper published in such county, not more than five months nor less than three months before the time at which the tax deed may issue, and he shall send by registered or certified mail a copy of such notice to each person not found to be served whose address is known or can be determined upon diligent inquiry. If no such newspaper is published in the county, then said notice shall be published in the newspaper that is published in Colorado nearest the county seat of the county in which such land, lot, or claim is situated. The purchaser or assignee, at the time of making such request for notification on the treasurer, shall pay to the treasurer a fee, as provided in section 30-1-102, C.R.S. The treasurer shall make and carefully preserve among the files of his office a record of all things done in compliance with this section and shall certify to the same.

(2) When request is made for a tax deed to lands situated wholly within the exterior boundary lines of an irrigation district, the holder of tax sale certificates of purchase to such lands may include in one request or demand for a tax deed all contiguous tracts for which he holds such certificates of purchase. When all of such lands for which a tax deed is so requested or demanded are unoccupied and no taxes have been paid thereon, or upon any parcel of such lands embraced in such request or demand, for five consecutive years prior to the making of such request or demand, the only notice which the treasurer shall be required to give of the fact that a request or demand for tax deed has been made upon him shall be a notice of publication as provided in this section, in which as many tracts or parcels of land shall be described as are embraced in any one demand or request for deed.

**Source: L. 64:** R&RE, p. 731, § 1. **C.R.S. 1963:** § 137-11-28. **L. 71:** p. 329, § 11. **L. 85:** IP(1) and (1)(a) amended, p. 1240, § 19, effective July 1. **L. 96:** (1)(b) amended, p. 116, § 5, effective March 25.

**Cross references:** For publication of legal notices generally, see part 1 of article 70 of title 24.

**39-11-129. Tax deed - issuance, execution, requirements.** The words "issue", "issued", "execute", and "executed" when used in this article in connection with a treasurer's deed mean the signing of such a deed by the treasurer, and the delay in the acknowledgment of such a deed or the delivery thereof shall not in any way affect the validity of such deed. If the notice required in section 39-11-128 for a deed is prepared subsequent to three years after the date of sale of a tax lien for delinquent taxes, it shall not be necessary to make any statement in such notice concerning the time of expiration of the period of redemption. The treasurer may sign such treasurer's deed at any time after the time specified therefor in such notice if no redemption has then been made, if the signing of such deed is within five months from the service of said notice as required in section 39-11-128.

**Source: L. 64:** R&RE, p. 732, § 1. **C.R.S. 1963:** § 137-11-29. **L. 85:** Entire section amended, p. 1240, § 20, effective July 1.

**39-11-130. Fees included in redemption money.** In case the treasurer is compelled to serve or to publish a notice in a newspaper pursuant to section 39-11-128, then before any person who may have a right to redeem the land, lot, or claim from the tax sale is permitted to redeem, the person shall pay the officer or person who by law is authorized to receive such redemption money the entire amount paid by the applicant for a tax deed for such notices, for abstract and search fees, for the cost of publishing such notices for the use of the person compelled to pay such charges, and for amounts paid to third parties for computer software costs incurred in connection with processing the redemption. If the property therein described is redeemed before the expiration of the period of redemption named in such notice, the purchaser or the purchaser's assigns shall recover, in addition to the purchaser's interest and costs, the cost of such publication and the abstract and search fee.

**Source: L. 64:** R&RE, p. 732, § 1. **C.R.S. 1963:** § 137-11-30. **L. 85:** Entire section amended, p. 1241, § 21, effective July 1. **L. 2017:** Entire section amended, (HB 17-1019), ch. 17, p. 56, § 1, effective March 8.

**39-11-131. Notice of application for deed.** Any number of tracts or parcels of land not exceeding twenty-five, whether contiguous or noncontiguous, or whether claimed or held under one or more titles or ownerships, or whether included in an irrigation district or not so included, and although tax liens for such tracts or parcels of land were separately sold at the tax sale or covered by more than one tax sale certificate, may be included and described in one notice of application for tax deed provided for in section 39-11-128. Such tracts or parcels, not exceeding twenty-five in number, may also be included and described in a single request for tax deed if such notice and the service thereof and such request are in conformity with section 39-11-128 in other respects. The name of the person in whose name the land for which a tax lien was sold was taxed or specially assessed for the year for which the tax lien was sold shall be prominently displayed in said notice at or near the beginning thereof and near or with a reference to the number of the tax sale certificate and the description of the land involved, sufficient to enable identification of the land with the name of the person assessed if all certificates so sought to be included in a single notice or request are held by but one person, or jointly held by more than one person.

**Source: L. 64:** R&RE, p. 733, § 1. **C.R.S. 1963:** § 137-11-31. **L. 85:** Entire section amended, p. 1241, § 22, effective July 1.

**39-11-132. Prior notices or requests containing more than one parcel - validation. (Repealed)**

**Source: L. 64:** R&RE, p. 733, § 1. **C.R.S. 1963:** § 137-11-32. **L. 75:** Entire section repealed, p. 1480, § 8, effective July 1.

**39-11-133. Suit to quiet title.** Suit to quiet title or to try title may be maintained by the grantee or his successors for all or any one or more of the parcels or tracts acquired under tax deed issued pursuant to said notices and requests, and it shall not be a defense or ground of objection to such action that there is a misjoinder of parties or causes of action; but if a defense to such action or a counterclaim is interposed by a claimant to one or more of said parcels, less than all, then the action shall be tried as between the plaintiff and such claimant, separately from the suit as to other parties and other parcels.

**Source: L. 64:** R&RE, p. 733, § 1. **C.R.S. 1963:** § 137-11-33.

**39-11-134. Defects in tax deed, effect.** Invalidities or defects in or concerning one or more tax deeds, titles, or certificates, or in proceedings relating thereto, shall have no effect on other deeds, titles, or certificates, and redemption from one or more sales shall be without effect as to other sales, titles, or certificates; and, in case of redemption from one or more sales, the treasurer shall compute and collect a fair proportion, as nearly as may be, of the costs, fees, and charges required by law to be paid on redemption from tax sales.

**Source: L. 64:** R&RE, p. 734, § 1. **C.R.S. 1963:** § 137-11-34.

**39-11-135. Form of tax deed.** Deeds executed by the treasurer under the provisions of this article shall be substantially in the following form:

Know all men by these presents, that, whereas, the following described real property, viz: (description of property taxed), situated in the county of ....., and state of Colorado, was subject to taxation for the year (or years) A.D. 20....;

And, whereas, the taxes assessed upon said property for the year (or years) aforesaid remained due and unpaid at the date of the sale hereinafter named; and, whereas, the treasurer of the said county did, on the ..... day of ....., A.D. 20...., by virtue of the authority vested in him by law, at the sale begun and publicly held on the ..... day of ....., A.D. 20...., expose to public sale at the office of the treasurer, in the county aforesaid, in substantial conformity with the requirements of the statute in such case made and provided, the tax lien on the real property above described for the payment of the taxes, delinquent interest, and costs then due and remaining unpaid on said property;

And, whereas, at the time and place aforesaid, ..... of the county of ..... and ..... of ..... bid on the tax lien on all of the above described property the sum of ..... dollars and .... cents, being the whole amount of taxes, delinquent interest, and costs then due and remaining unpaid upon said property for that year, and the said .... having offered in his said bid to pay the sum of ..... dollars and .... cents in excess of said taxes, delinquent interest, and costs, and the said bid being the largest amount which any person offered to pay in excess of the said taxes, delinquent interest, and costs so due upon said property for that year (or those years), and payment of the said sum having been made by him to the said treasurer, the said tax lien on such property was stricken off to him at that price;

And, whereas, the said ..... did, on the ..... day of ....., A.D. 20...., duly assign the certificate of the sale of the tax lien on the property as aforesaid, and all his rights, title, and interest in said property, to ..... of the county of ....., and ..... of .....;

And, whereas, at the sale so held as aforesaid by the treasurer, no bids were offered or made by any person or persons for the tax lien on said property, and no person or persons having offered to pay the said taxes, delinquent interest, and costs upon the said property for that year, and the treasurer having become satisfied that no sale of the tax lien on said property could be had, therefore the said tax lien on said property was, by the then treasurer of the said county, stricken off to the said county, and a certificate of sale was duly issued therefor to the said county in accordance with the statute in such case made and provided;

And, whereas, the said ..... county, acting by and through its treasurer, and in conformity with the order of the board of county commissioners of the said county, duly entered of record on the ..... day of ....., A.D. 20.... (the said day being one of the days of a regular session of the board of county commissioners of said county), did duly assign the

certificate of sale of the tax lien on said property, so issued as aforesaid to said county, and all its rights, title, and interest in said property held by virtue of said sale;

And, whereas, the said ..... (or .....) has paid subsequent taxes on said property to the amount of ..... dollars and ..... cents;

And, whereas, more than three years have elapsed since the date of the said sale, and the said property has not been redeemed therefrom as provided by law;

And, whereas, the said property was valued for assessment for that year at the amount of .....;

And, whereas, all the provisions of the statutes prescribing prerequisites to obtaining tax deeds have been fully complied with, and are now of record, and filed in the office of the treasurer of said county;

Now, therefore, I, ....., treasurer of the county aforesaid, for and in consideration of the sum to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell the above and foregoing described real estate unto the said ..... (or .....), his heirs and assigns, forever, subject to all the rights of redemption by minors, or incompetent persons, as provided by law.

In witness whereof, I, ....., treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto set my hand and seal this ..... day of ....., A.D. 20.... .

.....
(Seal) Treasurer

STATE OF COLORADO )
) ss.
County of .....)

The foregoing instrument was acknowledged before me this ..... day of ....., 20...., by ..... as treasurer of said county.

Witness my hand and official seal. (If notary public, state date commission expires).

(Seal).....

.....
Title of Officer

**Source: L. 64:** R&RE, p. 734, § 1. **C.R.S. 1963:** § 137-11-35. **L. 69:** p. 1124, § 1. **L. 85:** Entire section amended, p. 1241, § 23, effective July 1. **L. 92:** Entire section amended, p. 2232, § 23, effective April 9.

**39-11-136. Treasurer to execute deed - effect.** (1) The deed shall be signed by the treasurer in his official capacity and when so signed shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed and also all right, title, interest, and claim of the state and county thereto. Such deed may be acknowledged in the same manner as other deeds to real estate and, if so acknowledged and recorded in the proper county, shall be prima facie evidence of the following facts:

(a) That the real property conveyed was subject to taxation for the year or years stated in the deed;

(b) That the taxes were not paid at any time before the sale;

(c) That the real property conveyed had not been redeemed from the sale at the date of the deed;

(d) That the property had been listed and assessed at the time and in the manner required by law;

(e) That the taxes were levied according to law;

(f) That the tax lien on said property was advertised for sale in the manner and for the length of time required by law;

(g) That the tax lien on said property was sold for delinquent taxes as stated in the deed;

(h) That the grantee named in the deed was the purchaser, or the heir at law, or the assignee of such purchaser;

(i) That the sale was conducted in the manner required by law;

(j) That the deed was properly signed, acknowledged, and delivered by the treasurer.

(2) All the right, title, interest, and estate conveyed by any such deed executed before August 1, 1964, by the treasurer shall be deemed to have vested in the purchaser at the time such deed was signed by the treasurer in his official capacity.

(3) Execution of a deed pursuant to this section shall not affect the existence of any public or private roads, rights-of-way, conservation easements, other easements, or equitable servitudes that run with land and have both benefits and burdens, all as claimed or existing prior to the execution of such deed.

**Source: L. 64:** R&RE, p. 736, § 1. **C.R.S. 1963:** § 137-11-36. **L. 85:** (1)(f) and (1)(g) amended, p. 1243, § 24, effective July 1. **L. 93:** (3) added, p. 305, § 4, effective April 7. **L. 2001:** (3) amended, p. 10, § 1, effective August 8; (3) amended, p. 308, § 1, effective August 8.

**Editor's note:** Amendments to subsection (3) by House Bill 01-1082 and House Bill 01-1321 were harmonized.

**39-11-137. Validation of acknowledgments of tax deeds.** Any tax deed executed by a treasurer pursuant to section 39-11-135, if acknowledged in conformity with the provisions of section 38-35-101, C.R.S., shall be considered for all purposes as having been properly acknowledged, and such acknowledgment shall carry with it the presumptions provided for by section 38-35-101, C.R.S.

**Source: L. 64:** R&RE, p. 737, § 1. **C.R.S. 1963:** § 137-11-37.

**39-11-138. When successor of treasurer shall act.** If any treasurer dies, resigns, or is removed from office or his term of office expires after selling any tax liens on any real estate for delinquent taxes and before executing a certificate or deed for the same, his successor in office shall execute such certificate or deed in the same manner that the treasurer making such sale might have done.

**Source: L. 64:** R&RE, p. 737, § 1. **C.R.S. 1963:** § 137-11-38. **L. 85:** Entire section amended, p. 1243, § 25, effective July 1.

**39-11-139. Posting list of tax sale certificates and tax deeds.** No later than the fifteenth day of January of each year, each county treasurer shall deliver to the county clerk and recorder of the county treasurer's county a list showing all tax certificates theretofore issued and held in the name of the county and a list of all property the title to which has been acquired by the county through issuance of a tax deed. A copy of such lists shall be posted in a conspicuous place in the courthouse for not less than thirty days.

**Source: L. 67:** p. 803, § 5. **C.R.S. 1963:** § 137-11-49. **L. 93:** Entire section amended, p. 440, § 8, effective July 1.

**39-11-140. Tax deed recorded - entry.** When any tax deed is filed for record, the county clerk and recorder shall also enter the name of the grantee in the proper column of his record of land for which a tax lien was sold for delinquent taxes.

**Source: L. 64:** R&RE, p. 737, § 1. **C.R.S. 1963:** § 137-11-39. **L. 85:** Entire section amended, p. 1243, § 26, effective July 1.

**39-11-141. Action to determine validity of certificates.** Whenever any county or city and county in this state holds tax sale certificates which are believed by the board of county commissioners to be void for irregularity in the assessment of property or sale of a tax lien on property or otherwise, the board of county commissioners of the county or city and county may institute an action in the district court of the county, under the provisions of article 51 of title 13, C.R.S., to have the matter determined as to whether said certificates are void. Such actions shall be brought in the name of the board of county commissioners. Any number of such certificates may be included in one action, and the fee owners of record of the tax liens on the lands on account of the sale of which the certificates were issued shall be made defendants in the action. If any defendant is a nonresident of the state or cannot be found, service of summons may be had upon such defendant in accordance with the provisions of rule 4 of the Colorado rules of civil procedure. If the court, by its decree, finds and determines that any such certificate is void, then the tax lien on the real estate on account of the sale of which such certificate was issued shall be resold for taxes at the next succeeding sale for delinquent taxes; and if the irregularity on account of which such certificate was held void is in the assessment of the property, then the board of county commissioners shall direct the assessor to reassess the same, and, if the delinquent taxes are not thereafter duly paid pursuant to such reassessment, the tax lien on such

property shall likewise be sold at the next delinquent tax sale following such reassessment. No appeal shall lie from the final decree of the court in cases brought under this section. No costs of the action shall be assessed against any defendant who files a disclaimer or fails to appear in the action.

**Source: L. 64:** R&RE, p. 737, § 1. **C.R.S. 1963:** § 137-11-40. **L. 85:** Entire section amended, p. 1244, § 27, effective July 1.

**39-11-142. Disposition of certificates held by counties.** (1) In all cases where a tax lien on real estate has been struck off to the county at tax sales and the county has held the certificate of sale for three years or more, the board of county commissioners may apply for and receive a tax deed in like manner as is provided by law in the case of delinquent tax sale certificates held by individuals. The board of county commissioners, whenever the county becomes entitled to a tax deed, may cause the treasurer to issue, serve, and publish notices, pursuant to law, of application for such tax deed in like manner as in the case of individual certificate holders.

(2) In cases where the county has held the tax certificate for five years or more and such real estate is not located within the limits of any incorporated town or city within the said county, the county may include in one request or demand any or all separate parcels of real estate for which it holds tax sale certificates for sales in any one year, and the board of county commissioners may apply for and receive tax deeds therefor. In cases where the county has held the tax certificate for eight years and in the opinion of the board of county commissioners such real estate is not used, operated, or maintained wholly or in part in the interest or for the benefit of the public, said board shall apply for and receive a tax deed therefor.

(3) Upon making application in the case of tax certificates held by the counties for five years or more, the treasurer shall not be required to give the notice that a request or demand for tax deed has been made upon him provided for in section 39-11-128. The treasurer, in lieu of such notice, at least sixty days before the day said tax deed issues, shall give notice by registered or certified mail, addressed to the last-known residence of the person in whose name the real estate is assessed for the years during which said taxes have not been paid, that a tax deed has been applied for on the particular described property and that said tax deed will issue on a day certain. The treasurer shall also post in a public place in the county courthouse, at least sixty days before said deed issues, a notice stating that a deed will be issued to the county on the real estate described in said notice. Said notice shall contain the name of the person to whom the property is assessed together with the date said tax deed will issue.

(4) In all cases, the owner of the property shall have the right of redemption of the property as provided by law.

(5) Any tax deed, when issued to the county, shall be duly recorded, but no fee shall be required to be paid therefor. Thereafter, the board of county commissioners shall list such property for sale and post such list in the county courthouse and, out of the county general fund, may make such essential repairs thereon and pay such premiums for fire insurance as are necessary for the protection and preservation of any improvements on such property. The board of county commissioners, after a county has acquired such tax deed, in its discretion, may institute and prosecute suits to quiet the title to any such real estate so acquired under such tax deeds.

(6) (a) In all cases where a tax lien on real property has been struck off to the county at a tax sale and the county has held the certificate of sale for thirty years or more without obtaining a tax deed as provided in this section, then such certificate may be declared void and of no effect.

(b) It is the duty of the treasurer at least once each year to prepare and present, at any regular or special meeting of the board of county commissioners, a list of all tax liens on all real property struck off to the county and all certificates of sale relating thereto, which certificates have been held by the county for thirty years or more without obtaining a deed or being otherwise disposed of under this article.

(c) Upon being presented with such list, the board of county commissioners shall determine that the tax liens were struck off to the county, that such certificates of sale relating thereto have been held by the county for thirty years or more, and that no tax deed has been obtained or applied for as provided in this section. Upon making such determination, the board of county commissioners may declare that such certificates are void, and an order to that effect shall be duly entered in the recorded proceedings of the board, which order shall direct the treasurer to cancel such certificates of sale.

(d) Upon receipt of an order of the board of county commissioners declaring that any certificates of sale are void, the treasurer shall record said order in his records and shall cancel all such certificates specified in said order.

(e) Any action concerning a determination and declaration by a board of county commissioners made pursuant to this subsection (6) shall be commenced within one year after the date of the board's order, or said action shall be forever barred.

**Source: L. 64:** R&RE, p. 738, § 1. **C.R.S. 1963:** § 137-11-41. **L. 67:** p. 802, § 2. **L. 85:** (1) and (6)(a) to (6)(c) amended, p. 1244, § 28, effective July 1.

**39-11-143. Appraisal - county may retain, lease, or sell - definitions.** (1) Whenever real property is conveyed by a treasurer to the county by tax deed under section 39-11-142, the assessor shall annually value the same in the manner prescribed by law for taxable property and shall notify the board of county commissioners of such valuation.

(2) The board of county commissioners has the power to retain for public projects, rent, lease, or sell such real property as provided in this section.

(2.5) If the board of county commissioners retains such real property for a present or future public project, as defined in section 30-20-301 (2), C.R.S., it shall pass a resolution describing the project for which the property is retained. The board of county commissioners may rent or lease any lot or parcel retained for a present or future public project in accordance with subsection (3) of this section. For purposes of this section, using property to generate revenue for the county is not a public project.

(3) The board of county commissioners may lease such real property to an affiliated entity, but no lease shall be for a period exceeding five years. For purposes of this subsection (3), "affiliated entity" means a nonprofit entity with which the county enters into a contract for the delivery of goods or services to the county or to third parties on behalf of the county.

(4) (a) Any such real property that is not retained or leased in accordance with subsection (2.5) or (3) of this section shall be sold at public sale by the board of county commissioners within one year after the property is conveyed to the county; except that the

board of county commissioners may reject any bid that is less than the value of the property as determined by the assessor. Prior to offering such property for sale, the board of county commissioners shall obtain from the assessor a certificate as to the current actual value and the valuation for assessment of the same. A notice of such sale shall be posted in a public place in the county courthouse at least thirty days before the date of sale, and such notice of sale shall also be advertised in two issues of a newspaper of general circulation in the county in which the property is situated, said newspaper notices to appear one week apart and within the thirty days as above provided. Such notice shall reserve the right upon the part of the board of county commissioners to reject any bid that is less than the value determined by the assessor. Said notice shall be substantially in the following form:

NOTICE

Public notice is hereby given that the following real property acquired by the County of ....., Colorado, by tax deed, to wit:

(description of property)

will, according to law, be offered at public sale at the county courthouse, ....., Colorado, on the ..... day of ....., 20...., at the hour of .... to the highest and best bidder. The board of county commissioners reserves the right to reject any bid that is less than the current actual value fixed by the county assessor.

.....
County Clerk and Recorder.

(a.5) The notice of sale posted pursuant to paragraph (a) of this subsection (4) shall contain a statement substantially in the following form: "If this property is at least fifty years old, it may be eligible for inclusion in the state register of historic properties or designation as a landmark. Such property may be eligible for certain rehabilitation grants and incentives.

(b) Such real property shall be sold at public sale for the highest and best bid for any lots or parcels, as determined in the discretion of the board of county commissioners; except that the board of county commissioners may reject any bid that is less than the value of the property as determined by the assessor. Such real property may be sold in such lots or parcels and upon such terms of payment as the board of county commissioners deems acceptable, but no deed shall be issued until the purchaser has made payment in full. Upon written application of any person, the board of county commissioners shall offer for sale the property requested by such person to be sold; except that no parcel shall be divided for the purpose of such requested sale unless the board of county commissioners specifically permits such division. The board of county commissioners may, prior to the sale of any lot or parcel, reserve or grant streets, alleys, or roads or utilities or other easements, public or private, under such terms and conditions as it may deem advisable.

(5) Such deeds shall be issued by a commissioner to convey, duly appointed by the board of county commissioners, which commissioner shall act upon the direction of the board of county commissioners, but such deed shall be issued without covenants of warranty.

(6) The foregoing provisions of this section shall not apply to any city and county having a population of more than three hundred thousand. Sales and leases by such city and county shall be made in compliance with the applicable provisions of its charter or ordinances. All sales and leases made before August 1, 1964, by such city and county of any real estate acquired by it under tax deeds, whether made or authorized by the board of county commissioners, the mayor of said city and county, or in purported compliance with its charter or ordinances, are deemed valid, and such sales and leases are hereby confirmed. All actions or proceedings to set aside or question the validity of such sales or leases made before August 1, 1964, by such city and county shall be brought within six months from said date and not thereafter. This subsection (6) shall not reinstate any such action or proceeding barred by law before August 1, 1964.

**Source: L. 64:** R&RE, p. 739, § 1. **C.R.S. 1963:** § 137-11-42. **L. 2004:** (1), (2), (3), and (4) amended and (2.5) added, p. 159, § 2, effective August 4.

**39-11-144. County lands, prior sales validated.** All sales of such real estate made by the board of county commissioners of any county shall be deemed valid, and such sales are hereby confirmed if such sales were made at either public or private sale, whether made by deed issued by the treasurer upon direction of the board of county commissioners or by deed issued by a duly appointed commissioner to convey upon direction of the board of county commissioners.

**Source: L. 64:** R&RE, p. 741, § 1. **C.R.S. 1963:** § 137-11-43.

**39-11-145. Proceeds of sales.** All net proceeds from the sale, lease, or other disposition of such real estate so conveyed to the county by the treasurer shall be paid to the treasurer of such county, and the treasurer shall distribute said proceeds to the various taxing jurisdictions in which such real estate is situated in the same proportion that the ad valorem taxes levied by each taxing jurisdiction in the preceding calendar year bears to the total of all ad valorem taxes levied on such real estate in the preceding calendar year.

**Source: L. 64:** R&RE, p. 741, § 1. **C.R.S. 1963:** § 137-11-44. **L. 69:** p. 1127, § 1.

**39-11-146. Lien of special assessment not affected.** Nothing in sections 39-11-143 to 39-11-145 shall be construed to affect in any manner or degree whatsoever the lien of any special assessment to which such real estate and the conveyance thereof by the treasurer is subject under law.

**Source: L. 64:** R&RE, p. 741, § 1. **C.R.S. 1963:** § 137-11-45.

**39-11-147. Treasurer to report payments.** A complete report of all payments made to and accepted by the treasurer under sections 39-11-142, 39-11-143, and 39-11-145 shall be made by him, a copy of which shall be sent to the board of county commissioners of his county, to the administrator, and to the controller at the end of each month.

**Source: L. 64:** R&RE, p. 741, § 1. **C.R.S. 1963:** § 137-11-46.

**39-11-148. Limitations on tax certificates - special improvement liens.** (1) No lien upon real property created by a tax certificate or a certificate of purchase issued by a treasurer on account of any delinquent property taxes or any special assessment of any kind or nature shall remain a lien thereon for a period longer than fifteen years after the original issuance thereof, except as provided in subsection (3) of this section. This section shall not apply to any tax certificate or certificate of purchase issued to and held by the county, city, city and county, or district levying such tax or special assessment; except that, in the event of an assignment of such tax certificate or certificate of purchase so issued to and held by such county, city, city and county, or district, the lien of such tax certificate or certificate of purchase shall cease fifteen years after the date of its issuance subject only to the provisions of subsection (3) of this section.

(2) No treasurer's deed shall issue on any tax sale evidenced by tax certificate or certificate of purchase where such tax certificate or certificate of purchase has ceased to be a lien pursuant to the provisions of this section and application for such treasurer's deed is not pending at the time of the expiration of the limitation period provided for in this section.

(3) In the event of an assignment of a tax certificate or certificate of purchase held by a county, city, city and county, or district levying such tax wherein such certificate is fifteen years old at the time of assignment or will become fifteen years old within one year from the date of such assignment, the assignee thereof shall be entitled to a tax deed in the manner provided by law if such assignee or other legal holder of such certificate institutes proceedings to procure a tax deed by making a demand upon the treasurer for same, as provided by law, within one year from the date of such assignment by the county, city, city and county, or district levying such tax.

(4) Whenever a lien created by a tax certificate has expired by reason of the provisions of this section, the treasurer shall immediately issue a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation, and he shall also make proper entries in the book of sales in his office as follows: "Cancelled by provision of section 39-11-148, C.R.S.", with the date of such entry. He shall also present every such certificate of cancellation to the county clerk and recorder who shall enter the same in the record of land for which a tax lien was sold for delinquent taxes and endorse the date of entry on the certificate of cancellation and file the same, and such certificate and the record thereof shall be prima facie evidence of the cancellation of the certificate of purchase or tax certificate and of the release of the lien of such certificate on the lands therein described. Failure to record such certificate of cancellation shall not extend the lien created by the certificate of purchase or tax certificate. The treasurer and county clerk and recorder shall not be entitled to any fees for the issuing of such certificate of cancellation nor for the entries in their books made under the provisions of this subsection (4).

(5) Whenever a lien created pursuant to a tax certificate becomes unenforceable pursuant to section 31-25-1119, C.R.S., the treasurer shall immediately issue a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate indicating thereon the date of cancellation and shall make the appropriate entries in the book of sales in his office, as follows: "Cancelled by provision of sections 31-25-1119 and 39-11-148, C.R.S.", with the date of such entry. He shall present every such certificate of cancellation to the county clerk and recorder who shall enter the same in the record of land for which a tax lien was sold for delinquent taxes and endorse the date of entry on the said certificate of cancellation and file the same, and such certificate and the record thereof shall be prima facie evidence of the

cancellation of the certificate of purchase or tax certificate and of the release of the lien of such certificate on the lands therein described. Failure to record such certificate of cancellation shall not extend the lien created by the certificate of purchase or tax certificate. The treasurer and county clerk and recorder shall not be entitled to any fees for the issuing and recording of such certificate of cancellation nor for the entries in their books made under the provisions of this subsection (5).

**Source: L. 64:** R&RE, p. 742, § 1. **C.R.S. 1963:** § 137-11-47. **L. 67:** p. 802, §§ 3, 4. **L. 81:** (5) amended, p. 1627, § 40, effective July 1. **L. 85:** (4) and (5) amended, p. 1245, § 29, effective July 1.

**39-11-149. Sales en masse valid.** If two or more noncontiguous lots, tracts of land, or mining claims or portions thereof have not been separately valued and assessed or, having been separately valued and assessed, whether having a common ownership or not, have had tax liens thereof sold en masse for a gross sum for the nonpayment of taxes and charges thereon, then, after seven years from the date of any such sale, such assessment and sale and any tax sale certificate issued thereon shall be deemed valid and legal and shall be so considered in all actions, suits, or proceedings in which is involved the validity of any such assessment, sale, tax sale certificate, or treasurer's deed issued thereon. There is excepted from this section any such action, suit, or proceeding pending on August 1, 1964, wherein any party thereto has or may assert the invalidity of any such assessment, sale, tax sale certificate, or treasurer's deed. Nothing in this section shall be construed to alter, amend, or repeal section 39-11-148.

**Source: L. 64:** R&RE, p. 743, § 1. **C.R.S. 1963:** § 137-11-48. **L. 85:** Entire section amended, p. 1246, § 30, effective July 1.

**39-11-150. Sales of tax liens on severed mineral interests.** Sales of tax liens for delinquent taxes due on severed mineral interests shall take place at the same place and time and under the same circumstances as in this article, but, where the surface estate ownership is coterminous with the severed mineral interest, the owner of the surface estate shall have the right of first refusal to purchase the tax lien on the severed mineral interest, and the surface owner shall be allowed to pay all delinquent taxes due and owing for the severed mineral interest in lieu of the proceeds that would be collected from a tax sale of a tax lien on the severed mineral interest. The treasurer shall notify the surface owner, by mail, at his last-known address, of his right of refusal at least ten days prior to the sale of a tax lien on the severed mineral interest. The surface owner shall have until two days prior to the sale to exercise the right of first refusal. If the surface owner does not exercise his right of first refusal, the tax lien on such severed mineral interest shall be sold. No action for the recovery of a severed mineral interest for which a tax deed was issued under the provisions of this article shall lie unless brought within the same time period as that limiting actions for the recovery of land pursuant to section 39-12-101.

**Source: L. 73:** p. 1430, § 3. **C.R.S. 1963:** § 137-11-50. **L. 85:** Entire section amended, p. 1246, § 31, effective July 1.

**39-11-151. County officials and employees may not acquire a tax lien or property by sale of a tax lien.** (1) (a) No property for which a tax lien is sold for delinquent taxes under this article shall be conveyed to an elected or appointed county official, to a county employee, or to a member of the immediate family of any such person or to the agent of any such county official or employee, if the tax lien on such property is sold during the time the official or employee holds office or is employed.

(b) No tax lien shall be sold to an elected or appointed county official, to a county employee, or to a member of the immediate family of such person or to the agent of any such county official or employee during the time the official or employee holds office or is employed.

(2) The purchase of any tax lien or the conveyance of any property by tax deed pursuant to this article is exempt from the provisions of this section under the following circumstances:

(a) If the property to be conveyed was owned by the county official or county employee, or by a member of the immediate family of any such person, immediately prior to the sale of a tax lien on such property for delinquent taxes;

(b) If such property is situated within a county other than the county to which such county official or employee is elected, appointed, or employed; or

(c) If the property to be conveyed is a severed mineral interest and, at the time of the conveyance, the county official or county employee is the owner of the surface estate which is coterminous with the severed mineral interest.

(3) Any county official, county employee, or member of the immediate family of any such person, or the agent of any such county official or employee, who knowingly purchases any tax lien or receives a conveyance of property in violation of the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source: L. 75:** Entire section added, p. 1481, § 1, effective June 29. **L. 85:** (1) and (2) amended, p. 1246, § 32, effective July 1. **L. 94:** Entire section amended, p. 757, § 12, effective April 20. **L. 2002:** (3) amended, p. 1555, § 346, effective October 1.

**Cross references:** (1) For other provisions relating to standards of conduct for public officers and employees, see article 18 of title 24.

(2) For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

**39-11-152. Combined sale of delinquent tax liens and special assessment liens.** Whenever provision is made in this article for the sale of a tax lien on property, such sale shall include the sale of any lien for delinquent special assessments on such property which have been certified to the county treasurer for collection. The separate sale of liens for delinquent general taxes and for delinquent special assessments on property is hereby prohibited.

**Source: L. 93:** Entire section added, p. 81, § 1, effective March 26.

## ARTICLE 12

Redemption

**Editor's note:** This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

**Law reviews:** For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

**39-12-101. Limitation of actions for recovery of land.** No action for the recovery of land for which a tax deed was issued under the provisions of article 11 of this title for delinquent taxes shall lie unless the same is brought within five years after the execution and delivery of the deed therefor by the treasurer, any laws to the contrary notwithstanding; except that, when any owner of such land, for which a tax deed has been issued, at the time of the execution and delivery of the deed by the treasurer is under legal disability, it shall be lawful for him to bring a suit or action for the recovery of the land within the period during which he has the right to make redemption of such land from the tax sale upon which the deed is based. When a recovery of any of such land is effected in any suit, action, or proceeding, the value of all improvements made in good faith on such lands, and all sums paid for the tax lien on said land and for improvements, and all costs incident to the issuance and recording of the treasurer's deed, and all taxes and assessments paid thereon after the sale of the tax lien thereof, including the redemption value of all tax sale certificates redeemed, held, or surrendered for redemption by the grantee in such treasurer's deed or his heirs or assigns, shall be ascertained by the court or jury trying the action for recovery and shall be paid, together with interest thereon at the rate of twelve percent per annum, by the person recovering said land to the persons entitled thereto, and the payment of such sum shall be a condition precedent to the entry of judgment or decree in such suit, action, or proceeding. All such treasurer's deeds executed by the treasurer purporting to convey lands and improvements thereon for all purposes shall be deemed to be color of title from and after the time the same is recorded in the office of the county clerk and recorder for the county in which said lands are located. The term "improvements" includes sums and amounts of money expended thereon in good faith by the grantee and his successors and assigns in search of minerals and oil, as well as other expenditures for the improvements of such lands which add to the cost and value thereof.

**Source: L. 64:** R&RE, p. 743, § 1. **C.R.S. 1963:** § 137-12-1. **L. 85:** Entire section amended, p. 1247, § 33, effective July 1.

**Cross references:** For limitation of actions with respect to persons under disability, see article 81 of title 13.

**39-12-102. Action to recover mining property.** No action shall be maintained for the recovery of mining or placer claims unless such action is brought within a period of two years from the commencement of actual possession obtained under tax deed.

**Source: L. 64:** R&RE, p. 744, § 1. **C.R.S. 1963:** § 137-12-2.

**39-12-103. Redemption made - interest.** (1) Real property for which a tax lien was sold under the provisions of article 11 of this title as a result of delinquent taxes may be redeemed by the owner thereof or his agent, assignee, or attorney, or by any person having a legal or equitable claim therein, or by a holder of a tax sale certificate; except that such holder may redeem such real property from any sale of a tax lien thereof made subsequent to the time of the issuance of the tax sale certificate upon which he is relying, and the amount paid for the redemption of the subsequent certificate of purchase shall be endorsed as subsequent taxes paid on the certificate upon which he is relying.

(2) An undivided interest may be redeemed upon payment of a ratable share of the sum required to redeem the whole even though a tax lien for the whole has been sold. In case a tax lien on any tract of land sold for delinquent taxes under the provisions of article 11 of this title belongs to two or more separate and distinct parties in severalty, the treasurer, when satisfied of the fact and upon application of any one of the parties or his agent, assignee, or attorney and upon payment of the proper proportional amount, shall issue a certificate of redemption for such party's interest in said land.

(3) The redemption may be made at any time before the execution of a treasurer's deed to the purchaser or his heirs or assigns upon payment to the treasurer, to be held by him subject to the order of the purchaser, of the amount of taxes, delinquent interest, and costs for which the tax lien on the property was sold, with redemption interest thereon from the date of sale at the rate which is determined as provided in this subsection (3), together with the amount of all taxes accruing on such real property after the sale, paid by the purchaser and endorsed on his certificate of purchase, with redemption interest at the rate which is determined as provided in this subsection (3) on such taxes so endorsed on the certificate of purchase. Any payment under this section shall be deemed received by the treasurer on the date that it is actually received in the treasurer's office. The annual rate of redemption interest shall be nine percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent. The commissioner of banking shall establish the annual rate of redemption interest based upon the computation specified immediately above. Such annual rate of redemption interest shall be so established as of September 1, 1981, to become effective October 1, 1981. Thereafter, on September 1 of each year, the annual rate of redemption interest shall be established in the same manner, to become effective on October 1 of the same year.

(4) If subsequent taxes are paid before the time when they would become delinquent, interest shall be computed only from the time of their delinquency. Such taxes shall bear interest at the annual rate set forth in subsection (3) of this section, and no more, from the time when the purchaser becomes entitled to a deed up to the time of issuance of such deed.

(5) All statutory fees paid by the purchaser in connection with such certificate shall bear the same rate of interest as the original amount for which the tax lien on the property was sold, the same to be prorated among the several tracts described in said certificates.

(6) In computing the amount of interest due, portions of months shall be counted as whole months.

**Source: L. 64:** R&RE, p. 744, § 1. **C.R.S. 1963:** § 137-12-3. **L. 69:** p. 1126, § 2. **L. 71:** p. 330, § 12. **L. 79:** (3) amended, p. 1421, § 3, effective January 1, 1980. **L. 81:** (3) amended, p.

1861, § 1, effective September 1. **L. 85:** (1) to (5) amended, p. 1247, § 34, effective July 1. **L. 89:** (4) amended, p. 1467, § 34, effective June 7. **L. 92:** (3) amended, p. 2233, § 24, effective April 9.

**39-12-104. Redemption of real property of person under disability.** (1) When the owner of real property for which a tax deed was issued under the provisions of article 11 of this title as a result of delinquent taxes is under legal disability at the time of execution and delivery of a tax deed therefor, such person shall have the right to make redemption of such property at any time within nine years from the date of the recording of such tax deed. In the event that the disability of such person is removed or ceases within such nine-year period, such redemption must be asserted and take place within a period of not more than two years after the removal or cessation of such legal disability. All redemptions under this section shall take place within nine years of the recording of the tax deed, irrespective of the time that such disability was removed or ceased.

(2) In order to make such redemption, such owner, or some person in his behalf, shall pay to the treasurer the sum for which the tax lien on such real property was sold, and the cost of the tax deed and the recording of the same, with interest thereon from the date of such sale at the rate of fifteen percent per annum, and all other taxes, costs, and charges which remain unpaid on such real property at the time of making such redemption, levied or accrued thereon subsequent to the assessment date of the taxes for which the tax lien was sold, and all other taxes levied subsequent to the date of such sale, which have been paid by the person to whom the tax lien on said real property was sold, or by any other person claiming under him, with interest thereon at the rate of fifteen percent per annum from the date of such payment, insofar as such payments can be ascertained from the books and records in the office of such treasurer. If the person to whom the tax lien on such real property was sold, or any other person claiming under him, has made improvements, the person redeeming said real property shall pay the then present value of such improvements. The improvements shall be appraised by three disinterested persons appointed by the board of county commissioners. For all the money so paid, the treasurer shall give a certificate of redemption to the persons making such payment. From the time of making the redemption, the deed given upon the same shall be void as against such owner. In the event a redemption is not made within the periods of time provided for in this section, all rights of redemption shall cease and be forever barred as to all persons.

**Source: L. 64:** R&RE, p. 745, § 1. **C.R.S. 1963:** § 137-12-4. **L. 85:** Entire section amended, p. 1248, § 35, effective July 1.

**39-12-105. Certificate of redemption.** (1) Upon application of any party to redeem any real property for which a tax lien was sold or a tax deed was issued under the provisions of article 11 of this title, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, the treasurer shall issue to such party a certificate of redemption, describing the tract redeemed as in the certificate of sale and giving the date of redemption, the amount paid, and by whom redeemed and shall make the proper entries in the book of sales in the treasurer's office.

(2) For each certificate so delivered, the treasurer shall be entitled to a fee as provided in section 30-1-102, C.R.S.

**Source: L. 64:** R&RE, p. 746, § 1. **C.R.S. 1963:** § 137-12-5. **L. 69:** p. 1123, § 4. **L. 71:** p. 330, § 13. **L. 75:** (2) amended, p. 1480, § 7, effective July 1. **L. 85:** (1) amended, p. 1249, § 36, effective July 1. **L. 96:** (1) amended, p. 1393, § 15, effective July 1.

**39-12-106. Entry by county clerk and recorder of redemption certificate. (Repealed)**

**Source: L. 64:** R&RE, p. 746, § 1. **C.R.S. 1963:** § 137-12-6. **L. 85:** Entire section amended, p. 1249, § 37, effective July 1. **L. 96:** Entire section repealed, p. 1395, § 16, effective July 1.

**39-12-107. Fee for entering certificate. (Repealed)**

**Source: L. 64:** R&RE, p. 747, § 1. **C.R.S. 1963:** § 137-12-7. **L. 83:** Entire section amended, p. 1231, § 21, effective July 1. **L. 96:** Entire section repealed, p. 1395, § 17, effective July 1.

**39-12-108. Payment of redemption money.** All moneys received by the treasurer for the redemption of lands under the provisions of section 39-12-104 shall be paid over to the person to whom the tax lien on such land was sold or a tax deed was issued, or those claiming under him, on his deliverance to the treasurer, for the use of the person redeeming the same, a quitclaim deed of all the title to such land acquired under the sale, duly executed and acknowledged.

**Source: L. 64:** R&RE, p. 747, § 1. **C.R.S. 1963:** § 137-12-8. **L. 85:** Entire section amended, p. 1250, § 38, effective July 1.

**39-12-109. Payment upon surrender of tax certificate.** On demand of any person entitled to redemption money in his hands, the treasurer shall pay the same to any such person, upon his surrendering to him the tax certificate to such land or lot as has been redeemed. If only a portion of the land or lots described in the tax certificate has been redeemed, the treasurer shall endorse on such certificate the portion redeemed and the amount of money paid to each person and shall take a receipt therefor.

**Source: L. 64:** R&RE, p. 747, § 1. **C.R.S. 1963:** § 137-12-9.

**39-12-110. Payment when certificate lost.** If there is a loss or wrongful detention of such certificate and the land therein described has been redeemed, the owner thereof may exhibit to the treasurer evidence of such loss or detention, and, upon his making the same to appear satisfactory to the treasurer and upon his executing a bond with sufficient surety that he will refund such redemption money, with twenty-five percent per annum interest thereon, if any person thereafter shows his right thereto, the treasurer shall pay such redemption money to the person so executing such bond.

**Source: L. 64:** R&RE, p. 747, § 1. **C.R.S. 1963:** § 137-12-10.

**39-12-111. Land wrongfully sold - repayment.** (1) When, by mistake or error of the treasurer, county clerk and recorder, or assessor or from double assessment, a tax lien has been sold on land upon which no tax was due at the time, the county shall reimburse the purchaser in the amount paid by him in connection with the purchase of the tax lien on such land, together with interest from the date of purchase at the rate which is determined as provided in this section. Reimbursement shall be made from the various funds to which the tax was originally distributed; except that interest shall be paid from the county general fund. The treasurer, county clerk and recorder, or assessor, as the case may be, and his sureties on his official bond shall be liable to the county for such amounts reimbursed as a result of sales made only through willful misconduct.

(2) (a) The annual rate of interest shall be two percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent.

(b) Notwithstanding any other provision of this subsection (2), the rate of interest shall be no lower than eight percent per annum compounded annually.

(3) The commissioner of banking shall establish the annual rate of interest based upon the computation specified in subsection (2) of this section. Such annual rate of interest shall be so established as of September 1, 1981, to become effective October 1, 1981. Thereafter, on September 1 of each year, the annual rate of interest shall be established in the same manner, to become effective on October 1 of the same year.

**Source: L. 64:** R&RE, p. 747, § 1. **C.R.S. 1963:** § 137-12-11. **L. 67:** p. 951, § 24. **L. 69:** p. 1128, § 1. **L. 81:** Entire section amended, p. 1862, § 2, effective September 1. **L. 85:** (1) amended, p. 1250, § 39, effective July 1. **L. 88:** (2) amended, p. 1294, § 28, effective May 23.

**39-12-112. Allowance for erroneous assessments.** The state treasurer shall allow each treasurer to take credit for the amount of state tax that may have been refunded to the taxpayer as double or erroneous assessments or refunded to the purchaser of a tax lien on real estate which lien was erroneously sold.

**Source: L. 64:** R&RE, p. 747, § 1. **C.R.S. 1963:** § 137-12-12. **L. 85:** Entire section amended, p. 1250, § 40, effective July 1.

**39-12-113. Redemption of proportionate interest.** (1) Any person who has or claims an interest in or a lien upon all or any part of any undivided or divided estate or interest in any piece or parcel of land or lot for which a tax lien was sold pursuant to article 11 of this title may redeem such undivided or divided estate or interest by paying to the treasurer his proportionate part of the amount required to redeem the whole. In such case the treasurer shall issue to such party a certificate of redemption for his interest in such land or lot, as provided by law.

(2) In the event that the treasurer cannot definitely ascertain the amount required to redeem the portion sought to be redeemed, he shall request the assessor to determine the valuation for assessment on such portion sought to be redeemed as of the original assessment date for the tax upon which the sale of the tax lien was based. Such assessor shall furnish such valuation for assessment to the treasurer forthwith. The treasurer shall thereupon ascertain such

proportionate redemption amount as that amount which bears the same proportion to the amount required to redeem the entire piece or parcel of land or lot for which a tax lien was sold as such valuation for assessment so furnished bears to the original valuation for assessment of the entire piece or parcel of land or lot for which a tax lien was sold.

**Source: L. 64:** R&RE, p. 748, § 1. **C.R.S. 1963:** § 137-12-13. **L. 85:** Entire section amended, p. 1251, § 41, effective July 1.

## Conveyancing and Evidence of Title

## ARTICLE 13

Documentary Fee on Conveyances
of Real Property

**39-13-101. Legislative declaration.** (1) The general assembly declares that, in enacting laws relating to the general property tax, it has provided that certain property in each county of the state shall be appraised and the actual value thereof determined by the assessor and that one of the several factors to be considered by him in determining the actual value of any property shall be "comparison with other properties of known or recognized value".

(2) It further declares that such comparison may be best effected if there is available to the assessor a continuing record of the consideration paid or to be paid by purchasers of real property evidenced, prior to recording, on the document conveying title to such property and recorded in the office of the county clerk and recorder in the several counties of the state in the manner provided by law and that this article is enacted to provide a means of developing such continuing record and making such record available for use primarily by assessors.

**Source: L. 67:** p. 942, § 1. **C.R.S. 1963:** § 137-13-1.

**39-13-102. Documentary fee imposed - amount - to whom payable.** (1) There is imposed and shall be paid, by every person offering for recording in the office of the county clerk and recorder any deed or instrument in writing wherein or whereby title to real property situated in this state is granted or conveyed, a fee, referred to in this article as "documentary fee", measured by the consideration paid or to be paid for such grant or conveyance, which documentary fee shall be in addition to any other fee fixed by law for the recording of such deed or instrument in writing.

(2) The amount of documentary fee payable in each case shall be as follows:

(a) When there is no consideration or when the total consideration paid by the purchaser, inclusive of the amount of any lien or encumbrance against the real property granted or conveyed and all charges and expenses required to be paid for the making of such grant or conveyance is five hundred dollars or less, no documentary fee shall be payable.

(b) When the total consideration paid by the purchaser, inclusive of the amount of any lien or encumbrance against the real property granted or conveyed and all charges and expenses required to be paid for the making of such grant or conveyance exceeds five hundred dollars, the

documentary fee payable shall be computed at the rate of one cent for each one hundred dollars, or major fraction thereof, of such consideration.

(3) All documentary fees shall be payable to and collected by the county clerk and recorder.

(4) In those cases in which real property located in two or more counties is granted or conveyed in a single transaction, each county clerk and recorder shall collect a portion of the total documentary fee referred to in subsection (2) of this section in the same ratio that the consideration fairly attributable to the part of such property located in his county bears to the total consideration. The allocation of the total consideration between counties is to be made by the person offering such deed or instrument in writing for recording.

(5) (a) For the purpose of determining the documentary fee in accordance with subsection (2) of this section, the amount of consideration paid for the grant or conveyance of residential real property, inclusive of liens, charges, and expenses, is the amount listed on the grant or conveyance document; except that, if there is no consideration amount listed on the grant or conveyance document or the amount listed is five hundred dollars or less, and there is a related declaration filed in accordance with section 39-14-102, then the amount of consideration paid is the total sales price listed on the declaration.

(b) In determining the amount of consideration paid for the grant or conveyance of commercial or industrial real property, inclusive of liens, charges, and expenses, the total amount of the sales price to the purchaser shall be deemed to be paid for the grant or conveyance of real property unless evidence of the separate consideration paid for personal property is submitted as shown on the purchaser's use tax return as filed with the department of revenue or unless evidence of such separate consideration is shown on the declaration filed pursuant to the provisions of section 39-14-102.

(c) Any such evidence submitted under paragraph (a) or (b) of this subsection (5) shall not be recorded or filed by the county clerk and recorder and shall not be subject to public inspection but shall be sent to the county assessor. Such evidence shall be used by the assessor as required by section 39-13-107 but shall be kept confidential and shall not be subject to public inspection.

(d) Solely for the purpose of computing the documentary fee, the property conveyed by a deed or other instrument will be regarded as residential unless the deed or other instrument includes a conspicuous statement or notation that the property is not to be regarded as residential. This provision does not authorize the alteration of a deed or other instrument after it has been executed.

**Source: L. 67:** p. 942, § 1. **C.R.S. 1963:** § 137-13-2. **L. 68:** p. 33, § 4. **L. 84:** (5) added, p. 1004, § 1, effective July 1; (2)(a) and (2)(b) amended, p. 1004, § 1, effective January 1, 1985. **L. 89:** (5)(a) and (5)(b) amended, p. 1462, § 21, effective July 1. **L. 2016:** (5)(a) amended and (5)(d) added, (HB 16-1145), ch. 108, p. 310, § 1, effective April 15.

**39-13-103. Evidence of payment of fee.** Each county clerk and recorder shall evidence payment of the documentary fee imposed in this article in the recording annotation or by imprinting, typing, stamping, or writing in ink on the margin or other blank portion of every document to which such fee applies the words "State Documentary Fee", the amount of

documentary fee paid, and the date upon which paid, which impression or notation shall be made on such document before it is recorded.

**Source: L. 67:** p. 943, § 1. **C.R.S. 1963:** § 137-13-3. **L. 68:** p. 32, § 1. **L. 2014:** Entire section amended, (HB 14-1073), ch. 30, p. 178, § 10, effective July 1.

**39-13-104. Exemptions.** (1) The documentary fee imposed in this article shall not apply to:

(a) Any deed wherein the United States or any agency or instrumentality thereof or the state of Colorado or any political subdivision thereof is either the grantor or the grantee; except that, at the time such entity offers a deed for recording in the office of the county clerk and recorder, it shall file an affidavit with the clerk stating the consideration paid or to be paid for such grant or conveyance. If the entity imprints, types, stamps, or writes in ink on the margin or other blank portion of the document the consideration paid or to be paid for such grant or conveyance, it shall be deemed to satisfy the requirements of an affidavit.

(b) Any deed granting or conveying title to real property in consequence of a gift of such property;

(c) Any public trustee's deed executed pursuant to the provisions of section 38-38-501, C.R.S.;

(d) Any treasurer's deed executed in accordance with the provisions of article 11 of this title;

(e) Any sheriff's deed;

(f) Any instrument which confirms or corrects a deed previously recorded;

(g) Any deed granting or conveying title to cemetery lots;

(h) Any executory contract for the sale of real property of less than three years' duration under which the vendee is entitled to or does take possession thereof without acquiring title thereto nor to any assignment or cancellation of any such contract;

(i) Any lease of real property or assignment or transfer of an interest in any such lease;

(j) Any document given to secure payment of an indebtedness;

(k) Any document granting or conveying a future interest in real property;

(l) Any decree or order of a court of record determining or vesting title;

(m) Any document necessary to transfer title to property as a result of the death of an owner thereof;

(n) Repealed.

(o) Any rights-of-way and easements.

(2) Exemption from payment of the documentary fee imposed in this article must be claimed at the time a deed or instrument is offered for recording.

**Source: L. 67:** p. 943, § 1. **C.R.S. 1963:** § 137-13-4. **L. 68:** p. 32, § 2. **L. 85:** (1)(n) repealed, p. 1214, § 12, effective May 9. **L. 89:** (1)(a) amended, p. 1496, § 1, effective March 15. **L. 91:** (1)(c) amended, p. 1925, § 56, effective June 1.

**39-13-105. No deed recorded unless documentary fee paid.** No deed or instrument in writing to which a documentary fee applies shall be recorded until and unless the documentary fee payable thereon has been paid and evidence of its payment has been imprinted, typed,

stamped, or written in ink thereon as provided in section 39-13-103. Any county clerk and recorder who willfully and knowingly records any document to which a documentary fee applies without having first collected such fee and evidenced payment thereof as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars.

**Source: L. 67:** p. 944, § 1. **C.R.S. 1963:** § 137-13-5. **L. 68:** p. 32, § 3.

**39-13-106. Unlawful acts - penalty.** (1) It is unlawful for any person to commit the following acts:

(a) To fail or refuse to pay the documentary fee imposed in this article when such payment is required;

(b) To willfully and knowingly recite to the county clerk and recorder a consideration greater or less than the actual consideration referred to in section 39-13-102 (2)(a) and (2)(b) in connection with the granting or conveying of title to real property by any deed or instrument in writing to which the documentary fee applies.

(2) Any person who commits either of the acts set forth in subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than three months, or by both such fine and imprisonment.

**Source: L. 67:** p. 944, § 1. **C.R.S. 1963:** § 137-13-6.

**39-13-107. Assessor to compile continuing record.** It is the duty of each assessor to examine at least once each year all documents recorded in his county upon which a documentary fee has been paid and to determine in each case the consideration upon which such fee was computed and paid. He shall compile and maintain in his office a continuing record of all such considerations to assist him in appraising property and determining the actual value thereof as required by the provisions of section 39-1-103 (5).

**Source: L. 67:** p. 944, § 1. **C.R.S. 1963:** § 137-13-7.

**39-13-108. Disposition of fees.** All documentary fees collected by the county clerk and recorder shall be deposited with the treasurer at least once each month and credited by him in the manner prescribed by law.

**Source: L. 67:** p. 944, § 1. **C.R.S. 1963:** § 137-13-8.

## ARTICLE 14

Real Property Transfer Information

**39-14-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Authorized agent" shall have the same meaning as set forth in section 38-29-102 (1), C.R.S.

(1.5) "Conveyance" means any transfer of a real property interest or manufactured home for some consideration in money or money's worth.

(2) "Conveyance document" means any document upon which a documentary fee is imposed pursuant to section 39-13-102.

(3) "Declaration" means a form prescribed by the property tax administrator, and approved by the state board of equalization after review by the advisory committee to the property tax administrator as provided in section 39-9-103 (10), that contains information to assist the assessor in determining the value of real property and manufactured homes required to be furnished under this article pursuant to section 39-14-102 or 39-14-103.

(4) "Manufactured home" shall have the same meaning as set forth in section 39-1-102 (7.8).

(5) "Manufactured home title application" means an application for a new certificate of title in accordance with the provisions of part 1 of article 29 of title 38, C.R.S., that is made after a sale or transfer described in section 38-29-112 (1) or 38-29-114 (1), C.R.S.

(6) "Verification of application form" shall have the same meaning as set forth in section 38-29-102 (13), C.R.S.

**Source: L. 89:** Entire article added, p. 1460, § 20, effective July 1. **L. 96:** (3) amended, p. 949, § 3, effective July 1. **L. 2008:** (1) and (3) amended and (1.5), (4), (5), and (6) added, p. 452, § 11, effective July 1. **L. 2009:** (1.5) and (4) amended, (SB 09-040), ch. 9, p. 71, § 13, effective July 1.

**39-14-102. Filing of declaration - information available to county assessor.** (1) (a) On or after July 1, 1989, any conveyance document presented for recordation shall be accompanied by a declaration prescribed by the property tax administrator. Said declaration shall be completed and signed by either the grantor or the grantee.

(b) (I) If the declaration required in this subsection (1) does not accompany a conveyance document at the time such conveyance document is presented for recordation, the county clerk and recorder shall promptly record the conveyance document and shall notify the county assessor that such conveyance document was not accompanied by such declaration.

(II) Upon receiving such notice from the county clerk and recorder pursuant to subparagraph (I) of this paragraph (b), the county assessor shall send written notice to the grantee specified in such conveyance document that the grantee shall provide the declaration to the county assessor within thirty days of the date the notice was mailed. If the grantee fails to provide such declaration within thirty days after the date the notice was mailed, the county assessor may impose upon such grantee a penalty of twenty-five dollars or a penalty equal to twenty-five one-thousandths of one percent of the sale price of the real property transferred pursuant to the conveyance document, whichever amount is greater. In each subsequent year in which the grantee fails to file the declaration, the assessor may impose said specified penalty unless the real property has been subsequently conveyed. Any penalty imposed pursuant to this subparagraph (II) shall be a fee of the office of the county assessor.

(III) Any unpaid penalties which were imposed pursuant to subparagraph (II) of this paragraph (b) shall be certified to the county treasurer by January 1 of each year and shall be included in the statement sent to the grantee pursuant to section 39-10-103 for property taxes levied against the real property.

(c) The county clerk and recorder shall not record or file any declaration made pursuant to the provisions of this section; however, the county clerk and recorder shall enter upon such declaration the date of recordation and reception number of the conveyance document presented for recordation. The county clerk and recorder shall transmit any declaration made pursuant to the provisions of this section to the county assessor. The county assessor shall make any declaration made pursuant to the provisions of this section available for inspection by any taxpayer who was the grantee specified in the conveyance document which such declaration accompanied or who filed such declaration, the person conducting any valuation for assessment study pursuant to section 39-1-104 (16) and his employees, and the property tax administrator and his employees.

(2) No declaration made pursuant to the provisions of this section which accompanies a conveyance document or is filed separately shall be deemed to provide constructive notice of information contained therein for purposes of article 35 of title 38, C.R.S.

(3) (Deleted by amendment, L. 96, p. 949, § 4, effective July 1, 1996.)

(4) Each county assessor shall maintain a data bank consisting of information which has been derived from the declarations filed pursuant to the provisions of this article. Such information shall be used to properly adjust sales for sales ratio analysis and for determining the actual value of the real property transferred and the actual value of other real property, as well as other purposes deemed appropriate by the county assessor.

**Source: L. 89:** Entire article added, p. 1460, § 20, effective July 1. **L. 90:** (1)(c) amended, p. 1698, § 25, effective June 9. **L. 96:** (1)(a), (1)(b)(II), and (3) amended, p. 949, § 4, effective July 1.

**39-14-103. Manufactured home declaration - information available to county assessor.** (1) (a) On or after July 1, 2008, but before July 1, 2009, any manufactured home title application that is submitted to an authorized agent shall be accompanied by a declaration prescribed by the property tax administrator. On or after July 1, 2009, upon conveyance of any manufactured home, a new title application that is submitted to an authorized agent shall be accompanied by a declaration prescribed by the property tax administrator. The declaration shall be completed and signed by the purchaser or transferee.

(b) (I) If the declaration required in this subsection (1) does not accompany a manufactured home title application at the time such application is presented to the authorized agent, the authorized agent shall notify the county assessor that such application was not accompanied by such declaration.

(II) Upon receiving the notice from the authorized agent pursuant to subparagraph (I) of this paragraph (b), the county assessor shall send written notice to the purchaser or transferee specified in the manufactured home title application that the purchaser or transferee shall provide the declaration to the county assessor within thirty days after the date the notice was mailed. If the purchaser or transferee fails to provide such declaration within thirty days after the date the notice was mailed, the county assessor may impose upon such purchaser or transferee a penalty of twenty-five dollars or a penalty equal to twenty-five one-thousandths of one percent of the sale price of the manufactured home, whichever amount is greater. In each subsequent year in which the purchaser or transferee fails to file the declaration, the assessor may impose said

specified penalty unless the manufactured home has been subsequently conveyed. Any penalty imposed pursuant to this subparagraph (II) shall be a fee of the office of the county assessor.

(III) Any unpaid penalties that were imposed pursuant to subparagraph (II) of this paragraph (b) shall be certified to the county treasurer by January 1 of each year and shall be included in the statement sent to the purchaser or transferee pursuant to section 39-10-103 for property taxes levied against the manufactured home.

(c) The authorized agent shall not record or file any declaration made pursuant to the provisions of this section; however, the authorized agent shall enter upon such declaration the date of recordation and reception number of the verification of application form related to the manufactured home title application. The county clerk and recorder shall transmit any declaration made pursuant to the provisions of this section to the county assessor. The county assessor shall make any declaration made pursuant to the provisions of this section available for inspection by any taxpayer who was specified in the manufactured home title application or who filed such declaration, the person conducting any valuation for assessment study pursuant to section 39-1-104 (16) and his or her employees, and the property tax administrator and his or her employees.

(2) No declaration made pursuant to this section that accompanies a manufactured home title application or is filed separately shall be deemed to provide constructive notice of information contained therein for purposes of article 35 of title 38, C.R.S.

(3) Each county assessor shall maintain a data bank consisting of information that has been derived from the declarations filed pursuant to this section. Such information shall be used to properly adjust sales for sales ratio analysis and for determining the actual value of the manufactured home transferred and the actual value of other manufactured homes, as well as other purposes deemed appropriate by the county assessor.

(4) A manufactured home that has become real property in accordance with the provisions of part 1 of article 29 of title 38, C.R.S., shall be subject to the provisions of section 39-14-102.

**Source: L. 2008:** Entire section added, p. 453, § 12, effective July 1. **L. 2009:** (1)(a) amended, (SB 09-040), ch. 9, p. 71, § 14, effective July 1.

## SPECIFIC TAXES

### General and Administrative

### ARTICLE 20

Enforcement of Tax Liens

**39-20-101. Not applicable to general or inheritance taxes.** The provisions of this article shall not apply to liens for general taxes or inheritance taxes.

**Source: L. 43:** p. 509, § 7. **CSA:** C. 142, § 280(7). **CRS 53:** § 138-7-1. **C.R.S. 1963:** § 138-6-1.

**39-20-102. Civil action to enforce lien.** In any case where there has been a refusal or neglect to pay any tax due the state of Colorado and a statement or notice has been filed which, under law, creates a lien upon any real property for such tax, the executive director of the department of revenue may cause a civil action to be filed in the district court of the county in which is situated any real property which is subject to said lien to enforce the lien of the state of Colorado for such tax upon the real property situated in that county or in any other county in the state which may be subject to such lien or to subject any real property or any right, title, or interest in real property to the payment of such tax. The court shall adjudicate all matters involved in such action and may decree a sale of the real property and distribute the proceeds of such sale according to the findings of the court in respect to the interest of the parties and of the state of Colorado. The proceedings in such action and the manner of sale, the period for and manner of redemption from such sale, and the execution of a deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

**Source: L. 43:** p. 507, § 1. **CSA:** C. 142, § 280(1). **CRS 53:** § 138-7-2. **C.R.S. 1963:** § 138-6-2.

**Cross references:** For foreclosure of mortgages and redemption procedures, see articles 38, 39, and 40 of title 38; for appointment and qualification of receivers, see C.R.C.P. 66.

**39-20-103. When holder of prior lien may file action.** (1) A person having a lien upon or any interest in any real estate referred to in section 39-20-102 under or by virtue of any instrument that has been duly filed of record, in the office of the county clerk and recorder of the county where the real estate is located, prior to the filing of the statement or notice that created a lien upon such real property for taxes or any person purchasing such real estate at a sale to satisfy such prior lien or interest may make written request to the executive director of the department of revenue to file a civil action as provided in section 39-20-102. If no civil action has been commenced as provided in section 39-20-102 within two months after receipt by the executive director of the written request, the person or purchaser may file a civil action in the district court of any county where any such real property is situated asking for a final determination of all claims of the state of Colorado to and all liens of the state of Colorado upon the real estate in question. Service of the process in such action upon the state of Colorado shall be made upon the executive director of the department of revenue or upon one of his or her deputies. Permission is given for the state of Colorado to be so sued. The court shall in such civil action adjudicate the matters involved therein in the same manner as in the case of civil actions filed under section 39-20-102.

(2) Except for liens with priority pursuant to section 39-22-604, a lien for taxes due the state of Colorado may be divested by a foreclosure pursuant to article 38 of title 38, C.R.S., in the same manner as other lienors with liens upon the property being foreclosed. The state of Colorado shall have the same redemption rights as other lienors in such a foreclosure. A person foreclosing a deed of trust or other lien with priority over a lien for taxes due the state of Colorado in a foreclosure under article 38 of title 38, C.R.S., shall not be required to make a written request or to commence a civil action pursuant to subsection (1) of this section.

**Source: L. 43:** p. 507, § 2. **CSA:** C. 142, § 280(2). **CRS 53:** § 138-7-3. **C.R.S. 1963:** § 138-6-3. **L. 2006:** Entire section amended, p. 1479, § 34, effective July 1.

**39-20-104. Certificate of discharge subject to lien.** If any property, real or personal, under the law, is subject to a lien for the payment of any tax due the state of Colorado, the executive director of the department of revenue may issue a certificate of discharge of any part of the property subject to the lien if he finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.

**Source: L. 43:** p. 508, § 3. **CSA:** C. 142, § 280(3). **CRS 53:** § 138-7-4. **C.R.S. 1963:** § 138-6-4.

**39-20-105. Certificate of discharge to part of property.** If any property, real or personal, under the law, is subject to a lien for the payment of any tax due the state of Colorado, the executive director of the department of revenue may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the executive director, in part satisfaction of the liability in respect to such tax, an amount determined by the executive director, which shall not be less than the value, as determined by him, of the interest of the state of Colorado in the part to be so discharged.

**Source: L. 43:** p. 508, § 4. **CSA:** C. 142, § 280(4). **CRS 53:** § 138-7-5. **C.R.S. 1963:** § 138-6-5.

**39-20-106. How values determined.** In determining the values mentioned in section 39-20-105, the executive director of the department of revenue shall give consideration to the fair market value of the part to be so discharged and to such lien thereon as has priority to the lien of the state of Colorado.

**Source: L. 43:** p. 508, § 5. **CSA:** C. 142, § 280(5). **CRS 53:** § 138-7-6. **C.R.S. 1963:** § 138-6-6.

**39-20-107. Certificate of release conclusive.** A certificate of release or of partial discharge issued under section 39-20-104 shall be held conclusive that the lien of the state of Colorado upon the property released therein is extinguished.

**Source: L. 43:** p. 509, § 6. **CSA:** C. 142, § 280(6). **CRS 53:** § 138-7-7. **C.R.S. 1963:** § 138-6-7.

## ARTICLE 21

Procedure and Administration

**Law reviews:** For article, "Taxation", which discusses Tenth Circuit decisions dealing with tax law, see 61 Den. L.J. 379 (1984).

PART 1

GENERAL PROVISIONS

**39-21-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Department" means the department of revenue.

(2) "Executive director" or "executive director of the department of revenue" means the executive director of the department of revenue and includes the head of any group, division, or subordinate department, as appointed in accordance with article 35 of title 24, C.R.S., whenever the executive director specifically authorizes the group, division, or subordinate department head to act on his or her behalf.

(3) "Person" includes any individual, firm, corporation, partnership, limited liability company, joint venture, estate, trust, or group or combination acting as a unit.

(4) "Taxpayer" includes a person against whom a deficiency is being asserted, whether or not he has paid any of the tax in issue prior thereto.

**Source: L. 65:** p. 1148, § 2. **C.R.S. 1963:** § 138-9-15. **L. 76:** (1) amended and (1.5) added, p. 777, § 2, effective July 1. **L. 77:** Entire section R&RE, p. 1765, § 1, effective June 19. **L. 90:** (3) amended, p. 450, § 28, effective April 18. **L. 93:** (2) amended, p. 1239, § 13, effective July 1. **L. 2000:** (2) amended, p. 1639, § 18, effective June 1.

**39-21-102. Scope.** (1) Unless otherwise indicated, the provisions of this article 21 apply to the taxes or fees imposed by articles 22 to 35 of this title 39 and article 60 of title 34, section 21 of article X of the state constitution, article 3 of title 42, part 5 of article 3 of title 44, articles 11 and 20 of title 30, article 4 of title 43, article 2 of title 40, and part 2 of article 20 of title 8.

(2) The provisions of this article 21 apply to the taxes imposed pursuant to articles 3, 4, and 32 of title 44, but only to the extent that the provisions of this article 21 are not inconsistent with the provisions of articles 3, 4, and 32 of title 44.

(3) Repealed.

(4) The provisions of this article apply to grants authorized pursuant to article 31 of this title to the extent that such provisions are not inconsistent with the provisions of said article 31.

(5) The provisions of this article apply to the taxes or fees imposed pursuant to articles 1, 2, 11, and 25 of title 29, C.R.S., but only to the extent that the provisions of this article are not inconsistent with the provisions of articles 1, 2, 11, and 25 of title 29, C.R.S.

(6) The provisions of this article apply to the taxes or fees imposed pursuant to title 32, C.R.S., but only to the extent that the provisions of this article are not inconsistent with the provisions of title 32, C.R.S.

**Source: L. 65:** p. 1131, § 2. **C.R.S. 1963:** § 138-9-1. **L. 72:** p. 620, § 164. **L. 77:** Entire section amended, p. 841, § 2, effective July 1; entire section amended, pp. 1766, 1852, §§ 1, 3, effective January 1, 1978. **L. 79:** Entire section amended, p. 1499, § 20, effective January 1, 1980. **L. 86:** Entire section amended, p. 1109, § 3, effective July 1. **L. 87:** Entire section amended, p. 486, § 31, effective July 1. **L. 89:** (1) amended, p. 1594, § 4, effective July 1, 1993. **L. 90:** (1) amended, p. 1721, § 1, effective May 1; (1) amended, p. 1721, § 2, effective July 1, 1993. **L. 93:** (2) amended, p. 1239, § 14, effective July 1. **L. 2001:** (3) added, p. 777, § 7,

effective June 1. **L. 2004:** (4) added, p. 399, § 1, effective August 4. **L. 2005:** (1) amended, p. 911, § 13, effective June 2; (1) amended, p. 926, § 14, effective June 2. **L. 2009:** (3) repealed, (HB 09-1053), ch. 159, p. 689, § 10, effective August 5. **L. 2014:** (1) amended and (5) and (6) added, (HB 14-1107), ch. 134, p. 465, § 2, effective April 25. **L. 2015:** (1) amended, (SB 15-264), ch. 259, p. 967, § 90, effective August 5. **L. 2018:** (1) amended, (HB 18-1025), ch. 152, p. 1081, § 19, effective October 1; (2) amended, (HB 18-1024), ch. 26, p. 325, § 22, effective October 1.

**Editor's note:** Amendments to this section by House Bill 77-1076 harmonized with Senate Bill 77-100 and Senate Bill 77-1448.

**Cross references:** For the legislative declaration contained in the 2005 act amending subsection (1), see section 1 of chapter 241, Session Laws of Colorado 2005.

**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., the executive director 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.

(2) The taxpayer may request a hearing on the proposed tax by application to the executive director within thirty days of the mailing of a notice of deficiency.

(3) The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency.

(3.5) If the executive director determines that a request for a hearing related to the tax set forth in part 1 of article 22 of this title is a frivolous submission and rejects the request pursuant to section 39-21-104.5, the taxpayer shall not be entitled to a hearing before the executive director and the provisions of section 39-21-104.5 shall apply.

(4) The executive director of the department of revenue shall notify the taxpayer in writing of the time and place for such hearing thirty days prior thereto. In all cases where the disputed deficiency involves gift taxes or exceeds two hundred dollars and does not involve sales and use taxes, the hearing shall be held in Denver, Colorado. If the disputed deficiency does not involve gift taxes, is two hundred dollars or less, or involves sales and use taxes regardless of the amount, the hearing may be held, at the election of the taxpayer, in the district office of the department nearest to the place where the taxpayer resides or has his principal place of business within Colorado. If the taxpayer does not reside or have a place of business in Colorado, the hearing shall be held in the city and county of Denver.

(4.5) If the taxpayer and the executive director agree that the disposition of the taxpayer's requested changes requires the resolution of a question of law arising under the United States or Colorado constitutions, the executive director shall memorialize the agreement and send the taxpayer a notice of the agreement by first-class mail as set forth in section 39-21-105.5. If a notice is sent pursuant to this subsection (4.5), a taxpayer may elect to waive a hearing pursuant to this section and appeal the notice of deficiency directly to the district court pursuant to section 39-21-105 within thirty days after the mailing of the notice.

(5) After a hearing under this section, the taxpayer shall not be entitled to a second hearing before the executive director of the department of revenue on the matters set forth in his previous request for hearing.

(6) (a) Except as provided in paragraph (b) of this subsection (6), the hearing shall be held before the executive director of the department of revenue.

(b) In cases where the disputed deficiency is more than two hundred dollars and involves an income tax, the hearing may be held before such qualified person within the department specifically authorized by the executive director to act on the executive director's behalf to hear such dispute. In cases where the disputed deficiency is two hundred dollars or less or involves a sales, use, or gift tax, the hearing may be held before such person within the department as the executive director shall designate.

(c) The executive director or the executive director's delegate is authorized to administer oaths and take testimony. At the hearing, the taxpayer may assert any facts, make any arguments, and file any briefs and affidavits the taxpayer believes pertinent to the case.

(7) In lieu of the request for hearing within the time provided by this section, the taxpayer may, at his election, file a written brief and such other written materials or documents as he deems appropriate and request that the executive director of the department of revenue reconsider the deficiency without a hearing. The executive director shall reconsider the deficiency in the same manner as if the written material submitted had been presented at a hearing pursuant to this section. The submission of written material shall be considered for all purposes the same as a request for and submission of the material at a hearing.

(8) (a) Based on the evidence presented at the hearing or filed in support of the taxpayer's contentions or after the expiration of thirty days from the mailing of the notice of deficiency, if no request for hearing or brief has been filed by the taxpayer, the executive director of the department of revenue shall make a final determination within the time specified in paragraph (b) of this subsection (8) and shall send the taxpayer a notice of final determination accompanied by notice and demand for payment by first-class mail as set forth in section 39-21-105.5.

(b) The executive director shall make a final determination within sixty days of the hearing. Such deadline may be extended:

(I) By up to an additional sixty days by mutual agreement between the executive director and the taxpayer; or

(II) By the executive director in the executive director's discretion if the final determination raises issues that require additional information or time to analyze in order to make the determination. The executive director may authorize successive extensions of a deadline to make a particular determination; however, no individual extension authorized pursuant to this subparagraph (II) shall exceed sixty days. Prior to authorizing each extension of a deadline pursuant to this subparagraph (II), the executive director shall mail a written notice of the extension and the specific reasons therefor to the taxpayer.

(c) The executive director may modify the tax, penalty, and interest questioned at the hearing and may approve a refund; except that no additional tax shall be assessed for less than one dollar. Unless an appeal is taken as provided in section 39-21-105, the tax, together with interest thereon and penalties, if any, shall be paid within thirty days after mailing of the notice and demand for payment by the executive director.

**Source: L. 65:** p. 1131, § 2. **C.R.S. 1963:** § 138-9-2. **L. 73:** p. 1417, § 101. **L. 77:** (1), (4), and (6) amended, p. 841, § 3, effective July 1; (1) amended, pp. 1766, 1852, §§ 2, 4, effective January 1, 1978. **L. 79:** (1) amended, p. 1499, § 21, effective January 1, 1980. **L. 86:** (1) amended, p. 1110, § 4, effective July 1. **L. 89:** (1) amended, p. 1594, § 5, effective July 1, 1993. **L. 90:** (1) amended, p. 1721, § 3, effective May 1; (1) amended, p. 1722, § 4, effective July 1, 1993. **L. 96:** (1) and (8) amended, p. 163, § 1, effective July 1. **L. 2001:** (1) amended, p. 777, § 8, effective June 1. **L. 2002:** (4.5) added and (6) and (8) amended, p. 256, § 1, effective July 1. **L. 2003:** (3.5) added, p. 661, § 1, effective March 20. **L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 689, § 11, effective August 5.

**Editor's note:** Amendments to subsection (1) by House Bill 77-1076, Senate Bill 77-100, and Senate Bill 77-144 were harmonized.

**39-21-104. Rejection of claims.** (1) Upon rejection, in whole or in part, of a claim for refund filed by a taxpayer, with respect to any tax set forth in section 39-21-103 (1), the executive director of the department of revenue shall send a notice of rejection to the taxpayer in writing by first-class mail as set forth in section 39-21-105.5; and, within thirty days from the mailing thereof, the taxpayer may request a hearing or file a brief with the executive director, except where the claim is for refund of a deficiency in taxes assessed after hearing or determination on written brief had under the provisions of section 39-21-103. Thereafter, both the taxpayer and the executive director shall proceed as provided in section 39-21-103 with respect to the hearing or determination on written brief. Upon reaching a decision upon the claim for refund after hearing had thereon or consideration of the written brief, the executive director shall send to the taxpayer, by first-class mail as set forth in section 39-21-105.5, notice of final determination of claim for refund, stating therein the grounds for allowance or rejection in whole or in part.

(2) If the executive director determines that a request for a hearing related to the tax set forth in part 1 of article 22 of this title is a frivolous submission and rejects the request pursuant to section 39-21-104.5, the taxpayer shall not be entitled to a hearing before the executive director and the provisions of section 39-21-104.5 shall apply.

**Source: L. 65:** p. 1133, § 2. **C.R.S. 1963:** § 138-9-3. **L. 77:** Entire section amended, pp. 742, 841, §§ 2, 4, effective July 1. **L. 96:** Entire section amended, p. 164, § 2, effective July 1. **L. 2003:** Entire section amended, p. 661, § 2, effective March 20. **L. 2004:** (1) amended, p. 383, § 1, effective April 8.

**Editor's note:** Amendments to this section by House Bill 77-1164 and Senate Bill 77-100 were harmonized.

**39-21-104.5. Frivolous submissions.** (1) As used in this part 1, unless the context otherwise requires, "frivolous submission" means a request for a hearing related to the tax set forth in part 1 of article 22 of this title made pursuant to section 39-21-103 or 39-21-104 that is based on a position that was previously rejected in a published opinion by a Colorado or federal court.

(2) If the executive director determines that a request for a hearing made pursuant to section 39-21-103 or 39-21-104 is a frivolous submission, the executive director may reject the request. If the executive director does not reject the request, the provisions of section 39-21-103 or 39-21-104 shall apply.

(3) If the executive director rejects a taxpayer's request for a hearing:

(a) The executive director shall notify the taxpayer in writing within a reasonable time after receiving the taxpayer's request that the taxpayer's request has been rejected; and

(b) The executive director shall make a final determination within a reasonable time after receiving the taxpayer's request for a hearing and shall send the taxpayer a notice of final determination accompanied by a notice and demand for payment by first-class mail as set forth in section 39-21-105.5.

(4) A taxpayer may appeal the final determination of the executive director in accordance with the provisions of section 39-21-105.

(5) Unless an appeal is taken as provided in section 39-21-105, the tax, together with interest thereon and penalties, if any, shall be paid within thirty days after mailing of the notice and demand for payment by the executive director.

**Source: L. 2003:** Entire section added, p. 662, § 3, effective March 20.

**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 within thirty days after the mailing of such determination. Jurisdiction to hear and determine such appeals is in the district courts of this state.

(2) (a) Venue is in the district court of the county where the taxpayer resides or has his or her principal place of business. If the taxpayer has neither a residence nor a principal place of business within the state, venue is in the Denver district court.

(b) The district court shall try the case de novo, reviewing all questions of law and fact, such review being conducted in accordance with the Colorado rules of civil procedure. The taxpayer shall present his or her case in the same manner as the plaintiff in other civil actions and the normal rules of evidence shall apply. The taxpayer has the burden of proof with respect to the issues raised in the written notice described in subsection (3) of this section except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. The burden of proof is on the executive director of the department of revenue or his or her delegate to show that a petitioner is liable as a transferee of property of a taxpayer but not to show that the taxpayer was liable for the tax. The district court may affirm, modify, or reverse the determination of the executive director and may enter judgment on its findings.

(3) A taxpayer appeals a final determination of the executive director by filing, with the clerk of the district court of the proper county, a copy of the notice of final determination received by the taxpayer, together with a written notice stating that the taxpayer appeals to the district court and alleging the pertinent facts upon which such appeal is grounded.

(4) Within fifteen days after filing an appeal to the district court from a decision pursuant to section 39-21-104.5, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest, and other charges stated as due in the final determination by the executive director which are contested on appeal. The taxpayer may, at his or her option, satisfy the surety bond requirement by deposit in a savings account or deposit account held in, or

purchase a certificate of deposit issued by, a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of section 11-35-101 (1), C.R.S., an amount equal to twice the amount of the taxes, interest, and other charges stated as due in the final determination by the executive director.

(5) Any taxpayer may, at his or her option, deposit the disputed amount with the executive director of the department of revenue within fifteen days after filing an appeal to the district court. If such amount is so deposited, no further interest accrues on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the supreme court or the court of appeals or after the time for such appeal has expired, the funds deposited must be, at the direction of the court, either retained by the executive director and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed under section 39-21-110.5. The taxpayer does not need to make a claim for refund of amounts deposited with the executive director of the department of revenue in order for such amounts to be repaid in accordance with the direction of the court.

(6) Upon filing of the written notice described in subsection (3) of this section, the executive director of the department of revenue is deemed to be a party to the appeal, and the clerk of the district court shall docket the cause as a civil action. The appellant shall cause summons to be issued and cause the same to be served upon the executive director, in accordance with the manner provided by law in civil cases. Notice of the date of trial must be mailed to the taxpayer and to the executive director, at least twenty days before the date of the trial.

(7) The final decision made in an appeal of an executive director's final determination must be entered as a judgment, as in other civil cases, against the taxpayer or against the executive director as the case may be.

(8) (a) The decision of the district court is reviewable by the supreme court or the court of appeals as is otherwise provided by law; except that C.R.C.P. 62 (d) and C.R.C.P. 121 section 1-23 shall not apply. Except as provided in paragraph (b) of this subsection (8), if the taxpayer wishes to seek review of a district court ruling that is adverse to the taxpayer in part or in whole, no later than fifteen days after the ruling the taxpayer shall:

(I) File with the district court a surety bond in twice the amount of the taxes, interest, and other charges stated as due in the district court ruling, which are contested on appeal;

(II) Deposit in a savings account or deposit account held in, or purchase a certificate of deposit issued by, a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of section 11-35-101 (1), C.R.S., an amount equal to twice the amount of the taxes, interest, and other charges stated in the district court ruling; or

(III) Deposit the amount stated as due in the district court ruling with the executive director.

(b) If the taxpayer has posted a bond, made a deposit, or deposited the disputed amount with the executive director as specified in subsections (4) and (5) of this section, such previous payment or posting is continued in effect and no further payment or posting may be required.

(c) Upon the taxpayer fulfilling the appeal requirements specified in paragraph (a) of this subsection (8), collection on the judgment is stayed during the pendency of the action.

(d) If the taxpayer deposits the amount stated as due in the district court ruling with the executive director as specified in subparagraph (III) of paragraph (a) of this subsection (8), no further interest shall accrue on the amount deposited during the pendency of the action. At the

conclusion of the action, after appeal to the supreme court or after the time for such appeal has expired, the funds deposited must be, at the direction of the court, either retained by the executive director and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed under section 39-21-110.5. The taxpayer does not need to make a claim for refund of amounts deposited with the executive director in order for such amounts to be repaid in accordance with the direction of the court.

**Source: L. 65:** p. 1133, § 2. **C.R.S. 1963:** § 138-9-4. **L. 69:** p. 272, § 18. **L. 81:** (4) amended, p. 1863, § 1, effective June 8. **L. 84:** (4) amended, p. 1006, § 1, effective March 26. **L. 2001:** (1) amended, p. 434, § 2, effective April 20. **L. 2003:** (1) amended, p. 662, § 4, effective March 20. **L. 2010:** (1) amended, (SB 10-212), ch. 412, p. 2034, § 6, effective July 1. **L. 2016:** Entire section amended, (SB 16-036), ch. 292, p. 1179, § 1, effective August 10.

**Cross references:** For service of summons and entry of judgment in civil cases, see C.R.C.P. 4 and 58.

**39-21-105.5. Notice - first-class mail - definition.** (1) Except as provided in subsection (2) of this section, any notice required to be given to any taxpayer pursuant to the scope of this article as set forth in section 39-21-102 is sufficient if mailed, postpaid by first-class mail to the last-known address of the taxpayer. The first-class mailing of any notice pursuant to the scope of this article as set forth in section 39-21-102 creates a presumption that such notice was received by the taxpayer if the department maintains a record of the notice and maintains a certification that the notice was deposited in the United States mail by an employee of the department. Evidence of the record of the notice mailed to the last-known address of the taxpayer as shown by the records of the department and a certification of mailing by first-class mail by a department employee is prima facie proof that the notice was received by the taxpayer.

(2) Notwithstanding subsection (1) of this section, and notwithstanding any other provision of law that requires written correspondence to be sent by first-class mail to a taxpayer, the department may promulgate rules to establish procedures that allow a taxpayer to voluntarily elect to receive any notice or other communication by electronic means pursuant to the established procedures. The procedures must be designed to ensure that to the greatest degree reasonably possible the party viewing the notice or communication is the taxpayer for whom the notice or communication is intended. An electronically transmitted notice or communication is sufficient to satisfy any requirement of mailing if sent in accordance with the procedures. If the department maintains a record of the recipient viewing the notice or communication, the record creates a presumption of receipt by the taxpayer and is prima facie proof that the notice or communication was received by the taxpayer.

(3) For purposes of this section, the term "taxpayer" includes the agent or personal representative of the estate of the taxpayer.

**Source: L. 96:** Entire section added, p. 164, § 3, effective July 1. **L. 2014:** Entire section amended, (HB 14-1107), ch. 134, p. 464, § 1, effective April 25.

**39-21-106. Compromise.** (1) The executive director 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, article 60 of title 34, or article 3 of title 42, 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.

(2) Whenever a compromise of two thousand five hundred dollars or more is made by the executive director or his delegate in any case, there shall be placed on file in the office of the executive director or his delegate the opinion of the director with his reasons therefor, which may include financial inability of the taxpayer to pay a greater amount, with a statement of:

(a) The amount of tax assessed;

(b) The amount of interest, additional amount, addition to the tax, or assessable penalty imposed by law on the person against whom the tax is assessed; and

(c) The amount paid in accordance with the terms of the compromise.

(3) Notwithstanding the provisions of subsection (2) of this section, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed, including any interest, additional amount, addition to the tax, or assessable penalty, is less than two thousand five hundred dollars.

**Source: L. 65:** p. 1135, § 2. **C.R.S. 1963:** § 138-9-5. **L. 72:** p. 621, § 165. **L. 77:** (1) amended, p. 842, § 5, effective July 1; (1) amended, pp. 1766, 1852, §§ 3, 5, effective January 1, 1978. **L. 79:** (1) amended, p. 1499, § 22, effective January 1, 1980. **L. 86:** (1) amended, p. 1110, § 5, effective July 1. **L. 89:** (1) amended, p. 1594, § 6, effective July 1, 1993. **L. 90:** (1) amended, p. 1722, § 5, effective May 1; (1) amended, p. 1722, § 6, effective July 1, 1993. **L. 2001:** (1) amended, p. 778, § 9, effective June 1. **L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 689, § 12, effective August 5.

**Editor's note:** Amendments to subsection (1) by House Bill 77-1076, Senate Bill 77-100, and Senate Bill 77-144 were harmonized.

**39-21-107. Limitations.** (1) Except as provided in this section, in section 29-2-106.1 (5)(b), 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 39 or article 3 of title 42, 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 39.

(2) In the case of an income tax imposed by article 22 of this title, unless such time is extended by waiver and except as provided in section 39-22-601 (6)(e), the assessment of any tax, penalties, and interest shall be made within one year after the expiration of the time provided for assessing a deficiency in federal income tax or changing the reported federal taxable income of a partnership, limited liability company, or fiduciary, including any extensions of such period by agreement between the taxpayer and the federal taxing authorities; except that a written proposed adjustment of the tax liability by the department shall extend the limitation of this subsection (2) for one year after a final determination or assessment is made and except that, if the taxpayer has been audited by the department for the year in question and the issues raised in the audit have been settled by agreement for payment or payment of deficiencies arising therefrom, then any additional assessment shall be limited to deficiencies arising as a result of adjustments made by the commissioner of internal revenue in the final determination of federal taxable income. An assessment of income taxes having been made according to law shall be good and valid and collection thereof may be enforced at any time within six years from the date of said assessment.

(3) For purposes of this section, a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.

(4) In the case of failure to file a return or the filing of a false or fraudulent return with intent to evade tax, the tax may be assessed and collected at any time.

(5) Where, before the expiration of the time prescribed in this section for the assessment of tax, both the executive director of the department of revenue or his delegate and the taxpayer have consented in writing to an assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(6) Nothing in this section shall be construed to limit any right accrued or revive any liability barred by any statute enacted on or before July 1, 1965.

**Source: L. 65:** p. 1136, § 2. **C.R.S. 1963:** § 138-9-6. **L. 73:** p. 1417, § 102. **L. 77:** (2) amended, p. 1770, § 1, effective May 18; (1) amended, pp. 1767, 1853, §§ 4, 6, effective January 1, 1978. **L. 79:** (1) amended, p. 1500, § 23, effective January 1, 1980. **L. 83:** (1) and (2) amended, p. 1510, § 1, effective May 26. **L. 86:** (1) amended, p. 1110, § 6, effective July 1. **L. 89:** (1) amended, p. 1594, § 7, effective July 1, 1993. **L. 90:** (2) amended, p. 450, § 29, effective April 18; (1) amended, p. 1722, § 7, effective May 1; (1) amended, p. 1723, § 8, effective July 1, 1993. **L. 92:** (1) amended, p. 2247, § 1, effective July 1. **L. 2001:** (1) amended, p. 778, § 10, effective June 1. **L. 2002:** (1) amended, p. 1361, § 16, effective July 1. **L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 690, § 13, effective August 5. **L. 2017:** (1) amended, (SB 17-112), ch. 144, p. 483, § 3, effective April 18.

**Editor's note:** Amendments to subsection (1) by Senate Bill 77-144 and House Bill 77-1076 were harmonized.

**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, 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.

(b) Repealed.

(2) If the executive director discovers from the examination of a return within the time periods provided for the filing of refunds, or upon claim duly filed by the taxpayer, or upon final judgment of a court that the tax, penalty, or interest paid by any taxpayer is in excess of the amount due or has been illegally or erroneously collected, then the executive director shall issue in favor of the taxpayer his voucher to the controller for the refund of such illegally collected tax, penalty, or interest, regardless of whether or not such sum was paid under protest, together with interest provided in section 39-21-110. Upon receipt of such voucher properly executed and endorsed, the controller shall issue his warrant for the payment to the taxpayer out of the reserve provided therefor; but the controller shall keep in his files a duplicate of said voucher and also a statement which shall set forth the reason why such refund has been ordered.

(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, 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; 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 that has been reduced to judgment by the division of unemployment insurance in the department of labor and employment; 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; 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 that has been reduced to judgment, as certified by the department of human services; 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 that has been reduced to judgment, as certified by the appropriate institution; 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 that has been reduced to judgment, as certified by the division; 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 that has been reduced to judgment; 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; there is any unpaid debt owing to the state or any agency thereof by such taxpayer, and that 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 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 must be credited first to the unpaid balance of tax and interest accrued and then to the unpaid debt, and any excess of the overpayment must 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 must 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 other taxpayer named on the joint return that the portion of the overpayment that is generated by the other taxpayer's income will be refunded upon receipt of a request detailing said amount. As used in this section, unless the context otherwise requires, "agency" includes a state-supported institution of higher education or a political subdivision of the state under contract with central collection services.

(B) With respect to debts for 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., or 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., or 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., a debtor must be afforded his or her due process rights prior to a final agency determination.

(II) Any moneys withheld for payment of an unemployment compensation benefit debt pursuant to this subsection (3) shall be deposited with the state treasurer and credited to the unemployment compensation fund. For persons required to repay benefit overpayments in accordance with section 8-81-101 (4)(a), C.R.S., the executive director of the department of revenue shall provide to said division the taxpayers' names and associated amounts deposited with the state treasurer.

(III) Any moneys withheld for payment of a child support debt or child support arrearages pursuant to this subsection (3) shall be deposited in the family support registry created pursuant to section 26-13-114, C.R.S., for disbursement by the department of human services. For all names and amounts certified by the department of human services pursuant to section 26-13-111, C.R.S., the executive director of the department of revenue shall provide to the

department of human services the taxpayers' names and associated amounts deposited with the state treasurer and any other identifying information as required by the department of human services.

(IV) Any moneys withheld for payment of an institution of higher education debt pursuant to this subsection (3) shall be deposited with the state treasurer for disbursement by the state treasurer to the appropriate institution. For each person whose name and amount is certified by the appropriate institution pursuant to section 23-5-115, C.R.S., the executive director of the department of revenue shall provide to the appropriate institution the name, address, and social security number or federal employer identification number, whichever is applicable, of the taxpayer whose refund is being offset, the amount of the offset, and any other identifying information as required by the institution.

(V) Any moneys withheld for payment of an unpaid debt owing to the state pursuant to this subsection (3) shall be deposited with the state treasurer for disbursement by the controller. For each person whose name and amount is certified by the controller pursuant to section 24-30-202.4, C.R.S., the executive director of the department of revenue shall provide to the controller the name, address, and social security number or federal employer identification number, whichever is applicable, of the taxpayer whose refund is being offset, the amount of the offset, and any other identifying information as required by the controller.

(VI) Any moneys withheld for payment of a student loan division debt pursuant to this subsection (3) shall be deposited with the state treasurer for disbursement by the state treasurer to the division. For each person whose name and amount is certified by the division pursuant to section 23-3.1-104 (1)(p), C.R.S., the executive director of the department of revenue shall provide to the division the name, address, and social security number or federal employer identification number, whichever is applicable, of the taxpayer whose refund is being offset, the amount of the offset, and any other identifying information as required by the division.

(VII) Any moneys withheld for payment of obligations owed the department of human services for overpayment of public assistance benefits pursuant to this subsection (3) shall be deposited with the state treasurer for disbursement by the department of human services. For all names and associated amounts certified by the department of human services pursuant to section 26-2-133, C.R.S., the executive director of the department of revenue shall provide to the department of human services the names of taxpayers and the associated amounts deposited with the state treasurer and any other identifying information as required by the department of human services.

(VIII) Any moneys withheld for payment of an obligation certified by the judicial department pursuant to section 16-11-101.8 or 16-18.5-106.8, C.R.S., shall be transferred to the judicial department. At the time of the offset, the executive director shall notify the taxpayer of the offset and shall provide to the judicial department the name, address, and social security number or federal employer identification number, whichever is applicable, of the taxpayer whose refund is being offset, the amount of the offset, and any other identifying information as required by the judicial department.

(b) In the event there are debts for overpayments of unemployment insurance pursuant to section 8-81-101 (4), C.R.S., debts for unpaid child support, as set forth in section 26-13-111, C.R.S., debts for overpayment of public assistance or medical assistance benefits, as set forth in section 26-2-133, C.R.S., debts for 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., debts for 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., any amounts owed for judicial fines, fees, costs, or surcharges, as set forth in section 16-11-101.8, C.R.S., any amounts owed for judicial restitution, as set forth in section 16-18.5-106.8, C.R.S., and other unpaid debts owing to the state or any agency thereof, as set forth in this subsection (3), then credit to the unpaid debts shall be prorated on the basis of the ratio of the amount of each such unpaid debt as compared to the total amount of unpaid debts.

(4) Notwithstanding the provisions of subsection (1) of this section, in the case of the severance tax imposed by article 29 of this title, when an increase in the value of any product is subject to the approval or affected by the actions of any agency of the United States, or the state of Colorado, or any court, the increased value shall be subject to this tax. In the event that the increase in value is disapproved or reduced as the direct or indirect result of the actions of any agency of the United States, the state of Colorado, or any court, either in whole or in part, then the amount of tax which has been paid on the disapproved or reduced part of the value shall be considered excess tax. Within one year following the final determination of value, any person who has paid any such excess tax may apply for a refund, and the executive director, upon proper finding, shall have the authority and duty to refund the amount of excess tax paid. Any refund may, at the discretion of the executive director, be made in the form of a credit against future tax payments.

(5) (a) On and after October 1, 2002, any warrant representing a refund of income tax imposed by article 22 of this title or a grant for property taxes, rent, or heat or fuel expenses assistance allowed by article 31 of this title that is not presented for payment within six months from its date of issuance shall be void. On and after October 1, 2002, upon the cancellation of a warrant in accordance with the standard operating procedures of the department or the state controller, the department shall forward to the state treasurer the name of the taxpayer as it appears on the warrant, the taxpayer identification number, the taxpayer's last known address, the amount of the cancelled warrant, and an amount of money equal to the amount specified in the warrant so that the state treasurer may make the refund pursuant to the provisions of the "Unclaimed Property Act", article 13 of title 38, C.R.S.

(b) The department may reclaim from the unclaimed property fund and credit to the appropriate state revenue fund any amount forwarded by the department to the state treasurer pursuant to paragraph (a) of this subsection (5) that was based on a warrant representing an erroneous refund or grant. If the state treasurer issued an erroneous refund or grant to the person named on the warrant, the treasurer shall provide proof of that payment to the department and the department may assess that amount pursuant to section 39-21-103 (1).

(6) Repealed.

(7) (a) On and after October 1, 2010, any warrant representing a refund issued by the department, excluding refunds addressed by subsection (5) of this section, that is not presented for payment within six months from its date of issuance shall be void. On and after October 1, 2010, upon the cancellation of a warrant in accordance with the standard operating procedures of the department or the state controller, the department shall forward to the state treasurer the name of the taxpayer as it appears on the warrant, the taxpayer identification number, the taxpayer's last-known address, the amount of the canceled warrant, and an amount of money equal to the amount specified in the warrant so that the state treasurer may make the refund pursuant to the provisions of the "Unclaimed Property Act", article 13 of title 38, C.R.S.

(b) The department may reclaim from the unclaimed property fund and credit to the appropriate state revenue fund any amount forwarded by the department to the state treasurer pursuant to paragraph (a) of this subsection (7) that was based on a warrant representing an erroneous refund or grant. If the state treasurer issued an erroneous refund or grant to the person named on the warrant, the treasurer shall provide proof of that payment to the department, and the department may assess that amount pursuant to section 39-21-103 (1).

**Source: L. 65:** p. 1137, § 2. **C.R.S. 1963:** § 138-9-7. **L. 67:** pp. 847, 848, §§ 1, 2. **L. 71:** p. 1265, § 1. **L. 77:** (1)(a) amended and (4) added, pp. 1767, 1853, §§ 5, 7, effective January 1, 1978. **L. 82:** (3) amended, p. 558, § 1, effective April 6. **L. 83:** (3) amended, p. 794, § 5, effective June 3; (3) amended, p. 654, § 2, effective June 10; (3) amended, p. 438, § 2, effective June 15. **L. 84:** (3)(a) amended and (3)(b)(IV) added, pp. 1008, 1010, §§ 3, 4, effective March 29; (3) amended, p. 1011, § 1, effective April 27; (3)(b)(IV) repealed and (3)(b) amended, pp. 1125, 1126, §§ 47, 48, effective June 7. **L. 85:** (3)(a)(I), (3)(a)(VI), and (3)(b) amended, p. 1366, § 39, effective June 28; (3)(a)(I), (3)(a)(III), and (3)(b) amended, p. 602, § 22, effective July 1. **L. 88:** (3)(a)(I) amended, p. 637, § 19, effective July 1. **L. 89:** (3)(a)(I) and (3)(b) amended and (3)(a)(VII) added, p. 1195, § 4, effective June 7; (3)(a)(I) amended, p. 799, § 34, effective July 1; (1)(a) amended, p. 1595, § 8, effective July 1, 1993. **L. 94:** (3)(a)(I), (3)(a)(III), and (3)(a)(VII) amended, p. 3135, § 299, effective July 1. **L. 96:** (1)(a) amended, p. 164, § 4, effective July 1. **L. 98:** (3)(a)(II) amended, p. 91, § 5, effective March 23. **L. 98, 2nd Ex. Sess.:** (3)(a)(I) amended, p. 7, § 4, effective September 16. **L. 99:** (3)(a)(I) amended, p. 1317, § 5, effective August 4. **L. 2001:** (1)(a) and (3)(a)(I) amended, p. 778, § 11, effective June 1; (1)(a) amended, p. 233, § 2, effective August 8; (5) added, p. 619, § 4, effective August 8. **L. 2002:** (3)(a)(I) amended, p. 99, § 1, effective August 7. **L. 2004:** (1)(a) amended, p. 383, § 2, effective April 8; (3)(a)(I) amended, p. 576, § 35, effective July 1; (1)(b) repealed, p. 207, § 31, effective August 4; (3)(a)(I)(A) and (3)(b) amended and (3)(a)(VIII) added, p. 1259, § 4, effective August 4; (6) added, p. 315, § 3, effective August 4. **L. 2009:** (1)(a) and (3)(a)(I)(A) amended, (HB 09-1053), ch. 159, p. 690, § 14, effective August 5; (3)(a)(III), (3)(a)(IV), (3)(a)(V), and (3)(a)(VI) amended, (HB 09-1137), ch. 308, p. 1662, § 14, effective September 1. **L. 2010:** (6) repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; (7) added, (SB 10-186), ch. 309, p. 1454, § 1, effective August 11. **L. 2011:** (1)(a) amended, (HB 11-1303), ch. 264, p. 1175, § 91, effective August 10. **L. 2012:** (3)(a)(I)(A) amended, (HB 12-1120), ch. 27, p. 112, § 31, effective June 1. **L. 2013:** (3)(a)(I)(A) amended, (SB 13-247), ch. 296, p. 1584, § 4, effective August 7. **L. 2014:** (3)(a)(I)(A) amended, (SB 14-019), ch. 10, p. 96, § 2, effective February 27.

**Editor's note:** (1) Amendments to subsection (1)(a) by House Bill 77-1076 and Senate Bill 77-144 were harmonized.

(2) Amendments to subsection (3) by Senate Bill 83-107 and Senate Bill 83-296 harmonized with House Bill 83-1445.

(3) Amendments to subsection (3) by Senate Bill 84-171 and Senate Bill 84-32 were harmonized.

(4) Amendments to subsection (3)(a)(I) and (3)(b) by Senate Bill 85-170 and House Bill 85-1380 were harmonized.

(5) Amendments to subsection (3)(a)(I) by House Bill 89-1180 and Senate Bill 89-153 were harmonized.

(6) Amendments to subsection (1)(a) by Senate Bill 01-125 and House Bill 01-1304 were harmonized.

(7) Amendments to subsection (3)(a)(I)(A) by House Bill 04-1350 and Senate Bill 04-253 were harmonized.

(8) The effective date for amendments to subsection (3)(a)(I)(A) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

(9) Section 9 of chapter 10 (SB 14-019), Session Laws of Colorado 2014, provides that changes to this section by the act apply to income tax years commencing on or after January 1, 2013, and any other income tax years that are open under § 39-21-107 or 39-21-108.

**Cross references:** For the legislative declaration contained in the 2001 act amending subsection (1)(a), see section 1 of chapter 95, Session Laws of Colorado 2001.

**39-21-109. Interest on underpayment, nonpayment, or extensions of time for payment of tax.** (1) If any amount of tax or any charge on oil and gas production imposed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under section 39-21-110.5, except as provided in subsection (1.5) of this section, shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the executive director of the department of revenue or his delegate.

(1.5) If payment of or an agreement to pay the amount of any tax described in subsection (1) of this section is made within thirty days of notice of underpayment, nonpayment, or extension of time, the executive director shall waive the imposition of the three points in excess of the prime rate described in section 39-21-110.5 (2) on such amount unless the executive director determines that there has been a willful neglect or failure to pay such tax.

(2) Interest prescribed under this section shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as the tax to which it is applicable.

(3) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(4) Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

(5) This section shall not apply to any failure to pay estimated Colorado income tax.

**Source: L. 65:** p. 1138, § 2. **C.R.S. 1963:** § 138-9-8. **L. 73:** p. 1418, § 103. **L. 77:** (1) amended, pp. 1768, 1854, §§ 6, 8, effective January 1, 1978. **L. 79:** (1) amended, p. 1500, § 24,

effective January 1, 1980. **L. 81:** (1) amended, p. 1863, § 2, effective June 8. **L. 86:** (1) amended, p. 1111, § 7, effective July 1. **L. 89:** (1) amended, p. 1595, § 9, effective July 1, 1993. **L. 90:** (1) amended and (1.5) added, p. 1728, § 2, effective April 5; (1) amended, p. 1723, § 9, effective May 1; (1) amended, pp. 1729, 1724, §§ 3, 10, effective July 1, 1993.

**Editor's note:** Amendments to subsection (1) by Senate Bill 77-144 and House Bill 77-1076 were harmonized. Amendments to subsection (1) by House Bill 90-1176 and House Bill 90-1258 were harmonized.

**39-21-110. Interest on overpayments.** (1) Interest shall be allowed and paid upon any overpayment in respect to any tax or any charge on oil and gas production imposed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., at the rate imposed under section 39-21-110.5. Such interest shall be allowed and paid as follows:

(a) In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken;

(b) In the case of a refund, from the date of the overpayment to a date, to be determined by the executive director of the department of revenue or his delegate, preceding the date of the refund by not more than thirty days, whether or not such refund is accepted by the taxpayer after tender of such refund to the taxpayer. The acceptance of such refund shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(1.5) Notwithstanding any other provision of this section to the contrary, a payment not made incident to a bona fide and orderly discharge of an actual liability or a liability reasonably assumed to be imposed by law is not an overpayment for the purposes of this section only, and interest is not payable on the payment. For purposes of this subsection (1.5), the following burdens of proof shall apply:

(a) If a taxpayer's total payments are less than or equal to twice the amount of the actual tax liability, then the department shall bear the burden of proving, by a preponderance of the evidence, that such payments were not made incident to a bona fide and orderly discharge of an actual liability or a liability reasonably assumed to be imposed by law; and

(b) If a taxpayer's total payments are more than twice the amount of the actual tax liability, then the taxpayer shall bear the burden of proving, by a preponderance of the evidence, that such payments were made incident to a bona fide and orderly discharge of an actual liability or a liability reasonably assumed to be imposed by law.

(2) Any portion of any tax or of a charge on oil and gas production imposed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., or any interest, assessable penalty, additional amount, or addition to a tax or charge which has been erroneously refunded shall bear interest at the rate imposed under section 39-21-110.5 from the date of the payment of the refund.

(3) If any overpayment of any tax or of a charge on oil and gas production imposed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., is refunded within ninety days after the last date prescribed for filing the return of such tax or charge, determined without regard to any extension of time for filing the return, no interest shall be allowed under subsection (1) of this section on such overpayment.

(4) If the amount of any income tax is reduced by reason of a carry-back of a net operating loss, such reduction in tax shall not affect the computation of interest under this

section for the period ending with the last day of the taxable year in which the net operating loss arises. If any overpayment of income tax results from a carry-back of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss arises.

**Source: L. 65:** p. 1139, § 2. **C.R.S. 1963:** § 138-9-9. **L. 73:** p. 1418, § 104. **L. 77:** IP(1), (2), and (3) amended, pp. 1768, 1854, §§ 7, 9, effective January 1, 1978. **L. 79:** IP(1), (2), and (3) amended, p. 1500, § 25, effective January 1, 1980. **L. 81:** IP(1) and (2) amended, p. 1864, § 3, effective June 8. **L. 86:** (2) amended, p. 1111, § 8, effective July 1. **L. 89:** (2) and (3) amended, p. 1596, § 10, effective July 1, 1993. **L. 90:** IP(1), (2), and (3) amended, p. 1724, § 11, effective May 1; IP(1), (2), and (3) amended, p. 1725, § 12, effective July 1, 1993. **L. 2009:** (1.5) added, (HB 09-1219), ch. 71, p. 241, § 1, effective March 25.

**Editor's note:** Amendments to the introductory portion to subsection (1) and subsections (2) and (3) by Senate Bill 77-144 and House Bill 77-1076 were harmonized.

**39-21-110.5. Rate of interest to be fixed.** (1) When interest is required or permitted to be charged under any provision of articles 20 to 29 of this title in connection with interest on underpayment, nonpayment, extension of time for payment, or overpayment, or when interest is required to be paid pursuant to section 8-20.5-104, C.R.S., in connection with an application for reimbursement from the petroleum storage tank fund, such interest shall be computed at the annual rate which has been established pursuant to this section.

(2) Except as otherwise provided in subsection (4) of this section, the annual rate of interest shall be the prime rate, as reported by the "Wall Street Journal", plus three points, rounded to the nearest full percent. In the event that more than one rate is so reported, the highest rate shall be utilized.

(3) The commissioner of banking shall establish an adjusted annual rate of interest based upon the computation specified in subsections (2) and (4) of this section and rounded to the nearest full percent. The adjusted annual rate of interest shall be so established by the commissioner of banking as of July 2, 1990, to become effective January 1, 1991. Thereafter, on July 1, or the next succeeding business day, of each year, the adjusted annual rate of interest shall be established in the same manner, to become effective on January 1 of the next succeeding year.

(4) For refunds issued on or after January 1, 2004, the annual rate of interest applicable to sections 39-21-110 and 39-22-622 shall be as follows:

(a) If the amount of the refund is less than five thousand dollars or if the amount of the refund is equal to or greater than five thousand dollars but less than ten percent of the taxpayer's net tax liability for the period for which the tax is paid, the annual rate of interest shall be the prime rate, as reported by the "Wall Street Journal", plus three points, rounded to the nearest full percent. In the event that more than one rate is so reported, the highest rate shall be utilized.

(b) (I) If the amount of the refund is equal to or greater than five thousand dollars and the amount of the refund is equal to or greater than ten percent of the taxpayer's net tax liability for the period for which the tax is paid, the annual rate of interest shall be the prime rate, as reported by the "Wall Street Journal", rounded to the nearest full percent, except as provided in

subparagraph (II) of this paragraph (b). In the event that more than one rate is reported, the highest rate shall be utilized.

(II) For any refund subject to the provisions of subparagraph (I) of this paragraph (b), if the taxpayer demonstrates that the overpayment of tax necessitating such refund was due to good cause as determined by the executive director, the annual rate of interest shall be the prime rate, as reported by the "Wall Street Journal", plus three points, rounded to the nearest full percent. In the event that more than one rate is so reported, the highest rate shall be utilized.

**Source: L. 81:** Entire section added, p. 1864, § 4, effective June 8. **L. 90:** (2) and (3) amended, p. 1728, § 1, effective April 5. **L. 95:** (1) amended, p. 420, § 11, effective July 1. **L. 2003:** (2) and (3) amended and (4) added, p. 2360, § 1, effective August 6.

**39-21-111. Jeopardy assessment and demands.** (1) If the executive director of the department of revenue finds that collection of the tax will be jeopardized by delay, in his discretion, he may declare the taxable period immediately terminated, determine the tax, and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the executive director may proceed immediately to collect such tax as provided in section 39-21-114.

(2) In any other case wherein it appears that the revenue is in jeopardy, the executive director of the department of revenue may immediately issue demand for payment; and, regardless of the provisions of sections 39-21-103 and 39-21-105, the tax shall be due and payable forthwith and, in his discretion, the executive director may proceed immediately to collect said tax as provided in section 39-21-114.

(3) Collection under either subsection (1) or (2) of this section may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the executive director.

**Source: L. 65:** p. 1140, § 2. **C.R.S. 1963:** § 138-9-10.

**39-21-112. Duties and powers of executive director.** (1) It is the duty of the executive director to administer the provisions of this article, and he or she has the power to adopt, amend, or rescind such rules not inconsistent with the provisions of this article, articles 22 to 29 of this title, and article 3 of title 42, C.R.S., and, subject to other provisions of law relating to the promulgation of 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.

(2) If any taxpayer refuses voluntarily to furnish any of the foregoing information when requested by the executive director of the department of revenue or his employee, agent, or representative, the executive director, by subpoena issued under his hand, may require the attendance of the taxpayer and the production by him of any of the foregoing information in his possession and may administer an oath to him and take his testimony. If the taxpayer fails or refuses to respond to said subpoena and give testimony, the executive director may apply to any judge of the district court of the state of Colorado for an attachment against such taxpayer as for contempt, and said judge may cause arrest of such person, and upon hearing, said judge has, for the purpose of enforcing obedience to the requirements of said subpoena, power to make such order as, in his discretion, he deems consistent with the law for punishment of contempts.

(3) If the executive director of the department of revenue is unable to secure from the taxpayer information relating to the correctness of the taxpayer's return or the amount of the income of the taxpayer, the executive director may apply to any judge of the district court of the state of Colorado for the issuance of subpoenas to such other persons as the executive director believes may have knowledge in the premises, and, upon making a showing satisfactory to the court that the taxpayer cannot be found, or evades service of subpoena, or fails or refuses to produce his records or give testimony, or is unable to furnish such records or testimony, the judge has power, after service of summons upon the persons named in the petition of the executive director, after written notice mailed to the taxpayer to his last-known address as set forth in the records of the department of revenue, and after hearing, to cause the issuance of subpoenas under the seal of the court to the persons sought to be so summoned requiring any of them to appear before said executive director and give testimony relating to said taxpayer's return or income. In case any of said persons so served with subpoena fail to respond thereto, the judge may proceed against such persons as in cases of contempt.

(3.5) (a) If any retailer that does not collect Colorado sales tax refuses voluntarily to furnish any of the information specified in subsection (1) of this section when requested by the executive director of the department of revenue or his or her employee, agent, or representative, the executive director, by subpoena issued under the executive director's hand, may require the attendance of the retailer and the production by him or her of any of the foregoing information in the retailer's possession and may administer an oath to him or her and take his or her testimony. If the retailer fails or refuses to respond to said subpoena and give testimony, the executive director may apply to any judge of the district court of the state of Colorado to enforce such subpoena by any appropriate order, including, if appropriate, an attachment against the retailer as for contempt, and upon hearing, said judge has, for the purpose of enforcing obedience to the requirements of said subpoena, power to make such order as, in his or her discretion, he or she deems consistent with the law for punishment of contempts.

(b) For purposes of this subsection (3.5), "retailer" shall have the same meaning as set forth in section 39-26-102 (8).

(c) (I) Each retailer that does not collect Colorado sales tax shall notify Colorado purchasers that sales or use tax is due on certain purchases made from the retailer and that the state of Colorado requires the purchaser to file a sales or use tax return.

(II) Failure to provide the notice required in subparagraph (I) of this paragraph (c) shall subject the retailer to a penalty of five dollars for each such failure, unless the retailer shows reasonable cause for such failure.

(d) (I) (A) Each retailer that does not collect Colorado sales tax shall send notification to all Colorado purchasers by January 31 of each year showing such information as the Colorado department of revenue shall require by rule and the total amount paid by the purchaser for Colorado purchases made from the retailer in the previous calendar year. Such notification shall include, if available, the dates of purchases, the amounts of each purchase, and the category of the purchase, including, if known by the retailer, whether the purchase is exempt or not exempt from taxation. The notification shall state that the state of Colorado requires a sales or use tax return to be filed and sales or use tax paid on certain Colorado purchases made by the purchaser from the retailer.

(B) The notification specified in sub-subparagraph (A) of this subparagraph (I) shall be sent separately to all Colorado purchasers by first-class mail and shall not be included with any other shipments. The notification shall include the words "Important Tax Document Enclosed" on the exterior of the mailing. The notification shall include the name of the retailer.

(II) (A) Each retailer that does not collect Colorado sales tax shall file an annual statement for each purchaser to the department of revenue on such forms as are provided or approved by the department showing the total amount paid for Colorado purchases of such purchasers during the preceding calendar year or any portion thereof, and such annual statement shall be filed on or before March 1 of each year.

(B) The executive director of the department of revenue may require any retailer that does not collect Colorado sales tax that makes total Colorado sales of more than one hundred thousand dollars in a year to file the annual statement described in sub-subparagraph (A) of this subparagraph (II) by magnetic media or another machine-readable form for that year.

(III) (A) Failure to send the notification required in subparagraph (I) of this paragraph (d) shall subject the retailer to a penalty of ten dollars for each such failure, unless the retailer shows reasonable cause for such failure.

(B) Failure to file the annual statement required in sub-subparagraph (A) of subparagraph (II) of this paragraph (d) shall subject the retailer to a penalty of ten dollars for each purchaser that should have been included in such annual statement, unless the retailer shows reasonable cause for such failure.

(4) Regulations adopted, amended, or rescinded by the executive director of the department of revenue shall be effective in the manner and at the time prescribed by the executive director, subject to the provisions of article 4 of title 24, C.R.S.

(5) Subject to the provisions of this article and the state personnel system regulations, the executive director of the department of revenue is authorized to appoint and prescribe the duties and powers of such officers, accountants, experts, and other persons as may be necessary in the performance of his duty. He may delegate to any such person so appointed such power as he deems reasonable and proper for the effective administration of this article and shall bond, in a sufficient amount, any person handling money under this article.

(6) Members of the department of revenue shall each give bond to the state of Colorado in the sum of five thousand dollars conditioned upon the faithful performance of their duties under the provisions of this article.

(7) (a) Any officer or employee of the department shall be dismissed from office or discharged from employment if, while performing functions related to any revenue law of the state of Colorado, he:

(I) Extorts or willfully oppresses any person through use of his actual or apparent authority;

(II) Knowingly demands other or greater sums than are authorized by law or receives any fee, compensation, or reward, except as prescribed by law, for the performance of any duty;

(III) With intent to defeat the application of any provision of this title, makes opportunity for any person to defraud the state of Colorado by intentionally failing to perform any of the duties of his office or employment;

(IV) Conspires or colludes with any other person to defraud the state of Colorado;

(V) Knowingly makes opportunity for any person to defraud the state of Colorado;

(VI) Commits or omits to do any act with the intent to enable any other person to defraud the state of Colorado;

(VII) Makes or signs any fraudulent entry in any book or makes or signs any fraudulent certificate, return, or statement;

(VIII) Fails to report in writing to the executive director of the department of revenue or his designee any knowledge or information he has concerning a violation of any revenue law by any person or a fraud committed by any person against the state of Colorado under any revenue law; or

(IX) Demands, accepts, or attempts to collect, directly or indirectly, as payment, gift, or otherwise any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as otherwise expressly authorized by law.

(b) Any officer or employee who violates any of the provisions of paragraph (a) of this subsection (7) is guilty of a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. The court may in its discretion award out of any fine imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, in any such case who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured.

(8) The executive director is authorized to waive, for good cause shown, any penalty or interest assessed on any tax administered under the provisions of this article, and interest imposed in excess of the rate imposed under section 39-21-110.5 shall be deemed a penalty.

(9) The executive director shall have such other powers, duties, and functions as are prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

**Source: L. 65:** p. 1140, § 2. **C.R.S. 1963:** § 138-9-11. **L. 77:** (1) amended and (7) added, pp. 842, 1772, §§ 6, 1, effective July 1. **L. 81:** (3) amended, p. 1869, § 1, effective May 13. **L. 82:** Entire section amended, p. 558, § 2, effective April 6. **L. 89:** (8) added, p. 1497, § 1, effective June 7; (7)(b) amended, p. 852, § 143, effective July 1. **L. 94:** (9) added, p. 566, § 17, effective April 6. **L. 2001:** (1) amended, p. 780, § 12, effective June 1. **L. 2002:** (7)(b) amended, p. 1556, § 347, effective October 1. **L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 692, § 15, effective August 5. **L. 2010:** (3.5) added, (HB 10-1193), ch. 9, p. 55, § 2, effective February 24.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (7)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

**39-21-113. Reports and returns - rule.** (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, 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.

(b) It is the duty of every person, firm, or corporation liable to the state of Colorado for any tax imposed on income or gifts or a report in connection therewith to keep and preserve for a period of four years following the due date of the return or the payment of said tax such books, accounts, and records as may be necessary to determine the amount of such tax liability.

(c) All such books, accounts, and records shall be open for examination at any time by the executive director of the department of revenue or his duly authorized agents.

(2) In the case of a person, firm, or corporation which does not keep the necessary books, accounts, and records within the state, it shall be sufficient if such person, firm, or corporation produces within this state such books, accounts, records, or such information as shall be reasonably required by the executive director of the department of revenue for examination by him or, an agent duly authorized by him or, in lieu thereof, if said books, accounts, and records are open for inspection, by an agent authorized by the executive director at the place where such books, accounts, and records are kept.

(3) All reports and returns of taxes received by the department, other than income tax returns, covered by this article shall be preserved for three years and thereafter until the executive director of the department of revenue orders them to be destroyed. Income tax returns received by the department of revenue shall be preserved for four years and thereafter until the executive director orders them to be destroyed.

(4) (a) Except in accordance with judicial order or as otherwise provided by law, the executive director of the department of revenue and his agents, clerks, and employees shall not divulge or make known in any way any information obtained from any investigation conducted by the department or its agents or disclosed in any document, report, or return filed in connection with any of the taxes covered by this article. The officials charged with the custody of such documents, reports, investigations, and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the executive director in an action or proceeding under the provisions of any such taxing statutes to which the department is a party or on behalf of any party to any action or proceeding under the provisions of such taxing statutes when the report of facts shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding and no more.

(b) (I) This section does not prohibit the delivery to a person or his or her duly authorized representative of a copy of any return or report filed in connection with his or her tax. The copy may be certified by the executive director of the department of revenue or the head of a group, division, or subordinate department, as appointed by the executive director in accordance with article 35 of title 24, C.R.S., and when so certified is evidence equally with and

in like manner as the originals and may be used by a court as evidence of the contents of the originals.

(II) An individual or his or her duly authorized representative may also request proof of return filing for particular tax years. Following request and payment of the applicable fee, the department shall provide proof of return filing for a period for which the taxpayer has filed a return and requested proof of return filing. The department shall include in the proof of filing:

(A) The individual's name;

(B) The individual's address as shown on the most recently filed return;

(C) The dates of the tax periods of the requested returns; and

(D) A statement as to whether the most recently filed return was filed as a resident of Colorado, or, if a part-year resident, the date the individual acquired or abandoned residency.

(III) The department shall promulgate a rule establishing and charging a fee for the issuance of proof of return filing. To be valid, the charge must be based on the actual cost of issuing the proof of return filing.

(c) It is unlawful for any members of the department of revenue and any deputy, agent, clerk, or other officer or employee engaged in any administration which is governed by this article to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm, or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Colorado, by any other state, or by the United States government or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Colorado, any other state, or by the United States government.

(d) The executive director and any agent, clerk, or employee of the department may:

(I) Disclose the name of a tax return preparer to the state board of accountancy in accordance with section 39-22-621 (2)(g.5) under the circumstances described in that section; and

(II) Disclose to a tax return preparer who is potentially subject to a penalty under section 39-22-621 (2)(g.5) the taxpayer name, account number, alleged understatement of liability, and applicable laws pertaining to the understatement giving rise to the potential imposition of the penalty.

(5) Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection of returns by the attorney general or other legal representatives of the state. Nothing in this section shall be construed to prohibit the release of information for the periodic publication of gasoline gallonage reports based on reports and returns filed under the gasoline tax or special fuel tax statutes and containing summaries of the quantities of liquid fuel marketed in Colorado, specifying the suppliers, distributors, and consumers of such gasoline or special fuel, and other information relating to gasoline tax or special fuel tax.

(6) Except as provided in subsections (5), (7), (8), (9), and (10) of this section, any person who violates any provision of subsection (4) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, and, if the offender is an officer or employee of the state, he shall be dismissed from office.

(7) Notwithstanding the provisions of this section, the executive director of the department of revenue shall supply any county assessor of the state of Colorado or his

representative with information relating to ad valorem tax assessments or valuation of property within his county and, in his discretion, may permit the commissioner of internal revenue of the United States, or the proper official of any state imposing a similar tax, or the authorized representative of either to inspect the reports and returns of taxes covered by this article.

(8) Notwithstanding the provisions of this section, the executive director of the department of revenue may provide the division of unemployment insurance with any information obtained pursuant to this section and, in connection therewith, may enter into an agreement with the division of unemployment insurance providing for payment of the costs incurred in connection with supplying the information and providing for periodic updating of the information supplied. Information thus supplied to the division of unemployment insurance is subject to the rules of confidentiality set forth in section 8-72-107 (1), C.R.S., to the same extent as information supplied by employers to the division of unemployment insurance.

(9) Notwithstanding the provisions of this section, the executive director of the department of revenue shall provide the department of human services with any information obtained pursuant to this section which is necessary to implement the procedure to offset state income tax refunds against past-due child support pursuant to section 26-13-111, C.R.S., and section 39-21-108.

(10) Notwithstanding the provisions of this section, the executive director of the department of revenue shall supply any county assessor of the state of Colorado or his representative with information obtained through audit of reports and returns covered by this article dealing with such taxpayers' ability to pay or to properly accrue any ad valorem tax collected by such county assessor.

(11) Notwithstanding the provisions of this section, the executive director of the department of revenue shall supply the department of corrections with any information obtained pursuant to this section which is necessary to implement the procedure to offset state sales tax refunds against restitution and costs pursuant to section 39-22-120 (10) or 39-22-2003 (9).

(12) (a) Notwithstanding the provisions of this section, on and after October 1, 2002, for the purpose of enabling the state treasurer to make income tax refunds pursuant to the provisions of the "Unclaimed Property Act", article 13 of title 38, C.R.S., the department shall supply the state treasurer with information as required by section 39-21-108 (5).

(b) Repealed.

(13) Notwithstanding the provisions of this section, the executive director shall provide the aeronautics division created in section 43-10-103, C.R.S., with information obtained from an audit of or disclosed in any document, report, or return filed in connection with any of the taxes collected pursuant to sections 39-26-104, 39-26-715 (1)(a)(I), 39-26-202, 39-27-102, and 39-27-112 on gasoline or fuel used in aviation. The department shall only release information regarding the portion of said tax revenues that will be credited to the aviation fund created in section 43-10-109, C.R.S. Any information provided to the division pursuant to this subsection (13) shall remain confidential, and all employees of the division shall be subject to the limitations set forth in subsection (4) of this section and the penalties contained in subsection (6) of this section.

(14) Notwithstanding the provisions of this section, the executive director of the department of revenue shall supply the state court administrator with taxpayer names, addresses, year of birth, if available, and other identifying information obtained pursuant to this section for the purpose of compiling the master juror list pursuant to section 13-71-107 (1), C.R.S. Those persons who receive taxpayer information under this subsection (14) shall be subject to the

provisions of this section, including limitations in subsection (4) of this section and penalties in subsection (6) of this section regarding disclosure of taxpayer information.

(15) Notwithstanding the provisions of this section, the executive director shall provide the legislative council staff with any information that the staff deems necessary to make the calculation required in section 39-29-109.5 (2). Any information provided to the staff shall remain confidential, and all staff employees shall be subject to the limitations set forth in subsection (4) of this section and the penalties contained in subsection (6) of this section.

(16) Repealed.

(17) Notwithstanding any other provision of this section, the executive director may require that such detailed information regarding a claim for a credit for the donation of a conservation easement in gross pursuant to section 39-22-522 and any appraisal submitted in support of the credit claimed be given to the division of conservation in the department of regulatory agencies and the conservation easement oversight commission created pursuant to section 12-61-1103 as the executive director determines is necessary in the performance of the department's functions relating to the credit. The executive director may provide copies of any appraisal and may file a complaint regarding any appraisal as authorized pursuant to section 39-22-522 (3.3). Notwithstanding part 2 of article 72 of title 24, in order to protect the confidential financial information of a taxpayer, the executive director shall deny the right to inspect any information or appraisal required in accordance with this subsection (17).

(17.5) (a) Notwithstanding the provisions of this section, the executive director may provide such detailed information pertinent to a claim for a credit for the donation of a conservation easement pursuant to section 39-22-522 to taxpayers, including donors and transferees, with cases involving common or related issues of fact or law. The executive director or the executive director's duly authorized agents may also provide such information to the parties to a consolidated administrative hearing pursuant to section 39-22-522.5 (5)(a) as necessary and appropriate for the efficient and fair resolution of disputes.

(b) Persons who receive taxpayer information pursuant to paragraph (a) of this subsection (17.5) shall be subject to the provisions of this section, including the limitations in subsection (4) of this section and the penalties in subsection (6) of this section regarding disclosure of taxpayer information.

(17.7) (a) Notwithstanding any other provision of this section, the executive director may require that such detailed information regarding a claim for a credit for the approved environmental remediation of contaminated property pursuant to section 39-22-526 and any documentation submitted in support of the credit claimed be given to the department of public health and environment as the executive director determines is necessary in the performance of the department's functions relating to the credit. Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the executive director shall deny the right to inspect any information or documentation required in accordance with the provisions of this subsection (17.7).

(b) Notwithstanding the provisions of this section, the executive director may provide such detailed information pertinent to a claim for a credit for the approved environmental remediation of contaminated property pursuant to section 39-22-526 to taxpayers, including transferees, with cases involving common or related issues of fact or law. Persons who receive taxpayer information pursuant to the provision of this subsection (17.7) shall be subject to the

provisions of this section, including the limitations in subsection (4) of this section and the penalties in subsection (6) of this section regarding disclosure of taxpayer information.

(18) Notwithstanding the provisions of this section, the executive director may provide to the department of local affairs information obtained pursuant to this section that is necessary to verify the information submitted to the department of local affairs pursuant to section 39-29-110 (1)(d)(I)(B) and that is sufficient to allow the department of local affairs to efficiently distribute moneys as required by section 39-29-110 (1)(c). The department shall not release any information to the department of local affairs that is not needed to verify information or distribute moneys. With the exception of taxpayer contact information, any information provided to the department of local affairs pursuant to this subsection (18) shall remain confidential, and all persons within the department of local affairs shall be subject to the limitations set forth in subsection (4) of this section and the penalties contained in subsection (6) of this section.

(19) Notwithstanding the provisions of this section, the executive director shall publish the lists of wholesalers as specified in section 39-28-115 and distributors as specified in section 39-28.5-112.

(20) Notwithstanding the provisions of this section, the executive director shall provide the Colorado office of economic development with information as required pursuant to section 24-48.5-112 (2)(d), C.R.S.

(21) Notwithstanding the provisions of this section, the executive director of the department of revenue shall provide information to other state agencies as required pursuant to section 39-21-108 (3).

(22) Notwithstanding the provisions of this section, the executive director shall supply the Colorado office of economic development with information relating to the actual amount of any enterprise zone tax credit claimed pursuant to article 30 of this title as well as information submitted to and aggregated by the department pursuant to section 39-30-111 (2) and (3) regarding the carryforward of such income tax credits. Any information provided to the office pursuant to this subsection (22) shall remain confidential, and all office employees shall be subject to the limitations set forth in subsection (4) of this section and the penalties contained in subsection (6) of this section. Nothing in this subsection (22) shall prevent the office from making aggregated data regarding enterprise zone tax credits available.

(23) Notwithstanding the provisions of this section:

(a) The executive director may provide such detailed taxpayer information pertinent to a claim for an income tax credit for the approved rehabilitation of a historic structure pursuant to section 39-22-514.5 to taxpayers, including owners and transferees, with cases involving common or related issues of fact or law. With the exception of taxpayer contact information, any information provided pursuant to this subsection (23) must remain confidential, and all persons are subject to the limitations specified in subsection (4) of this section and the penalties specified in subsection (6) of this section.

(b) The executive director may require that such detailed taxpayer information pertinent to a claim for an income tax credit for the approved rehabilitation of a historic structure pursuant to section 39-22-514.5 and any documentation in support of the credit claimed be given to the Colorado office of economic development and the state historical society of Colorado as the executive director determines is necessary in the performance of the department's functions relating to the credit. In resolving disputes regarding the credit, the executive director may disclose such detailed taxpayer information and consult with the Colorado office of economic

development and the state historical society of Colorado. Notwithstanding part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the executive director shall deny the right to inspect any information or documentation required in accordance with this subsection (23).

(24) Notwithstanding any other provision of this section, the executive director, after receiving from the property tax administrator a list of individuals who are claiming the property tax exemptions for qualifying seniors and disabled veterans allowed under part 2 of article 3 of this title, shall provide to the property tax administrator information pertaining to the listed individuals, including their names, social security numbers, marital and income tax filing status, and residency status, needed by the administrator to verify that the exemption is allowed only to applicants who satisfy legal requirements for claiming it. The administrator and the administrator's agents, clerks, and employees shall keep all information received from the executive director confidential, and any individual who fails to do so is guilty of a misdemeanor and subject to punishment as specified in subsection (6) of this section.

**Source: L. 65:** p. 1142, § 2. **C.R.S. 1963:** § 138-9-12. **L. 66:** p. 198, § 1. **L. 67:** p. 839, § 2. **L. 75:** (4)(a) amended, p. 1483, § 1, effective June 20. **L. 77:** (1)(b) amended, p. 842, § 7, effective July 1; (1)(a) amended, pp. 1768, 1854, §§ 8, 10, effective January 1, 1978. **L. 79:** (1)(a) and (5) amended, p. 1501, § 26, effective January 1, 1980. **L. 81:** (8) added, p. 488, § 16, effective July 1. **L. 82:** (6) amended, p. 629, § 42, effective April 2. **L. 85:** (9) added, p. 604, § 23, effective July 1. **L. 86:** (1)(a) and (6) amended and (10) added, pp. 1111, 937, §§ 9, 2, effective July 1. **L. 89:** (1)(a) amended, p. 1596, § 11, effective July 1, 1993. **L. 90:** (1)(a) amended, p. 1725, § 13, effective May 1; (1)(a) amended, p. 1725, § 14, effective July 1, 1993. **L. 94:** (9) amended, p. 3136, § 300, effective July 1. **L. 98, 2nd Ex. Sess.:** (11) added, p. 8, § 5, effective September 16. **L. 99:** (11) amended, p. 1318, § 6, effective August 4. **L. 2000:** (4)(b) amended, p. 1639, § 19, effective June 1. **L. 2001:** (1)(a) amended, p. 780, § 13, effective June 1; (12) added, p. 619, § 5, effective August 8. **L. 2002:** (13) added, p. 63, § 2, effective March 22; (14) added, p. 986, § 2, effective June 1; (1)(a) amended, p. 1362, § 17, effective July 1. **L. 2004:** (13) amended, p. 1044, § 14, effective July 1; (12) amended, p. 315, § 4, effective August 4. **L. 2007:** (15) added, p. 1407, § 1, effective May 30. **L. 2008:** (4)(d) added, p. 433, § 1, effective July 1; (17) added, p. 2315, § 7, effective July 1; (16) added, p. 954, § 4, effective January 1, 2009. **L. 2009:** (1)(a) amended, (HB 09-1053), ch. 159, p. 692, § 16, effective August 5; (18) added, (HB 09-1148), ch. 42, p. 162, § 1, effective August 5; (19) added, (HB 09-1173), ch. 372, p. 2016, § 2, effective August 5; (20) added, (HB 09-1105), ch. 378, p. 2059, § 3, effective September 1; (21) added, (HB 09-1137), ch. 308, p. 1663, § 15, effective September 1. **L. 2010:** (12)(b) repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; (22) added, (SB 10-162), ch. 395, p. 1879, § 4, effective January 1, 2012. **L. 2011:** (17.5) added, (HB 11-1300), ch. 193, p. 752, § 3, effective May 19; (22) amended, (HB 11-1303), ch. 264, p. 1175, § 92, effective January 1, 2012. **L. 2012:** (8) amended, (HB 12-1120), ch. 27, p. 113, § 32, effective June 1. **L. 2013:** (4)(b) amended, (SB 13-251), ch. 402, p. 2355, § 7, effective August 7. **L. 2014:** (23) added, (HB 14-1311), ch. 183, p. 681, § 2, effective May 14; (17) amended, (SB 14-117), ch. 385, p. 1919, § 7, effective July 1; (17.7) added, (SB 14-073), ch. 213, p. 798, § 3, effective August 6. **L. 2016:** (24) added, (HB 16-1175), ch. 332, p. 1349, § 6, effective June 10. **L. 2018:** (17) amended, (HB 18-1291), ch. 273, p. 1689, § 5, effective May 29.

**Editor's note:** (1) Amendments to subsection (1)(a) by House Bill 77-1076 and Senate Bill 77-144 were harmonized.

(2) The effective date for amendments to subsection (8) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

(3) Subsection (16)(b) provided for the repeal of subsection (16), effective July 1, 2015. (See L. 2008, p. 954.)

**Cross references:** For the legislative declaration contained in the 2009 act adding subsection (20), see section 1 of chapter 378, Session Laws of Colorado 2009.

**39-21-114. Methods of enforcing collection.** (1) The executive director of the department of revenue may issue a warrant executed either with his manual signature or with his facsimile signature in accordance with the "Uniform Facsimile Signature of Public Officials Act", article 55 of title 11, C.R.S., directed to any employee, agent, or representative of the department, sometimes in this section referred to collectively as "agent", commanding him to distrain, seize, and sell the personal property of the taxpayer, except such personal property as is exempted from execution and sale by any statute of this state, for the payment of the tax due, together with any penalties and interest accrued thereon and the cost of execution:

(a) When any deficiency in tax is not paid within thirty days from the mailing of notice and final determination therefor and no appeal from such deficiency has been docketed with any district court of this state within said period; or

(b) When any other amount of tax, penalty, or interest is not paid within ten days from the mailing of demand for payment thereof; or

(c) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in section 39-21-111.

(d) (Deleted by amendment, L. 2002, p. 1362, § 18, effective July 1, 2002.)

(2) (a) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be left with the owner or possessor, or at his usual place of abode with some member of his family over the age of eighteen years, or at his usual place of business with his stenographer, bookkeeper, or chief clerk, or, if the taxpayer is a corporation, shall be left with any officer, manager, general agent, or agent for process, with a note of the sum demanded and the time and place of sale; and shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper of general circulation within the county wherein distraint is made or, in lieu thereof and in the discretion of the executive director of the department of revenue, the agent shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, copies thereof to be posted in at least two other public places within said county. The time fixed for the sale shall not be less than ten days nor more than sixty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent if he deems it advisable but not for a time to exceed in all ninety days from the date first fixed for the sale. When any personal property is advertised for sale under distraint as aforesaid, the agent making the seizure shall proceed to sell such property

at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale, and, if the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent conducting the sale may declare the same to be purchased by him for the state. The property so purchased may be sold by the agent under such regulations as may be prescribed by the executive director. In any case of distraint for the payment of taxes, the goods, chattels, or effects so distrained shall be restored to the owner or possessor if, prior to the sale, the amount due is paid together with the fees and other charges or may be redeemed by any person holding a chattel paper or other evidence of right of possession.

(b) In all cases of sale, the agent making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent to make such sale and conclusive evidence of the regularity of his proceedings in making the sale and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and, where such property consists of certificates of stock in the possession of the agent, the certificate of sale shall be notice, when received, to any corporation, company, or association of said transfer, and said certificate of such sale shall be authority for such corporation, company, or association to record the transfer on its books and records; and, where the subject of sale is securities or other evidences of debt in the possession of the agent, the certificate of sale shall be good and valid evidence of title in the person holding the same, as against any other person. Any surplus remaining above the taxes, penalties, interest, costs, and expenses of making the seizure and of advertising the sale shall be returned to the owner or such other person having a legal right thereto, and, on demand, the executive director of the department of revenue shall render an account in writing of the sale.

(3) The agent of the executive director of the department of revenue to whom a warrant has been issued may file with the clerk of any district court within this state a copy of said warrant, and thereupon the clerk shall enter in the judgment docket, in appropriate columns, the name of the taxpayer mentioned in the warrant, the amount of the tax, or a portion thereof, together with interest and penalties for which the warrant is issued, and the date upon which such copy is filed and shall issue and deliver a transcript of such judgment to the agent without cost. Said transcript so issued and delivered may be filed with the clerk and recorder of any county, and, from the time of such filing, such judgment shall become a lien upon all the real property of the judgment debtor in such county owned by him at the time or which he may afterwards acquire until said lien expires. The lien shall continue for six years from the entry of the judgment unless the judgment is previously satisfied, all in the same manner as is provided by statute for making a judgment of a court of record a lien on real property. The judgment so entered shall have the same force and effect as other judgments of a court of record, and execution upon the real and personal property of the judgment debtor and redemption thereof may be had as provided by law with respect to other judgments. The executive director and his agent may cause execution to be had thereon by the proper sheriff or other officer, and such sheriff or other officer shall be entitled to the same fees for his services to be collected in the same manner as in the case of other executions.

(4) Any employee, agent, or representative of the executive director of the department of revenue to whom warrant has been issued may file a notice of lien in such form as the executive director may prescribe with the person in possession of any personal property or rights to property belonging to the taxpayer, and the filing of such notice of lien shall operate as a lien

upon such personal property or rights to property from the date of such filing. Any costs incurred by the person in possession of such property or rights to property by reason of compliance with said notice of lien shall be paid by the executive director and recovered by him out of any proceeds of sale of the property subject thereto. The executive director may release said lien as to any part or all of the property or rights to property covered by any such lien upon such terms as he may deem proper.

(5) Nothing in this section shall be construed to abrogate or diminish the rights of bona fide purchasers, lienors, or pledgees for value and without notice.

(6) The executive director of the department of revenue may be made a party defendant in an action at law or a suit in equity by any person aggrieved by the unlawful seizure or sale of his personal property, but only the state of Colorado shall be responsible for any final money judgment secured against said executive director; and said judgment, so secured, shall be paid or satisfied out of the tax refund provided by section 39-21-108 (2) upon presentation by the judgment creditor to the executive director of two certified copies of said final judgment.

(7) If any person, firm, or corporation liable for the payment of any tax covered by this article has repeatedly failed, neglected, or refused to pay the same within the time specified for such payment and the department has been required to issue distraint warrants to enforce the collection of any taxes due from such taxpayer, the executive director of the department of revenue is authorized to assess and collect the amount of such taxes due, together with all interest and penalties thereon provided by law, and also the following additional penalties for recurring distraint warrants:

(a) Three, four, or five consecutive distraint warrants issued: Fifteen percent of the delinquent taxes, interest, and penalties due or the sum of twenty-five dollars, whichever amount is greater;

(b) Six or more consecutive distraint warrants issued: Thirty percent of the delinquent taxes, interest, and penalties due or the sum of fifty dollars, whichever amount is greater.

(8) (a) In order to facilitate and expedite the collection of taxes more than six months overdue from a taxpayer who is not a resident of nor domiciled in the state of Colorado, the executive director may enter into a contract with a debt collection agency or an attorney for the collection of the taxes due from such taxpayer together with any penalties and interest accrued thereon.

(b) For purposes of paragraph (a) of this subsection (8), the executive director may contract with a debt collection agency or an attorney doing business in the state of Colorado or in any other state; except that, prior to entering into such contract with a debt collection agency, the executive director shall require that the debt collection agency file a bond in the amount of one hundred thousand dollars, which bond shall run to the state of Colorado for the purpose of guaranteeing compliance with the terms of the contract. Such bond shall be executed by the debt collection agency as principal and by a corporation, which is licensed to transact the business of fidelity and surety insurance, as surety.

(b.5) In order to facilitate and expedite the collection of taxes more than twelve months overdue from a taxpayer who is a resident of and domiciled in the state of Colorado, the executive director may enter into contracts with two or more debt collection agencies or attorneys for the collection of the taxes due from such taxpayer, together with any penalties and interest accrued thereon pursuant to the procurement provisions of article 103 of title 24, C.R.S. For the purposes of this paragraph (b.5), the executive director may contract with debt collection

agencies or attorneys doing business in the state of Colorado or in any other state; except that, prior to entering into such a contract with a debt collection agency, the executive director shall require that the debt collection agency file a bond in the amount of no less than one hundred thousand dollars and no more than five hundred thousand dollars, which bond shall run to the state of Colorado for the purpose of guaranteeing compliance with the terms of the contract. Such bond shall be executed by a debt collection agency as principal and by a corporation, which is licensed to transact the business of fidelity and surety insurance, as surety.

(c) (I) Each contract entered into with a debt collection agency or an attorney shall specify that fees for services rendered shall be based on the total amount of delinquent taxes, including accrued penalties and interest, that is actually collected; however, under no circumstance shall the fees for services rendered exceed twenty percent of the total amount of delinquent taxes, including accrued penalties and interest, that is actually collected. Any fees for services rendered shall be collected by the agency or attorney in addition to the total amount of delinquent taxes, including accrued penalties and interest, actually collected. Such fees for services rendered shall be shown to the taxpayer as a separate and distinct item, and, when added, such fees for services rendered shall be a debt from the taxpayer to the agent or attorney until paid and shall be recoverable at law in the same manner as other debts.

(II) If the department enters into a contract with a debt collection agency or an attorney to collect delinquent taxes, including accrued penalties and interest, and any fees for services rendered as specified in subparagraph (I) of this paragraph (c) and the contract specifies that the department is required to collect the fees for services rendered if the taxpayer chooses to pay the total amount owed directly to the department, the department shall become the agent for the agency or attorney and collect the agency's or attorney's fees for services rendered on behalf of the agency or attorney.

(III) If a taxpayer makes a payment toward the total amount a debt collection agency or attorney is attempting to collect, including delinquent taxes, accrued penalties and interest, and any fees for services rendered as specified in subparagraph (I) of this paragraph (c), such payment shall be allocated among delinquent taxes, accrued penalties and interest, and fees for services rendered according to the rules or procedures of the department and the contract between the department and the agency or attorney. The taxpayer may not designate the allocation of the payment.

(IV) No costs except court costs shall be reimbursed unless authorized in such contract. If a debt collection agency or an attorney files a civil suit to collect delinquent taxes, including accrued penalties and interest, suit shall be brought in the name of the executive director of the department of revenue of the state of Colorado. When suit is brought by an agency or attorney, court costs are reimbursable by the department to the agency or attorney, but fees for services of legal representation incurred by such agency or attorney on behalf of the department for the purpose of such suit shall not be reimbursable.

(d) A debt collection agency or an attorney shall, pursuant to contract, remit the total amount of delinquent taxes, including accrued penalties and interest, collected, less allowable reimbursable costs, to the executive director within thirty days from the date the moneys are collected from the taxpayer.

(e) The executive director may prescribe forms to be used in implementing this subsection (8).

(9) The executive director, under such terms and conditions as he deems advisable, may enter into a reciprocal agreement with an agency of another state for the collection of delinquent taxes owed by individuals who are nonresidents of the state of Colorado. Under such an agreement, the agency would agree to collect delinquent taxes owed to the state of Colorado by taxpayers who are residing or domiciled in that state. In return, the executive director would undertake the collection of taxes of the same or similar type owed to the other state by taxpayers residing or domiciled in the state of Colorado.

(10) (a) The executive director is authorized to enter into an agreement with the controller for the purpose of collecting delinquent state taxes through the vendor offset program established pursuant to section 24-30-202.4 (3.5)(a), C.R.S.

(b) Each agreement entered into with the controller shall specify that fees for services rendered shall be based on the total amount of delinquent taxes, including accrued penalties and interest, that is actually collected through the vendor offset program established pursuant to section 24-30-202.4 (3.5)(a), C.R.S.

(c) The controller shall, pursuant to agreement, remit the total amount actually offset from a vendor's account pursuant to section 24-30-202.4 (3.5)(a), less fees for services rendered and allowable costs, to the executive director within thirty days after the date the moneys are offset from the vendor's account.

**Source: L. 65:** p. 1143, § 2. **C.R.S. 1963:** § 138-9-13. **L. 76:** IP(1) amended, p. 776, § 1, effective April 3. **L. 77:** (1)(d) added and (7) R&RE, pp. 842, 1774, §§ 8, 1, effective July 1. **L. 84:** (8) and (9) added, p. 1015, § 1, effective April 12. **L. 87:** (8)(b), (8)(c), and (8)(d) amended and (8)(b.5) added, p. 1424, § 1, effective July 10. **L. 97:** (10) added, p. 945, § 5, effective July 1. **L. 2002:** (1)(c) and (1)(d) amended, p. 1362, § 18, effective July 1. **L. 2010:** (8)(c) and (8)(d) amended, (HB 10-1055), ch. 33, p. 124, § 1, effective March 22.

**39-21-115. Reciprocity with other states for collection of taxes provided.** (1) Any state of the United States or any political subdivision thereof has the right to sue in the courts of the state of Colorado to recover any lawfully imposed taxes which may be owing it, whether or not the taxes have been reduced to judgment, when the like right is accorded to the state of Colorado and its political subdivisions by that state through statutory authority or granted as a matter of comity. The appropriate officials of such other states are authorized to bring action in the courts of this state for the collection of such taxes. The certificate of the secretary of state of such other state that such officials have the authority to collect the taxes to be collected by such action shall be the conclusive proof of authority.

(2) The attorney general or an appropriate official of any political subdivision of the state of Colorado may bring suit in the courts of other states to collect taxes legally due this state or any political subdivision thereof.

(3) "Taxes" as used in this section includes:

(a) Any tax assessments lawfully made, whether they are based upon a return or other disclosure of the taxpayer, or upon the information and belief of the taxing authority, or otherwise;

(b) Any penalties lawfully imposed pursuant to a taxing statute; and

(c) Interest charges lawfully added to the tax liability which constitutes the subject of the action.

(4) Repealed.

**Source: L. 69:** p. 1144, § 1. **C.R.S. 1963:** § 138-9-18. **L. 2001:** (4) added, p. 780, § 14, effective June 1. **L. 2009:** (4) repealed, (HB 09-1053), ch. 159, p. 692, § 17, effective August 5.

**39-21-116. Closing agreements.** (1) For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, or other fiduciary relationships, corporations, limited liability companies, and partnerships in the process of dissolution or which have been dissolved, the executive director of the department of revenue may agree with the fiduciary or surviving directors or limited liability company members or partnership members upon the amount of taxes due from the decedent, or from the decedent's estate, the trust, receivership, or other fiduciary relationship or corporation or limited liability company or partnership, for any of his or its taxable periods, under the provisions of the taxes covered by this article; and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement relates. In addition, the executive director or any person authorized in writing by him may agree to enter into an agreement with any person, or the person or estate for whom he acts, relating to the liability of such person in respect of any tax within the provisions of this article for any prior taxable period. Any such agreement shall be final and conclusive; and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact, the case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and, in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(2) Except as provided in subsection (4) of this section, any personal representative of a decedent or of the estate of a decedent, or any trustee, receiver, or other person acting in a fiduciary capacity, or any director or officer of a corporation or any member of a partnership or limited liability company in the process of dissolution or which has been dissolved who distributes the estate or fund in his control without having first paid any taxes covered by this article due from such decedent, decedent's estate, trust estate, fund, corporation, partnership, or limited liability company shall be personally liable to the extent of the property so distributed for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership, corporation, partnership, or limited liability company covered by this article which may be assessed within the time limited by section 39-21-107.

(3) The distributee of a decedent's estate or of a trust estate or fund, the stockholder of any dissolved corporation, or the member of any dissolved partnership or limited liability company who receives any of the property of such decedent's estate, trust estate, fund, corporation, partnership, or limited liability company shall be liable, to the extent of the property so received, for any unpaid income tax of the decedent, decedent's estate, trust estate, fund, corporation, partnership, or limited liability company covered by this article which may be assessed within the time limited by section 39-21-107. Notice to such distributee, stockholder, partnership member, or limited liability company member shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

(4) (a) In case a tax covered by this article is due from a decedent, or from his estate, or from a corporation, limited liability company, or partnership, in order for personal liability under

subsection (2) of this section to remain in effect, determination of the tax due shall be made and notice and demand therefor shall issue within eighteen months after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent or by the corporation, limited liability company, or partnership, filed after the filing of its return; but a request under this provision shall not extend the period of limitation otherwise applicable.

(b) This subsection (4) shall not apply in the case of a corporation, limited liability company, or partnership unless:

(I) Such request notifies the executive director of the department of revenue that the corporation, limited liability company, or partnership contemplates dissolution at or before the expiration of such eighteen-month period;

(II) The dissolution is begun in good faith before the expiration of such eighteen-month period; and

(III) The dissolution is completed.

(c) Upon the expiration of said eighteen-month period, without determination being made and notice and demand being issued, the personal representative of the decedent, the directors and officers of the corporation, or the members of the limited liability company or partnership no longer will be liable under the provisions of subsection (2) of this section.

**Source: L. 65:** p. 1146, § 2. **C.R.S. 1963:** § 138-9-14. **L. 75:** (1) amended, p. 1485, § 1, effective July 1. **L. 77:** Entire section amended, p. 1776, § 1, effective July 1. **L. 90:** Entire section amended, p. 451, § 30, effective April 18.

**39-21-116.5. Penalties.** In addition to the personal liability provided in section 39-21-116, all officers of a corporation and all members of a partnership or a limited liability company required to collect, account for, and pay over any tax administered by this article who willfully fail to collect, account for, or pay over such tax or who willfully attempt in any manner to evade or defeat any such tax, or the payment thereof, are subject to, in addition to other penalties provided by law, a penalty equal to one hundred fifty percent of the total amount of the tax not collected, accounted for, paid over, or otherwise evaded. An officer of a corporation or a member of a partnership or a limited liability company shall be deemed to be subject to this section if the corporation, partnership, or limited liability company is subject to filing returns or paying taxes administered by this article and if such officers of corporations or members of partnerships or limited liability companies voluntarily or at the direction of their superiors assume the duties or responsibilities of complying with the provisions of any tax administered by this article on behalf of the corporation, partnership, or limited liability company.

**Source: L. 77:** Entire section amended, p. 1777, § 2, effective July 1. **L. 85:** Entire section amended, p. 1253, § 3, effective January 1, 1986. **L. 90:** Entire section amended, p. 452, § 31, effective April 18.

**39-21-117. Saving clause.** The provisions of section 13-52-108, C.R.S., shall not apply to methods of enforcing collections provided in this article.

**Source: L. 65:** p. 1150, § 4. **C.R.S. 1963:** § 138-9-16.

**39-21-118. Criminal penalties.** (1) Any person who willfully attempts in any manner to evade or defeat any tax administered by the department or the payment thereof, 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) 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 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.

(3) Any person required under any title administered by the department to pay any tax or estimated tax, or required under such title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such tax or estimated tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, in addition to other penalties provided by law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty thousand dollars, or one hundred thousand dollars in the case of a corporation, or imprisoned not more than one year, or both, together with the costs of prosecution.

(4) Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he or she does not believe to be true and correct as to every material matter, 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.

(5) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under any title administered by the department, or a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, 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.

**Source: L. 77:** Entire section added, p. 1773, § 2, effective July 1. **L. 85:** Entire section R&RE, p. 1253, § 4, effective January 1, 1986. **L. 89:** (1), (2), (4), and (5) amended, p. 852, § 144, effective July 1. **L. 2002:** (1), (2), (4), and (5) amended, p. 1556, § 348, effective October 1. **L. 2011:** (2) amended and (2.5) added, (HB 11-1265), ch. 228, p. 977, § 2, effective May 27.

**Editor's note:** Section 5 of chapter 228, Session Laws of Colorado 2011, provides that the act amending subsection (2) and adding subsection (2.5) applies to all claims for refunds of sales or use tax filed with the department of revenue before, on, or after May 27, 2011.

**Cross references:** (1) For civil penalties, see §§ 39-22-621, 39-23.5-110, 39-26-115, 39-26-118, 39-26-204, 39-27-105, 39-28-108, and 39-29-115.

(2) For the legislative declaration contained in the 2002 act amending subsections (1), (2), (4), and (5), see section 1 of chapter 318, Session Laws of Colorado 2002.

(3) For the legislative declaration in the 2011 act amending subsection (2) and adding subsection (2.5), see section 1 of chapter 228, Session Laws of Colorado 2011.

**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, C.R.S., to be filed with or any payment made to the executive director 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.

(b) Any such document which is mailed, but not received by the executive director, or is received and the cancellation mark is not legible, or is erroneous or omitted shall be deemed to have been filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mails on or before the date due for filing. In such cases of nonreceipt of a document by the executive director, the sender shall file a duplicate copy thereof within thirty days after written notification is given to the sender by the executive director of the failure to receive such document.

(2) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States postal service of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the executive director, to the state officer or state agency to which it was addressed, and the date of the registration, certification, or certificate shall be deemed to be the postmark date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

(4) The date of receipt of returns or other documents made, filed, signed, subscribed, verified, transmitted, received, or stored under the alternative methods provided in section 39-

21-120 shall be determined pursuant to rules and regulations adopted by the executive director pursuant to section 39-21-112 (1).

**Source: L. 77:** Entire section added, p. 1404, § 3, effective July 1. **L. 82:** (1)(a) amended, p. 559, § 3, effective April 6. **L. 93:** (4) added, p. 429, § 2, effective April 19. **L. 2001:** (1)(a) amended, p. 780, § 15, effective June 1. **L. 2009:** (1)(a) amended, (HB 09-1053), ch. 159, p. 693, § 18, effective August 5.

**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 articles 22 to 31 of this title, articles 46 and 47 of title 12, article 60 of title 34, and article 3 of title 42, 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 as may be appropriate to define and implement acceptable alternatives for each article within the scope of this section.

(2) Any return or other document signed, subscribed, or verified under any method adopted under subsection (1) of this section shall be treated for all purposes, including penalties for perjury, in the same manner as if verified by signature.

(3) To enable alternative filing of tax returns, the executive director is hereby authorized to contract for communications services with governmental or private contractors. Such contractors shall be subject to the provisions of section 39-21-113 (4), and each contract entered into pursuant to this subsection (3) shall set forth the provisions of section 39-21-113 (4) and (6).

**Source: L. 93:** Entire section added, p. 428, § 1, effective April 19. **L. 2001:** (1) amended, p. 781, § 16, effective June 1. **L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 693, § 19, effective August 5.

**39-21-121. Unclaimed property offset.** (1) (a) The department shall periodically certify to the state treasurer, acting as the administrator of unclaimed property under the "Unclaimed Property Act", article 13 of title 38, C.R.S., information regarding persons who are liable for the payment of taxes, penalties, or interest imposed pursuant to articles 22 to 33 of this title that are delinquent and in distraint.

(b) The information described in paragraph (a) of this subsection (1) shall include the social security number or federal employer identification number, whichever is applicable, of the person owing the delinquent taxes, penalties, or interest, the amount owed, and any other identifying information required by the state treasurer.

(2) (a) Prior to the payment of a claim for unclaimed property pursuant to section 38-13-117, C.R.S., the state treasurer shall compare the social security number or federal employer identification number, whichever is applicable, of the claimant with those certified by the department pursuant to subsection (1) of this section. If the name and associated social security number or federal employer identification number of a claimant appears among those certified, the state treasurer shall obtain the current address of the claimant, suspend the payment of the claim, and notify the department. The notification shall include the name, home address, and social security number or federal employer identification number of the claimant.

(b) After receipt of the notification from the state treasurer that a person claiming unclaimed property pursuant to section 38-13-117, C.R.S., appears among those certified by the department pursuant to subsection (1) of this section, the department shall notify the person, in writing, that the state intends to offset the person's delinquent state taxes, penalties, or interest liability against the person's claim for unclaimed property.

(3) Except as otherwise provided in section 38-13-117.3 (2), C.R.S., upon notification by the state treasurer of the amounts of unclaimed property held pursuant to section 38-13-117.7, C.R.S., the department shall apply such amounts to the person's delinquent state tax liability.

(4) The department shall promulgate rules pursuant to article 4 of title 24, C.R.S., establishing procedures to implement this section.

(5) For purposes of this section, "claim for unclaimed property" means a cash claim submitted in accordance with section 38-13-117, C.R.S.

**Source: L. 2005:** Entire section added, p. 701, § 6, effective August 8.

**39-21-122. Revenue impact of 2010 tax legislation - tracking by department. (Repealed)**

**Source: L. 2010:** Entire section added, (HB 10-1189), ch. 5, p. 38, § 2, effective February 24; entire section added, (HB 10-1190), ch. 6, p. 42, § 3, effective February 24; entire section added, (HB 10-1191), ch. 7, p. 47, § 4, effective February 24; entire section added, (HB 10-1193), ch. 9, p. 56, § 3, effective February 24; entire section added, (HB 10-1194), ch. 10, p. 59, § 2, effective February 24; entire section added, (HB 10-1195), ch. 11, p. 63, § 2, effective February 24; entire section added, (HB 10-1196), ch. 12, p. 66, § 3, effective February 24; entire section added, (HB 10-1199), ch. 13, p. 67, § 1, effective February 24; entire section added, (HB 10-1192), ch. 8, p. 52, § 5, effective March 1; entire section added, (HB 10-1197), ch. 175, p. 635, § 3, effective August 11. **L. 2011:** (7) repealed, (HB 11-1005), ch. 194, p. 755, § 2, effective July 1; (4)(b) added by revision, (HB 11-1293), ch. 299, pp. 1437, 1440, §§ 3, 6. **L. 2016:** Entire section repealed, (HB 16-1026), ch. 36, p. 91, § 1, effective March 22.

PART 2

TAX AMNESTY PROGRAM

**Editor's note:** This part 2 was repealed in 1987 and was subsequently recreated and reenacted in 2003, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**39-21-201. Program established.** (1) Notwithstanding any other provision of this title, title 29, title 32, or title 42, C.R.S., the executive director shall conduct a tax amnesty program for any taxpayer liable for the payment of any of the taxes specified in subsection (2) of this section for which a return was required to be filed before December 31, 2010, including returns for which the department has granted an extension beyond said date. The taxpayer amnesty

program shall be conducted from October 1, 2011, through November 15, 2011, and shall not extend to any other period.

(2) A taxpayer eligible to participate in the tax amnesty program shall include any taxpayer liable for payment of income taxes imposed pursuant to article 22 of this title, sales and use taxes imposed pursuant to article 26 of this title, gasoline and special fuel taxes imposed pursuant to part 1 of article 27 of this title, cigarette taxes imposed pursuant to article 28 of this title, taxes on tobacco products imposed pursuant to article 28.5 of this title, severance taxes imposed pursuant to article 29 of this title, county or municipal sales taxes collected by the executive director pursuant to article 2 of title 29, C.R.S., local marketing and promotion taxes collected by the department pursuant to section 29-25-112, C.R.S., county lodging taxes collected by the department pursuant to section 30-11-107.5, C.R.S., county rental taxes collected by the department pursuant to section 30-11-107.7, C.R.S., local improvement district sales taxes collected by the department pursuant to section 30-20-604.5, C.R.S., regional transportation district sales and use taxes imposed pursuant to article 9 of title 32, C.R.S., Denver metropolitan scientific and cultural facilities district sales and use taxes imposed pursuant to article 13 of title 32, C.R.S., metropolitan football stadium district sales and use taxes imposed pursuant to article 15 of title 32, C.R.S., and regional transportation authority sales and use taxes collected by the department pursuant to section 43-4-605 (1)(j), C.R.S.

(3) (a) Subject to the provisions of subsection (4) of this section, the tax amnesty program shall permit any taxpayer liable for payment of any taxes specified in subsection (2) of this section to report the amount of the taxes for which the taxpayer is liable and to pay the full amount of such taxes, including one-half of any interest due, as computed without the reduction pursuant to section 39-21-109 (1.5), on or before November 15, 2011, without the imposition of any fine or other civil or criminal penalty otherwise provided by law.

(b) Subject to the provisions of subsection (4) of this section, the tax amnesty program shall permit any taxpayer liable for payment of any taxes specified in subsection (2) of this section to report the amount of the taxes for which the taxpayer is liable and to sign an agreement to pay that shall be printed on the tax amnesty application form and deliver the application and signed agreement to pay to the department on or before November 15, 2011, without the imposition of any fine or other civil or criminal penalty otherwise provided by law. If the taxpayer fails to pay the full amount of taxes owed and all interest for which the taxpayer is liable pursuant to the terms of the tax amnesty agreement to pay, the waiver provision of this paragraph (b) is void.

(c) Payment of taxes pursuant to this article shall constitute a waiver of any right to file a claim for refund or an amended return for refund, or seek an administrative review, administrative hearing, or district court appeal pursuant to sections 39-21-103, 39-21-104, and 39-21-105.

(d) If a taxpayer fails to pay the full amount of the tax liability by November 15, 2011, or fails to sign and file the agreement to pay on the tax amnesty application by November 15, 2011, and remain in compliance with the agreement to pay, or commits willful fraud in filing pursuant to the terms of the tax amnesty program, the taxpayer shall be subject to civil or criminal penalty, or both.

(4) (a) A taxpayer liable for the payment of any taxes specified in subsection (2) of this section shall not be permitted to satisfy such liability through the tax amnesty program if a notice of deficiency for the liability has been mailed to the taxpayer before October 1, 2011.

(b) A taxpayer who is under investigation or being prosecuted for criminal or fraudulent activity as of October 1, 2011, for crimes related to any taxes collected by the department is not eligible to participate in the tax amnesty program, regardless of whether the taxes owed for which the taxpayer seeks amnesty are the taxes on which the investigation or prosecution is based.

(5) Notwithstanding the provisions of section 24-19.5-103, C.R.S., the department is authorized, at the discretion of the executive director, to accept department approved credit card payment for all payments due pursuant to this article and assess the taxpayer an amount equivalent to any service fee charged by the credit card company to the department. Such amount shall be collected by the department and used by the department for the purpose of paying such credit card fees.

(6) The executive director shall promulgate emergency rules necessary for the administration of this article in accordance with article 4 of title 24, C.R.S.

(6.5) The department may contract with one or more independent contractors to administer any part of the tax amnesty program on behalf of the department.

(7) The department shall conduct an advertising and publicity campaign concerning the tax amnesty program that shall include sufficient notice to potential participants that all information obtained pursuant to this article may be disclosed to the federal internal revenue service.

(8) The requirements of the Colorado "Procurement Code", articles 101 to 112 of title 24, C.R.S., shall not apply to services and products procured by the department pursuant to this section. The department shall award contracts for services and products in good faith and in a manner that encourages, to the extent practicable, competitive proposals. Offerors and potential offerors shall not have a right to protest, recover bid preparation costs, or pursue any other remedy provided by Colorado law for services and products procured by the department for purposes of this article.

**Source: L. 2003:** Entire part RC&RE, p. 504, § 1, effective March 5. **L. 2005:** (2) amended, p. 1069, § 16, effective January 1, 2006. **L. 2011:** (1), (2), (3)(a), (3)(b), (3)(d), (4), and (8) amended and (6.5) added, (SB 11-184), ch. 290, p. 1345, § 1, effective June 3.

**Cross references:** For the legislative declaration contained in the 2005 act amending subsection (2), see section 1 of chapter 269, Session Laws of Colorado 2005.

**39-21-202. Tax amnesty cash fund - creation - uses - repeal. (Repealed)**

**Source: L. 2011:** Entire section added, (SB 11-184), ch. 290, p. 1347, § 2, effective June 3.

**Editor's note:** Subsection (3) provided for the repeal of this section, effective January 1, 2016. (See L. 2011, p. 290.)

PART 3

TAX PROFILE AND EXPENDITURE REPORT

**39-21-301. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) The general assembly uses both direct expenditure of government funds and special or selective tax relief, which is known as a tax expenditure, to further various public policy goals;

(b) A tax expenditure differs from a direct spending program because a direct spending program continues only if funds are appropriated for each budget period, while the continuation of a tax expenditure generally does not require any legislative action;

(c) In addition, a direct spending program is generally detailed on the expenditure side of the budget, but a tax expenditure is simply included on the revenue side of the budget without itemization;

(d) A tax expenditure should receive a periodic and comprehensive review as to its total cost and effectiveness in achieving its objectives;

(e) It is important that state government be accountable and transparent in such a way that the general public can understand the value of tax expenditures given by the state; and

(f) In the past, the department of revenue has published a Colorado tax profile study, which included a substantial amount of useful information about state and local taxes.

(2) In enacting this part 3, it is the intent of the general assembly to create a means for providing the general assembly and the public with this vital tax-related information in a biennial tax profile and tax expenditure report.

(3) The general assembly must spend its resources wisely and it is beneficial to the state to know whether the tax expenditures that are in place are accomplishing the goals they were intended to meet. In enacting section 39-21-305, it is the intent of the general assembly that the state auditor's evaluation will provide the state with factual evidence of whether the state's tax expenditures achieve the objectives they are intended to achieve, including economic development, assisting beneficiaries, and promoting the health, safety, and welfare of the public, including the business environment. Additionally, it is the intent of the general assembly that the state auditor's evaluation:

(a) Compares the state's tax expenditures with other state's tax expenditures;

(b) Compares the effect of the state's tax expenditures on competition;

(c) Measures the effect of the state's tax expenditures on business and stakeholder needs;

(d) Determines whether the state's tax expenditures are administered efficiently and transparently with defined performance measures that support accountability; and

(e) Analyzes how the state's tax expenditures serve the public's interests by protecting taxpayer dollars and how the state's tax expenditures ensure cost-effectiveness.

**Source: L. 2011:** Entire part added, (SB 11-184), ch. 290, p. 1348, § 3, effective June 3. **L. 2016:** (3) added, (SB 16-203), ch. 211, p. 816, § 1, effective August 10.

**39-21-302. Definitions.** As used in this part 3, unless the context otherwise requires:

(1) "Colorado tax profile study 2001" means the "Colorado Tax Profile Study 2001 and Statistics of Income" prepared in May 2004 by the office of research and analysis in the department for the individual income tax returns tax year 2000 and the corporate income tax returns filed in fiscal year 2002.

(1.3) "Evaluation report" means the evaluation report that the state auditor is required to prepare pursuant to section 39-21-305.

(1.5) "State auditor" means the state auditor described in section 2-3-102, C.R.S.

(2) "Tax expenditure" means a tax provision that provides a gross or taxable income definition, deduction, exemption, credit, or rate for certain persons, types of income, transactions, or property that results in reduced tax revenue.

(3) "Tax profile and expenditure report" or "report" means the biennial report that the department is required to prepare pursuant to section 39-21-303 (1).

**Source: L. 2011:** Entire part added, (SB 11-184), ch. 290, p. 1348, § 3, effective June 3. **L. 2016:** (1.3) and (1.5) added, (SB 16-203), ch. 211, p. 817, § 2, effective August 10.

**39-21-303. Tax profile and expenditure report.** (1) On or before January 1, 2013, and January 1 of every odd-numbered year thereafter, the department shall prepare a tax profile and expenditure report for the state that includes the information set forth in subsection (2) of this section.

(2) (a) A tax profile and expenditure report must include the following information for each tax expenditure for any tax levied and collected by the state that is administered by the department:

(I) A citation of the statutory or other legal authority for the tax expenditure;

(II) The year that the tax expenditure was enacted;

(III) A description of the tax expenditure;

(IV) An estimate of the tax expenditure's effect on revenue for the most recently completed tax or calendar year, as appropriate, for which such information is available;

(V) The estimate required pursuant to subparagraph (IV) of this paragraph (a) for the tax expenditure that was included in each of the three prior tax profile and expenditure reports, if available; and

(VI) For a tax expenditure that is subject to the requirement set forth in section 39-21-304, a statement of the intended purpose of the tax expenditure.

(b) For the state income tax only, the tax profile and expenditure report must include the effect of the tax expenditure by income class. The provisions of this paragraph (b) shall only apply to the extent that the department is capable of accessing the necessary information from its data system.

(c) The tax profile and expenditure report must include the sum of all estimates required pursuant to subparagraphs (IV) and (V) of paragraph (a) of this subsection (2) for each tax.

(d) (I) To the extent not otherwise included in the tax profile and expenditure report pursuant to this subsection (2), the report must also include any information that was included in the Colorado tax profile study 2001 for any taxes covered by such study, which includes but is not limited to information related to:

(A) State and local tax collections;

(B) Revenues, taxes, incidence, and equity;

(C) The distribution of state and local taxes among households; and

(D) Colorado statistics of income.

(II) The information required pursuant to subparagraph (I) of this paragraph (d) shall be for the most recent tax year for which such information is available.

(3) (a) The department shall provide a copy of the report to all members of the general assembly in accordance with section 24-1-136 (9), C.R.S.

(b) No later than February 1, 2013, and February 1 of every odd-numbered year thereafter, the executive director, or his or her designee, shall present the tax profile and expenditure report to the finance committees of the house of representatives and the senate, or any successor committees.

(c) The department shall make the tax profile and expenditure report available for public inspection and shall publish the report on the department website.

(4) The reporting requirement set forth in this section is exempt from the provisions of section 24-1-136 (11), C.R.S., and the biennial reporting requirement shall remain in effect until changed by the general assembly acting by bill.

(5) To the extent that the tax profile and expenditure report must include the distribution of tax burden by income class pursuant to paragraphs (b) and (d) of subsection (2) of this section, the department shall use at least as many income classes as the Colorado statistics of income in the Colorado tax profile study 2001, and the highest income class shall be at least as high as in such Colorado statistics of income.

(6) Repealed.

**Source: L. 2011:** Entire part added, (SB 11-184), ch. 290, p. 1349, § 3, effective June 3. **L. 2014:** (6) repealed, (HB 14-1018), ch. 35, p. 190, § 1, effective August 6.

**39-21-304. Tax expenditure - statement of intended purpose.** On and after January 1, 2012, any bill that creates a new tax expenditure or extends an expiring tax expenditure shall include a legislative declaration stating the intended purpose of the tax expenditure.

**Source: L. 2011:** Entire part added, (SB 11-184), ch. 290, p. 1351, § 3, effective June 3.

**39-21-305. Tax expenditure - state auditor evaluation.** (1) (a) The state auditor shall evaluate the state's tax expenditures pursuant to the requirements in this section. In evaluating each tax expenditure, the state auditor shall consult with the intended beneficiaries or representatives of the intended beneficiaries of the tax expenditure. In addition, if the tax expenditure is intended to benefit a specific geographic region of the state, the state auditor shall consult with the intended beneficiaries in that specific geographic region of the state.

(b) The state auditor's tax expenditure evaluation must include the following:

(I) A summary description of the purpose, intent, or goal of the tax expenditure;

(II) The intended beneficiaries of the tax expenditure;

(III) Whether the tax expenditure is accomplishing its purpose, intent, or goal;

(IV) An explanation of the intended economic costs and benefits of the tax expenditure, with analyses to support the evaluation if they are available or reasonably possible;

(V) A comparison of the tax expenditure to other similar tax expenditures in other states;

(VI) Whether there are other tax expenditures, federal or state spending, or other government, nonprofit, commercial, volunteer, or philanthropic programs, to the extent the information is readily available, that have the same or similar purpose, intent, or goal as the tax expenditure, how those all are coordinated, and if coordination could be improved, or whether any redundancies can be eliminated;

(VII) If the evaluation of a particular tax expenditure's economic impact is made difficult because of data constraints, any suggestions for changes in administration or law that would facilitate such data collection; and

(VIII) An explanation of the performance measures used to determine the extent to which the tax expenditure is accomplishing its purpose, intent, or goal. The performance measures must be clear and relevant to the specific tax expenditure being evaluated, should be measurable and track actionable goals, and can be assessable and reportable over time. The state auditor shall consider the original legislative intent as well as subsequent developments in the state's economy, the national economy, and any changes in national, state, or local fiscal policies and conditions.

(c) To the extent it can be determined by the state auditor, the tax expenditure evaluation should also include the following:

(I) The extent to which the tax expenditure is a cost-effective use of resources compared to other options for using the same resources to address the same purpose, intent, or goal;

(II) An analysis of the tax expenditure's effect on competition and on business and stakeholder needs;

(III) Whether there are any opportunities to improve the effectiveness of the tax expenditure in meeting its purpose, intent, or goal; and

(IV) An analysis of the effect of the state tax policies connected to local taxing jurisdictions on the overall purpose, intent, or goal of the tax expenditure.

(d) No later than September 15, 2017, the state auditor shall develop and publish a multi-year schedule that lists all tax expenditures in law as of July 1, 2017, and indicates the year when the evaluation report will be published for each tax expenditure. In developing the multi-year schedule the state auditor shall endeavor to review the oldest tax expenditures first and shall endeavor to review a tax expenditure with a statutory repeal date so that the evaluation report for such tax expenditure is available during the legislative session held in the calendar year before the tax expenditure is scheduled to repeal. The state auditor may revise the schedule so long as the state auditor continues to provide for a systematic evaluation of all tax expenditures, including any new tax expenditures enacted by the general assembly since the publication of a previous evaluation report, and so long as each tax expenditure is reviewed at least once every five years.

(e) Notwithstanding section 2-3-103 (2), C.R.S., the state auditor shall present the results in the form of an evaluation report that the state auditor shall ensure is posted on the general assembly's website, and, notwithstanding section 24-1-136 (9), C.R.S., the state auditor shall deliver a copy of the report to the joint budget committee and the finance committees of the senate and the house of representatives. The state auditor shall ensure the first evaluation report is delivered and posted no later than September 14, 2018, and shall ensure subsequent evaluation reports are delivered and posted no later than September 15 of each year thereafter.

(2) (a) Any records, information, or documentation generated pursuant to this section are work papers of the state auditor and shall be open to public inspection only upon approval of a majority of members of the legislative audit committee created in section 2-3-101, C.R.S. Only the specific work papers that the legislative audit committee votes to approve for disclosure shall be open to public inspection. Work papers that have not been specifically approved for disclosure by a majority vote of the legislative audit committee shall remain confidential. Under

no circumstances shall the work papers be open to public inspection prior to a completed report being posted as specified in paragraph (e) of subsection (1) of this section.

(b) The department of revenue must provide any requested information, analysis, or data, if available and under the control of the department, as requested by the state auditor; except that, if the request includes confidential information, such information must remain confidential in the hands of the state auditor, and the state auditor is subject to the same limitations specified in section 39-21-113.

(c) The state auditor's authority set forth in section 2-3-107, C.R.S., applies to the state auditor's evaluation set forth in this section.

**Source: L. 2016:** Entire section added, (SB 16-203), ch. 211, p. 817, § 3, effective August 10.

## Income Tax

## ARTICLE 22

Income Tax

**Editor's note:** This article was numbered as article 1 of chapter 138, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1964, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1964, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

**Cross references:** For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution; for the use of a method in lieu of any required oath or affirmation by a person making any return or any application for refund or protest pursuant to this article, see § 24-12-108.

**Law reviews:** For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

PART 1

GENERAL

**Editor's note:** This article was repealed and reenacted in 1964, and this part 1 was subsequently repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading. Former C.R.S. section numbers prior to 1987 are shown in editor's notes following those sections that were relocated.

**39-22-101. Short title.** This article shall be known and may be cited as the "Colorado Income Tax Act of 1987".

**Source: L. 87:** Entire part R&RE, p. 1426, § 2, effective June 22.

**Editor's note:** This section is similar to former § 39-22-101 as it existed prior to 1987.

**39-22-102. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that the purposes of the "Colorado Income Tax Act of 1987" include, but are not limited to:

(a) Simplifying the preparation of state income tax returns;

(b) Aiding in the interpretation of the state income tax law through increased use of federal judicial and administrative determinations and precedents;

(c) Improving the enforcement of the state income tax laws through better use of information obtained from federal income tax audits.

**Source: L. 87:** Entire part R&RE, p. 1426, § 2, effective June 22.

**Editor's note:** This section is similar to former § 39-22-101 as it existed prior to 1987.

**39-22-103. Definitions - construction of terms.** As used in this article, unless the context otherwise requires:

(1) "Assessment" means the filing of the return as to the tax, penalty, and interest shown to be due thereon and, as to any other tax imposed under this article, or any deficiency in tax, or any penalty or interest, means the mailing or issuance of a notice and demand for payment.

(2) "Basic date" means July 1, 1937.

(2.5) "C corporation" means any organization taxed as a corporation for federal income tax purposes.

(3) "Domestic corporation" means a corporation organized under the laws of this state.

(4) "Executive director" means the executive director of the department of revenue.

(5) "Foreign corporation" means a corporation other than a domestic corporation.

(5.3) "Internal revenue code" means the provisions of the federal "Internal Revenue Code of 1986", as amended, and other provisions of the laws of the United States relating to federal income taxes, as the same may become effective at any time or from time to time, for the taxable year.

(5.5) (Deleted by amendment, L. 95, p. 816, § 40, effective May 24, 1995.)

(5.6) "Partnership" means any group or organization that is a partnership, as defined by section 761 (a) of the internal revenue code, and is required to file a return under section 6031 (a) of the internal revenue code.

(5.8) "Qualified higher deductible health plan" has the same meaning as that set forth in section 39-22-504.6 (3.5).

(6) "Resident beneficiary" means a beneficiary of an estate or trust, which beneficiary is a resident individual, a domestic corporation, a resident estate, a resident trust, or a partnership or a limited liability company organized under the laws of this state. "Nonresident beneficiary" means a beneficiary other than a resident beneficiary.

(7) "Resident estate" means the estate of a deceased person which is administered in this state in a proceeding other than an ancillary proceeding. "Nonresident estate" means an estate other than a resident estate.

(8) (a) "Resident individual" means a natural person who is domiciled in this state and a natural person who maintains a permanent place of abode within this state and who spends in the aggregate more than six months of the taxable year within this state.

(b) (I) "Resident individual" does not include, for income tax years commencing on or after January 1, 2001, any individual domiciled in this state who:

(A) Is absent from the state for a period of at least three hundred five days of the tax year and is stationed outside of the United States of America for active military duty; and

(B) Elects not to file a Colorado individual income tax return as a resident individual.

(II) "Resident individual" does not include the spouse of an individual described in subparagraph (I) of this paragraph (b) who accompanies such individual for the period of such individual's absence and who elects not to file a tax return as a resident individual.

(c) A "nonresident individual" means an individual other than a resident individual and an individual described in paragraph (b) of this subsection (8) who elects treatment as a nonresident individual.

(8.5) (Deleted by amendment, L. 95, p. 816, § 40, effective May 24, 1995.)

(9) "Resident partner" means a partner who is a resident individual, a domestic corporation, a resident estate, a resident trust, or a partnership or a limited liability company organized under the laws of this state. "Nonresident partner" means a partner other than a resident partner.

(10) "Resident trust" means a trust which is administered in this state. "Nonresident trust" means a trust other than a resident trust.

(10.5) "S corporation" means a corporation for which a valid election is in effect pursuant to section 1362 (a) of the internal revenue code.

(10.8) "Withholding certificate" means a document, which may be in paper or electronic form, utilized by an employee to instruct his or her employer to withhold taxes at a specific rate.

(11) Any term used in this article, except as otherwise expressly provided or clearly appearing from the context, shall have the same meaning as when used in a comparable context in the internal revenue code, as amended, in effect for the taxable period. Due consideration shall be given in the interpretation of this article to applicable sections of the internal revenue code in effect from time to time and to federal rulings and regulations interpreting such sections if such statute, rulings, and regulations do not conflict with the provisions of this article.

**Source: L. 87:** Entire part R&RE, p. 1426, § 2, effective June 22. **L. 90:** (5.5) and (8.5) added and (6) and (9) amended, p. 453, § 32, effective April 18. **L. 92:** (2.5), (5.3), and (10.5) added and (11) amended, p. 2265, § 4, effective April 16. **L. 94:** (5.8) added, p. 2839, § 1, effective January 1, 1995. **L. 95:** (2.5), (5.5), and (8.5) amended, p. 816, § 40, effective May 24. **L. 96:** (5.6) added, p. 335, § 1, effective April 16. **L. 2000:** (8) amended, p. 1298, § 1, effective January 1, 2001. **L. 2002:** (10.8) added, p. 530, § 1, effective August 7.

**Editor's note:** This section is similar to former § 39-22-103 as it existed prior to 1987.

**Cross references:** For the federal "Internal Revenue Code of 1986", see title 26 of the United States Code.

**39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - legislative declaration - definitions - repeal.** (1) Subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 1987, but prior to January 1, 1999, a tax of five percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(1.5) Subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 1999, but prior to January 1, 2000, a tax of four and three-quarters percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(1.7) Except as otherwise provided in section 39-22-627, subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 2000, a tax of four and sixty-three one hundredths percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(2) Prior to the application of the rate of tax prescribed in subsection (1), (1.5), or (1.7) of this section, the federal taxable income shall be modified as provided in subsections (3) and (4) of this section.

(3) There shall be added to the federal taxable income:

(a) Any federal net operating loss deduction carried over from a taxable year beginning prior to January 1, 1987;

(b) An amount equal to the interest income which is excluded from gross income for federal income tax purposes pursuant to section 103 (a) of the internal revenue code less amortization of premium on obligations of any state or any political subdivision thereof, other than interest income on obligations of the state of Colorado or any political subdivision thereof which are issued on or after May 1, 1980, and other than interest income on obligations of the state of Colorado or any political subdivision thereof which were issued prior to May 1, 1980, to the extent that such interest is specifically exempt from income taxation under the laws of the state of Colorado authorizing the issuance of such obligations. The amount of such interest shall be the net amount after reduction by the amount of the deductions related thereto which are required by the internal revenue code to be allocated to such classes of interest.

(c) Repealed.

(d) (I) For income tax years beginning on and after January 1, 1992, for those taxpayers who deduct state income taxes pursuant to section 164 (a)(3) of the internal revenue code, an amount equal to the deduction claimed; except that such amount shall be limited to the amount required to reduce the federal itemized amount computed under section 161 of the internal revenue code to the amount of the standard deduction allowable under section 63 (c) of the internal revenue code.

(II) For income tax years beginning on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who deduct state income taxes pursuant to section 164 (a)(3) of the internal revenue code, an amount equal to the deduction claimed; except that such amount shall be limited to the amount required to reduce the federal itemized amount computed under section 161 of the internal revenue code to an amount equal to double the amount of the basic standard deduction allowable under section 63 (c)(2) of

the internal revenue code in the case of an individual federal return for an individual who is not the head of a household plus any additional standard deduction allowable under section 63 (c)(3) of the internal revenue code, if applicable.

(e) (I) Any expenses incurred by a taxpayer with respect to expenditures made at, or payments made to, a club licensed pursuant to section 44-3-418 that has a policy to restrict membership on the basis of sex, sexual orientation, marital status, race, creed, religion, color, ancestry, or national origin. Any such club shall provide on each receipt furnished to a taxpayer a printed statement as follows:

The expenditures covered by this receipt are

nondeductible for state income tax purposes.

(II) The general assembly finds, determines, and declares that the people of the state of Colorado desire to promote and achieve tax equity and fairness among all the state's citizens and further desire to conform to the public policy of nondiscrimination. The general assembly further declares that the provisions of this paragraph (e) are enacted for these reasons and for no other purpose.

(f) Any amount withdrawn from a medical savings account pursuant to section 39-22-504.7 (3)(b)(II) or (3)(b)(III);

(g) For the income tax years commencing on or after January 1, 2000, an amount equal to the charitable contribution deduction allowed by section 170 of the internal revenue code to the extent such deduction includes a contribution of real property to a charitable organization for a conservation purpose for which an income tax credit is claimed pursuant to section 39-22-522;

(h) Repealed.

(i) An amount equal to a business expense for labor services that is deducted pursuant to section 162 (a)(1) of the internal revenue code but that is prohibited from being claimed as a deductible business expense for state income tax purposes pursuant to section 39-22-529;

(j) For income tax years commencing on or after January 1, 2015, but before January 1, 2020, an amount equal to the charitable contribution deduction allowed by section 170 of the internal revenue code to the extent such deduction includes a food contribution during the tax year to a hunger-relief charitable organization for which an income tax credit is claimed pursuant to section 39-22-536;

(k) The amount recaptured in accordance with section 39-22-4705 (2).

(4) There shall be subtracted from federal taxable income:

(a) An amount equal to any interest income on obligations of the United States and its possessions to the extent included in federal taxable income;

(a.5) For income tax years commencing on and after January 1, 1990, an amount equal to any interest income earned on Colorado investment deposits issued by qualified financial institutions pursuant to article 37 of title 11, C.R.S., as that article existed prior to its repeal on July 1, 2004, to the extent included in federal taxable income, but not to exceed twenty thousand dollars in any taxable year;

(b) To the extent included in federal adjusted gross income, the portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Colorado income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis;

(c) The amount necessary to prevent the taxation under this article of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a prior tax year, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(d) The net operating loss deduction allowed under section 39-22-504 to the extent carried over from a taxable year beginning prior to January 1, 1987;

(e) The amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Colorado income tax purposes;

(f) (I) For income tax years commencing on or after January 1, 1989, amounts received as pensions or annuities from any source by any individual who is fifty-five years of age or older at the close of the taxable year, to the extent included in federal adjusted gross income;

(II) For income tax years commencing on or after January 1, 1989, amounts received as pensions or annuities from any source by any individual who is less than fifty-five years of age at the close of the taxable year if such benefits are received because of the death of the person originally entitled to receive such benefits and only to the extent such benefits are included in federal adjusted gross income;

(III) For income tax years commencing on or after January 1, 1989, amounts subtracted under this paragraph (f) shall not exceed twenty thousand dollars per tax year; except that, for income tax years commencing on or after January 1, 2000, amounts subtracted under subparagraph (I) of this paragraph (f) shall not exceed twenty-four thousand dollars per tax year for any individual who is sixty-five years of age or older at the close of the taxable year. For the purpose of determining the exclusion allowed by this paragraph (f), in the case of a joint return, social security benefits included in federal taxable income shall be apportioned in a ratio of the gross social security benefits of each taxpayer to the total gross social security benefits of both taxpayers. For the purposes of this paragraph (f), "pensions and annuities" means retirement benefits that are periodic payments attributable to personal services performed by an individual prior to his or her retirement from employment and that arise from an employer-employee relationship, from service in the uniformed services of the United States, or from contributions to a retirement plan which are deductible for federal income tax purposes. "Pensions and annuities" includes distributions from individual retirement arrangements and self-employed retirement accounts to the extent that such distributions are not deemed to be premature distributions for federal income tax purposes, amounts received from fully matured privately purchased annuities, social security benefits, and amounts paid from any such sources by reason of permanent disability or death of the person entitled to receive the benefits.

(g) Repealed.

(h) Any amount contributed to a medical savings account by an employer pursuant to section 39-22-504.7 (2)(e), to the extent such amount is not claimed as a deduction on the taxpayer's federal tax return;

(i) (I) For income tax years commencing on or after January 1, 1998, an amount equal to the portion attributable to interest and other income of a distribution under a qualified state tuition program that is distributed for the purpose of meeting qualified higher education expenses of a designated beneficiary, to the extent such amount is included in federal taxable income;

(II) For income tax years commencing on or after January 1, 2001, an amount equal to all payments or contributions made during the taxable year under an advance payment contract, to a savings trust account, or otherwise in connection with a qualified state tuition program established by collegeinvest created in section 23-3.1-203, C.R.S., or to a qualified state tuition program that is affiliated with an educational institution in the state and that is established and maintained pursuant to section 529 of the internal revenue code or any successor section;

(III) No exclusion shall be allowed pursuant to this paragraph (i) to the extent that such payments or contributions are excluded from the taxpayer's federal taxable income for the taxable year. Any exclusion taken under this paragraph (i) shall be subject to recapture in the taxable year or years in which any distribution, refund, or any other withdrawal is made pursuant to an advance payment contract, from a savings trust account, or otherwise in connection with a qualified state tuition program for any reason other than:

(A) To pay qualified higher education expenses;

(B) As a result of the beneficiary's death or disability; or

(C) As a result of receiving a scholarship and as long as the aggregate amount of distributions, refunds, or withdrawals made pursuant to this sub-subparagraph (C) do not exceed the amount of the scholarship provided during such tax year.

(IV) As used in this paragraph (i), "designated beneficiary" means a designated beneficiary as defined in section 529 (e)(1) of the internal revenue code, "qualified state tuition program" means a qualified state tuition program as defined in section 529 (b) of the internal revenue code, and "qualified higher education expenses" means qualified higher education expenses as defined in section 529 (e)(3) of the internal revenue code.

(j) For income tax years commencing on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who claim the basic standard deduction allowable under section 63 (c)(2) of the internal revenue code, an amount equal to the difference between an amount equal to double the amount of the basic standard deduction allowable under section 63 (c)(2) of the internal revenue code in the case of an individual federal return for an individual who is not the head of a household and the amount of the basic standard deduction allowable under section 63 (c)(2) of the internal revenue code in the case of a joint federal return;

(k) For income tax years commencing on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who claim itemized deductions in an amount that is greater than the amount of the basic standard deduction allowable under section 63 (c)(2) of the internal revenue code plus any additional standard deduction allowable under section 63 (c)(3) of the internal revenue code, if applicable, in the case of a joint federal return, but less than double the amount of the basic standard deduction allowable under section 63 (c)(2) of the internal revenue code plus any additional standard deduction allowable under section 63 (c)(3) of the internal revenue code, if applicable, in the case of an individual federal return for an individual who is not the head of a household, an amount equal to the difference between an amount equal to double the amount of such basic standard deduction allowable in the case of an individual federal return for an individual who is not the head of a household plus any additional standard deduction allowable to either individual and the amount of the itemized deductions claimed by the resident individuals;

(l) and (l.5) Repealed.

(m) (I) Except as provided in subparagraph (VII) 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.

(II) Any state income tax modification allowed pursuant to the provisions of subparagraph (I) of this paragraph (m) shall be published in rules promulgated by the executive director in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms for that taxable year.

(III) to (VI) Repealed.

(VII) For any income tax year commencing on or after January 1, 2015, but before January 1, 2020, any individual who claims an income tax credit allowed in section 39-22-536 may not claim the deduction set forth in this paragraph (m) for the food contribution to the hunger-relief charitable organization.

(n) Repealed.

(n.5) (I) (A) For income tax years commencing on or after January 1, 2014, but prior to January 1, 2017, and for income tax years commencing on or after January 1, 2020, but prior to January 1, 2025, an amount equal to fifty percent of a landowner's costs incurred in performing wildfire mitigation measures in that income tax year on his or her property located within the state; except that the amount of the deduction claimed in an income tax year shall not exceed two thousand five hundred dollars or the total amount of the landowner's federal taxable income for the income tax year for which the deduction is claimed, whichever is less.

(A.5) For income tax years commencing on or after January 1, 2017, but prior to January 1, 2020, an amount equal to one hundred percent of a landowner's costs incurred in performing wildfire mitigation measures in that income tax year on his or her property located within the state; except that the amount of the deduction claimed in an income tax year shall not exceed two thousand five hundred dollars or the total amount of the landowner's federal taxable income for the income tax year for which the deduction is claimed, whichever is less.

(B) In the case of two taxpayers filing a joint return, the amount subtracted from federal taxable income shall not exceed two thousand five hundred dollars in any taxable year. In the case of two taxpayers who may legally file a joint return but actually file separate returns, only one of the taxpayers may claim the deduction specified in this paragraph (n.5).

(C) In the case of real property owned as tenants in common, the deduction allowed pursuant to this paragraph (n.5) shall only be allowed to one of the individuals of the ownership group.

(II) A landowner who performs wildfire mitigation measures on his or her real property located within the state may claim the deduction authorized by this paragraph (n.5) if the wildfire mitigation measures are performed in a wildland-urban interface area.

(III) For purposes of this paragraph (n.5):

(A) "Colorado state forest service" means the Colorado state forest service identified in section 23-31-302, C.R.S.

(B) "Costs" means any actual out-of-pocket expense incurred and paid by the landowner, documented by receipt, for performing wildfire mitigation measures. "Costs" do not include any inspection or certification fees, in-kind contributions, donations, incentives, or cost sharing associated with performing wildfire mitigation measures. "Costs" do not include expenses paid by the landowner from any grants awarded to the landowner for performing wildfire mitigation measures.

(C) "Landowner" means any owner of record of private land located within the state, including any easement, right-of-way, or estate in the land, and includes the heirs, successors, and assigns of such land, and shall not include any partnership, S corporation, or other similar entity that owns private land as an entity.

(D) "Wildfire mitigation measures" means the creation of a defensible space around structures; the establishment of fuel breaks; the thinning of woody vegetation for the primary purpose of reducing risk to structures from wildland fire; or the secondary treatment of woody fuels by lopping and scattering, piling, chipping, removing from the site, or prescribed burning; so long as such activities meet or exceed any Colorado state forest service standards or any other applicable state rules.

(IV) This paragraph (n.5) is repealed, effective January 1, 2026.

(o) For income tax years commencing on or after January 1, 2011, an amount equal to any amount received as employer matching contributions to an adult learner's individual trust account or savings account made pursuant to part 3 of article 3.1 of title 23, C.R.S.;

(p) For income tax years commencing on or after January 1, 2014, any amount received as a grant from the military family relief fund created in section 28-3-1502, C.R.S., to the extent that it is included in federal taxable income;

(q) For income tax years commencing on or after January 1, 2013, an amount equal to any amount received as compensation for an exonerated person pursuant to section 13-65-103, C.R.S., on or after January 1, 2014, except as to those portions of the judgment awarded as attorney fees for bringing a claim under such section;

(r) For income tax years commencing on or after January 1, 2014, if a taxpayer is licensed under the "Colorado Medical Marijuana Code", article 11 of title 44, an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by section 280E of the internal revenue code because marijuana is a controlled substance under federal law;

(s) For income tax years commencing on or after January 1, 2014, if a taxpayer is licensed under the "Colorado Retail Marijuana Code", article 12 of title 44, an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by section 280E of the federal internal revenue code because marijuana is a controlled substance under federal law;

(t) (I) For income tax years commencing on or after January 1, 2015, compensation that would be subject to withholding under section 39-22-604, received by a nonresident individual for performing disaster-related work in the state during a disaster period.

(II) For purposes of this paragraph (t):

(A) "Declared state disaster emergency" means a disaster or emergency event for which the governor has issued an executive order declaring a disaster emergency.

(B) "Disaster period" means a period that begins with the day of the governor's executive order declaring a state disaster emergency and that extends for a period of sixty calendar days after the expiration of the governor's executive order.

(C) "Disaster-related work" means repairing, renovating, installing, building, or rendering services that relate to infrastructure that has been damaged, impaired, or destroyed by a declared state disaster emergency or providing emergency medical, firefighting, law enforcement, hazardous material, search and rescue, or other emergency service related to a declared state disaster emergency.

(D) "Infrastructure" means property and equipment owned or used by communications networks, gas and electric utilities, water pipelines, and public roads and bridges and related support facilities that service multiple customers or citizens, including but not limited to real and personal property such as buildings, offices, lines, poles, pipes, structures, and equipment.

(u) For income tax years commencing on or after January 1, 2016, an amount equal to any compensation received for active duty service in the armed forces of the United States by an individual who has reacquired residency in the state pursuant to section 39-22-110.5, to the extent that the compensation is included in federal taxable income;

(v) (I) The general assembly hereby finds and declares that:

(A) The state is seeing a continued trend of aging farmers and ranchers;

(B) The current average age of a family farm or ranch operator in Colorado is fifty-nine;

(C) There is a national and local focus on the benefits of local foods, and at the same time a new generation of farmer is emerging, but the beginning farmers or ranchers are having trouble finding land to lease; and

(D) The income tax deduction allowed in this paragraph (v) is intended to be an incentive for aging farmers or ranchers to lease their agricultural assets to beginning farmers or ranchers in order to give the beginners a chance to get started in the industry.

(II) For income tax years beginning on or after January 1, 2017, but before January 1, 2020, if a qualified taxpayer enters into a qualified lease with an eligible beginning farmer or rancher, an amount specified in a deduction certificate issued by the Colorado agricultural development authority that is equal to twenty percent of the lease payments received from an eligible beginning farmer or rancher as specified in the qualified lease, not to exceed the qualified taxpayer's income and not to exceed the amount specified in subparagraph (III) of this paragraph (v).

(III) The Colorado agricultural development authority may issue more than one deduction certificate to each qualified taxpayer if such qualified taxpayer enters into more than one qualified lease with more than one eligible beginning farmer or rancher; except that the total amount specified in all deduction certificates issued to a qualified taxpayer may not exceed twenty-five thousand dollars per income tax year for a maximum of three income tax years, and except that the Colorado agricultural development authority shall not issue more than the number of deduction certificates per income tax year set forth in section 35-75-107 (1)(u), C.R.S.

(IV) For purposes of this paragraph (v):

(A) "Agricultural asset" means land, crops, livestock and livestock facilities, farm equipment and machinery, grain storage, or irrigation equipment.

(B) "Colorado agricultural development authority" means the Colorado agricultural development authority created in section 35-75-104, C.R.S.

(C) "Deduction certificate" means a certificate issued by the Colorado agricultural development authority certifying that a qualified taxpayer qualifies for the income tax deduction authorized in this section and specifying the amount of the deduction allowed.

(D) "Eligible beginning farmer or rancher" means a farmer or rancher residing in the state who has a net worth of less than two million dollars, will provide the majority of the daily physical labor and management on the qualified taxpayer's agricultural asset or will use the qualified taxpayer's agricultural asset the majority of the time, has plans to farm or ranch full-time, has not been engaged in farming or ranching for more than ten years, has farming or ranching experience or education, and has participated in a financial management educational program approved by the Colorado agricultural development authority.

(E) "Qualified lease" means a lease entered into between a qualified taxpayer and an eligible beginning farmer or rancher for the qualified taxpayer's agricultural asset that is approved by the Colorado agricultural development authority and has a duration of at least three years.

(F) "Qualified taxpayer" means a taxpayer, including a partnership, S corporation, or other similar pass-through entity, who owns an agricultural asset located in the state.

(V) To claim the deduction allowed in this paragraph (v), the qualified taxpayer shall attach a copy of the deduction certificate issued by the Colorado agricultural development authority to the taxpayer's return. No tax deduction is allowed under this paragraph (v) unless the taxpayer provides the copy of the deduction certificate.

(VI) The Colorado agricultural development authority shall, in a sufficiently timely manner to allow the department of revenue to process returns claiming the deduction allowed by this section, provide the department of revenue with an electronic report of the qualified taxpayers receiving a deduction certificate as allowed in this section for the preceding calendar year that includes the following information:

(A) The qualified taxpayer's name;

(B) The qualified taxpayer's social security number; and

(C) The amount of the deduction allowed in this section.

(VII) This paragraph (v) is repealed, effective December 31, 2023.

(w) (I) For income tax years commencing on or after January 1, 2017, to the extent included in federal taxable income and as permitted under part 47 of this article, an amount equal to any interest and other income earned on the investment of the money in a first-time home buyer savings account during the taxable year.

(II) Any exclusion taken under subparagraph (I) of this paragraph (w) is subject to recapture under paragraph (k) of subsection (3) of this section as specified in section 39-22-4705.

(x) (I) Except as otherwise provided in subsection (4)(x)(II) of this section, for income tax years commencing on or after January 1, 2018, all income earned, to the extent included in federal taxable income except as otherwise provided in subsection (4)(x)(IV) of this section, as a direct result of winning a medal while competing for the United States of America at the Olympic games.

(II) The subtraction provided for in subsection (4)(x)(I) of this section does not apply to a taxpayer whose federal adjusted gross income for the income tax year in which the taxpayer has income earned as a direct result of winning a medal, as determined prior to application of

this subsection (4)(x), exceeds one million dollars or, if the taxpayer's filing status is married filing separately, exceeds five hundred thousand dollars.

(III) As used in this subsection (4)(x):

(A) "Income earned as a direct result of winning a medal" includes both the monetary value of the medal itself and any monetary award given for winning the medal by the United States Olympic committee or any sport-specific national governing body or Paralympic sport organization but does not include endorsement income or nonmonetary benefits.

(B) "Olympic games" means the summer and winter Olympic games and the summer and winter Paralympic games.

(IV) The monetary value of any medal won while competing for the United States of America at either the summer or winter Olympic games or the summer or winter Paralympic games shall be subtracted from federal taxable income regardless of whether or not said monetary value is included in federal taxable income.

(y) (I) For income tax years commencing on or after January 1, 2019, but prior to January 1, 2024, an amount equal to a qualified individual's military retirement benefits included in federal adjusted gross income, but not to exceed the following amounts:

(A) Four thousand five hundred dollars for income tax years commencing on or after January 1, 2019, but prior to January 1, 2020;

(B) Seven thousand five hundred dollars for income tax years commencing on or after January 1, 2020, but prior to January 1, 2021;

(C) Ten thousand dollars for income tax years commencing on or after January 1, 2021, but before January 1, 2022; or

(D) Fifteen thousand dollars for income tax years commencing on or after January 1, 2022, but before January 1, 2024.

(II) As used in this subsection (4)(y):

(A) "Military retirement benefits" means any retirement benefits received as a result of the individual's service in the armed forces of the United States.

(B) "Qualified individual" means an individual who is under fifty-five years of age at the close of the taxable year.

(5) Any person who is required by the terms of this article to file a return whose only activities in Colorado consist of making sales, who does not own or rent real estate within the state of Colorado, and whose annual gross sales in or into this state amount to not more than one hundred thousand dollars may elect to pay a tax of one-half of one percent of his annual gross receipts derived from sales in or into Colorado in lieu of paying an income tax.

**Source: L. 87:** Entire part R&RE, p. 1427, § 2, effective June 22. **L. 88:** (1), (3)(b), and (4)(f) amended, p. 1311, § 2, effective May 29. **L. 89:** (4)(f) amended and (4)(g) repealed, pp. 1504, 1506, §§ 1, 3, effective June 10. **L. 90:** (4)(a.5) added, p. 699, § 2, effective May 31. **L. 92:** (3)(d) added, p. 555, § 37, effective May 28; (3)(e) added, p. 2279, § 2, effective June 1. **L. 94:** (3)(f) and (4)(h) added, p. 2839, §§ 2, 3, effective January 1, 1995. **L. 97:** (3)(e)(I) amended, p. 304, § 20, effective July 1; (4)(i) added, p. 513, § 1, effective August 6. **L. 99:** (4)(l) added, p. 784, § 1, effective May 24; (1) amended and (1.5) added, p. 1376, § 1, effective August 4; (3)(d) amended and (4)(j) and (4)(k) added, pp. 936, 937, §§ 1, 2, effective August 4; (3)(g) added, p. 977, § 2, effective August 4; (4)(f) amended, p. 1301, § 1, effective August 4. **L. 2000:** (4)(l)(I), (4)(l)(III), (4)(l)(IV)(A), (4)(l)(IV)(B), and (4)(l)(V) amended and (4)(l.5) added, p. 658, § 1,

effective May 22; (4)(m) added, p. 1409, § 1, effective May 31; (1.5) and (2) amended and (1.7) added, p. 1413, § 1, effective August 2; (2) amended, p. 1869, § 98, effective August 2; (3)(h) added, p. 1321, § 3, effective August 2; (4)(i) amended, p. 946, § 1, effective August 2. **L. 2001:** (4)(l)(VI) amended, p. 1279, § 54, effective June 5; (3)(d)(II) and (4)(k) amended, p. 392, § 2, effective August 8. **L. 2004:** (4)(a.5) amended, p. 323, § 8, effective April 7; (4)(i)(II) amended, p. 577, § 36, effective July 1; (3)(g) amended, p. 1208, § 88, effective August 4. **L. 2005:** (4)(m) amended, p. 215, § 1, effective April 8; (1.7) amended, p. 1361, § 1, effective June 6. **Referred 2006:** (3)(i) added, L. 2006, 1st Ex. Sess., p. 1, § 1, December 31. **L. 2008:** (3)(e)(I) amended, p. 1604, § 35, effective May 29; (4)(n) added, p. 1550, § 1, effective August 5. **L. 2010:** (4)(o) added, (SB 10-202), ch. 396, p. 1884, § 8, effective June 9; (3)(h), (4)(l), (4)(l.5), (4)(m)(III), (4)(m)(IV), (4)(m)(V), and (4)(m)(VI) repealed and (4)(m)(I) amended, (SB 10-212), ch. 412, pp. 2032, 2034, §§ 1, 7, effective July 1; (3)(h) repealed, (HB 10-1256), ch. 133, p. 440, § 2, effective August 11. **L. 2013:** (4)(n.5) added, (HB 13-1012), ch. 91, p. 293, § 1, effective April 4; (4)(s) added, (SB 13-283), ch. 332, p. 1896, § 18, effective May 28; (4)(q) added, (HB 13-1230), ch. 409, p. 2426, § 5, effective June 5; (4)(p) added, (HB 13-1024), ch. 27, p. 66, § 1, effective August 7; (4)(r) added, (HB 13-1042), ch. 327, p. 1820, § 1, effective August 7. **L. 2014:** (4)(f)(III), (4)(n)(I)(B), and (4)(n.5)(I)(B) amended, (SB 14-019), ch. 10, p. 98, § 4, effective February 27; (3)(j) and (4)(m)(VII) added and (4)(m)(I) amended, (HB 14-1119), ch. 286, p. 1175, § 3, effective May 30; (4)(t) added, (HB 14-1003), ch. 224, p. 837, § 2, effective August 6. **L. 2015:** (4)(u) added, (HB 15-1181), ch. 233, p. 865, § 4, effective August 5. **L. 2016:** (3)(c) repealed and (4)(f) amended, (SB 16-189), ch. 210, p. 793, § 108, effective June 6; (3)(k) and (4)(w) added, (HB 16-1467), ch. 321, p. 1301, § 1, effective August 10; (4)(n.5)(I)(A) amended and (4)(n.5)(I)(A.5) added, (HB 16-1286), ch. 300, p. 1215, § 2, effective August 10; (4)(v) added, (HB 16-1194), ch. 252, p. 1029, § 1, effective August 10. **L. 2017:** (4)(x) added, (HB 17-1104), ch. 223, p. 860, § 1, effective August 9. **L. 2018:** (4)(y) added, (HB 18-1060), ch. 271, p. 1667, § 2, effective August 8; (3)(e)(I) amended, (HB 18-1025), ch. 152, p. 1081, § 20, effective October 1; (4)(r) and (4)(s) amended, (HB 18-1023), ch. 55, p. 591, § 23, effective October 1.

**Editor's note:** (1) This section is similar to former § 39-22-104 as it existed prior to 1987.

(2) Subsection (5) of this section implements the requirements of Article III, section 2, of the Multistate Tax Compact, § 24-60-1301.

(3) Amendments to subsection (2) by House Bill 00-1103 and House Bill 00-1463 were harmonized.

(4) Subsection (3)(i) was enacted by House Bill 06S-1020 at the first extraordinary session of the sixty-fifth general assembly. That bill contained a referendum clause and was approved by a vote of the registered electors of the state of Colorado on November 7, 2006. Subsection (3)(i) was effective upon proclamation of the governor, December 31, 2006. The vote count for the measure was as follows:

| | |
|---|---|
| FOR: | 744,475 |
| AGAINST: | 722,651 |

(5) Section 9 of chapter 10 (SB 14-019), Session Laws of Colorado 2014, provides that changes to this section by the act apply to income tax years commencing on or after January 1, 2013, and any other income tax years that are open under § 39-21-107 or 39-21-108.

(6) Subsection (4)(n)(IV) provided for the repeal of subsection (4)(n), effective January 1, 2015. (See L. 2008, p. 1550.)

**Cross references:** (1) For other provisions concerning adjustments to federal taxable income, see §§ 39-22-104.5, 39-22-104.6, 39-22-504.7 (2), and 39-22-518.

(2) For the legislative declaration contained in the 2001 act amending subsections (3)(d)(II) and (4)(k), see section 1 of chapter 133, Session Laws of Colorado 2001.

(3) For the legislative declaration contained in the 2008 act amending subsection (3)(e)(I), see section 1 of chapter 341, Session Laws of Colorado 2008.

(4) For the legislative declaration in the 2013 act adding subsection (4)(q), see section 1 of chapter 409, Session Laws of Colorado 2013.

(5) For the legislative declaration in HB 14-1003, see section 1 of chapter 224, Session Laws of Colorado 2014. For the legislative declaration in HB 14-1119, see section 1 of chapter 286, Session Laws of Colorado 2014.

(6) For the short title ("Colorado is Honoring Our Military Exemption (Colorado is HOME) Act") and the legislative declaration in HB 15-1181, see sections 1 and 2 of chapter 233, Session Laws of Colorado 2015.

(7) For the legislative declaration in HB 16-1286, see section 1 of chapter 300, Session Laws of Colorado 2016.

(8) For the legislative declaration in HB 18-1060, see section 1 of chapter 271, Session Laws of Colorado 2018.

**39-22-104.5. Pretax payments - catastrophic health insurance.** For income tax years commencing on or after January 1, 1995, amounts withheld from an individual's wages that are used to pay for catastrophic health insurance pursuant to and within the limitations prescribed by section 10-16-116, C.R.S., are excluded from the individual's federal taxable income for purposes of the state income tax imposed by section 39-22-104.

**Source: L. 94:** Entire section added, p. 745, § 2, effective January 1, 1995; entire section amended, p. 1651, § 97, effective January 1, 1995. **L. 2013:** Entire section amended, (HB 13-1266), ch. 217, p. 994, § 69, effective May 13.

**Cross references:** For other provisions concerning adjustments to federal taxable income, see § 39-22-104.

**39-22-104.6. Pretax payments - medical savings accounts.** To the extent a taxpayer is not otherwise claiming deductions on federal income tax returns for contributions to medical savings accounts, amounts withheld from an individual's wages which are contributed to such individual's medical savings account, pursuant to section 39-22-504.7, are excluded from an individual's federal taxable income for purposes of the state income tax imposed by section 39-22-104.

**Source: L. 94:** Entire section added, p. 745, § 4, effective January 1, 1995. **L. 97:** Entire section amended, p. 643, § 10, effective May 1.

**Cross references:** For other provisions concerning adjustment to federal taxable income, see § 39-22-104.

**39-22-105. Alternative minimum tax.** (1) With respect to each taxable year commencing on or after January 1, 1987, but prior to January 1, 2000, for every individual, estate, and trust, in addition to the tax imposed in section 39-22-104, a tax is imposed in an amount equal to the excess of:

(a) Three and seventy-five one-hundredths percent of the Colorado alternative minimum taxable income, as determined pursuant to subsection (2) of this section; over

(b) The tax imposed in section 39-22-104.

(1.5) With respect to each taxable year commencing on or after January 1, 2000, for every individual, estate, and trust, in addition to the tax imposed in section 39-22-104, a tax is imposed in an amount equal to the excess of:

(a) Three and forty-seven one-hundredths percent of the Colorado alternative minimum taxable income, as determined pursuant to subsection (2) of this section; over

(b) The tax imposed in section 39-22-104.

(2) (a) The Colorado alternative minimum taxable income shall be the federal alternative minimum taxable income, as determined pursuant to section 55 of the internal revenue code, minus the applicable federal exemptions allowed pursuant to such section, with the modifications provided in section 39-22-104; except that any state or local bond interest included in the federal alternative minimum taxable income shall not be added back in determining the Colorado alternative minimum taxable income, and any interest income from obligations of the state of Colorado or any political subdivision thereof which is exempt from the Colorado tax imposed pursuant to the provisions of section 39-22-104 (3)(b) shall be subtracted from the federal alternative minimum taxable income to the extent included therein in determining Colorado alternative minimum taxable income.

(b) In any case, should the tax determined under the provisions of this section for a taxable year beginning on or after January 1, 1987, but before January 1, 1988, exceed the tax imposed by this section as it existed on June 22, 1987, then only the smaller tax shall apply.

(3) (a) For taxable years beginning on or after January 1, 1988, but prior to January 1, 2000, each individual, estate, and trust shall be allowed a credit against the tax imposed by this part 1 in an amount equal to eighteen percent of the credit allowed for the same tax year by section 53 of the internal revenue code.

(b) For taxable years beginning on or after January 1, 2000, each individual, estate, and trust shall be allowed a credit against the tax imposed by this part 1 in an amount equal to twelve percent of the credit allowed for the same tax year by section 53 of the internal revenue code.

(4) In the case of a nonresident taxpayer, the tax imposed by subsections (1) and (1.5) of this section and the credit allowed by subsection (3) of this section shall be apportioned in the ratio of the modified federal alternative minimum taxable income from Colorado sources over the total modified federal alternative minimum taxable income.

**Source: L. 87:** Entire part R&RE, p. 1429, § 2, effective June 22. **L. 88:** Entire section R&RE, p. 1312, § 3, effective May 29. **L. 2000:** IP(1), (3), and (4) amended and (1.5) added, p. 1413, § 2, effective August 2.

**Editor's note:** This section is similar to former § 39-22-104 as it existed prior to 1987.

**39-22-106. Colorado personal exemptions of a resident individual.** A resident individual shall be entitled to a Colorado exemption of zero dollars.

**Source: L. 87:** Entire part R&RE, p. 1430, § 2, effective June 22.

**Editor's note:** This section is similar to former § 39-22-114 as it existed prior to 1987.

**39-22-107. Income tax filing status.** (1) If the federal taxable income of two taxpayers may legally be determined on a joint federal return but actually is determined on separate federal returns, such income for purposes of the Colorado income tax shall be separately determined.

(2) If the federal taxable income of two taxpayers is determined on a joint federal return, their tax shall be determined on their joint federal taxable income.

(3) Repealed.

**Source: L. 87:** Entire part R&RE, p. 1430, § 2, effective June 22. **L. 88:** (3) repealed, p. 1317, § 17, effective May 29. **L. 2014:** (1) and (2) amended, (SB 14-019), ch. 10, p. 98, § 3, effective February 27.

**Editor's note:** (1) This section is similar to former § 39-22-109 as it existed prior to 1987.

(2) Section 9 of chapter 10 (SB 14-019), Session Laws of Colorado 2014, provides that changes to this section by the act apply to income tax years commencing on or after January 1, 2013, and any other income tax years that are open under § 39-21-107 or 39-21-108.

**39-22-107.5. Income tax filing status - innocent spouse relief.** In any case in which a taxpayer has been granted relief under section 6015 of the internal revenue code, such taxpayer shall also be granted comparable relief from joint and several liability for the tax imposed under this article and any interest, penalties, and other amounts related to such tax.

**Source: L. 2001:** Entire section added, p. 37, § 1, effective August 8.

**39-22-108. Credit for tax paid other states.** (1) With respect to all taxable years commencing on or after January 1, 1987, the amount of taxes on federal taxable income accrued to another state, the District of Columbia, or a territory or possession of the United States, on income derived by a resident individual, estate, or trust from sources in another state, the District of Columbia, or a territory or possession of the United States, shall be allowed as a credit against the tax computed under provisions of this article.

(2) The amount of credit taken under this section shall be subject to each of the following limitations:

(a) The amount of the credit for taxes on the federal taxable income taxed by another state, the District of Columbia, or a territory or possession of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's federal taxable income from the sources within such state, the District of Columbia, or a territory or possession of the United States bears to his entire federal taxable income for the same period;

(b) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's federal taxable income from sources outside of Colorado bears to his entire federal taxable income for the same taxable year; and

(c) Federal taxable income shall be deemed to be from sources in another state in the same ratio as the modified federal adjusted gross income is from sources in such state.

(3) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer or if any tax paid is refunded in whole or in part, the taxpayer shall notify the executive director, who shall redetermine the amount of tax due for the years affected; the amount of tax, if any, found to be due upon such redetermination shall be paid by the taxpayer upon notice and demand or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 39-21-108. In the case of such a tax accrued but not paid, the executive director, as a condition precedent to the allowance of a credit, may require the taxpayer to deposit a surety bond or other security acceptable to the executive director in such amount as he may require, conditioned upon the payment by the taxpayer of any amount of tax found to be due upon any such redetermination.

(4) The credits provided for in this section, irrespective of the method of accounting employed by the taxpayer in keeping his books, shall be taken in the year in which the taxes of another state, the District of Columbia, or a territory or possession of the United States accrue, subject to the conditions prescribed in subsection (3) of this section.

(5) The credits provided by this section shall be allowed only if the taxpayer furnishes to the executive director all information necessary for the verification and computation of such credits as the executive director, by regulation, may prescribe.

**Source: L. 87:** Entire part R&RE, p. 1430, § 2, effective June 22. **L. 88:** (2)(a) and (2)(b) amended and (2)(c) added, p. 1313, § 4, effective May 29.

**Editor's note:** This section is similar to former § 39-22-108 as it existed prior to 1987.

**39-22-108.5. Dual resident trusts - income tax calculation.** (1) With respect to a trust that is a resident of another state and becomes a resident of Colorado after May 25, 2006, and that is subject to income taxes in the other state and in Colorado by virtue of the trust's dual residence, the executive director shall, in lieu of the credit granted in section 39-22-108 (1), allow a credit to the Colorado income tax to be determined in accordance with this section.

(2) The credit amount shall be equal to the Colorado income tax imposed on the portion of the trust's income that is subject to tax in Colorado and the other state, multiplied by a percentage equal to the other state's income tax rate for the income tax year divided by the sum of the income tax rates of Colorado and the other state for the income tax year.

(3) If the credit amount in subsection (2) of this section is computed using more than one other state, the percentage used shall equal the combined total of all the other states' income tax

rates for the income tax year divided by the combined income tax rates of Colorado and the other states for the income tax year.

(4) For purposes of this section, "state income tax rate" means the trust's state income tax liability divided by the trust's taxable income used to compute the state income tax liability.

(5) The provisions of section 39-22-108 (3), (4), and (5) shall apply to this section.

**Source: L. 2006:** Entire section added, p. 1163, § 1, effective May 25.

**39-22-109. Income of a nonresident individual for purposes of Colorado income tax.** (1) In the case of a nonresident individual, the tax imposed by section 39-22-104 shall be apportioned in the ratio of Colorado nonresident federal adjusted gross income to total federal adjusted gross income, both modified as provided in section 39-22-104.

(2) (a) Colorado nonresident federal adjusted gross income means that part of the individual's federal adjusted gross income as determined pursuant to section 62 of the internal revenue code derived from sources within Colorado. Federal adjusted gross income of an individual shall be considered derived from sources within Colorado when such income is attributable to:

(I) The ownership of any interest in real or tangible personal property in Colorado;

(II) A business, trade, profession, or occupation carried on in Colorado;

(III) His distributive share of partnership or limited liability company income, gain, loss, and deduction determined under section 39-22-203;

(IV) His share of estate or trust income, gain, loss, and deduction determined under section 39-22-404;

(V) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in Colorado. A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to carry on a business, trade, profession, or occupation in Colorado solely by reason of the purchase and sale of property for his own account.

(VI) His share of subchapter S corporation income, gain, loss, credit, and deduction allocable or apportionable to Colorado.

(b) Compensation paid by the United States for service in the armed forces of the United States performed by an individual not domiciled in Colorado shall not constitute income derived from sources within Colorado.

(3) (a) If the federal taxable income of two taxpayers, both of whom are nonresidents, is determined on separate federal returns, their Colorado taxable incomes shall be separately determined.

(b) If the federal taxable income of two taxpayers, both of whom are nonresidents, is determined on a joint federal return, their tax shall be determined on their joint Colorado nonresident federal taxable income.

(c) Repealed.

(4) In any case, where the nature of income earned by a nonresident individual is such as to render the computations described in subsections (1) to (3) of this section impracticable and

where the books of account and records of the taxpayer do not clearly reflect the income subject to tax by this article, apportionment shall be made in accordance with section 39-22-303.5.

**Source: L. 87:** Entire part R&RE, p. 1431, § 2, effective June 22. **L. 88:** (1), IP(2)(a), and (2)(b) R&RE and (3)(c) repealed, pp. 1313, 1317, §§ 5, 17, effective May 29. **L. 90:** (2)(a)(III) amended, p. 453, § 33, effective April 18. **L. 2008:** (4) amended, p. 954, § 5, effective January 1, 2009. **L. 2014:** (3)(a) and (3)(b) amended, (SB 14-019), ch. 10, p. 99, § 5, effective February 27.

**Editor's note:** (1) This section is similar to former § 39-22-115 as it existed prior to 1987.

(2) Section 9 of chapter 10 (SB 14-019), Session Laws of Colorado 2014, provides that changes to this section by the act apply to income tax years commencing on or after January 1, 2013, and any other income tax years that are open under § 39-21-107 or 39-21-108.

**39-22-110. Apportionment of tax in the case of a part-year resident.** (1) In the case of an individual who is a resident of Colorado for part of his taxable year, the tax imposed by section 39-22-104 shall be apportioned in the ratio of that part of his federal adjusted gross income which relates to the period of the year he was a Colorado resident to his total federal adjusted gross income, both modified as provided in section 39-22-104.

(2) A taxpayer filing a part-year resident return shall also file as a nonresident on the same return as provided in section 39-22-109 for the remaining portion of his federal taxable year in the event the taxpayer has income within such remaining portion derived from sources within Colorado, as defined in section 39-22-109 (2).

(3) Repealed.

(4) In determining apportioned federal adjusted gross income which relates to the period of the year a part-year resident was a resident as required in subsection (1) of this section, S corporation income shall be apportioned as provided in section 39-22-326.

**Source: L. 87:** Entire part R&RE, p. 1432, § 2, effective June 22. **L. 88:** (1) R&RE and (3) repealed, pp. 1314, 1317, §§ 6, 17, effective May 29. **L. 92:** (4) added, p. 2266, § 5, effective April 16.

**Editor's note:** This section is similar to former § 39-22-116 as it existed prior to 1987.

**39-22-110.5. Reacquisition of residency during active duty military service.** (1) An individual in active duty military service whose home of record is Colorado and whose state of legal residence commencing on or after January 1, 2016, is a state other than Colorado may reacquire legal residence in the state, regardless of whether the individual has a physical presence in the state, if the individual intends to make Colorado his or her state of legal residence. For purposes of this section, evidence of an intent to make this state an individual's state of legal residence must include one or more of the following:

(a) Registering to vote in the state;

(b) Purchasing residential property or an unimproved residential lot in the state;

(c) Titling and registering a motor vehicle in the state;

(d) Notifying the state of the individual's previous legal residence of the intent to make Colorado the individual's state of legal residence; or

(e) Preparing a new last will and testament that indicates Colorado as the individual's state of legal residence.

**Source: L. 2015:** Entire section added, (HB 15-1181), ch. 233, p. 864, § 3, effective August 5.

**Cross references:** For the short title ("Colorado is Honoring Our Military Exemption (Colorado is HOME) Act") and the legislative declaration in HB 15-1181, see sections 1 and 2 of chapter 233, Session Laws of Colorado 2015.

**39-22-111. Accounting periods and methods.** (1) The taxpayer's taxable year under this article shall be the same as his taxable year for federal income tax purposes.

(2) If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this article shall be similarly changed.

(3) The taxpayer's method of accounting under this article shall be the same as his method of accounting for federal income tax purposes.

(4) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall be similarly changed.

**Source: L. 87:** Entire part R&RE, p. 1432, § 2, effective June 22.

**Editor's note:** This section is similar to former § 39-22-107 as it existed prior to 1987.

**39-22-112. Persons and organizations exempt from tax under this article.** (1) A person or organization exempt from federal income taxation under the provisions of the internal revenue code shall also be exempt from the tax imposed by this article in each year in which such person or organization satisfies the requirements of the internal revenue code for exemption from federal income taxation; except that insurance companies subject to the tax imposed on gross premiums by section 10-3-209, C.R.S., shall also be exempt from the tax imposed by this article. If the exemption applicable to any person or organization under the provisions of the internal revenue code is limited or qualified in any manner, the exemption from taxes imposed by this article shall be limited or qualified in a similar manner.

(2) Notwithstanding the provisions of subsection (1) of this section to the contrary, the unrelated business taxable income, as computed under the provisions of the internal revenue code, of any person or organization otherwise exempt from the tax imposed by this article and subject to the tax imposed on unrelated business income by the internal revenue code shall be subject to the tax which would have been imposed by this article but for the provisions of subsection (1) of this section.

**Source: L. 87:** Entire part R&RE, p. 1433, § 2, effective June 22.

**Editor's note:** This section is similar to former § 39-22-111 as it existed prior to 1987.

**39-22-113. Tax credit or refund for persons with disabilities who are employed - amount - applicability. (Repealed)**

**Source: L. 87:** Entire part R&RE, p. 1433, § 2, effective June 22. **L. 93:** (1), (2), (3)(a), and (3)(b)(I) amended, p. 1670, § 88, effective July 1. **L. 2004:** Entire section repealed, p. 207, § 32, effective August 4.

**Editor's note:** Before its repeal, this section was similar to former § 39-22-126 as it existed prior to 1987.

**39-22-114. Residential energy credit. (Repealed)**

**Source: L. 87:** Entire part R&RE, p. 1434, § 2, effective June 22. **L. 2002:** (5)(c) amended, p. 1557, § 349, effective October 1. **L. 2004:** Entire section repealed, p. 208, § 33, effective August 4.

**Editor's note:** Before its repeal, this section was similar to former § 39-22-127 as it existed prior to 1987.

**39-22-114.5. Tax credit for investment in technologies for recycling plastics.** (1) There shall be allowed to each resident individual, as a credit against the income taxes imposed by this article, a plastic recycling credit equal to twenty percent of net expenditures to third parties for rent, wages, supplies, consumable tools, equipment, test inventory, and utilities up to ten thousand dollars made by the taxpayer for new plastic recycling technology in Colorado, with a maximum credit of two thousand dollars. The tax credit allowed in this section shall be applicable only to income related to the expenditures described in this subsection (1).

(2) If the credit allowed under this section exceeds the income taxes otherwise due on the claimant's income, the amount of the credit not used as an offset against income taxes may be carried forward as a tax credit against subsequent years' income tax liability for a period not exceeding five years and shall be applied first to the earliest years possible.

(3) Any form filed with the department of revenue for the purpose of claiming the credit allowed by this section shall be accompanied by copies of any receipts, bills, or other documentation of the qualified expenditures claimed for the purpose of receiving such credit.

**Source: L. 89:** Entire section added, p. 1182, § 3, effective July 1.

**39-22-115. Credit for crops or livestock contributed to charitable organizations - definitions. (Repealed)**

**Source: L. 87:** Entire part R&RE, p. 1435, § 2, effective June 22. **L. 2004:** Entire section repealed, p. 209, § 34, effective August 4.

**Editor's note:** Before its repeal, this section was similar to former § 39-22-128 as it existed prior to 1987.

**39-22-116. Tax tables for individuals.** (1) In lieu of the tax imposed by section 39-22-104, there is hereby imposed for each taxable year on the federal taxable income of every individual for Colorado income tax purposes who does not itemize his deductions for the taxable year and whose federal taxable income for Colorado income tax purposes for such taxable year does not exceed the ceiling amount a tax determined under tables applicable to such taxable year, which shall be prescribed by the executive director and which shall be in such form as he deems appropriate. In the tables so prescribed, the amount of the tax shall be computed on the basis of the rate prescribed by section 39-22-104.

(2) For purposes of subsection (1) of this section, "ceiling amount" means, with respect to any taxpayer, the amount, not less than twenty thousand dollars, determined by the executive director for the tax rate category in which such taxpayer falls.

(3) Repealed.

(4) For purposes of this article, the tax imposed by this section shall be treated as the tax imposed by section 39-22-104.

(5) Whenever it is necessary to determine the federal taxable income of an individual for Colorado income tax purposes to whom this section applies, the federal taxable income for Colorado income tax purposes shall be determined under section 39-22-104.

(6) The executive director may provide that this section shall apply for any taxable year to individuals who itemize their deductions.

**Source: L. 87:** Entire part R&RE, p. 1436, § 2, effective June 22. **L. 88:** (1) amended and (3) repealed, pp. 1314, 1317, §§ 7, 17, effective May 29.

**39-22-117. Uninsurable health plan charge - repeal. (Repealed)**

**Source: L. 90:** Entire section added, p. 640, § 2, effective July 1; (3) added by revision, p. 641, § 5.

**Editor's note:** Subsection (3) provided for the repeal of this section, effective July 1, 1993. (See L. 90, p. 641.)

**39-22-118. Grants for members of United States armed services - combat pay received during active duty in Operation Desert Storm - amount - applicability - repeal. (Repealed)**

**Source: L. 91:** Entire section added, p. 1998, § 1, effective May 1. **L. 92:** (2) amended, p. 1067, § 2, effective March 16.

**Editor's note:** Subsection (3) provided for the repeal of this section, effective June 15, 1994. (See L. 91, p. 1998.)

**39-22-119. Expenses related to child care - credits against state tax.** (1) (a) For income tax years beginning on and after January 1, 1996, but before January 1, 2019, if a resident individual claims a credit for child care expenses on the individual's federal tax return,

the individual shall be allowed a child care expenses credit against the income taxes due on the individual's income under this article 22 calculated as follows:

(I) If the resident individual's federal adjusted gross income is twenty-five thousand dollars or less, the credit shall be in an amount equal to fifty percent of the credit for child care expenses claimed on the resident individual's federal tax return.

(II) If the resident individual's federal adjusted gross income is between twenty-five thousand one dollars and thirty-five thousand dollars, the credit shall be in an amount equal to thirty percent of the credit for child care expenses claimed on the resident individual's federal tax return.

(III) If the resident individual's federal adjusted gross income is between thirty-five thousand one dollars and sixty thousand dollars, the credit shall be in an amount equal to ten percent of the credit for child care expenses claimed on the resident individual's federal tax return.

(b) If the resident individual's federal adjusted gross income is sixty thousand one dollars or more, the resident individual shall not be allowed a credit under this subsection (1).

(1.5) Repealed.

(1.7) For income tax years beginning on and after January 1, 2019, if a resident individual's federal adjusted gross income is less than or equal to sixty thousand dollars and the individual claims a credit for child care expenses on the individual's federal tax return, then the individual is allowed a child care expenses credit against the income taxes due on the individual's income under this article 22. The amount of the credit is an amount equal to fifty percent of the credit for child care expenses claimed on the individual's federal tax return.

(2) If the credits allowed under subsections (1) and (1.7) 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) and (1.7) 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.

(4) In the case of a resident for part of a tax year, the credits allowed by this section shall be apportioned in the ratio determined under section 39-22-110 (1).

(5) to (9) Repealed.

**Source: L. 96:** Entire section added, p. 1096, § 1, effective May 30. **L. 98:** (1.5) added and (2) to (4) amended, p. 1373, § 1, effective June 2. **L. 2000:** (2) and (3) amended and (5), (6), (7), (8), and (9) added, p. 675, § 1, effective May 23. **L. 2010:** (1.5), (5), (6), (7), (8), and (9) repealed and (2) and (3) amended, (SB 10-212), ch. 412, pp. 2032, 2035, §§ 1, 8, effective July 1. **L. 2018:** IP(1)(a), (2), and (3) amended and (1.7) added, (HB 18-1208), ch. 227, p. 1437, § 1, effective August 8.

**39-22-119.5. Child care expenses tax credit - legislative declaration - definitions - repeal.** (1) (a) The general assembly hereby finds and declares that:

(I) Colorado families and the state economy thrive when parents are able to work;

(II) While research shows that high-quality child care contributes to economic mobility, child care can be cost prohibitive for low-income working parents;

(III) The general assembly created the child care expenses tax credit in section 39-22-119 in 1996 to make child care more affordable for working families;

(IV) The credit in section 39-22-119 is currently based on the amount claimed for a similar federal credit;

(V) As a result, some low-income families are not receiving the state child care expenses tax credit because they fail to file a federal return or, based on their income taxes owed, are ineligible for a federal credit; and

(VI) As a result, the state tax credit is unintentionally unfair and regressive.

(b) Now, therefore, the general assembly declares that the intended purpose for creating and extending the term of the tax credit in this section is to fix the Colorado child care expenses income tax credit so that all low-income working families are able to claim the credit regardless of the amount of their federal child care expenses credit.

(2) As used in this section, unless the context otherwise requires:

(a) "Credit" means the child care expenses tax credit created in this section.

(b) "Dependent" has the same meaning as in section 152 (a)(1) of the internal revenue code, or any successor section.

(3) (a) For income tax years beginning on and after January 1, 2014, but prior to January 1, 2017, and for income tax years specified in subsection (3)(a.5) of this section, a resident individual is allowed a credit against the taxes due under this article for child care expenses that the individual incurred during the taxable year if:

(I) The individual has an adjusted gross income of twenty-five thousand dollars or less;

(II) The individual has insufficient tax liability to claim any credit under section 39-22-119;

(III) The expenses are for the care of a dependent of the taxpayer who is less than thirteen years old; and

(IV) The individual would be allowed a credit for the expenses under section 21 of the internal revenue code, or any successor section, if he or she had sufficient tax liability to claim the credit.

(a.5) (I) If, based on the revenue estimate prepared by legislative council staff in June 2017, the general fund surplus for the 2016-17 state fiscal year is expected to be greater than or equal to two million nine hundred thousand dollars, then the credit is available for income tax years beginning on and after January 1, 2017, but prior to January 1, 2020.

(II) If the condition in subsection (3)(a.5)(I) of this section is not met, then the credit is available for income tax years beginning on and after January 1, 2018, but prior to January 1, 2021.

(III) For purposes of determining whether subsection (3)(a.5)(I) or (3)(a.5)(II) of this section applies, legislative council staff shall not take into account any reduction in revenue that would result from the credit applying for income tax years beginning on and after January 1, 2017, but prior to January 1, 2018.

(b) The credit is equal to twenty-five percent of the resident individual's child care expenses; except that the maximum amount of a credit that a resident individual is allowed under this section is:

(I) Five hundred dollars for a single dependent; or

(II) One thousand dollars for two or more dependents.

(c) The amount of the credit that exceeds the resident individual's income taxes due is refunded to the individual.

(4) The amount of an individual's child care expenses incurred during a taxable year that may be the basis of the credit shall not exceed:

(a) In the case of an individual who files a single return, the individual's earned income for the year; or

(b) In the case of two individuals who file a joint return, the lesser of either individual's earned income for the year.

(5) (a) Except as set forth in paragraph (b) of this subsection (5), a resident individual is not allowed a credit for any amount paid to any person who provides child care unless:

(I) The name, address, and taxpayer identification number of the person are included on the resident individual's return; or

(II) If the person is an organization described in section 501 (c)(3) of the internal revenue code, or any successor section, and exempt from tax under section 501 (a) of the internal revenue code, or any successor section, the name and address of the person are included on the resident individual's return.

(b) If the resident individual does not provide the taxpayer identification number but is able to show that he or she exercised due diligence in attempting to provide the required information, the individual may claim the credit.

(c) A resident individual may not claim a credit with respect to a dependent unless the resident individual includes the dependent's name and taxpayer identification number on the individual's return.

(6) In the case of a part-year resident, the credit is apportioned in the ratio determined under section 39-22-110 (1).

(7) This section is repealed, effective January 1, 2022.

**Source: L. 2014:** Entire section added, (HB 14-1072), ch. 258, p. 1026, § 1, effective August 6. **L. 2017:** (1)(b), IP(3)(a), and (7) amended and (3)(a.5) added, (HB 17-1002), ch. 315, p. 1693, § 1, effective August 9.

**39-22-120. Legislative declaration - state sales tax refund - offset against state income tax.** (1) The general assembly hereby finds and declares that:

(a) Section 20 of article X of the state constitution, which was approved by the registered electors of this state in 1992, limits the annual growth of state fiscal year spending;

(b) During the 1997-98 fiscal year, state revenues from sources not excluded from state fiscal year spending exceeded the limitation on state fiscal year spending;

(c) When revenues exceed the state fiscal year spending limitation for any given fiscal year, section 20 (7)(d) of article X of the state constitution requires that the excess revenues be refunded in the next fiscal year unless voters approve a revenue change allowing the state to keep the revenues;

(d) In addition, section 20 (1) of article X of the state constitution states that refunds need not be proportional when prior payments are impractical to identify or return and authorizes the use of any reasonable method for refunding excess revenues;

(e) The state is required to refund during the 1998-99 fiscal year all revenues in excess of the state fiscal year spending limitation for the 1997-98 fiscal year; except that, if at the 1998 general election voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, the state is required to refund only that portion of the state excess revenues for the 1997-98 fiscal year that the voters have not authorized the state to retain;

(f) It is within the legislative prerogative of the general assembly to enact legislation to implement the refund of state excess revenues for the 1997-98 fiscal year in compliance with section 20 of article X of the state constitution;

(g) It is a reasonable and necessary exercise of the legislative prerogative to determine that, due to the impossibility of identifying or returning prior payments, it is not feasible to make proportional refunds of state excess revenues;

(h) It is also a reasonable and necessary exercise of the legislative prerogative to determine what constitutes a reasonable method of refunding state excess revenues after consideration of the best information available at the time regarding: The amount and source of excess revenues to be refunded; the qualifications for and number of eligible recipients; the amount of refund each recipient should receive; the necessary procedures to claim and make refunds; and the related administrative expenses;

(i) It is the considered judgment of the general assembly that:

(I) The state excess revenues for the 1997-98 fiscal year are derived from a wide variety of state taxes and fees ranging from state sales tax to severance and transportation taxes to health service fees to court fines to permit and license fees and to higher education fees and should, therefore, be returned to as large a group of Colorado residents as is identifiable and economically feasible;

(II) It is not feasible to make proportional refunds of state excess revenues for the 1997-98 fiscal year due to the impossibility of identifying or returning prior payments;

(III) It is reasonable and fair to refund state excess revenues for the 1997-98 fiscal year to a large group of individuals as a refund of state sales tax revenues since more Coloradans pay state sales tax than any other state tax;

(IV) The state collected over one billion four hundred fourteen million dollars in state sales tax revenues during the 1997-98 fiscal year from which the refund of state excess revenues may be made;

(V) Refunding state excess revenues for the 1997-98 fiscal year through the state income tax system in the manner set forth in this section is a reasonable method for refunding such excess revenues; and

(VI) The most cost-effective and expeditious method of refunding state excess revenues for the 1997-98 fiscal year is through the state income tax system but that a refund offset against state income tax liability is merely a mechanism for refunding said state excess revenues to a broad spectrum of persons.

(2) (a) As used in this section, "qualified individual" means:

(I) A natural person who is domiciled in this state for the entire taxable year commencing on January 1, 1998, and ending December 31, 1998, and who is required to file a Colorado individual income tax return for that tax year pursuant to section 39-22-601 (1)(a) or who files a Colorado individual income tax return to claim a refund of Colorado income tax withheld from wages for that tax year; or

(II) Any natural person who is domiciled in this state for the entire taxable year commencing on January 1, 1998, and ending December 31, 1998, and who is at least eighteen years of age as of December 31, 1997; or

(III) A natural person who died during the taxable year commencing on January 1, 1998, and ending December 31, 1998, who was domiciled in this state from January 1, 1998, until the date of death, and whose estate or spouse is required to file a Colorado individual income tax return for that tax year pursuant to section 39-22-601 (1)(a) or whose estate or spouse files a Colorado income tax return to claim a refund of Colorado income tax withheld from wages for that tax year; or

(IV) A natural person who died during the taxable year commencing on January 1, 1998, and ending December 31, 1998, who was domiciled in this state from January 1, 1998, until the date of death, and who was at least eighteen years of age as of December 31, 1997.

(b) "Qualified individual" does not include:

(I) Any natural person who was convicted of a felony and who served a sentence of incarceration in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to the department of corrections pursuant to section 16-11-308, C.R.S., or in both such facility and jail for a total of one hundred eighty days or more during the 1997-98 fiscal year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (2);

(II) Any natural person who is convicted of a misdemeanor or is adjudicated for an offense that would constitute a misdemeanor if committed by an adult and who is incarcerated in a county or municipal jail for a total of one hundred eighty days or more during the 1997-98 fiscal year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (2);

(III) Any person under eighteen years of age who is adjudicated for an offense that would constitute a felony if committed by an adult and who was committed to the department of human services for a total of one hundred eighty days or more during the 1997-98 fiscal year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (2).

(3) With respect to the taxable year commencing on January 1, 1998, and ending December 31, 1998, there shall be allowed to each qualified individual a state sales tax refund in an amount specified in subsection (4) of this section with respect to the income taxes imposed by this article.

(4) The amount of the refund allowed under this section shall be as follows:

(a) For a qualified individual filing a single return for the 1998 tax year:

(I) If the qualified individual's federal adjusted gross income for the 1998 tax year is less than or equal to twenty thousand dollars, the refund shall be in the amount of one hundred forty-two dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of ninety-two dollars;

(II) If the qualified individual's federal adjusted gross income for the 1998 tax year is greater than twenty thousand dollars but not more than fifty thousand dollars, the refund shall be in the amount of one hundred ninety-five dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first

general assembly, in which case the refund shall be in the amount of one hundred twenty-six dollars;

(III) If the qualified individual's federal adjusted gross income for the 1998 tax year is greater than fifty thousand dollars but not more than ninety-five thousand dollars, the refund shall be in the amount of two hundred seventy-six dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of one hundred seventy-eight dollars;

(IV) If the qualified individual's federal adjusted gross income for the 1998 tax year is greater than ninety-five thousand dollars, the refund shall be in the amount of three hundred eighty-four dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of two hundred forty-eight dollars;

(b) For two qualified individuals filing a joint return for the 1998 tax year:

(I) If the qualified individuals' aggregate federal adjusted gross income for the 1998 tax year is less than or equal to twenty thousand dollars, the refund shall be in the amount of two hundred eighty-four dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of one hundred eighty-four dollars;

(II) If the qualified individuals' aggregate federal adjusted gross income for the 1998 tax year is greater than twenty thousand dollars but not more than fifty thousand dollars, the refund shall be in the amount of three hundred ninety dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of two hundred fifty-two dollars;

(III) If the qualified individuals' aggregate federal adjusted gross income for the 1998 tax year is greater than fifty thousand dollars but not more than ninety-five thousand dollars, the refund shall be in the amount of five hundred fifty-two dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of three hundred fifty-six dollars;

(IV) If the qualified individuals' aggregate federal adjusted gross income for the 1998 tax year is greater than ninety-five thousand dollars, the refund shall be in the amount of seven hundred sixty-eight dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of four hundred ninety-six dollars.

(5) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (2) of this section by filing a 1998 income tax return with the department of revenue no later than April 15, 1999.

(II) Any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (2) of this section who is granted an extension of time to file a 1998 income tax return by filing a 1998 income tax return with the department of revenue no later than October 15, 1999. Such qualified individual shall not be required to pay all or any portion of the qualified individual's net tax liability due

prior to October 15, 1999, in order to be granted an extension of time to file said tax return; except that, pursuant to section 39-22-621, such qualified individual may be subject to a late payment penalty and interest on any net income tax liability not paid by April 15, 1999.

(III) The department of revenue shall not allow said refund claimed on any 1998 income tax return not filed in compliance with the provisions of this article. In no event shall the refund claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (2) of this section on any 1998 income tax return be:

(A) Disallowed if said return is filed on or before October 15, 1999; and

(B) Allowed if said return is filed after October 15, 1999.

(b) Any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (2) of this section by filing a 1998 income tax return with the department of revenue no later than April 15, 1999. The department of revenue shall not allow said refund claimed by a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (2) of this section on any 1998 income tax return filed with the department of revenue after April 15, 1999.

(c) (I) Notwithstanding any provision of paragraph (b) of this subsection (5) to the contrary, a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (2) of this section who claims a property tax assistance grant pursuant to section 39-31-101 or a heat or fuel expenses assistance grant pursuant to section 39-31-104 may claim a refund authorized by this section on the assistance grant application form described in section 39-31-102 (2). Claiming a refund on such assistance grant application form shall be in lieu of claiming the refund on an income tax return pursuant to paragraph (b) of this subsection (5). Any refund claimed pursuant to this paragraph (c) shall be claimed on or before April 15, 1999.

(II) The department of revenue shall not allow a refund authorized by this section that is claimed on an assistance grant application form if:

(A) The assistance grant application form is filed after April 15, 1999; or

(B) The qualified individual has claimed the refund authorized by this section on an income tax form filed in accordance with paragraph (b) of this subsection (5) for the tax year for which the refund is allowed.

(5.5) (a) The department of revenue shall make a state sales tax refund of excess revenues for the 1996-97 fiscal year to any qualified individual, as defined in paragraph (a) of subsection (2) of this section as said section existed for purposes of refunding excess revenues for the 1996-97 fiscal year and prior to the amendments to said section contained in House Bill 98S-1003, enacted at the second extraordinary session of the sixty-first general assembly, who, pursuant to a rule of the department of revenue, was not allowed such state sales tax refund because of the failure to pay all or any portion of such qualified individual's net tax liability due prior to a certain date.

(b) The department of revenue shall notify each qualified individual described in paragraph (a) of this subsection (5.5) of the allowance of such refund and make payment of such refunds to such qualified individuals no later than September 30, 1999.

(c) The amount of any state sales tax refund made pursuant to this subsection (5.5) that is outstanding for more than six months after the date such refund was issued to the taxpayer by the department of revenue shall be added to and refunded with the state excess revenues pursuant to section 24-77-103.8, C.R.S.

(6) If the refund allowed under this section exceeds the income taxes otherwise due on the claimant's income, the amount of the refund not used as an offset against income taxes may not be carried forward as an offset against subsequent years' income tax liability and shall be refunded to the claimant.

(7) In addition to any other penalties allowed by law, any person who claims but is not eligible to claim the refund allowed pursuant to this section shall be subject to the criminal penalties imposed pursuant to section 39-21-118, as applicable.

(8) The state sales tax refund allowed to any qualified individual under this section shall not be reported by the department of revenue as a payment of a refund, credit, or offset of state income taxes to such qualified individual in any information return required to be filed pursuant to federal law.

(9) The executive director shall not print individual income tax forms for the 1998 taxable year until the results of the 1998 general election are known so that forms will reflect the impact of the results of said election on the amount of the refund to be allowed in accordance with subsection (4) of this section.

(10) The department of revenue shall identify any qualified individual who has been convicted of a felony and who, at the time of filing for a refund pursuant to this section, is incarcerated in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to a correctional facility pursuant to section 16-11-308, C.R.S. The department of revenue shall transfer the amount of any refund owed to said qualified individual to the department of corrections. The department of corrections shall transmit the amount of said refund to the clerk of the district court which issued an order for payment of restitution or an order for costs pursuant to section 18-1.3-701, C.R.S. Such refund shall be credited in the priority specified in section 16-11-101.6 (1), C.R.S.

(11) The department of corrections, the department of human services, and each county of the state, to the extent each such county has the capability within existing resources, shall provide in a timely manner the information requested by the department of revenue necessary to identify the persons specified in paragraph (b) of subsection (2) of this section and in subsection (10) of this section. The information shall be provided in the form requested by the department of revenue. The department of revenue shall maintain the confidentiality of any social security number received pursuant to this subsection (11).

**Source: L. 97, 1st Ex. Sess.:** Entire section added, p. 1, § 1, effective October 22. **L. 98, 2nd Ex. Sess.:** (1)(b), (1)(e), (1)(f), (1)(e), and (2) to (7) amended and (8) to (11) added, p. 1, § 1, effective September 16. **L. 99:** (5.5) added, p. 1364, § 1, effective June 3. **L. 2002:** (10) amended, p. 1557, § 350, effective October 1. **L. 2004:** (10) amended, p. 1209, § 89, effective August 4. **L. 2007:** (5.5)(c) amended, p. 2049, § 95, effective June 1.

**Editor's note:** This section was enacted at the first extraordinary session of the sixty-first general assembly in 1997 to provide a method of refunding revenues in excess of the state fiscal year spending limitation for the 1996-97 state fiscal year as required by section 20 of article X of the state constitution (TABOR). It establishes a one-time sales tax refund credit against state individual income tax to qualified individuals.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (10), see section 1 of chapter 318, Session Laws of Colorado 2002.

**39-22-120.5. Unrefunded excess revenues. (Repealed)**

**Source: L. 99:** Entire section added, p. 1365, § 2, effective June 3. **L. 2005:** Entire section repealed, p. 133, § 4, effective April 5.

**39-22-121. Credit for child care facilities - repeal.** (1) For the income tax year commencing on or after January 1, 1999, but prior to January 1, 2000, any taxpayer who makes a monetary or in-kind contribution to promote child care in the state shall be allowed a credit against the income tax imposed by this article in an amount equal to twenty-five percent of the total value of the contribution except as otherwise provided in subsection (5) of this section.

(1.5) For income tax years commencing prior to January 1, 2025, any taxpayer who makes a monetary contribution to promote child care in the state is allowed a credit against the income tax imposed by this article 22 in an amount equal to fifty percent of the total value of the contribution except as otherwise provided in subsections (5) and (6.7) of this section.

(1.7) As used in this section, unless the context otherwise requires, "child care" means care provided to a child twelve years of age or younger.

(2) Monetary or in-kind contributions to promote child care in the state shall include the following types of contributions:

(a) Donating money, real estate, or property for the establishment or operation of a child care facility that uses the donation to provide child care, a child care program that is not a child care facility but provides child care services similar to those provided by a child care center, as defined in section 26-6-102 (5), C.R.S., or any other program that received donations for which a credit was allowed to the donor pursuant to this section for any income tax year that ended before January 1, 2004, in the state;

(b) Donating money to establish a grant or loan program for a parent or parents in the state requiring financial assistance for child care;

(c) Pooling moneys of several businesses and donating such moneys for the establishment of a child care facility in the state;

(d) Donating money for the training of child care providers in the state; and

(e) Donating money, services, or equipment for the establishment of an information dissemination program in the state to provide information and referral services to assist a parent or parents in obtaining child care.

(3) In no event shall credits be allowed pursuant to this section for contributions that are not directly related to promoting child care in the state or for contributions that a taxpayer makes to a child care facility in which the taxpayer or a person related to the taxpayer has a financial interest.

(4) When a contribution for which a credit is claimed pursuant to this section is made to a for-profit business, such contribution shall be directly invested by the business for the acquisition or improvement of facilities, equipment, or services, including the improvement of staff salaries, staff training, or the quality of child care.

(5) The credit allowed by this section shall not exceed one hundred thousand dollars or the taxpayer's actual income tax liability for the tax year for which the credit is claimed,

whichever is less. In-kind contributions shall not exceed fifty percent of the total amount of the credit claimed for a given tax year.

(6) If the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward and used as a credit against subsequent years' income tax liability for a period not to exceed five years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(6.5) For the purposes of this section, "child care facility" means:

(a) Any facility required to be licensed pursuant to part 1 of article 6 of title 26, C.R.S., and shall include, but is not limited to:

(I) Child care centers;

(II) Child placement agencies;

(III) Family child care homes;

(IV) Foster care homes;

(V) Homeless youth shelters;

(VI) Residential child care facilities; and

(VII) Secure residential treatment centers; and

(b) For income tax years commencing on and after January 1, 2013, any approved facility school as such term is defined in section 22-2-402 (1), C.R.S., that is also affiliated with a licensed or certified hospital in the state and is also a nonprofit organization; except that, subject to the limitations specified in subsections (5) and (6) of this section and paragraph (d) of subsection (6.7) of this section, any credit for a monetary contribution made to an approved facility school in the income tax year commencing on or after January 1, 2013, but before January 1, 2014, shall not be claimed until the income tax year commencing on or after January 1, 2014.

(6.7) (a) If the revenue estimate prepared by the staff of the legislative council in December 2010 and December 2011 indicates that the amount of the total general fund revenues for that particular fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized in this section shall not be allowed for any income tax year commencing during the calendar year following the year in which the estimate is prepared; except that any taxpayer who would have been eligible to claim a credit pursuant to this section in the income tax year in which the credit is not allowed shall be allowed to claim the credit earned in such income tax year in the next income tax year in which the estimate indicates that the amount of the total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(b) The department of revenue shall, through its website, specify on or before January 1, 2011, and January 1, 2012, whether the credit authorized in this section shall be allowed for a given income tax year pursuant to paragraph (a) of this subsection (6.7).

(c) Notwithstanding any other provision, and subject to the limitations in subsections (5) and (6) of this section, in the income tax year commencing on January 1, 2013, a taxpayer may claim no more than fifty percent of any credit allowed pursuant to subsection (1.5) of this section and paragraph (a) of this subsection (6.7) and any credit carried forward pursuant to subsection

(6) of this section. The remainder of all credits allowed as described in this paragraph (c) shall be carried forward to the income tax year commencing January 1, 2014.

(d) Notwithstanding any other provision, and subject to the limitations in subsections (5) and (6) of this section, in the income tax year commencing on January 1, 2014, a taxpayer may claim no more than seventy-five percent of any credit allowed pursuant to subsection (1.5) of this section and any credit carried forward pursuant to subsection (6) of this section and paragraph (c) of this subsection (6.7). The remainder of all credits allowed as described in this paragraph (d) shall be carried forward to the income tax year commencing January 1, 2015.

(7) This section is repealed, effective January 1, 2032.

**Source: L. 98:** Entire section added, p. 1370, § 1, effective August 5. **L. 2000:** (1) amended and (1.5) added, p. 678, § 2, effective May 23. **L. 2004:** (1.7) added and (2)(a) and (7) amended, p. 84, § 1, effective March 9. **L. 2008:** (2)(a) and (7) amended and (6.5) and (6.7) added, p. 2269, § 1, effective August 5. **L. 2009:** (6.7)(a) amended, (SB 09-228), ch. 410, p. 2265, § 18, effective July 1. **L. 2011:** (1.5) and (6.7) amended, (HB 11-1014), ch. 247, p. 1080, § 1, effective August 10. **L. 2012:** (6.5) amended, (HB 12-1273), ch. 270, p. 1424, § 2, effective August 8. **L. 2016:** (2)(a) amended, (SB 16-189), ch. 210, p. 794, § 109, effective June 6. **L. 2018:** (1.5) and (7) amended, (HB 18-1004), ch. 327, p. 1965, § 1, effective August 8.

**Cross references:** For the legislative declaration in the 2012 act amending subsection (6.5), see section 1 of chapter 270, Session Laws of Colorado 2012.

**39-22-122. Long-term care insurance credit.** (1) Any resident individual who incurs an expense in purchasing or making a payment upon a policy of long-term care insurance for the individual or the individual's spouse shall be allowed a credit against the income taxes due on the individual's income under this article. The credit shall be an amount equal to twenty-five percent of the amount expended for such insurance during the taxable year for which the credit is claimed. For the purposes of this section, "long-term care insurance" shall have the same meaning as in section 10-19-103 (5), C.R.S.

(2) Notwithstanding any other provision of this section to the contrary, a credit shall only be allowed to:

(a) An individual filing a single return with a federal taxable income of less than fifty thousand dollars for the tax year for which the credit is claimed;

(b) Two individuals filing a joint return with a federal taxable income of less than fifty thousand dollars for the tax year for which the credit is claimed if claiming the credit for one policy; or

(c) Two individuals filing a joint return with a federal taxable income of less than one hundred thousand dollars for the tax year for which the credit is claimed if claiming the credit for two policies or for a joint policy that covers each individual separately.

(3) Notwithstanding any other provision of this section to the contrary, the amount of credit claimed pursuant to this section shall not exceed one hundred fifty dollars for each policy for which a credit is claimed pursuant to this section.

(4) If the credit allowed under subsection (1) of this section exceeds the income taxes due on the resident individual's income, the amount of the credit 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 not be refunded to the individual.

(5) Any credit allowed pursuant to the provisions of this section shall be published in rules promulgated by the executive director of the department of revenue in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms for that taxable year.

**Source: L. 99:** Entire section added, p. 1362, § 1, effective August 4. **L. 2001:** (2)(c) amended, p. 393, § 3, effective August 8.

**Cross references:** For the legislative declaration contained in the 2001 act amending subsection (2)(c), see section 1 of chapter 133, Session Laws of Colorado 2001.

**39-22-123. Earned income tax credit - refund of state excess revenues for fiscal years commencing on or after July 1, 1998.**

(1) (a) Repealed.

(b) Subject to the provisions of subsection (4) of this section, for any income tax year commencing on or after January 1, 2000, if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year ending in that income tax year exceeds the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution and the voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year, a resident individual or part-year resident individual who claims an earned income tax credit on the individual's federal tax return shall be allowed an earned income tax credit against the taxes due on the individual's income under this article. The amount of the credit shall be an amount equal to ten percent of the amount of the federal credit claimed on the resident individual's federal tax return or, in the case of a part-year resident individual, such amount as shall reflect ten percent of the federal earned income credit earned while a resident of Colorado.

(2) If the credit allowed under subsection (1) of this section exceeds the income taxes due on the resident individual's income, the amount of the credit 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) Any earned income tax credit allowed for any given taxable year pursuant to this section shall be published in rules promulgated by the executive director of the department of revenue in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms for that taxable year.

(3.5) Any earned income tax credit allowed to any person pursuant to subsection (1) of this section shall not be considered as income or resources for the purpose of determining eligibility or for the payment of public assistance benefits and medical assistance benefits authorized under state law or for payments made under any other publicly funded programs.

(4) (a) If, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year commencing on July 1, 1998, exceeds the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution for that fiscal year by less than

fifty million dollars, then the credit authorized by subsection (1) of this section shall not be allowed for the income tax year commencing on January 1, 1999.

(b) If, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for any state fiscal year commencing on or after July 1, 1999, exceeds the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution for that fiscal year by less than fifty million dollars, as adjusted pursuant to paragraph (c) of this subsection (4), then the credit authorized by subsection (1) of this section shall not be allowed for the income tax year in which said state fiscal year ended.

(c) (I) No later than October 1 of any given calendar year commencing on or after January 1, 2000, the executive director of the department of revenue shall annually adjust the dollar amount specified in paragraph (b) of this subsection (4) to reflect the rate of growth of Colorado personal income for the calendar year immediately preceding the calendar year in which such adjustment is made. For purposes of this subparagraph (I), "the rate of growth of Colorado personal income" means the percentage change between the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year immediately preceding the calendar year in which the adjustment is made and the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year prior to the calendar year immediately preceding the calendar year in which the adjustment is made.

(II) Upon calculating the adjustment of said dollar amount in accordance with subparagraph (I) of this paragraph (c), the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of the adjusted dollar amount and the basis for the adjustment. Such written notification shall be given within five working days after such calculation is completed, but such written notification shall be given no later than October 1 of the calendar year.

(III) It is the function of the executive committee to review and approve or disapprove such adjustment of said dollar amount within twenty days after receipt of such written notification from the executive director. Any adjustment that is not approved or disapproved by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such adjustment, such automatic approval shall not occur unless the executive committee does not approve or disapprove such adjustment after the conclusion of such hearing. Any hearing conducted by the executive committee pursuant to this subparagraph (III) shall be concluded no later than twenty-five days after receipt of such written notification from the executive director.

(IV) (A) If the executive committee disapproves any adjustment of said dollar amount calculated by the executive director pursuant to this paragraph (c), the executive committee shall specify such adjusted dollar amount to be utilized by the executive director. Any adjusted dollar amount specified by the executive committee pursuant to this sub-subparagraph (A) shall be calculated in accordance with the provisions of this paragraph (c).

(B) For the purpose of determining whether the credit authorized by subsection (1) of this section is to be allowed for any given income tax year, the executive director shall not utilize

any adjusted dollar amount that has not been approved pursuant to subparagraph (III) of this paragraph (c) or otherwise specified pursuant to sub-subparagraph (A) of this subparagraph (IV).

(V) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any calendar year commencing on or after January 1, 1999, that seek authorization for the state to retain and spend all or any portion of the amount of excess state revenues for the state fiscal year ending during said calendar year, the executive director shall not determine whether the credit authorized by subsection (1) of this section shall be allowed and shall not promulgate rules containing said credit until the impact of the results of said election on the amount of the excess state revenues to be refunded is ascertained.

(5) The general assembly finds and declares that an earned income tax credit is a reasonable method of refunding a portion of the state excess revenues required to be refunded in accordance with section 20 (7)(d) of article X of the state constitution.

(6) No credit is allowed under this section for an income tax year for which a credit is allowed under section 39-22-123.5.

**Source: L. 99:** Entire section added, p. 1327, § 1, effective June 3. **L. 2000:** (1) amended and (3.5) added, p. 1407, § 1, effective August 2. **L. 2013:** (6) added, (SB 13-001), ch. 381, p. 2227, § 2, effective August 7.

**Editor's note:** Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective January 1, 2005. (See L. 2000, p. 1407.)

**Cross references:** In 2013, subsection (6) was added by the "Colorado Working Families Economic Opportunity Act of 2013". For the short title, see section 1 of chapter 381, Session Laws of Colorado 2013.

**39-22-123.5. Earned income tax credit - not a refund of excess state revenues - trigger - legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) The federal earned income tax credit is a refundable tax credit for low- and middle-income working individuals and families whose earnings are below an income threshold;

(b) The amount of the credit increases with income until the credit reaches a maximum level and then phases out, and this structure creates an incentive for people to work and earn more income;

(c) Since its establishment in 1975, the credit has increased family income, reduced child poverty, and promoted employment by supplementing the earnings of low-wage workers, including military families;

(d) The credit has a positive impact on the education and health of children living in poverty;

(e) The credit has a positive economic impact on local economies and businesses because it puts more money in the hands of low- and middle-income working people who spend the money on immediate needs, such as groceries, school supplies, car repairs, rent, and health care;

(f) The Colorado earned income tax credit created in section 39-22-123 is ten percent of the federal earned income tax credit, but it is a mechanism to refund excess state revenues as required by section 20 of article X of the state constitution;

(g) This existing credit has not been in effect since 2001 because the refund has not been triggered; and

(h) Now, therefore, it is the intent of the general assembly to establish a permanent and refundable state earned income tax credit for eligible Colorado taxpayers, which is equal to ten percent of the federal earned income tax credit. The intended purpose of this credit is to help individuals and families achieve greater financial security and to help Colorado's economy.

(2) For an income tax year specified in subsection (3) of this section, a resident individual who claims an earned income tax credit on the individual's federal tax return is allowed an earned income tax credit against the taxes due under this article that is equal to ten percent of the federal credit that the resident individual claimed on his or her federal tax return for the same tax year.

(3) If a credit is allowed under section 39-22-123 for an income tax year commencing on or after January 1, 2013, the credit allowed under this section may be claimed for any income tax year beginning with the income tax year after the income tax year that the credit is allowed under section 39-22-123.

(4) The amount of the credit allowed under this section that exceeds the resident individual's income taxes due is refunded to the individual.

(5) In the case of a part-year resident, the credit allowed under this section is apportioned in the ratio determined under section 39-22-110 (1).

(6) The credit allowed under this section is not considered to be income or resources for the purpose of determining eligibility for the payment of public assistance benefits and medical assistance benefits authorized under state law or for a payment made under any other publicly funded programs.

**Source: L. 2013:** Entire section added, (SB 13-001), ch. 381, p. 2227, § 3, effective August 7.

**Cross references:** In 2013, this section was added by the "Colorado Working Families Economic Opportunity Act of 2013". For the short title, see section 1 of chapter 381, Session Laws of Colorado 2013.

**39-22-124. Tax credit against state taxes - legislative declaration - hearings and appeals. (Repealed)**

**Source: L. 99:** Entire section added, p. 1289, § 1, effective August 4. **L. 2000:** (2)(b), (3), (4), (5), (8)(a), (8)(b), (8)(c)(I), and (8)(c)(II) amended and (5.5) and (6.5) added, p. 744, § 1, effective May 23. **L. 2001:** (3), IP(4), (4)(b), IP(5), IP(5)(a), (5)(b), and (8)(c)(I) amended and (4.5) and (10) added, p. 429, § 1, effective April 20. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

**39-22-125. Credit for health benefit plans - definitions - mechanism to refund excess state revenues. (Repealed)**

**Source: L. 2000:** Entire section added, p. 930, § 1, effective May 25. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

**39-22-126. Credit for health care professionals practicing in rural health care professional shortage areas - legislative declaration - definitions. (Repealed)**

**Source: L. 2000:** Entire section added, p. 738, § 1, effective August 2. **L. 2001:** (2)(a) amended, p. 186, § 19, effective August 8; (2)(a), (2)(b)(I), (3), (4)(a), (4)(d), (6), (7), (9), and (10)(a) amended, p. 649, § 1, effective August 8; (4)(a), (4)(d), (6), (7), and (10)(a) amended, p. 393, § 4, effective August 8. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

**39-22-127. Credit for providing foster care - refund of excess state revenues for fiscal years commencing on or after January 1, 2000 - legislative declaration. (Repealed)**

**Source: L. 2001:** Entire section added, p. 608, § 1, effective May 30. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

**39-22-128. Credit for income eligible to be deferred on sale of livestock due to weather-related conditions - repeal. (Repealed)**

**Source: L. 2002, 3rd Ex. Sess.:** Entire section added, p. 56, § 1, effective August 12.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective January 1, 2009. (See L. 2002, 3rd Ex. Sess., p. 56.)

**39-22-129. Child tax credit - trigger - legislative declaration - definitions.** (1) (a) The general assembly hereby finds and declares that:

(I) The federal child tax credit, which includes the refundable portion of the credit commonly known as the additional child tax credit, supports low- and middle-income working families whose earnings are below an income threshold and who have children under seventeen years of age;

(II) Since its establishment at the federal level in 1997, the credit has increased family income, reduced child poverty among families with children, and supported local economies; and

(III) The credit has a positive impact on the early childhood development and health of children whose families gain income from the credit.

(b) Now, therefore, it is the intent of the general assembly to establish a permanent and refundable state child tax credit for eligible Colorado taxpayers, which is equal to a percentage of the federal credit based on a family's adjusted gross income. The intended purpose of this credit is to support Colorado working families with young children, reduce child poverty, and to help Colorado's economy.

(2) As used in this section:

(a) "Eligible child" means a qualifying child for purposes of the federal child tax credit who is under six years of age at the end of the taxable year for which the credit is claimed.

(b) "Federal child tax credit" means the child tax credit allowed under section 24 of the internal revenue code, or any successor section, and includes the refundable portion of the tax credit, which portion is referred to as the additional child credit.

(3) (a) For an income tax year specified in subsection (4) of this section, a resident individual who claims a federal child tax credit for an eligible child on the individual's federal tax return is allowed a child tax credit against the income taxes due under this article for the same tax year.

(b) (I) For a resident individual who files a single return, the amount of the credit is equal to:

(A) Thirty percent of the federal child tax credit that the resident individual claimed on his or her federal tax return for each eligible child, if the individual's federal adjusted gross income is twenty-five thousand dollars or less;

(B) Fifteen percent of the federal child tax credit that the resident individual claimed on his or her federal tax return for each eligible child, if the individual's federal adjusted gross income is greater than twenty-five thousand dollars but less than or equal to fifty thousand dollars; and

(C) Five percent of the federal child tax credit that the resident individual claimed on his or her federal tax return for each eligible child, if the individual's federal adjusted gross income is greater than fifty thousand dollars but less than or equal to seventy-five thousand dollars.

(II) A resident individual who files a single return and whose federal adjusted gross income is greater than seventy-five thousand dollars is not allowed a credit under this section.

(c) (I) For two resident individuals who file a joint return, the amount of the credit is equal to:

(A) Thirty percent of the federal child tax credit that the resident individuals claimed on their federal tax return for each eligible child, if the individuals' federal adjusted gross income is thirty-five thousand dollars or less;

(B) Fifteen percent of the federal child tax credit that the resident individuals claimed on their federal tax return for each eligible child, if the individuals' federal adjusted gross income is greater than thirty-five thousand dollars but less than or equal to sixty thousand dollars; and

(C) Five percent of the federal child tax credit that the resident individuals claimed on their federal tax return for each eligible child, if the individuals' federal adjusted gross income is greater than sixty thousand dollars but less than or equal to eighty-five thousand dollars.

(II) Two resident individuals who file a joint return and whose federal adjusted gross income is greater than eighty-five thousand dollars are not allowed a credit under this section.

(4) No credit is allowed under this section until the United States congress has enacted the "Marketplace Fairness Act of 2013", or any other act with substantially similar requirements, and the general assembly has enacted a law to implement the minimum simplification requirements in the congressional act. The credit allowed under this section may be claimed for any income tax year beginning with the income tax year during which the last prerequisite bill under this subsection (4) becomes law; except that, if the last bill becomes law after October 1 of a given year, the credit is first available in the next income tax year, and in no case may the credit be claimed prior to the 2014 income tax year.

(5) The amount of the credit allowed under this section that exceeds the resident individual's income taxes due is refunded to the individual.

(6) In the case of a part-year resident, the credit allowed under this section is apportioned in the ratio determined under section 39-22-110 (1).

(7) The credit allowed under this section is not considered to be income or resources for the purpose of determining eligibility for the payment of public assistance benefits and medical

assistance benefits authorized under state law or for a payment made under any other publicly funded programs.

**Source: L. 2013:** Entire section added, (SB 13-001), ch. 381, p. 2229, § 4, effective August 7.

**Cross references:** In 2013, this section was added by the "Colorado Working Families Economic Opportunity Act of 2013". For the short title, see section 1 of chapter 381, Session Laws of Colorado 2013.

PART 2

PARTNERS AND PARTNERSHIPS

**39-22-201. Partners, not partnership, subject to tax.** A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for the tax and the alternative minimum tax under this article only in their separate or individual capacities.

**Source: L. 64:** R&RE, p. 766, § 1. **C.R.S. 1963:** § 138-1-25. **L. 67:** p. 849, § 1. **L. 87:** Entire section amended, p. 1437, § 3, effective June 22.

**39-22-201.5. Limited liability company members - subject to tax. (Repealed)**

**Source: L. 90:** Entire section added, p. 453, § 34, effective April 18. **L. 95:** Entire section repealed, p. 817, § 41, effective May 24.

**39-22-202. Resident partners.** (1) In determining the federal taxable income of a resident partner for Colorado income tax purposes, any modification described in section 39-22-104 which relates to an item of partnership income, gain, loss, or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of partnership taxable income or loss generally.

(2) Each item of partnership income, gain, loss, deduction, or credit shall have the same character for a partner under this article as for federal income tax purposes.

(3) Where a partner's distributive share of an item of partnership income, gain, loss, deduction, or credit is determined for federal income tax purposes by special provision of the partnership agreement with respect to such item and where the principal purpose of such provision is the avoidance or evasion of tax under this article, the partner's distributive share of such item and any modification required with respect thereto shall be determined as if the partnership agreement made no special provision with respect to such item.

**Source: L. 64:** R&RE, p. 766, § 1. **C.R.S. 1963:** § 138-1-26. **L. 87:** (1) amended, p. 1437, § 4, effective June 22.

**39-22-202.5. Resident members. (Repealed)**

**Source: L. 90:** Entire section added, p. 453, § 34, effective April 18. **L. 95:** Entire section repealed, p. 817, § 42, effective May 24.

**39-22-203. Nonresident partners.** (1) (a) In determining Colorado nonresident federal taxable income of a nonresident partner of any partnership, there shall be included only the portion of such partner's distributive share of items of partnership income, gain, loss, deduction, or credit derived from sources within Colorado determined in accordance with the provisions of section 39-22-109 or, at the partnership's election, apportioned or allocated to this state pursuant to section 39-22-303.5.

(b) Repealed.

(2) In determining the sources of a nonresident partner's income for the purposes of Colorado income tax, no effect shall be given to a provision in the partnership agreement which:

(a) Characterizes payments to the partner as being for services or for the use of capital; or

(b) Allocates to the partner, as income or gain from sources outside Colorado, a greater portion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside Colorado to partnership income or gain from all sources, except as authorized in subsection (4) of this section; or

(c) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources within Colorado than his proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (4) of this section.

(3) Repealed.

(4) The executive director may authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources within Colorado, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he may require.

(5) (a) A nonresident partner's distributive share of items shall be determined under section 39-22-202 (1).

(b) The character of partnership items for a nonresident partner shall be determined under section 39-22-202 (2).

(c) The effect of a special provision in a partnership agreement having the principal purpose of avoidance or evasion of tax under this article shall be determined under section 39-22-202 (3).

**Source: L. 64:** R&RE, p. 767, § 1. **C.R.S. 1963:** § 138-1-27. **L. 83:** (1)(b) amended, p. 1513, § 5, effective January 1, 1984. **L. 87:** (1)(a), IP(2), and (2)(c) amended and (1)(b) and (3) repealed, pp. 1437, 1457, §§ 5, 31, effective June 22. **L. 93:** (1)(a) amended, p. 1319, § 1, effective June 6. **L. 2008:** (1)(a) amended, p. 954, § 6, effective January 1, 2009.

**39-22-203.5. Nonresident members. (Repealed)**

**Source: L. 90:** Entire section added, p. 454, § 34, effective April 18. **L. 93:** (1) amended, p. 1319, § 2, effective June 6. **L. 95:** Entire section repealed, p. 818, § 46, effective May 24.

**39-22-204. Accounting periods and methods.** The provisions of section 39-22-111 shall apply to partnerships to the extent not inconsistent with sections 39-22-201 to 39-22-203.

**Source: L. 64:** R&RE, p. 768, § 1. **C.R.S. 1963:** § 138-1-28. **L. 87:** Entire section amended, p. 1438, § 6, effective June 22.

**39-22-204.5. Accounting periods and methods - limited liability companies. (Repealed)**

**Source: L. 90:** Entire section added, p. 454, § 34, effective April 18. **L. 95:** Entire section repealed, p. 817, § 43, effective May 24.

**39-22-205. Limited liability company members. (Repealed)**

**Source: L. 90:** Entire section added, p. 455, § 34, effective April 18. **L. 95:** Entire section repealed, p. 817, § 44, effective May 24.

**39-22-206. Foreign source income of export taxpayers.** If a partnership qualifies as an export taxpayer, its partners may exclude from gross income for Colorado income tax purposes such partners' distributive share of any such partnership income or gain which constitutes foreign source income for federal income tax purposes. For the purposes of this section, an "export taxpayer" means any partnership which is subject to the provisions of this article and which sells fifty percent or more of its product or products which are produced in Colorado in states other than Colorado or in foreign countries or, if the gross receipts of such partnership are derived from the performance of services, such services are performed in Colorado by a partner or employee of the partnership and fifty percent or more of such services provided by the partnership are sold or provided to persons outside of Colorado.

**Source: L. 93:** Entire section added, p. 1320, § 3, effective June 6. **L. 95:** Entire section amended, p. 818, § 45, effective May 24.

PART 3

CORPORATIONS

SUBPART 1

C CORPORATIONS

**39-22-300.1. Short title - citation.** This subpart 1 shall be comprised of sections 39-22-300.1 to 39-22-310 and may be cited as subpart 1. This subpart 1 shall be known and may be cited as the "Colorado C Corporation Income Tax Act".

**Source: L. 92:** Entire section added, p. 2266, § 6, effective April 16.

**39-22-301. Corporate tax imposed.** (1) (a) For income tax years commencing on or after January 1, 1983, but before July 1, 1986, a tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount equal to five percent of the net income of such C corporation during the year derived from sources within Colorado. Income from sources within Colorado includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

(b) For income tax years commencing on or after January 1, 1981, but before January 1, 1983, a tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount equal to five percent of the net income of such C corporation during the year derived from sources within Colorado reduced pursuant to the reduction tables set forth in subsections (1.1) and (1.2) of this section. Income from sources within Colorado includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce. In the case of a C corporation which is a component member of a controlled group of corporations as defined in section 1563 (a) of the internal revenue code, the sum of the Colorado net incomes of all the component members of the controlled group, but not the losses of each component member thereof, shall be used in computing the reduction for the controlled group. The reduction for the controlled group may be allocated between or among the component members thereof as agreed to by such members. If such an agreement is not reached, the executive director shall allocate the reduction based on the ratio of the Colorado net income of each component member to the total Colorado net incomes of all component members.

(c) For income tax years commencing on or after July 1, 1986, but before July 1, 1987, a tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount equal to six percent of the net income of such C corporation during the year derived from sources within Colorado reduced pursuant to the reduction table set forth in subsection (1.3) of this section. Income from sources within Colorado includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce. In the case of a C corporation which is a component member of a controlled group of corporations as defined in section 1563 (a) of the internal revenue code, the sum of the Colorado net incomes of all the component members of the controlled group, but not the losses of each component member thereof, shall be used in computing the reduction for the controlled group. The reduction for the controlled group may be allocated between or among the component members thereof as agreed to by such members. If such an agreement is not reached, the executive director shall allocate the reduction based on the ratio of the Colorado net income of each component member to the total Colorado net incomes of all component members.

(d) (I) A tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount of the net income of such C corporation during the year derived from sources within Colorado as set forth in the following schedule of rates:

(A) For income tax years commencing on or after July 1, 1987, but before July 1, 1988:

| **If the Colorado net income is:** | **The tax is:** |
|---|---|
| $50,000.00 or less | 5.5% of the Colorado net income |
| Over $50,000.00 | $2,750.00 plus 6% of the excess Colorado net income over $50,000.00 |

(B) For income tax years commencing on or after July 1, 1988, but before July 1, 1989:

| **If the Colorado net income is:** | **The tax is:** |
|---|---|
| $50,000.00 or less | 5% of the Colorado net income |
| Over $50,000.00 | $2,500.00 plus 5.5% of the excess Colorado net income over $50,000.00 |

(C) For income tax years commencing on or after July 1, 1989, but before July 1, 1990:

| **If the Colorado net income is:** | **The tax is:** |
|---|---|
| $50,000.00 or less | 5% of the Colorado net income |
| Over $50,000.00 | $2,500.00 plus 5.4% of the excess Colorado net income over $50,000.00 |

(D) For income tax years commencing on or after July 1, 1990, but before July 1, 1991:

| **If the Colorado net income is:** | **The tax is:** |
|---|---|
| $50,000.00 or less | 5% of the Colorado net income |
| Over $50,000.00 | $2,500.00 plus 5.3% of the excess Colorado net income over $50,000.00 |

(E) For income tax years commencing on or after July 1, 1991, but before July 1, 1992:

| **If the Colorado net income is:** | **The tax is:** |
|---|---|

| | |
|---|---|
| $50,000.00 or less | 5% of the Colorado net income |
| Over $50,000.00 | $2,500.00 plus 5.2% of the excess Colorado net income over $50,000.00 |

(F) For income tax years commencing on or after July 1, 1992, but before July 1, 1993:

| **If the Colorado net income is:** | **The tax is:** |
|---|---|
| $50,000.00 or less | 5% of the Colorado net income |
| Over $50,000.00 | $2,500.00 plus 5.1% of the excess Colorado net income over $50,000.00 |

(G) For income tax years commencing on or after July 1, 1993, but prior to January 1, 1999, five percent of the Colorado net income;

(H) For income tax years commencing on or after January 1, 1999, but prior to January 1, 2000, four and three-quarters percent of the Colorado net income;

(I) Except as otherwise provided in section 39-22-627, for income tax years commencing on or after January 1, 2000, four and sixty-three one hundredths percent of the Colorado net income.

(II) For purposes of this paragraph (d), income from sources within Colorado shall be determined in accordance with the provisions of this part 3 and includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce. In the case of a C corporation which is a component member of a controlled group of corporations as defined in section 1563 (a) of the internal revenue code, the sum of the Colorado net incomes of all the component members of the controlled group, but not the losses of each component member thereof, shall be used in computing the tax bracket for the controlled group. The tax bracket for the controlled group may be allocated between or among the component members thereof as agreed to by such members. If such an agreement is not reached, the executive director shall allocate the tax bracket based on the ratio of the Colorado net income of each component member to the total Colorado net incomes of all component members.

(1.1) For income tax years commencing on or after January 1, 1981, but before January 1, 1982, the tax imposed by paragraph (b) of subsection (1) of this section shall be reduced in accordance with the following table:

| **If the Colorado net income is:** | **The reduction is:** |
|---|---|
| Not over $25,000.00 | 1% of the Colorado net income |
| Over $25,000.00 but not over $50,000.00 | $250.00 plus 0.5% of the excess over $25,000.00 |
| Over $50,000.00 | $375.00 |

(1.2) For income tax years commencing on or after January 1, 1982, but before January 1, 1983, the tax imposed by paragraph (b) of subsection (1) of this section shall be reduced in accordance with the following table:

| **If the Colorado net income is:** | **The reduction is:** |
|---|---|
| Not over $25,000.00 | 1% of the Colorado net income |
| Over $25,000.00 but not over $75,000.00 | $250.00 plus 0.5% of the excess over $25,000.00 |
| Over $75,000.00 | $500.00 |

(1.3) For income tax years commencing on or after July 1, 1986, but before July 1, 1987, the tax imposed by paragraph (c) of subsection (1) of this section shall be reduced in accordance with the following table:

| **If the Colorado net income is:** | **The reduction is:** |
|---|---|
| Not over $50,000.00 | .75% of the Colorado net income |
| Over $50,000.00 but not over $200,000.00 | $375.00 plus .5% of the excess over $50,000.00 |
| Over $200,000.00 | $1,125.00 |

(1.4) and (1.5) Repealed.

(2) Any corporation which is required by the terms of this article to file a return, and whose only activities in Colorado consist of making sales, and which does not own or rent real estate within the state of Colorado, and whose annual gross sales in or into this state amount to not more than one hundred thousand dollars may elect to pay a tax of one-half of one percent of its annual gross receipts derived from sales in or into Colorado in lieu of paying an income tax.

(3) (a) As used in this section:

(I) "Charitable organization" means a charitable organization exempt from federal income taxation under the provisions of the internal revenue code.

(II) "Crop" means an agricultural crop, including but not limited to grains, fruits, and vegetables, which is usable as food for human beings.

(III) "Crop contribution" means a contribution of a crop or portion of a crop to a charitable organization by a taxpayer engaged in the trade or business of farming or processing of a crop.

(IV) "Livestock" means cattle, swine, poultry, or other animals raised for profit and usable as food for human beings.

(V) "Livestock contribution" means a contribution of livestock to a charitable organization by a taxpayer engaged in the trade or business of raising or processing of livestock.

(VI) "Most recent sale price" means an amount equal to the price which the taxpayer would have received for the crop or livestock contributed, determined as if the crop or livestock had been sold on the date of the most recent sale of such a crop or livestock and at the same price per unit as the crop or livestock which was sold on that date.

(VII) "Wholesale market price" means the average wholesale market price for the crop or livestock contributed in the nearest regional market during the month in which the contribution is made, determined without consideration of grade or quality of the crop or livestock and as if the quantity of the crop or livestock contributed were marketable.

(b) There shall be allowed to taxpayers, as a credit with respect to the income taxes imposed by this part 3, an amount equal to twenty-five percent of the wholesale market price or twenty-five percent of the most recent sale price of crop contributions or livestock contributions, or both, made to a tax-exempt charitable organization. Credit, as provided for in this subsection (3), may not exceed one thousand dollars per tax year.

(c) Unused portions of such credit may be carried forward to subsequent tax years as credit against income taxes due for those years. However, such credit must be used within five years of the end of the tax year in which the contribution was made.

(d) The credit under this section is available only if the following conditions are met:

(I) The crop is harvested or the livestock is slaughtered by or on behalf of the donee charitable organization;

(II) The use of the crop or livestock by the donee charitable organization is related to the purpose or function constituting the basis for the organization's tax-exempt status;

(III) The crop or livestock is not transferred by the donee charitable organization in exchange for money, other property, or services. This condition shall not apply in those cases where the donee charitable organization functions as a clearinghouse for distribution, without expectation of remuneration, of such crops or livestock, or both, to other charitable organizations. These secondary donees shall be subject to the provisions of this section in the same measure as if the contribution were received by that tax-exempt charitable organization directly from the original donor.

(IV) The taxpayer and any subsequent donors shall receive from the donee charitable organization a written statement declaring that its use and disposition of the crop or livestock will be in accordance with this section;

(V) No taxpayer who donates items of food to a tax-exempt charitable organization for use or distribution in providing assistance shall be liable for damages in any civil action or subject to prosecution in any criminal proceeding resulting from the nature, age, condition, or packaging of such crop contributions or livestock contributions, or both. However, the exemption shall not apply to the willful, wanton, or reckless acts of donors which result in injury to the recipients of such contributed foods.

**Source: L. 64:** R&RE, p. 768, § 1. **C.R.S. 1963:** § 138-1-35. **L. 69:** p. 1129, § 2. **L. 81:** (1) amended, (1.1), (1.2), (1.3), (1.4), and (1.5) added, p. 1872, § 9, effective June 29. **L. 82:** (3) added, p. 564, § 2, effective April 22. **L. 83:** (1) and (1.1) to (1.5) amended, p. 1516, § 2, effective March 22; (1) and (1.3) to (1.5) amended, p. 2096, § 3, effective October 13. **L. 85:** (1) and (1.3) to (1.5) amended, p. 1265, § 3, effective May 30. **L. 86:** (1) amended, (1.3) and (1.4) R&RE, and (1.5) repealed, pp. 1117, 1118, 1120, §§ 14, 15, 22, effective July 1. **L. 86, 2nd Ex. Sess.:** (1.3) and (1.4) amended, p. 73, § 1, effective August 15. **L. 87:** (1)(b) and (1)(c) amended,

(1)(d) and (3) R&RE, and (1.4) repealed, pp. 1438, 1439, 1457, §§ 7, 8, 31, effective June 22; (1)(d)(I)(A) amended, p. 1590, § 70, effective July 10. **L. 89:** (1)(d)(II) amended, p. 1499, § 1, effective July 1, 1990. **L. 92:** (1)(a) to (1)(c), IP(1)(d)(I), and (1)(d)(II) amended, p. 2266, § 7, effective April 16. **L. 99:** (1)(d)(I)(G) amended and (1)(d)(I)(H) added, p. 1376, § 2, effective August 4. **L. 2000:** (1)(d)(I)(H) amended and (1)(d)(I)(I) added, p. 1414, § 3, effective August 2. **L. 2005:** (1)(d)(I)(I) amended, p. 1361, § 2, effective June 6.

**Editor's note:** Subsection (2) of this section implements the requirements of Article III, Section 2, of the Multistate Tax Compact, § 24-60-1301.

**39-22-302. S corporations.** An S corporation shall not be subject to taxation under this article.

**Source: L. 64:** R&RE, p. 768, § 1. **C.R.S. 1963:** § 138-1-36. **L. 92:** Entire section amended, p. 2265, § 3, effective April 16.

**39-22-303. Dividends in a combined report - foreign source income - affiliated groups - definitions.**

(1) to (5) (Deleted by amendment, L. 2008, p. 955, § 7, effective January 1, 2009.)

(6) In the case of two or more C corporations, whether domestic or foreign, owned or controlled directly or indirectly by the same interests, the executive director may, to avoid abuse, on a fair and impartial basis, distribute or allocate the gross income and deductions between or among such C corporations in order to clearly reflect income.

(7) (Deleted by amendment, L. 2008, p. 955, § 7, effective January 1, 2009.)

(8) The executive director shall not require the inclusion in a combined report of the income of any C corporation which conducts business outside the United States if eighty percent or more of the C corporation's property and payroll, as determined by factoring pursuant to section 24-60-1301, C.R.S., is assigned to locations outside the United States. For the purpose of this subsection (8), "United States" shall be restricted to the fifty states and the District of Columbia.

(9) Dividends which a C corporation includable in a combined report receives from another C corporation also includable in the combined report shall be excluded from taxable income.

(10) As used in this subsection (10), "foreign source income" means taxable income from sources without the United States, as used in section 862 of the internal revenue code. In apportioning and allocating income pursuant to section 39-22-303.5 or 39-22-303.7, foreign source income shall be considered only to the extent provided in this subsection (10):

(a) If, for federal income tax purposes, the taxpayer has elected to claim foreign taxes paid or accrued as a deduction, then all foreign source income minus such deduction shall be considered;

(b) (I) If, for federal income tax purposes, the taxpayer has elected to claim foreign taxes paid or accrued as a credit, then foreign source income shall be considered only to the extent that such income exceeds the exclusion provided by this paragraph (b).

(II) For income tax years commencing prior to January 1, 2000, the amount to be excluded shall be determined by multiplying the foreign source income by a fraction, the

numerator of which is the total of taxes paid or accrued to foreign countries and United States possessions by or on behalf of the C corporation pursuant to section 901 or 902 of the internal revenue code, deemed paid pursuant to section 902 or 960 of the internal revenue code for the tax year, or carried over or carried back to such tax year pursuant to section 904 (c) of the internal revenue code. The denominator of said fraction shall be forty-six percent of the foreign source income.

(III) For income tax years commencing on or after January 1, 2000, the amount to be excluded shall be determined by multiplying the foreign source income by a fraction, the numerator of which is the total of taxes paid or accrued to foreign countries and United States possessions by or on behalf of the C corporation pursuant to section 901 or 902 of the internal revenue code, deemed paid pursuant to section 902 or 960 of the internal revenue code for the tax year, or carried over or carried back to such tax year pursuant to section 904 (c) of the internal revenue code. The denominator of said fraction shall be the same percentage as the effective federal corporate income tax rate multiplied by the foreign source income. As used in this subsection (10), "effective federal corporate income tax rate" means the taxpayer's federal corporate income tax calculated in accordance with section 11 (a) and (b) of the internal revenue code for such tax year divided by the taxpayer's federal taxable income.

(c) Foreign source income from a foreign C corporation within an affiliated group of C corporations shall be determined without regard to section 882 (a)(2) of the internal revenue code.

(11) (a) In the case of an affiliated group of C corporations, the executive director may require, or the taxpayer may file, a combined report, but such report shall only include those members of an affiliated group of C corporations as to which any three of the following facts have been in existence in the tax year and the two preceding tax years:

(I) Sales or leases by one affiliated C corporation to another affiliated C corporation constitute fifty percent or more of the gross operating receipts of the C corporation making the sales or leases; or, purchases or leases from one affiliated C corporation by another affiliated C corporation constitute fifty percent or more of the cost of goods sold or leased by the C corporation making the purchases or leases. This subparagraph (I) shall not apply to the following transactions between affiliated C corporations: The issuance of commercial paper or other debt obligations and the use of the proceeds therefrom to make loans or to purchase receivables between affiliated C corporations.

(II) Five or more of the following services are provided by one or more affiliated C corporations for the benefit of another affiliated C corporation: Advertising and public relations services; accounting and bookkeeping services; legal services; personnel services; sales services; purchasing services; research and development services; insurance procurement and servicing exclusive of employee benefit programs; and employee benefit programs including pension, profit-sharing, and stock purchase plans. A service shall be deemed provided if fifty percent or more of the service is provided without provision for an "arm's length charge" within the meaning of the United States treasury regulation 1.482-2 (b)(3).

(III) Twenty percent or more of the long-term debt of one affiliated C corporation is owed to or guaranteed by another affiliated C corporation. For the purposes of this subparagraph (III), "long-term debt" means debt which becomes due more than one year after incurred.

(IV) One affiliated C corporation substantially uses the patents, trademarks, service marks, logo-types, trade secrets, copyrights, or other proprietary materials owned by another affiliated C corporation.

(V) Fifty percent or more of the members of the board of directors of one affiliated C corporation are members of the board of directors or are corporate officers of another affiliated C corporation.

(VI) Twenty-five percent or more of the twenty highest-ranking officers of an affiliated C corporation are members of the board of directors or are corporate officers of another affiliated C corporation.

(b) The net income of the affiliated C corporations which are to be included in a combined report shall be determined pursuant to the rules and regulations promulgated pursuant to section 1502 of the internal revenue code, as modified by section 39-22-304.

(c) If an affiliated C corporation is included in a combined report, section 39-22-303.5 or 39-22-303.7 shall be applied with the following modifications:

(I) Intercompany transactions among the affiliated C corporations shall be excluded from the numerator and denominator of the apportionment calculation set forth in section 39-22-303.5; and

(II) The numerator of the apportionment calculation set forth in section 39-22-303.5 shall be, to the extent applicable, the sum of the sales of those affiliated C corporations doing business in Colorado.

(d) The executive director shall not require returns to be made on a consolidated basis, but an affiliated group of C corporations may elect to file a consolidated return as otherwise provided in this article.

(e) (Deleted by amendment, L. 2008, p. 955, § 7, effective January 1, 2009.)

(12) (a) As used in subsections (10) and (11) of this section, the term "affiliated group" means one or more chains of includable C corporations connected through stock ownership with a common parent C corporation which is an includable C corporation if:

(I) Stock possessing more than fifty percent of the voting power of all classes of stock and more than fifty percent of each class of the nonvoting stock of each of the includable C corporations, except the common parent C corporation, is owned directly by one or more of the other includable C corporations; and

(II) The common parent C corporation owns directly stock possessing more than fifty percent of the voting power of all classes of stock and more than fifty percent of each class of the nonvoting stock of at least one of the other includable C corporations.

(b) As used in this subsection (12), the term "stock" does not include nonvoting stock which is limited and preferred as to dividends, employer securities, within the meaning of section 409(1) of the internal revenue code, while such securities are held under a tax credit employee stock ownership plan, or qualifying employer securities, within the meaning of section 4975(e)(8) of the internal revenue code, while such securities are held under an employee stock ownership plan which meets the requirements of section 4975(e)(7) of the internal revenue code.

(c) As used in this subsection (12), the term "includable C corporations" means any C corporation which has more than twenty percent of the C corporation's property and payroll as determined by factoring pursuant to section 24-60-1301, C.R.S., assigned to locations inside the United States.

(13) The executive director shall, within existing appropriations to the department of revenue, promulgate rules and regulations to apply and administer the provisions of this section. Such rules and regulations shall be available for public review and comment not later than July 1, 1990.

(14) (Deleted by amendment, L. 2008, p. 955, § 7, effective January 1, 2009.)

**Source: L. 64:** R&RE, p. 769, § 1. **C.R.S. 1963:** § 138-1-37. **L. 79:** Entire section R&RE, p. 1443, § 34, effective July 3. **L. 80:** (7) added, p. 731, § 1, effective March 17. **L. 85:** (8) to (12) added, p. 1273, § 1, effective June 12. **L. 89:** (5)(a) and (6) amended and (13) added, p. 1499, § 2, effective July 1, 1990. **L. 92:** (1) to (3), (4)(a), (4)(d)(I), (4)(d)(V) to (4)(d)(VII), (4)(e), IP(5)(b), (5)(b)(III), (5)(c), (6), (8), (9), (10)(b), (10)(c), (11), (12)(a), and (12)(c) amended, p. 2268, § 8, effective April 16. **L. 93:** (14) added, p. 1320, § 4, effective June 6. **L. 96:** (5)(c) amended, p. 165, § 5, effective July 1. **L. 99:** (10)(b) amended, p. 1282, § 1, effective August 4. **L. 2004:** (12)(b) amended, p. 1209, § 90, effective August 4. **L. 2008:** (1), (2), (3), (4), (5), (7), IP(10), (11)(c), (11)(e), and (14) amended, p. 955, § 7, effective January 1, 2009.

**39-22-303.1. Interstate banking or branching - nondiscriminatory tax treatment.** (1) On or before June 1, 1997, the executive director shall promulgate regulations to ensure nondiscriminatory tax treatment of financial organizations engaged in interstate banking or interstate branching and, in connection therewith, shall consider:

(a) Any recommendations of the multistate tax commission established under the provisions of section 24-60-1301, C.R.S., regarding the taxation and allocation of income and expenses of financial organizations; and

(b) Applying the multistate tax compact, as set forth in part 13 of article 60 of title 24, C.R.S., to financial organizations.

**Source: L. 95:** Entire section added, p. 770, § 16, effective July 1.

**39-22-303.5. Single-factor apportionment of business income - allocation of nonbusiness income - rules - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Business income" means the net income of the taxpayer arising from the transactions and activity in the regular course of a taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. For purposes of administration of this section, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Nonbusiness income" means all income other than business income.

(d) "Sales" means all gross receipts of the taxpayer not allocated under subsection (5) of this section and not otherwise excluded from the calculation of net income; except that, for the sale of intangible property, "sales" means the gain from the sale and not the gross receipts.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(f) "Taxpayer" means a C corporation or any nonresident individual, nonresident partner, or S corporation that is permitted or required pursuant to another provision of law to apportion and allocate revenue pursuant to this section.

(2) (a) For income tax years commencing prior to January 1, 2009, a taxpayer shall apportion and allocate income pursuant to section 24-60-1301, C.R.S., or apportion income pursuant to section 39-22-303, as those sections existed immediately prior to January 1, 2009.

(b) For income tax years commencing on or after January 1, 2009, but prior to January 1, 2019, a taxpayer shall apportion and allocate the taxpayer's entire net income as provided in this section.

(3) (a) If a taxpayer has no income from business activity outside of Colorado, the taxpayer's entire net income shall be allocated to Colorado.

(b) A taxpayer having income from business activity that is taxable both within and without Colorado shall apportion and allocate the taxpayer's net income as provided in this section.

(c) For purposes of apportionment and allocation of income under this section, a taxpayer is taxable in another state if:

(I) In that state, the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, or any similar tax; or

(II) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state subjects the taxpayer to such tax.

(4) (a) A taxpayer's business income shall be apportioned to Colorado by multiplying such business income by a fraction, the numerator of which is the total sales of the taxpayer in Colorado during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(b) Sales of tangible personal property, including gross receipts from leases and other uses of tangible personal property, are in Colorado if:

(I) The property is delivered or shipped to a purchaser in Colorado regardless of the f.o.b. point or other conditions of the sale; or

(II) The property is shipped from an office, store, warehouse, factory, or other place of storage in Colorado and the taxpayer is not taxable in the state to which the property is shipped.

(c) Sales, other than sales of tangible personal property, are in Colorado as follows:

(I) Revenue from services rendered in Colorado;

(II) Rents and royalties from real property located in Colorado;

(III) Gross proceeds from the sale of real property located in Colorado;

(IV) Interest and dividend income to the extent included in taxable income, if the taxpayer's commercial domicile is in Colorado;

(V) Gain from the sale of intangible property if the taxpayer's commercial domicile is in Colorado;

(VI) Patent and copyright royalties, if and to the extent that:

(A) The patent or copyright is utilized by the payer in Colorado; or

(B) The patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Colorado; and

(VII) Revenue from the performance of purely personal services, if the income-producing activity is performed in Colorado.

(d) Notwithstanding any other provision of this subsection (4), in apportioning the income of a taxpayer engaged in the business of publishing magazines or periodicals either through print or electronic media, sales related to advertising in magazines or periodicals shall be part of the taxpayer's total sales in Colorado only to the extent that such magazines or periodicals are delivered within Colorado. The determination of the extent to which magazines or periodicals are delivered within Colorado shall be based upon the ratio that the delivery of magazines or periodicals by such taxpayer or tax-reporting entity in Colorado bears to the total delivery of magazines and periodicals by such taxpayer or tax-reporting entity.

(e) Notwithstanding any other provision of law, no foreign source income that is included in taxable income shall be included as sales of the taxpayer in Colorado for purposes of apportioning business income pursuant to this subsection (4).

(f) For purposes of subparagraph (VI) of paragraph (c) of this subsection (4) and paragraph (g) of subsection (5) of this section:

(I) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of the receipts from the patent royalties cannot be reasonably assigned to states or if the accounting procedures do not reflect the states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(II) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties cannot be reasonably assigned to states or if the accounting procedures do not reflect the states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(5) A taxpayer's rents and royalties from real or tangible personal property, capital gains, interest, dividends, patent or copyright royalties, or other income, to the extent that they constitute nonbusiness income, shall be allocated as follows:

(a) Net rents and royalties from real property located in Colorado shall be allocated to Colorado;

(b) (I) Net rents and royalties from tangible personal property shall be allocated to Colorado:

(A) If and to the extent that the property is utilized in Colorado; or

(B) In their entirety if the taxpayer's commercial domicile is in Colorado and the taxpayer is not organized under the laws of, or taxable in, the state in which the property is utilized.

(II) For purposes of this paragraph (b), the extent of utilization of tangible personal property in Colorado shall be determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in Colorado during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property shall be

utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(c) Capital gains and losses from sales of real property located in Colorado shall be allocated to Colorado;

(d) Capital gains and losses from sales of tangible personal property shall be allocated to Colorado if:

(I) The property had a situs in Colorado at the time of the sale; or

(II) The taxpayer's commercial domicile is in Colorado and the taxpayer is not taxable in the state in which the property had a situs;

(e) Capital gains and losses from sales of intangible property shall be allocated to Colorado if the taxpayer's commercial domicile is in Colorado;

(f) Interest and dividends shall be allocated to Colorado if the taxpayer's commercial domicile is in Colorado;

(g) Patent and copyright royalties shall be allocated to Colorado if and to the extent that:

(I) The patent or copyright is utilized by the payer in Colorado; or

(II) The patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Colorado; and

(h) Nonbusiness income that is not otherwise allocated pursuant to this subsection (5) shall be allocated pursuant to subsection (7) of this section.

(6) Notwithstanding any other provision of this section, for each taxable year commencing on or after January 1, 2009, but prior to January 1, 2019, a taxpayer may elect to treat all income as business income. This election shall be made in accordance with rules adopted by the department of revenue and shall be made by the extended due date of the tax return. Once made, the election shall be irrevocable for such tax year.

(7) (a) In the case of certain industries where unusual factual situations produce inequitable results under the apportionment and allocation provisions of this section, the executive director shall promulgate rules for determining the apportionment and allocation factors for each such industry, but such rules shall be applied uniformly.

(b) If the apportionment and allocation provisions of this section do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the executive director may require, with respect to all or any part of the taxpayer's business activities, if reasonable:

(I) Separate accounting;

(II) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in Colorado; or

(III) The employment of any other method to effectuate an equitable apportionment or allocation of the taxpayer's income, fairly calculated to determine the net income derived from or attributable to sources in Colorado.

(c) If the executive director requires the taxpayer to change its present method of reporting, the executive director shall notify the taxpayer in writing of the reason for the required change. The notice shall be made by first-class mail as set forth in section 39-21-105.5 and shall be sufficiently particular to give the taxpayer adequate information as to the reasons for the change so that the taxpayer may frame an answer for and defend its present method of reporting if it decides to appeal.

(d) The department of revenue, from time to time, shall publish all rulings of general public interest with respect to any application of the provisions of this subsection (7).

(e) If requested by the director of research of the legislative council, the executive director shall require taxpayers to provide additional information related to apportionment and allocation of income to support an income tax return for the purpose of providing such information to legislative council staff to improve the accuracy of fiscal notes and reports to the legislature. The executive director shall aggregate such additional information so as to preserve the confidentiality of the taxpayer's information and comply with section 39-21-113.

(8) A bank, savings and loan, credit union, or other taxpayer making or purchasing loans whose only business activity within Colorado is the ownership of property acquired through the process of foreclosure, or was obtained through a procedure exercised in lieu of the entity exercising its right to foreclose, which property is later disposed of within twenty-four months after obtaining ownership, shall directly allocate net income for such property during such time and any gains or losses realized from the sale of such foreclosed property to the state where the property is located. Such limited activities shall not render a bank, savings and loan, credit union, or other entity subject to the other allocation and apportionment provisions of this section.

(9) The executive director shall promulgate rules in accordance with article 4 of title 24, C.R.S., to apply and administer the provisions of this section. Any rules that the executive director promulgated in order to apply and administer section 39-22-303 or 24-60-1301, C.R.S., that may be used to apply and administer the provisions of this section, including provisions to apply and administer the sales factor for special industries, which are set forth in 1 CCR 201-2, shall continue to be in effect unless inconsistent with the provisions of this section or specifically withdrawn by the executive director.

(10) On or before January 1, 2014, the director of the office of economic development shall prepare a report describing the economic impacts related to apportionment and allocation of taxable income pursuant to this section and deliver the report to the finance committees of the senate and house of representatives, or any successor committees.

**Source: L. 2008:** Entire section added, p. 958, § 8, effective January 1, 2009. **L. 2010:** IP(4)(f) amended, (HB 10-1422), ch. 419, p. 2121, § 174, effective August 11. **L. 2018:** (2)(b) and (6) amended, (HB 18-1185), ch. 369, p. 2231, § 3, effective August 8.

**Cross references:** For the legislative declaration in HB 18-1185, see section 1 of chapter 369, Session Laws of Colorado 2018.

**39-22-303.6. Market-based apportionment of the income of a taxpayer engaged in business - allocation of nonapportionable income - rules - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Apportionable income" means:

(I) Any income that would be allocable to this state under the United States constitution, but that is apportioned rather than allocated pursuant to the laws of this state; and

(II) All income that is apportionable under the United States constitution and is not allocated under the laws of this state, including:

(A) Income arising from transactions and activity in the regular course of a taxpayer's trade or business; and

(B) Income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Nonapportionable income" means all income other than apportionable income.

(d) "Receipts" means all gross receipts of the taxpayer that are not allocated under subsection (7) or (9) of this section, and that are received from transactions and activity in the regular course of the taxpayer's trade or business; except that receipts of a taxpayer from hedging transactions and from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities are excluded.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(f) "Taxpayer" means any person that is permitted or required pursuant to another provision of law to apportion and allocate income pursuant to this section.

(2) For income tax years commencing on or after January 1, 2019, a taxpayer shall apportion and allocate the taxpayer's entire net income as provided in this section.

(3) (a) A taxpayer that has no income from business activity outside of Colorado shall allocate all net income to Colorado.

(b) A taxpayer that has income from business activity that is taxable both within and without Colorado shall apportion and allocate the taxpayer's net income as provided in this section.

(c) For purposes of apportionment and allocation of income under this section, a taxpayer's income is taxable in another state if:

(I) In that state, the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, or any similar tax; or

(II) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state subjects the taxpayer to such tax.

(4) (a) A taxpayer's apportionable income shall be apportioned to Colorado by multiplying such apportionable income by a fraction, the numerator of which is the total receipts of the taxpayer in Colorado during the tax period and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

(b) Notwithstanding any other provision of law, foreign source income that is included in taxable income is not included as receipts of the taxpayer in Colorado for purposes of apportioning apportionable income pursuant to this section.

(5) Receipts from the sales of tangible personal property are in Colorado if:

(a) The property is delivered or shipped to a purchaser in Colorado regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in Colorado and the taxpayer is not taxable in the state to which the property is shipped.

(6) Receipts, other than receipts described in subsection (5) of this section, are in Colorado if the taxpayer's market for the sales is in Colorado. The taxpayer's market for sales is in Colorado if:

(a) In the case of the sale of a service, to the extent the service is delivered to a location in Colorado;

(b) In the case of the sale, rental, lease, or license of real property, to the extent the real property is located in Colorado;

(c) In the case of the rental, lease, or license of tangible personal property, to the extent the tangible personal property is located in Colorado;

(d) In the case of intangible property:

(I) That is rented, leased, or licensed, to the extent the intangible property is used in Colorado, provided that the intangible property utilized in marketing a good or service to a consumer is used in Colorado if that good or service is purchased by a consumer who is in Colorado; or

(II) That is sold, to the extent the intangible property is used in Colorado, provided that:

(A) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is used in Colorado if the geographic area includes all or part of Colorado; and

(B) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property are treated as receipts from the rental, lease, or licensing of the intangible property under subsection (6)(d)(I) of this section;

(III) All other receipts for sales of intangible property that are not described in subsection (6)(d)(II) of this section are excluded from the numerator and denominator of the apportionment fraction set forth in subsection (4)(a) of this section;

(e) If the state or states of assignment under this subsection (6) cannot be determined, the state or states of assignment must be reasonably approximated; and

(f) With respect to any receipt, if the state of assignment cannot be determined under this subsection (6) or reasonably approximated under subsection (6)(e) of this section, such receipts are excluded from the denominator of the apportionment fraction set forth in subsection (4)(a) of this section.

(7) A taxpayer's rents and royalties from real or tangible personal property, capital gains, interest, dividends, patent or copyright royalties, or other income, to the extent that they constitute nonapportionable income, are allocated as follows:

(a) Net rents and royalties from real property located in Colorado are allocated to Colorado;

(b) (I) Net rents and royalties from tangible personal property are allocated to Colorado:

(A) If and to the extent that the property is utilized in Colorado; or

(B) In their entirety if the taxpayer's commercial domicile is in Colorado and the taxpayer is not organized under the laws of, or the taxpayer's income is not taxable in, the state in which the property is utilized.

(II) For purposes of this subsection (7)(b), the extent of utilization of tangible personal property in Colorado is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in Colorado during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in

the state in which the property was located at the time the rental or royalty payer obtained possession.

(c) Capital gains and losses from sales of real property located in Colorado are allocated to Colorado;

(d) Capital gains and losses from sales of tangible personal property are allocated to Colorado if:

(I) The property had a situs in Colorado at the time of the sale; or

(II) The taxpayer's commercial domicile is in Colorado and the taxpayer's income is not taxable in the state in which the property had a situs;

(e) Capital gains and losses from sales of intangible property are allocated to Colorado if the taxpayer's commercial domicile is in Colorado;

(f) Interest and dividends are allocated to Colorado if the taxpayer's commercial domicile is in Colorado;

(g) (I) Patent and copyright royalties are allocated to Colorado if and to the extent that:

(A) The patent or copyright is utilized by the payer in Colorado; or

(B) The patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Colorado.

(II) For purposes of this subsection (7)(g), a patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of the receipts from the patent royalties cannot be reasonably assigned to states or if the accounting procedures do not reflect the states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(III) For purposes of this subsection (7)(g), a copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties cannot be reasonably assigned to states or if the accounting procedures do not reflect the states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h) Nonapportionable income that is not otherwise allocated pursuant to this subsection (7) is allocated pursuant to subsection (9) of this section.

(8) Notwithstanding any other provision of this section, for each taxable year commencing on or after January 1, 2019, a taxpayer may elect to treat all income as apportionable income. This election must be made in accordance with rules adopted by the department of revenue and made by the extended due date of the tax return. Once made, the election is irrevocable for the tax year.

(9) (a) (I) If the allocation and apportionment provisions in this section do not fairly represent the extent of business activity in Colorado of taxpayers engaged in a particular industry or in a particular transaction or activity, the executive director may, in addition to the authority provided in subsection (9)(b) of this section, and notwithstanding any other provision in this section, establish appropriate rules, including the application of a variance allowed under subsection (9)(b) of this section on an industry-wide, transaction-wide, or activity-wide basis, for determining alternative allocation and apportionment methods for such taxpayers.

(II) A rule adopted pursuant to this subsection (9)(a) must be applied uniformly; except that, with respect to any taxpayer to whom such rule applies, the taxpayer may petition for, or the executive director may require, adjustment pursuant to subsection (9)(b) of this section.

(b) If the apportionment and allocation provisions of this section do not fairly represent the extent of the taxpayer's business activities in Colorado, the taxpayer may petition for, or the executive director may require, with respect to all or any part of the taxpayer's business activities, if reasonable:

(I) Separate accounting;

(II) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in Colorado;

(III) The inclusion of any receipts of a taxpayer otherwise excluded under subsection (1)(d) of this section, including those from hedging transactions or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities; or

(IV) The employment of any other method, notwithstanding any other provision of this section, to effectuate an equitable apportionment or allocation of the taxpayer's income, fairly calculated to determine the net income derived from or attributable to sources in Colorado.

(c) (I) The taxpayer petitioning for, or the executive director requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (9)(b) of this section shall prove, by a preponderance of the evidence, that:

(A) The allocation and apportionment provisions in this section do not fairly represent the extent of the taxpayer's business activity in Colorado; and

(B) The alternative to such provisions is reasonable.

(II) The same burden of proof applies whether the taxpayer is petitioning for, or the executive director is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income; except that, if the executive director can show that in any two of the prior five tax years, the taxpayer had used an allocation and apportionment method at variance with its allocation and apportionment method or methods in other tax years, then the executive director does not bear the burden of proof described in subsection (9)(c)(I) of this section in imposing a different method.

(d) If the executive director requires any different method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to this subsection (9), the executive director shall not impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this section.

(e) A taxpayer that has received written permission from the executive director to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the executive director reasonably relied.

(f) If the executive director requires the taxpayer to change its present method of reporting, the executive director shall notify the taxpayer in writing of the reason for the required change. The notice must be made by first-class mail as set forth in section 39-21-105.5 and must be sufficiently particular to give the taxpayer adequate information as to the reasons for the change so that the taxpayer may frame an answer for and defend its present method of reporting if it decides to appeal.

(g) The department of revenue, from time to time, shall publish all rulings of general public interest with respect to any application of this subsection (9).

(h) If requested by the director of research of the legislative council, the executive director shall require taxpayers to provide additional information related to apportionment and allocation of income to support an income tax return for the purpose of providing such information to legislative council staff to improve the accuracy of fiscal notes and reports to the legislature. The executive director shall aggregate such additional information so as to preserve the confidentiality of the taxpayer's information and comply with section 39-21-113.

(10) A bank, savings and loan, credit union, or other taxpayer making or purchasing loans whose only business activity in Colorado is the ownership of property acquired through the process of foreclosure, or was obtained through a procedure exercised in lieu of the entity exercising its right to foreclose, which property is later disposed of within twenty-four months after obtaining ownership, shall directly allocate net income for such property during such time and any gains or losses realized from the sale of such foreclosed property to the state where the property is located. Such limited activities do not render a bank, savings and loan, credit union, or other entity subject to the other allocation and apportionment provisions of this section.

(11) The executive director shall promulgate rules in accordance with article 4 of title 24 to apply and administer this section. Any rules that the executive director promulgated in order to apply and administer section 39-22-303, 39-22-303.5, or 24-60-1301 that may be used to apply and administer this section, including provisions to apply and administer the sales factor for special industries, which are set forth in 1 CCR 201-2, continue to be in effect unless inconsistent with this section or specifically withdrawn by the executive director.

(12) On or before January 1, 2024, the director of the office of economic development shall prepare a report describing the economic impacts related to apportionment and allocation of taxable income pursuant to this section and deliver the report to the finance committees of the senate and house of representatives, or any successor committees.

**Source: L. 2018:** Entire section added, (HB 18-1185), ch. 369, p. 2225, § 2, effective August 8.

**Cross references:** For the legislative declaration in HB 18-1185, see section 1 of chapter 369, Session Laws of Colorado 2018.

**39-22-303.7. Sourcing of sales of mutual fund service corporations - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Administration services" includes, but is not limited to, clerical, fund, or shareholder accounting and participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal, and tax services performed for a regulated investment company. Services qualify as "administrative services" only if the provider of such services during the taxable year also provides, or is affiliated with a person that provides, management or distribution services to a regulated investment company during the same taxable year.

(b) "Distribution services" includes, but is not limited to, the services of advertising, servicing, marketing, or selling shares of a regulated investment company. The services of advertising, servicing, or marketing shares qualify as "distribution services" only when the service is performed by a person that is, or in the case of a closed-end company was, either engaged in the business of selling regulated investment company shares or affiliated with a person that is engaged in the service of selling regulated investment company shares. In the case

of an open-end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to 15 U.S.C. sec. 80a-15 (b), as amended.

(c) "Domicile" presumptively means the shareholder's mailing address on the records of the regulated investment company. If, however, the regulated investment company or the mutual fund service corporation has actual knowledge that the shareholder's primary residence or principal place of business is different from the shareholder's mailing address, the presumption shall not control. If the shareholder of record is a company that holds the shares of the regulated investment company as depositor for the benefit of a separate account, then the shareholder shall be the contract owners or policyholders of the contracts or policies supported by the separate account determined using any reasonable basis, such as zip codes of underlying shareholders or United States census bureau data in order to determine the proper location for the assignment of these shares. If the regulated investment company or the mutual fund service corporation has actual knowledge that the shareholder's principal place of business is different from the shareholder's mailing address, the presumption shall not control.

(d) "Management services" includes, but is not limited to, any of the following: The rendering of investment advice, directly or indirectly, to a regulated investment company, making determinations as to when sales and purchases of securities are to be made on behalf of the regulated investment company, or providing services related to the selling or purchasing of securities constituting assets of a regulated investment company, and related activities. Services qualify as "management services" only when such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to 15 U.S.C. sec. 80a-15 (a), as amended, for a person that has entered into such contract with the regulated investment company or for a person that is affiliated with a person that has entered into such a contract with a regulated investment company.

(e) "Mutual fund sales" means gross receipts derived within the taxable year directly or indirectly from the rendering of management, distribution, or administration services to a regulated investment company, including gross receipts received directly or indirectly from trustees, sponsors, and participants of employee benefit plans that have accounts in a regulated investment company.

(f) "Mutual fund service corporation" means any corporation doing business in Colorado that derives gross income from the provision directly or indirectly of management, distribution, or administration services to or on behalf of a regulated investment company and from trustees, sponsors, and participants of employee benefit plans that have accounts in a regulated investment company.

(g) "Regulated investment company" means a regulated investment company as defined in section 851 of the federal "Internal Revenue Code of 1986", as amended.

(2) Notwithstanding any provision of section 39-22-303.5, for taxable years commencing on or after January 1, 2009, mutual fund sales by a mutual fund service corporation shall be considered Colorado sales for purposes of section 39-22-303.5 (4)(c), to the extent that shareholders of the regulated investment company are domiciled in Colorado as follows:

(a) (I) By multiplying the mutual fund service corporation's total dollar amount of mutual fund sales of such services on behalf of each regulated investment company by a fraction, the numerator of which shall be the average of the number of shares owned by the regulated investment company's shareholders domiciled in Colorado at the beginning of and at the end of the regulated investment company's taxable year that ends with or within the mutual

fund service corporation's taxable year, and the denominator of which shall be the average of the number of shares owned by the regulated investment company shareholders everywhere at the beginning of and at the end of the regulated investment company's taxable year that ends with or within the mutual fund service corporation's taxable year.

(II) Notwithstanding subparagraph (I) of this paragraph (a), a mutual fund service corporation may use the year-end of the regulated investment company's fund advisor for this calculation, as long as the mutual fund service corporation consistently uses this method from year to year. For purposes of this paragraph (a), a regulated investment company's fund advisor is the person that is directly and primarily responsible for providing investment advice to the regulated investment company under a contract entered into pursuant to 15 U.S.C. sec. 80a-15 (a).

(b) If the domicile of a shareholder is unknown to the mutual fund service corporation because the shareholder of record is a person that holds the shares of a regulated investment company as a depositor for the benefit of others, the mutual fund service corporation may utilize any reasonable basis, such as zip codes of underlying shareholders or United States census bureau data, in order to determine the proper location for the assignment of the shares.

(c) A separate computation shall be made to determine the mutual fund sales for each regulated investment company, the sum of which shall equal the total mutual fund sales sourced to Colorado.

**Source: L. 2008:** Entire section added, p. 958, § 8, effective January 1, 2009. **L. 2009:** (1)(e), (1)(f), IP(2), and (2)(c) amended, (HB 09-1311), ch. 275, p. 1237, § 1, effective May 18.

**39-22-303.9. Apportionment of the income of a taxpayer with enterprise data center operations in the state - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Capital investment" means the:

(I) Purchase and construction of real estate; or

(II) Purchase and deployment of capital equipment, machines, building systems, infrastructure, or other depreciable assets, including capital leases.

(b) "Enterprise data center operation" means a business that:

(I) Physically houses information technology equipment such as servers, switches, routers, data storage devices, or related equipment;

(II) Manages and processes digital data and information to provide application services or management for data processing, such as web hosting, internet, intranet, telecommunication, and information technology services;

(III) Is owned by a taxpayer; and

(IV) Is operated substantially for the taxpayer's own use.

(c) "Office of economic development" or "office" means the Colorado office of economic development created in section 24-48.5-101.

(d) "Person" has the same meaning as provided in section 39-21-101 (3).

(e) "Taxpayer" means a person or an affiliated group of C corporations authorized to elect to make a consolidated return under section 39-22-305, and an affiliated group as defined in section 39-22-303 (12).

(2) Notwithstanding any provision of section 39-22-303.5, for taxable years commencing on or after the July 1 in the year in which the office provides written certification to the taxpayer and to the department of revenue that the requirements described in subsection (3)(a) of this section have been met by the taxpayer, but no sooner than the taxable year commencing July 1, 2018, pursuant to the schedule set by the office as described in subsection (3)(c)(II) of this section, in apportioning the income of a taxpayer with enterprise data center operations in the state, sales from services are Colorado sales for purposes of section 39-22-303.5 (4)(c)(I) to the extent such sales constitute revenues from services that are delivered to the taxpayer's customer's location in the state, as demonstrated by the customer's billing address.

(3) (a) Except as provided in subsection (3)(d) of this section, if a taxpayer makes a capital investment in an enterprise data center operation in the state as described in subsection (3)(b) of this section and enters into a memorandum of understanding with the office as described in subsection (3)(c) of this section, then the taxpayer is authorized to use the apportionment method set forth in subsection (2) of this section pursuant to the schedule set forth in the memorandum of understanding when the capital investment is fully funded.

(b) The taxpayer shall make a capital investment in an enterprise data center in the state equal to at least one hundred fifty million dollars within any consecutive five-year period commencing on or after January 1, 2013.

(c) (I) The taxpayer shall enter into a memorandum of understanding with the office that sets forth:

(A) The amount of the capital investment;

(B) The specific consecutive five-year period in which the capital investment will occur;

(C) The minimum number of net new employees that will be hired by the taxpayer; and

(D) Any other investments or actions on the part of the taxpayer that will support the economic development of the state.

(II) The memorandum of understanding must include a schedule, to be set by the office, that incrementally transitions the taxpayer, over a period not to exceed eight years, to the apportionment method described in subsection (2) of this section.

(III) When negotiating the terms of the memorandum of understanding with the taxpayer, the office may seek input from the department of revenue. The department of revenue shall provide taxpayer-specific information that will assist the office in setting the terms of the memorandum of understanding. Notwithstanding section 39-21-113, it is lawful for the department of revenue to provide such taxpayer-specific information to the office. The office shall not disclose taxpayer-specific information to the public that it receives pursuant to this subsection (3)(c)(III) and subsection (3)(c)(V) of this section and shall keep such taxpayer-specific information confidential. All employees of the office are subject to the limitations set forth in section 39-21-113 (4) and the penalties set forth in section 39-21-113 (6).

(IV) (A) The memorandum of understanding must be signed by the office and the taxpayer no later than one year after the last year of the consecutive five-year capital investment period described in subsection (3)(b) of this section.

(B) When the taxpayer fully funds the capital investment and signs the memorandum of understanding, the office shall provide written certification to the taxpayer and the department of revenue that the requirements described in subsection (3)(a) of this section have been met by the taxpayer and the taxpayer shall attach a copy of the signed memorandum of understanding with

its tax return in order to provide the department of revenue with the transition schedule described in subsection (3)(c)(II) of this section for the apportionment method.

(V) The taxpayer shall provide any information required by the office for the office to determine compliance with the terms of the memorandum of understanding.

(VI) The office and the department of revenue have the right to audit compliance with the memorandum of understanding and review any information provided by the taxpayer pursuant to the memorandum of understanding or requested by the office as allowed under subsection (3)(c)(V) of this section.

(d) If the taxpayer fails to fully fund the capital investment or fails to fulfill the obligations established in the memorandum of understanding, the taxpayer may no longer use the apportionment method set forth in subsection (2) of this section and apportionment shall be determined pursuant to section 39-22-303.5.

(4) Notwithstanding section 24-1-136 (11), on November 1, 2019, and each November 1 thereafter, the office and the department of revenue shall submit a report to the finance committee of the house of representatives and the finance committee of the senate, or any successor committees, that includes a summary of the use of this section, the capital investments made, and the number of memoranda of understanding entered into and that includes an update on the use of market-based apportionment in the state.

**Source: L. 2017:** Entire section added, (SB 17-299), ch. 318, p. 1710, § 1, effective August 9.

**39-22-304. Net income of corporation - legislative declaration - definitions - repeal.** (1) The net income of a C corporation means the C corporation's federal taxable income, as defined in the internal revenue code, for the taxable year, with the modifications specified in this section.

(2) There shall be added to federal taxable income:

(a) Any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States that were deducted on the federal income tax return;

(b) Interest income less amortization of premium on obligations of any state or any political subdivision thereof, other than interest income on obligations of this state or a political subdivision thereof which are issued on or after May 1, 1980. Interest income on obligations of this state or a political subdivision thereof which were issued before May 1, 1980, shall be exempt from income tax to the extent that such interest is specifically so exempt under the laws of this state authorizing the issuance of such obligations. The amount of such interest shall be the net amount after reduction by the amount of the deductions related thereto which are required by the internal revenue code to be allocated to such classes of interest.

(c) The federal net operating loss deduction;

(d) Income taxes imposed by this state to the extent deducted in determining federal taxable income, except the tax imposed by article 29 of this title;

(e) (I) Any expenses incurred by a taxpayer with respect to expenditures made at, or payments made to, a club licensed pursuant to section 44-3-418 that has a policy to restrict membership on the basis of sex, sexual orientation, marital status, race, creed, religion, color,

ancestry, or national origin. Any such club shall provide on each receipt furnished to a taxpayer a printed statement as follows:

The expenditures covered by this receipt are

nondeductible for state income tax purposes.

(II) The general assembly finds, determines, and declares that the people of the state of Colorado desire to promote and achieve tax equity and fairness among all the state's citizens and further desire to conform to the public policy of nondiscrimination. The general assembly further declares that the provisions of this paragraph (e) are enacted for these reasons and for no other purpose.

(f) For the income tax years commencing on or after January 1, 2000, an amount equal to the charitable contribution deduction allowed by section 170 of the internal revenue code to the extent such deduction includes a contribution of real property to a charitable organization for a conservation purpose for which an income tax credit is claimed pursuant to section 39-22-522;

(g) Repealed.

(h) An amount equal to a business expense for labor services that is deducted pursuant to section 162 (a)(1) of the internal revenue code but that is prohibited from being claimed as a deductible business expense for state income tax purposes pursuant to section 39-22-529.

(3) There shall be subtracted from federal taxable income:

(a) Interest income on obligations of the United States and its possessions to the extent included in federal taxable income;

(b) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States to the extent included in federal taxable income but exempt from state income taxes under the laws of the United States;

(c) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Colorado income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but, if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to the portion of such gain which is included in federal taxable income;

(d) (I) The portion of any gain received during the taxable year from a qualified sale.

(II) As used in this paragraph (d), "qualified sale" means a sale, in good faith, of real or personal property to a buyer who initiates the transaction to purchase real or personal property of the seller and who had or could have obtained the power to condemn such property, if the transaction was not between persons defined in section 267 (b) of the internal revenue code.

(III) The purpose of this paragraph (d) is, for purposes of Colorado income tax, to accord a seller in a qualified sale the same treatment received by a taxpayer under section 1033 of the internal revenue code relating to gains from involuntary conversion, even though said seller does not qualify under said section 1033 due to the absence of condemnation or the threat or imminence thereof and the buyer of the property purchased initiates the transaction. The executive director shall promulgate such reasonable rules and regulations as are necessary to accomplish the purpose of this paragraph (d).

(e) The amount necessary to prevent the taxation under this article of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state, for a taxable year prior to January 1, 1965, to the taxpayer, or to a

decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(f) The amount of any refund or credit for overpayment of income taxes imposed by this state to the extent included in federal taxable income;

(g) The net operating loss deduction allowed under section 39-22-504;

(h) An amount equal to the difference between the depletion allowance permitted under the internal revenue code for oil shale and an amount which would be permitted as the depletion allowance for oil shale if: The percentage depletion rate were twenty-seven and one-half percent; and the crushing, retorting, condensing, and other processes by which oil, gas, or both oil and gas are removed from oil shale, were deemed to be treatment processes considered as mining;

(i) That portion of wages or salaries paid or incurred for the taxable year, the deduction for which is disallowed by section 280C of the internal revenue code;

(j) Any amount treated as a section 78 dividend under section 78 of the internal revenue code;

(k) Any amount contributed to a medical savings account pursuant to section 39-22-504.7 (2)(e), to the extent such amount is not claimed as a deduction on the taxpayer's federal tax return;

(l) Repealed.

(m) For income tax years commencing on or after January 1, 2014, if a taxpayer is licensed under the "Colorado Medical Marijuana Code", article 11 of title 44, an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by section 280E of the internal revenue code because marijuana is a controlled substance under federal law;

(n) For income tax years commencing on or after January 1, 2014, if a taxpayer is licensed under the "Colorado Retail Marijuana Code", article 12 of title 44, an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by section 280E of the federal internal revenue code because marijuana is a controlled substance under federal law;

(o) (I) The general assembly hereby finds and declares that:

(A) The state is seeing a continued trend of aging farmers and ranchers;

(B) The current average age of a family farm or ranch operator in Colorado is fifty-nine;

(C) There is a national and local focus on the benefits of local foods, and at the same time a new generation of farmer is emerging, but the beginning farmers or ranchers are having trouble finding land to lease; and

(D) The income tax deduction allowed in this paragraph (o) is intended to be an incentive for aging farmers or ranchers to lease their agricultural assets to beginning farmers or ranchers in order to give the beginners a chance to get started in the industry.

(II) For income tax years beginning on or after January 1, 2017, but before January 1, 2020, if a qualified taxpayer enters into a qualified lease with an eligible beginning farmer or rancher, an amount specified in a deduction certificate issued by the Colorado agricultural development authority that is equal to twenty percent of the lease payments received from an eligible beginning farmer or rancher as specified in the qualified lease, not to exceed the amount specified in subparagraph (III) of this paragraph (o).

(III) The Colorado agricultural development authority may issue more than one deduction certificate to each qualified taxpayer if such qualified taxpayer enters into more than

one qualified lease with more than one eligible beginning farmer or rancher; except that the total amount specified in all deduction certificates issued to a qualified taxpayer may not exceed twenty-five thousand dollars per income tax year for a maximum of three income tax years, and except that the Colorado agricultural development authority shall not issue more than the number of deduction certificates per income tax year set forth in section 35-75-107 (1)(u), C.R.S.

(IV) For purposes of this paragraph (o):

(A) "Agricultural asset" means land, crops, livestock and livestock facilities, farm equipment and machinery, grain storage, or irrigation equipment.

(B) "Colorado agricultural development authority" means the Colorado agricultural development authority created in section 35-75-104, C.R.S.

(C) "Deduction certificate" means a certificate issued by the Colorado agricultural development authority certifying that a qualified taxpayer qualifies for the income tax deduction authorized in this section and specifying the amount of the deduction allowed.

(D) "Eligible beginning farmer or rancher" means a farmer or rancher residing in the state who has a net worth of less than two million dollars, will provide the majority of the daily physical labor and management on the qualified taxpayer's agricultural asset or will use the qualified taxpayer's agricultural asset the majority of the time, has plans to farm or ranch full-time, has not been engaged in farming or ranching for more than ten years, has farming or ranching experience or education, and has participated in a financial management educational program approved by the Colorado agricultural development authority.

(E) "Qualified lease" means a lease entered into between a qualified taxpayer and an eligible beginning farmer or rancher for the qualified taxpayer's agricultural asset that is approved by the Colorado agricultural development authority and has a duration of at least three years.

(F) "Qualified taxpayer" means a taxpayer who owns an agricultural asset located in the state.

(V) To claim the deduction allowed in this paragraph (o), the qualified taxpayer shall attach a copy of the deduction certificate issued by the Colorado agricultural development authority to the taxpayer's return. No tax deduction is allowed under this paragraph (o) unless the taxpayer provides the copy of the deduction certificate.

(VI) The Colorado agricultural development authority shall, in a sufficiently timely manner to allow the department of revenue to process returns claiming the deduction allowed by this section, provide the department of revenue with an electronic report of the qualified taxpayers receiving a deduction certificate as allowed in this section for the preceding calendar year that includes the following information:

(A) The qualified taxpayer's name;

(B) The qualified taxpayer's Colorado account number; and

(C) The amount of the deduction allowed in this section.

(VII) This paragraph (o) is repealed, effective December 31, 2023.

**Source: L. 64:** R&RE, p. 771, § 1. **C.R.S. 1963:** § 138-1-38. **L. 67:** p. 854, §§ 1, 2. **L. 77:** (3) amended, p. 1795, § 1, effective May 26; (3) R&RE, p. 1784, § 2, effective June 19. **L. 78:** (3) R&RE, p. 490, § 2, effective March 24. **L. 79:** (3)(a) amended, p. 1453, § 2, effective March 26. **L. 80:** (3)(a) amended, p. 727, § 22, effective January 1, 1981. **L. 87:** Entire section R&RE, p. 1442, § 9, effective June 22. **L. 92:** (1) amended, p. 2272, § 9, effective April 16;

(2)(c) and (2)(d) amended and (2)(e) added, p. 2279, § 3, effective June 1. **L. 94:** (3)(k) added, p. 2840, § 5, effective January 1, 1995. **L. 95:** (3)(l) added, p. 1199, § 1, effective May 31. **L. 97:** (2)(e)(I) amended, p. 304, § 21, effective July 1. **L. 99:** (2)(f) added, p. 977, § 3, effective August 4. **L. 2000:** (2)(g) added, p. 1322, § 4, effective August 2. **L. 2004:** (2)(f) amended, p. 1209, § 91, effective August 4. **Referred 2006:** (2)(h) added, L. 2006, 1st Ex. Sess., p. 1, § 2, effective December 31. **L. 2008:** (2)(e)(I) amended, p. 1604, § 36, effective May 29. **L. 2010:** (2)(g) repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; (2)(g) repealed, (HB 10-1256), ch. 133, p. 440, § 3, effective August 11. **L. 2013:** (3)(n) added, (SB 13-283), ch. 332, p. 1896, § 19, effective May 28; (3)(m) added, (HB 13-1042), ch. 327, p. 1820, § 2, effective August 7. **L. 2016:** (3)(o) added, (HB 16-1194), ch. 252, p. 1031, § 2, effective August 10. **L. 2018:** (2)(e)(I) amended, (HB 18-1025), ch. 152, p. 1082, § 21, effective October 1; (3)(m) and (3)(n) amended, (HB 18-1023), ch. 55, p. 591, § 24, effective October 1.

**Editor's note:** (1) Amendments to subsection (3) by House Bill 77-1402 and House Bill 77-1519 were harmonized.

(2) Subsection (3)(l)(II) provided for the repeal of subsection (3)(l), effective January 1, 2001. (See L. 95, p. 1199.)

(3) Subsection (2)(h) was enacted by House Bill 06S-1020 at the first extraordinary session of the sixty-fifth general assembly. That bill contained a referendum clause and was approved by a vote of the registered electors of the state of Colorado on November 7, 2006. Subsection (2)(h) was effective upon proclamation of the governor, December 31, 2006. The vote count for the measure was as follows:

| | |
|---|---|
| FOR: | 744,475 |
| AGAINST: | 722,651 |

**Cross references:** For the legislative declaration contained in the 2008 act amending subsection (2)(e)(I), see section 1 of chapter 341, Session Laws of Colorado 2008.

**39-22-305. Consolidated returns.** (1) An affiliated group of C corporations, as defined in section 1504 of the internal revenue code, may elect to make a consolidated return with respect to the corporate income tax imposed by section 39-22-301 (1) for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all C corporations which at any time during the taxable year have been members of the affiliated group consent to be included in such return. The making of a consolidated return shall be considered as such consent. Such election may not be revoked in less than four years unless approved by the executive director.

(2) The executive director shall prescribe such regulations as the executive director may deem necessary in order that the tax liability of any affiliated group of C corporations making a consolidated return and of each C corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income tax liability and the various factors necessary for the determination of such liability and as the executive director may deem necessary in order to prevent avoidance of the tax liability.

**Source: L. 64:** R&RE, p. 771, § 1. **C.R.S. 1963:** § 138-1-39. **L. 77:** Entire section R&RE, p. 1797, § 1, effective May 18. **L. 87:** (1) amended, p. 1443, § 10, effective June 22. **L. 92:** Entire section amended, p. 2272, § 10, effective April 16.

**39-22-306. Accounting periods and methods.** The provisions of section 39-22-111 shall apply to C corporations to the extent not inconsistent with sections 39-22-301 to 39-22-305.

**Source: L. 64:** R&RE, p. 771, § 1. **C.R.S. 1963:** § 138-1-40. **L. 87:** Entire section amended, p. 1444, § 11, effective June 22. **L. 92:** Entire section amended, p. 2273, § 12, effective April 16.

**39-22-307. Credit allowed for prior payment of impact assistance.** (1) For income tax years commencing on or after January 1, 1981, there shall be allowed, as a credit against any taxes imposed by this part 3 on income derived from a new mining, milling, or mining and milling operation or expansion of an existing mining, milling, or mining and milling operation, an amount equal to the value of eligible contributions by the taxpayer made prior to the commencement of operations by the new operation or by the expansion of an existing operation to assist in solving the impact problems of units of local government resulting from the initiation of a new operation or an expansion of an existing operation. The credit allowed by this section shall be allowed only on a new operation or an expansion of an existing operation located within Colorado which begins actual operations subsequent to June 30, 1980. Such credit shall be based on the ratio of the gross income attributable to such new operation or expansion to the total Colorado gross income multiplied by the Colorado income tax liability for the year for which the credit is claimed.

(2) Eligible contributions, for the purpose of such credit, shall include the donation of property or payments to units of local government for use in the planning or construction or expansion of public facilities, limited to roads, schools, water facilities, sewerage facilities, police and fire protection facilities, and hospitals, which are deemed to be necessitated by the initiation of a new operation or an expansion of an existing operation. In order to qualify as an eligible contribution for credit, the following requirements shall be fulfilled:

(a) Each contribution shall be based on an agreement between the taxpayer and a unit of local government specifying the need for such contribution and its nature, value, and purpose. Such agreement shall be submitted for review to each unit of local government which is impacted by the new operation or the expansion of an existing operation. Each impacted unit of local government may send comments on the agreement to the parties to the agreement and the energy impact assistance advisory committee pursuant to section 34-63-102 (5)(b), C.R.S.

(b) Each contribution must be determined to be eligible for credit, after joint submission by the taxpayer and the unit of local government, by the executive director of the department of local affairs upon the recommendation of the energy impact assistance advisory committee.

(c) Certification of eligibility for credit of a contribution of a specified value must be made by the executive director of the department of local affairs to the executive director of the department of revenue, the unit of local government, and the taxpayer. Certification of eligibility for credit shall not be made to the specified value of any contribution submitted, but to a prorated value of the contribution, if the total of all claims received by the department of local affairs exceeds one hundred thousand dollars.

(3) A taxpayer may claim credit against income tax liability during the first five years of operations by a new operation or an expansion of an existing operation in the amount of the total value of all contributions certified as eligible for credit by submitting with the annual declarations and returns required by section 39-29-112 the certifications of eligibility for such credit. Any unabsorbed credit may not be claimed as a refund or applied as a credit to estimated tax.

**Source: L. 80:** Entire section added, p. 723, § 17, effective May 1. **L. 94:** (2)(a) amended, p. 1646, § 82, effective May 31.

**39-22-308. Credit allowed for purchase of Colorado coal.** (1) For income tax years commencing on or after January 1, 1989, but prior to January 1, 2005, there shall be allowed, as a credit against any taxes imposed on income by this part 3, an amount equal to one dollar per ton for each ton of Colorado coal purchased by and delivered to the taxpayer in excess of the number of tons of Colorado coal purchased by and delivered to the taxpayer in the income tax year commencing on or after January 1, 1988. If the amount of the tax credit allowed by this section exceeds the amount of income tax due for the taxable year, the excess amount may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding three years and shall be applied first to the earliest income tax years possible. For purposes of this section, "Colorado coal" means coal mined in Colorado, as certified by the producer of such coal.

(2) (a) Any public or private corporate purchaser who is not liable for or subject to state income tax during the year the coal is purchased and who is otherwise eligible for the credit allowed by subsection (1) of this section may by written agreement transfer such credit to the producer of the coal. Said producer shall be allowed, as a credit against any taxes imposed on income by this part 3, an amount equal to the amount of credit for which the purchaser would otherwise have been eligible pursuant to subsection (1) of this section. Any such credit shall be subject to any limitations established in subsection (1) of this section. Said producer shall reduce the purchase price of said coal to such corporate purchaser by the amount of the credit so transferred.

(b) The corporate purchaser shall file a copy of the written agreement with the department of revenue. The agreement shall contain, but shall not be limited to, terms stipulating the number of tons of Colorado coal purchased by the corporate purchaser in the 1988 base income tax year and the number of tons of Colorado coal over and above that base amount which is being purchased pursuant to the agreement.

**Source: L. 89:** Entire section added, p. 1507, § 1, effective April 12. **L. 91:** (1) amended, p. 1983, § 1, effective April 1.

**39-22-309. Tax credit for investment in technologies for recycling plastics. (Repealed)**

**Source: L. 89:** Entire section added, p. 1182, § 4, effective July 1. **L. 92:** (1) amended, p. 2273, § 11, effective April 16. **L. 2004:** Entire section repealed, p. 211, § 35, effective August 4.

**39-22-310. Legislative declaration - statutory interpretation and construction.** It is the intent of the general assembly that, in interpreting or construing the provisions of this part 3, statutes shall be given the strongest weight, then rules and regulations, and then the administrative interpretation or construction of said provisions by the executive director or the department of revenue; the administrative interpretation shall be given no greater weight than the interpretation of the taxpayer regardless of how long-standing such administrative interpretation or construction might be, unless such administrative interpretation or construction is set forth in rules and regulations promulgated by the executive director.

**Source: L. 89:** Entire section added, p. 1500, § 3, effective July 1, 1990.

SUBPART 2

S CORPORATIONS

**39-22-320. Short title - citation.** This subpart 2 shall be comprised of sections 39-22-320 to 39-22-330 and may be cited as subpart 2. This subpart 2 shall be known and may be cited as the "Colorado S Corporation Income Tax Act".

**Source: L. 92:** Entire section added, p. 2260, § 1, effective April 16.

**39-22-321. Definitions.** For the purposes of this subpart 2, unless the context otherwise requires:

(1) "Income attributable to the state" means items of income, loss, deduction, or credit of the S corporation apportioned or allocated to this state pursuant to section 39-22-303.5 or 39-22-303.7.

(2) "Income not attributable to the state" means all items of income, loss, deduction, or credit of the S corporation other than income attributable to the state.

(3) "Post-termination transition period" means that period defined in section 1377 (b)(1) of the internal revenue code.

(4) "Pro rata share" means the portion of any item attributable to an S corporation shareholder for a taxable period determined in the manner provided in, and subject to any election made under, section 1377 (a) or 1362 (e), as the case may be, of the internal revenue code.

(5) "Taxable period" means any taxable year or portion of a taxable year during which a corporation is an S corporation.

**Source: L. 92:** Entire section added, p. 2260, § 1, effective April 16. **L. 2008:** (1) amended, p. 966, § 9, effective January 1, 2009.

**39-22-322. Taxation of an S corporation and its shareholders.** (1) An S corporation shall not be subject to the tax imposed by this article.

(2) For the purposes of section 39-22-104, each shareholder's pro rata share of the S corporation's income attributable to the state and each resident shareholder's pro rata share of the S corporation's income not attributable to the state, all as modified pursuant to section 39-22-

323, shall be taken into account by the shareholder in the manner provided in section 1366 of the internal revenue code.

(3) For the purposes of determining the amounts taken into account by the shareholders of an S corporation pursuant to subsection (2) of this section, the amount of any tax imposed on the S corporation under the internal revenue code shall proportionately reduce the S corporation's income attributable to the state and income not attributable to the state.

**Source: L. 92:** Entire section added, p. 2261, § 1, effective April 16. **L. 2018:** (2) amended, (HB 18-1375), ch. 274, p. 1722, § 80, effective May 29.

**39-22-323. Modification and characterization of income.** (1) An S corporation's income attributable to the state shall, for the purposes of section 39-22-322, be subject to the modifications provided in section 39-22-304.

(2) Each resident shareholder's pro rata share of the S corporation's income not attributable to the state shall, for the purposes of section 39-22-322 (2), be subject to the modifications provided in section 39-22-104.

(3) The character of any S corporation item taken into account by a shareholder of an S corporation pursuant to section 39-22-322 (2) shall be determined as if such item were received or incurred by the S corporation and not its shareholder.

**Source: L. 92:** Entire section added, p. 2261, § 1, effective April 16.

**39-22-324. Basis and adjustments.** The basis in the hands of a shareholder of an S corporation in the stock of the S corporation and any indebtedness of the S corporation to the shareholder shall be determined in the manner provided under the internal revenue code.

**Source: L. 92:** Entire section added, p. 2261, § 1, effective April 16.

**39-22-325. Carryforwards and carrybacks - loss limitation.** (1) Carryforwards and carrybacks to and from taxable periods of an S corporation shall be restricted in the manner provided in section 1371 (b) of the internal revenue code.

(2) The aggregate amount of losses or deductions of an S corporation taken into account by a shareholder of the S corporation for a taxable period pursuant to section 39-22-323 (2) shall not exceed such shareholder's combined adjusted basis, as determined pursuant to section 39-22-324, in the stock of the S corporation and any indebtedness of the S corporation to such shareholder.

(3) Any loss or deduction of an S corporation which is disallowed for a taxable period pursuant to subsection (2) of this section shall be treated as incurred by the corporation in the succeeding taxable period with respect to that shareholder.

(4) (a) Any loss or deduction of an S corporation which is disallowed pursuant to subsection (2) of this section for the corporation's last taxable period as an S corporation shall be treated as incurred by a shareholder on the last day of any post-termination transition period.

(b) The aggregate amount of losses and deductions taken into account by a shareholder pursuant to paragraph (a) of this subsection (4) shall not exceed such shareholder's adjusted basis in the stock of the corporation, as such adjusted basis is determined pursuant to section 39-22-

324 at the close of the last day of any post-termination transition period and without regard to this subsection (4).

**Source: L. 92:** Entire section added, p. 2261, § 1, effective April 16.

**39-22-326. Part-year residence.** For the purposes of this subpart 2, if a shareholder of an S corporation is both a resident and a nonresident of this state during any taxable period, such shareholder's pro rata share of the S corporation's income attributable to the state and income not attributable to the state for the taxable period shall be further prorated between such shareholder's periods of residence and nonresidence during the taxable period, in accordance with the number of days in each period.

**Source: L. 92:** Entire section added, p. 2262, § 1, effective April 16.

**39-22-327. Distributions.** A distribution made by an S corporation with respect to its stock to a shareholder shall be taken into account by such shareholder for the purposes of section 39-22-104 to the extent that the distribution is determined to be taxable under the internal revenue code.

**Source: L. 92:** Entire section added, p. 2262, § 1, effective April 16.

**39-22-328. Returns.** An S corporation which engages in activity in this state shall be subject to the requirements of section 39-22-601 (2.5).

**Source: L. 92:** Entire section added, p. 2262, § 1, effective April 16.

**39-22-329. Tax credits.** (1) For the purposes of section 39-22-108, each resident shareholder shall be considered to have paid a tax imposed on each resident shareholder in an amount equal to each resident shareholder's pro rata share of any net income tax paid by the S corporation to a state which does not measure the income of shareholders of an S corporation by reference to the income of the S corporation. For the purposes of this section, the term "net income tax" means any tax imposed on, or measured by, an S corporation's net income.

(2) Each shareholder of an S corporation shall be allowed a credit against the tax imposed by section 39-22-104 in an amount equal to each shareholder's pro rata share of the tax credits described in sections 39-30-103.5 to 39-30-105.6 earned by the S corporation.

**Source: L. 92:** Entire section added, p. 2263, § 1, effective April 16.

**39-22-330. Uniformity of application and construction.** This subpart 2 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this subpart 2 among those states which enact the model S corporation income tax act.

**Source: L. 92:** Entire section added, p. 2263, § 1, effective April 16.

PART 4

ESTATES AND TRUSTS

**39-22-401. Income of a resident estate or trust for purposes of Colorado income tax.** (1) The income of a resident estate or trust subject to the tax imposed by this article shall be its federal taxable income as determined pursuant to section 63 of the internal revenue code with the following modifications:

(a) There shall be added or subtracted the modifications described in section 39-22-104 to the extent such items are excluded from federal distributable net income of the estate or trust.

(b) There shall be added or subtracted the share of the estate or trust in the Colorado fiduciary adjustment determined under section 39-22-402.

**Source: L. 64:** R&RE, pp. 656, 771, §§ 14, 1. **C.R.S. 1963:** § 138-1-45. **L. 78:** (1)(a) amended, p. 485, § 8, effective May 5. **L. 87:** Entire section R&RE, p. 1444, § 12, effective June 22.

**39-22-402. Share of a resident estate, trust, or beneficiary in Colorado fiduciary adjustments.** (1) (a) An adjustment shall be made in determining the federal taxable income subject to tax by Colorado of a resident estate or trust under section 39-22-401, or the federal taxable income subject to tax by Colorado of a resident beneficiary of any estate or trust under section 39-22-104, in the amount of the share of each in the Colorado fiduciary adjustment as determined in this section.

(b) Repealed.

(2) The Colorado fiduciary adjustment shall be the net amount of the modifications described in section 39-22-104, except to the extent such items are excluded from federal distributable net income of the estate or trust.

(3) (a) The respective shares of an estate or trust and its beneficiaries, including, solely for the purpose of this allocation, nonresident beneficiaries, in the Colorado fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust.

(b) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the Colorado fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Colorado fiduciary adjustment shall be allocated to the estate or trust.

(4) The executive director may, by regulation, establish such other method of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable. Such method may be used by the fiduciary in his discretion whenever the allocation of the fiduciary adjustment, pursuant to subsection (3) of this section, would result in an inequity which is substantial both in amount and in relation to the amount of the fiduciary adjustment.

**Source: L. 64:** R&RE, p. 772, § 1. **C.R.S. 1963:** § 138-1-46. **L. 67:** p. 850, §§ 1, 2. **L. 77:** (2) amended, p. 1784, § 3, effective May 19. **L. 87:** (1)(a) and (2) amended and (1)(b) repealed, pp. 1444, 1457, §§ 13, 31, effective June 22.

**39-22-403. Income of a nonresident estate or trust subject to income tax.** (1) In the case of a nonresident estate or trust, the tax imposed by section 39-22-104 shall be apportioned in the ratio of the Colorado-source federal taxable income to the total federal taxable income, both modified as provided in section 39-22-104.

(2) Colorado-source federal taxable income of an estate or trust means:

(a) Its share of the Colorado-source federal distributable net income as determined in section 39-22-404; and

(b) Its share of any Colorado-source income, gain, loss, and deduction recognized for federal income tax purposes but excluded from the definition of federal distributable net income of the estate or trust as determined under section 39-22-109, as in the case of a nonresident individual, and modified as provided in section 39-22-104.

**Source: L. 64:** R&RE, p. 773, § 1. **C.R.S. 1963:** § 138-1-47. **L. 87:** IP(1), (1)(b), and (1)(c) amended and (1)(d) repealed, pp. 1444, 1457, §§ 14, 31, effective June 22. **L. 88:** Entire section R&RE, p. 1314, § 8, effective May 29.

**39-22-404. Share of a nonresident estate, trust, or beneficiary in income from sources within Colorado.** (1) The share of a nonresident estate or trust under section 39-22-403 and the share of a nonresident beneficiary of any estate or trust under section 39-22-109 in estate or trust income, gain, loss, and deduction from sources within Colorado shall be determined as follows:

(a) There shall be determined the items of income, gain, loss, and deduction derived from sources within Colorado which enter into the definition of federal distributable net income of the estate or trust for the taxable year, including such items from another estate or trust of which the first estate or trust is a beneficiary. Such determination of source shall be made in accordance with the applicable rules of section 39-22-109 as in the case of a nonresident individual.

(b) There shall be added or subtracted the modifications described in section 39-22-104, to the extent relating to items of income, gain, loss, and deduction, derived from sources within Colorado, which enter into the definition of federal distributable net income, including such items from another estate or trust of which the first estate or trust is a beneficiary. No modification shall be made under this paragraph (b) which has the effect of duplicating an item already reflected in the definition of federal distributable net income.

(c) (I) The amounts determined under paragraphs (a) and (b) of this subsection (1) shall be allocated among the estate or trust and its beneficiaries, including, solely for the purpose of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income.

(II) The amounts so allocated shall have the same character under this article as for federal income tax purposes.

(2) (a) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary, including, solely for the purpose of this allocation, resident

beneficiaries, in the net amount, determined under paragraphs (a) and (b) of subsection (1) of this section, shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(b) The executive director may, by regulation, establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources within Colorado and in the modifications related thereto as may be appropriate and equitable. Such method may be used by the fiduciary in his discretion whenever the allocation of such respective shares under subsection (1) of this section or paragraph (a) of this subsection (2) would result in an inequity which is substantial both in amount and in relation to the total amount of the modifications referred to in paragraph (b) of subsection (1) of this section.

**Source: L. 64:** R&RE, p. 774, § 1. **C.R.S. 1963:** § 138-1-48. **L. 87:** IP(1), (1)(a), (1)(b), (1)(c)(I), and (2) amended, p. 1445, § 15, effective June 22. **L. 88:** IP(1), (1)(a), and (1)(b) amended, p. 1314, § 9, effective May 29.

**39-22-405. Colorado exemption and federal income tax modification of nonresident estate or trust. (Repealed)**

**Source: L. 64:** R&RE, p. 775, § 1. **C.R.S. 1963:** § 138-1-49. **L. 87:** Entire section repealed, p. 1457, § 31, effective June 22.

**39-22-406. Special rule for accumulation distributions. (Repealed)**

**Source: L. 64:** R&RE, p. 775, § 1. **C.R.S. 1963:** § 138-1-50. **L. 83:** Entire section repealed, p. 1515, § 11, effective January 1, 1984.

**39-22-407. Accounting periods and methods.** The provisions of section 39-22-111 shall apply to trusts and estates to the extent not inconsistent with sections 39-22-401 to 39-22-404.

**Source: L. 64:** R&RE, p. 775, § 1. **C.R.S. 1963:** § 138-1-51. **L. 83:** Entire section amended, p. 1515, § 10, effective January 1, 1984. **L. 87:** Entire section amended, p. 1446, § 16, effective June 22.

PART 5

SPECIAL RULES

**39-22-501. Taxation of regulated investment companies.** (1) (a) For purposes of this article, a "regulated investment company" shall have the same meaning as set forth in section 851 of the internal revenue code.

(b) For purposes of this article, the "net income" of a regulated investment company in each year in which the corporation is taxed as a regulated investment company for federal income tax purposes shall be the "investment company taxable income" of such corporation, adjusted as provided in section 39-22-304 (2) and (3).

(2) (a) For purposes of this article, a "captive regulated investment company" means a regulated investment company of which the shares or beneficial interests are not regularly traded on an established securities market and of which more than fifty percent of the voting power or value of the beneficial interests or shares are owned or controlled, directly, indirectly, or constructively, by a single entity that is:

(I) Treated as an association taxable as a corporation under the internal revenue code; and

(II) Not exempt from federal income tax pursuant to the provisions of section 501 (a) of the internal revenue code.

(b) Any voting stock in a regulated investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the internal revenue code, shall not be taken into account for purposes of determining whether a regulated investment company is a captive regulated investment company.

**Source: L. 64:** R&RE, p. 776, § 1. **C.R.S. 1963:** § 138-1-56. **L. 2009:** Entire section amended, (HB 09-1093), ch. 75, p. 269, § 2, effective April 2.

**Cross references:** For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 75, Session Laws of Colorado 2009.

**39-22-502. Adjustment to basis of shares of regulated investment company. (Repealed)**

**Source: L. 64:** R&RE, p. 777, § 1. **C.R.S. 1963:** § 138-1-57. **L. 91:** Entire section repealed, p. 1986, § 1, effective April 20.

**39-22-503. Taxation of real estate investment trusts - definitions.** (1) (a) For purposes of this article, a "real estate investment trust" shall have the same meaning as set forth in section 856 of the internal revenue code.

(b) For purposes of this article, the "net income" of a real estate investment trust in each year in which the trust is taxed as a real estate investment trust for federal income tax purposes shall be the "real estate investment trust taxable income" of the trust as computed for federal income tax purposes and adjusted as provided in section 39-22-304 (2) and (3).

(2) (a) For purposes of this article, a "captive real estate investment trust" means a real estate investment trust of which the shares or beneficial interests are not regularly traded on an established securities market and of which more than fifty percent of the voting power or value of the beneficial interests or shares are owned or controlled, directly, indirectly, or constructively, by a single entity that is:

(I) Treated as an association taxable as a corporation under the internal revenue code; and

(II) Not exempt from federal income tax pursuant to the provisions of section 501 (a) of the internal revenue code.

(b) A "captive real estate investment trust" shall not include a real estate investment trust that is intended to be regularly traded on an established securities market and that satisfies the requirements of section 856 (a)(5) and (a)(6) of the internal revenue code by reason of section 856 (h)(2) of the internal revenue code; except that, if such real estate investment trust does not become regularly traded on an established securities market within one year of the date on which it first becomes a real estate investment trust, such real estate investment trust shall be deemed to be a captive real estate investment trust.

(3) For purposes of this section, the constructive ownership rules of section 318 (a) of the internal revenue code, as modified by section 856 (d)(5) of the internal revenue code, shall apply in determining the ownership of stock, assets, or net profits of any person.

(4) For purposes of this section, unless the context otherwise requires:

(a) "Association taxable as a corporation under the internal revenue code" shall not include:

(I) Any real estate investment trust other than a captive real estate investment trust;

(II) Any qualified real estate investment trust subsidiary other than a qualified real estate investment trust subsidiary of a captive real estate investment trust;

(III) Any listed Australian property trust; or

(IV) Any qualified foreign entity.

(b) "Australian property trust" means an Australian unit trust registered as a managed investment scheme under the Australian corporations act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy-five percent or more of the voting power or value of the beneficial interests or shares of such trust.

(c) "Qualified foreign entity" means a corporation, trust, association, or partnership that is organized outside the laws of the United States and that satisfies the following criteria:

(I) At least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real estate assets as defined in section 856 (c)(5)(B) of the internal revenue code, cash and cash equivalents, or United States government securities;

(II) The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity-level taxation;

(III) The entity distributes at least eighty-five percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

(IV) Not more than ten percent of the voting power or value in such entity is held, directly, indirectly, or constructively, by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

(V) The entity is organized in a country that has a tax treaty or agreement with the United States.

(d) "Qualified real estate investment trust subsidiary" has the same meaning as set forth in section 856 (i) of the internal revenue code.

**Source: L. 64:** R&RE, p. 777, § 1. **C.R.S. 1963:** § 138-1-58. **L. 91:** Entire section amended, p. 1986, § 2, effective April 20. **L. 2009:** Entire section amended, (HB 09-1093), ch. 75, p. 269, § 3, effective April 2.

**Cross references:** For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 75, Session Laws of Colorado 2009.

**39-22-504. Net operating losses.** (1) A net operating loss deduction shall be allowed in the same manner that it is allowed under the internal revenue code except as otherwise provided in this section. The amount of the net operating loss that may be carried forward and carried back for Colorado income tax purposes shall be that portion of the federal net operating loss allocated to Colorado under this article in the taxable year that the net operating loss is sustained.

(2) With respect to individuals, estates, and trusts:

(a) A net operating loss incurred in a taxable year beginning prior to January 1, 1987, may be carried forward the same number of years a federal net operating loss may be carried forward. Such net operating losses may not be carried back to an earlier tax year.

(b) Net operating losses incurred in taxable years beginning on or after January 1, 1987, may be carried back to the same years as is a federal net operating loss incurred in such year; except that no such loss may be carried to a taxable year beginning on or after January 1, 1987. Such losses may not be carried forward to subsequent tax years.

(3) Net operating losses of corporations may be carried forward for the same number of years as allowed for a federal net operating loss. Net operating losses of corporations may not be carried back to an earlier tax year.

(4) If a financial institution suffers a net operating loss for any taxable year beginning on or after January 1, 1984, the amount of the unused net operating loss may be carried forward to each of the fifteen years following the taxable year of such loss. For the purposes of this subsection (4), "financial institution" means any institution to which section 585 or 593 of the internal revenue code applies.

(5) No corporation may carry forward a net operating loss to an income tax year commencing prior to January 1, 2009, if, for such year, the corporation uses a different method of allocating or apportioning income from the one it used in the period in which the loss occurred, unless such different method is approved by the executive director. A corporation may carry forward a net operating loss to any income tax year commencing on or after January 1, 2009, regardless of the method of allocating or apportioning income for such year.

(6) (a) Notwithstanding any other provision of this section, the maximum amount of net operating loss that a corporation may subtract from federal taxable income pursuant to section 39-22-304 (3)(g) for a tax year commencing on or after January 1, 2011, but prior to January 1, 2014, is two hundred fifty thousand dollars.

(b) All net operating losses may be carried forward one additional year for each tax year that a corporation is prohibited pursuant to paragraph (a) of this subsection (6) from subtracting a portion of such net operating losses from the corporation's federal taxable income.

(c) An amount equal to the amount of all net operating losses that a corporation is prohibited pursuant to paragraph (a) of this subsection (6) from subtracting from federal taxable income multiplied by a rate of interest equal to three and one-quarter percent per annum for the period during which such net operating losses are prohibited shall be added to the allowable net

operating loss that is carried forward by the corporation, and, for the purpose of section 39-22-304 (3)(g), shall be considered net operating loss.

**Source: L. 64:** R&RE, p. 777, § 1. **C.R.S. 1963:** § 138-1-59. **L. 77:** (5) added, p. 1795, § 2, effective May 26. **L. 83:** (1) amended and (2), (3), and (5)(a) repealed, p. 2097, §§ 4, 5, effective January 1, 1984. **L. 87:** (6) added, p. 1458, § 1, effective May 4; entire section R&RE, p. 1446, § 17, effective June 22. **L. 88:** (5) added, p. 1315, § 10, effective May 29. **L. 2008:** (5) amended, p. 966, § 10, effective January 1, 2009. **L. 2010:** (6) added, (HB 10-1199), ch. 13, p. 67, § 2, effective February 24. **L. 2016:** (4) amended, (SB 16-189), ch. 210, p. 794, § 110, effective June 6.

**Editor's note:** House Bill 87-1243 adding subsection (6) was superseded by House Bill 87-1331 and included in House Bill 87-1331 as (4).

**39-22-504.5. Short title.** Sections 39-22-504.5 to 39-22-504.7 shall be known and may be cited as the "Medical Savings Account Act of 1994".

**Source: L. 86:** Entire section added, p. 1121, § 1, effective June 23. **L. 94:** Entire section amended, p. 2840, § 6, effective January 1, 1995.

**39-22-504.6. Definitions.** As used in sections 39-22-504.5 to 39-22-504.7, unless the context otherwise requires:

(1) "Account administrator" means:

(a) A state chartered bank, savings and loan association, credit union, or trust company authorized to act as a fiduciary and under the supervision of the financial institutions bureau of the United States department of commerce;

(b) A national banking association, federal savings and loan association, or credit union authorized to act as a fiduciary in this state;

(c) An insurance company; or

(d) An employer if such employer maintains a self-insured health plan meeting the requirements of the federal "Employee Retirement Income Security Act of 1974", as amended.

(1.3) "Account holder" means an employee on whose behalf a medical savings account is established.

(2) "Dependent child" means any person who is:

(a) Under the age of twenty-one years;

(b) Legally entitled to or the subject of a court order for the provision of proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being and who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) So mentally or physically incapacitated that he or she cannot provide for himself or herself.

(2.4) "Eligible medical expense" means any medical expense that is deductible for purposes of section 213 (d) of the internal revenue code.

(2.5) "Employee" means the individual for whose benefit a medical savings account is established.

(2.6) "Employer" means a person or entity employing one or more persons in this state, excluding the federal government.

(3) "Medical savings account" means an account established to pay the eligible medical expenses of an account holder and his or her spouse and dependent children, if any.

(3.5) "Qualified higher deductible health plan" means a health coverage policy, certificate, or contract that provides for the payment of covered benefits that exceed the deductible, which shall be at least one thousand five hundred dollars but no more than two thousand two hundred fifty dollars for individual coverage or at least three thousand dollars but no more than four thousand five hundred dollars for family coverage, and that is purchased by an employer for the benefit of an employee who makes deposits into a medical savings account.

(4) (Deleted by amendment, L. 94, p. 2840, § 7, effective January 1, 1995.)

**Source: L. 86:** Entire section added, p. 1121, § 1, effective June 23. **L. 88:** (4) amended, p. 419, § 16, effective April 11. **L. 89:** (4) amended, p. 622, § 19, effective July 1. **L. 94:** Entire section amended, p. 2840, § 7, effective January 1, 1995. **L. 2000:** (3.5) amended, p. 172, § 2, effective January 1, 2001.

**Cross references:** For the federal "Employee Retirement Income Security Act of 1974", see 93 Pub.L. 406.

**39-22-504.7. Medical savings accounts - establishment - contributions - distributions - restrictions - taxation - portability.** (1) (a) **Establishment of accounts.** On and after January 1, 1995, an employer may offer to establish medical savings accounts.

(b) An employee on whose behalf a medical savings account has not been established by his or her employer may establish such an account on his or her own behalf.

(2) (a) Each year an employer may contribute to an employee's medical savings account an amount that does not exceed three thousand dollars.

(b) If an employer establishes a medical savings account for an employee but contributes less than the maximum set forth in paragraph (a) of this subsection (2), the employee may contribute the difference in accordance with the provisions of paragraph (d) of this subsection (2).

(c) An employee who establishes his or her own medical savings account may contribute to such account an amount that does not exceed the maximum set forth in paragraph (a) of this subsection (2). Any such contribution is to be made in accordance with the provisions of paragraph (d) of this subsection (2).

(d) **Employee contributions - pretax.** (I) All employee contributions to medical savings accounts are made on a pretax basis, pursuant to section 39-22-104.6. Such contributions are subject to the same limitations as employer contributions.

(II) An employee shall elect to make contributions to his or her medical savings account by signing a written election. Such election is to be in the form prescribed by the executive director of the department of revenue and is to be signed prior to the date the employer withholds the first contribution.

(e) **Employer contributions - tax deduction.** Employer contributions to employee medical savings accounts constitute a deduction from the employer's federal taxable income, pursuant to sections 39-22-104 (4)(h) and 39-22-304 (3)(k).

(3) **Distributions.** (a) An account holder shall submit documentation of eligible medical expenses paid during the tax year to the account administrator, and the account administrator shall reimburse the account holder for such expenses.

(b) Moneys may be distributed from a medical savings account only for the purpose of:

(I) Reimbursing the eligible medical expenses of the account holder or his or her spouse or dependent child;

(II) Cashing out the balance in the account of a deceased account holder; or

(III) (A) Cashing out an account holder's prior years' balance.

(B) An account holder may withdraw the balance in his or her account for any reason if such withdrawal occurs after the end of the year in which the moneys were contributed; however, such distributed moneys are subject to state income tax pursuant to subsection (6) of this section.

(4) (Deleted by amendment, L. 94, p. 2841, § 8, effective January 1, 1995.)

(5) **Restrictions.** An account holder may not use account moneys to fund a policy that covers the deductible for a qualified higher deductible health plan, as defined in section 39-22-504.6 (3.5).

(6) **Taxation of account moneys.** (a) Account moneys, including interest income, are not to be taxed as Colorado adjusted gross income if they are:

(I) In an employee's medical savings account; or

(II) Withdrawn to pay eligible medical expenses.

(b) Account moneys are to be taxed as Colorado adjusted gross income when such moneys are withdrawn for purposes other than the payment of eligible medical expenses.

(c) Upon the death of the account holder, the account principal, as well as any accumulated interest, is to be distributed to and taxed as part of the decedent's estate, as provided by law.

(7) **Portability.** An account holder is the owner of his or her medical savings account and may change the account administrator of such account upon leaving the employ of his or her employer.

**Source: L. 86:** Entire section added, p. 1122, § 1, effective May 23. **L. 94:** Entire section amended, p. 2841, § 8, effective January 1, 1995.

**Cross references:** For other provisions concerning adjustments to federal taxable income, see § 39-22-104.

**39-22-505. Oil and gas producers. (Repealed)**

**Source: L. 64:** R&RE, p. 778, § 1. **C.R.S. 1963:** § 138-1-60. **L. 71:** p. 1252, § 1. **L. 77:** Entire section repealed, p. 1855, § 13, effective January 1, 1978.

**39-22-506. Tentative carry-back adjustment - application - allowance. (Repealed)**

**Source: L. 67:** p. 851, §§ 1, 2. **C.R.S. 1963:** § 138-1-61. **L. 83:** Entire section repealed, p. 2097, § 5, effective January 1, 1984.

**39-22-507. Credits against tax - employer expenses - work incentive programs. (Repealed)**

**Source: L. 76:** Entire section added, p. 781, § 1, effective May 10. **L. 78:** Entire section repealed, p. 275, § 101, effective May 23.

**39-22-507.5. Credits against tax - investment in certain property.** (1) Except as otherwise provided in this section, there shall be allowed to any person as a credit against the tax imposed by this article, for income tax years commencing on or after January 1, 1979, an amount equal to the total of:

(a) Investment tax credit carryovers claimed by such person for such taxable year;

(b) Ten percent of that part of the credit allowed for the same income tax year by section 38 of the internal revenue code, as determined under the provisions of section 46 of the internal revenue code, without regard to the limitations imposed by said section 38, to the extent such part of such credit is determined by reference to property which is used in Colorado; and

(c) Investment tax credit carrybacks claimed by such person for such taxable year.

(1.5) For taxable years beginning on or after January 1, 1987, the provisions of paragraph (b) of subsection (1) of this section shall apply only with respect to taxes imposed by part 3 of this article.

(2) The executive director shall promulgate regulations which will prescribe the extent to which property must be used in Colorado to qualify for the credit allowed under the provisions of subsection (1) of this section, which regulations shall include a method or methods of determining what portion of the property shall qualify in the case of property which is used both within and without Colorado.

(3) The credit allowed by this section for any income tax year shall not exceed:

(a) The taxpayer's actual tax liability for the income tax year to the extent such liability does not exceed five thousand dollars; plus

(b) Twenty-five percent of that portion of said tax liability for the income tax year which exceeds five thousand dollars.

(4) Repealed.

(5) In the case of a "controlled group of corporations", as defined in section 1563 (a) of the internal revenue code, the five thousand dollars specified in subsection (3) of this section shall be apportioned among the members of the controlled group as they may elect. The election shall apply to the income tax year of the members of the controlled group ending with or including a common December 31. Should such members fail to agree on an allocation of the five thousand dollars, said five thousand dollars shall be divided equally among all members of the controlled group.

(6) In the case of a regulated investment company or a real estate investment trust, the five thousand dollars referred to in subsection (3) of this section shall be reduced to an amount which shall be five thousand dollars multiplied by the taxable income for the income tax year and divided by the taxable income for the income tax year plus the amount of the deduction for dividends paid.

(7) If the amount of the credit allowed by paragraph (b) of subsection (1) of this section exceeds the amount of the limitation imposed by subsection (3) of this section reduced by the

credit allowed by paragraph (a) of subsection (1) of this section for any income tax year, referred to in this subsection (7) as the "unused credit year", such excess shall be:

(a) An investment tax credit carryback to each of the three income tax years preceding the unused credit year; except that no credit shall be carried back to an income tax year commencing prior to January 1, 1979; and

(b) An investment tax credit carryover to each of the seven income tax years following the unused credit year.

(8) No carryover or carryback of unused investment credit will be allowed in the case of a taxable cooperative as defined in section 1381 (a) of the internal revenue code.

(9) (a) For any income tax year beginning on or after January 1, 1979, if any taxpayer is required to redetermine the credit allowed by section 38 of the internal revenue code due to the provisions of section 47 of the internal revenue code, such taxpayer must redetermine the credit allowed by subsection (1) of this section for the same income tax year. If the redetermination results in a reduction of the credit allowed by this section for the income tax year or for any income tax year to which the credit was carried back or carried forward, the reduction shall constitute an increase in the tax imposed by this article for the income tax year during which the disposition or reclassification of the nature of the property occurs, and the amount of any unused investment tax credit carryback or carryover must be redetermined as appropriate. The increase in tax shall not be included as tax liability for the purposes of subsection (3) of this section.

(b) If, during any income tax year which commences on or after May 26, 1983, "section 38 property" which was first placed in service by the taxpayer in a taxable year beginning on or after January 1, 1982, is disposed of by or otherwise ceases to be such property with respect to the taxpayer before the close of the property's recapture period, as determined for federal income tax purposes, the credit allowed by this section and the decrease, if any, in the investment tax credit carryback or carryover with respect to the property shall be redetermined in accordance with the recapture percentage table contained in:

(I) Section 47 (a) of the internal revenue code, as it existed immediately prior to the enactment of the federal "Revenue Reconciliation Act of 1990", for such property which was disposed of by or otherwise ceased to be such property with respect to the taxpayer prior to January 1, 1991; or

(II) Section 50 (a) of the internal revenue code for such property which is disposed of by or otherwise ceases to be such property with respect to the taxpayer on or after January 1, 1991.

(10) and (11) Repealed.

(12) In lieu of the amount of the investment tax credit allowed by subsection (1) of this section, a person who has invested in property used in an enterprise zone, as designated pursuant to section 39-30-103, shall be allowed a credit in the amount designated in section 39-30-104, subject to the terms and conditions of that section.

**Source: L. 79:** Entire section added, p. 1441, § 28, effective July 3. **L. 80:** (10) added, p. 724, § 18, effective May 1. **L. 81:** (11) added, p. 1871, § 3, effective June 29. **L. 82:** (1)(b) amended, p. 565, § 1, effective March 17. **L. 83:** (9) amended, p. 1514, § 8, effective May 26. **L. 86:** (1)(b) amended, p. 1124, § 1, effective April 3; (12) added, p. 1142, § 2, effective July 1. **L. 87:** (1)(b), (5), and (8) amended, (1.5) added, and (4), (10), and (11) repealed, pp. 1447, 1457, §§ 18, 31, effective June 22. **L. 91:** (1)(b) and (9)(b) amended, p. 1987, § 5, effective April 20. **L.**

**2004:** (3)(a) and (9)(a) amended, p. 211, § 36, effective August 4. **L. 2007:** (3)(a) and (9)(a) amended, p. 352, § 7, effective August 3.

**39-22-507.6. Credits against corporate tax - investment in certain property.** (1) Except as otherwise provided in this section, there shall be allowed to any person as a credit against the tax imposed by part 3 of this article, for income tax years commencing on or after January 1, 1988, an amount equal to the total of:

(a) Investment tax credit carryovers claimed by such person for such taxable year; and

(b) Ten percent of that part of the credit that would have been allowed for the same income tax year by section 38 of the internal revenue code, as determined under the provisions of subsection (a) of section 46 of the internal revenue code without regard to the limitations imposed by said section 38, had section 49 of the internal revenue code not been enacted, to the extent such part of such credit is determined by reference to property which is used in Colorado. The references in this paragraph (b) to sections 38, 46, and 49 of the internal revenue code mean sections 38, 46, and 49 of the internal revenue code as they existed immediately prior to the enactment of the federal "Revenue Reconciliation Act of 1990".

(2) The executive director shall promulgate regulations which will prescribe the extent to which property must be used in Colorado to qualify for the credit allowed under the provisions of subsection (1) of this section, which regulations shall include a method or methods of determining what portion of the property shall qualify in the case of property which is used both within and without Colorado.

(3) The credit allowed by this section for any income tax year shall not exceed the taxpayer's actual tax liability for the income tax year to the extent that the liability does not exceed one thousand dollars.

(4) In the case of a "controlled group of corporations", as defined in section 1563 (a) of the internal revenue code, the one thousand dollars specified in subsection (3) of this section shall be apportioned among the members of the controlled group as they may elect. The election shall apply to the income tax year of the members of the controlled group ending with or including a common December 31. Should such members fail to agree on an allocation of the one thousand dollars, said one thousand dollars shall be divided equally among all members of the controlled group.

(5) If the amount of the credit allowed by paragraph (b) of subsection (1) of this section exceeds the amount of the limitation imposed by subsection (3) of this section reduced by the credit allowed by paragraph (a) of subsection (1) of this section for any income tax year, referred to in this subsection (5) as the "unused credit year", such excess shall be an investment tax credit carryover to each of the three income tax years following the unused credit year.

(6) The limitations on the credits allowed by this section shall be reduced by any credit allowed by section 39-22-507.5 for the same tax year.

**Source: L. 87:** Entire section added, p. 1447, § 19, effective June 22. **L. 91:** (1)(b) amended, p. 1988, § 6, effective April 20. **L. 2007:** (3) amended, p. 352, § 8, effective August 3.

**39-22-508. Credit for property taxes attributable to pollution control property. (Repealed)**

**Source: L. 78:** Entire section added, p. 470, § 4, effective July 1. **L. 79:** Entire section amended and (5) added, pp. 1454, 1456, §§ 1, 4, effective June 22. **L. 81:** (4) amended and (5) R&RE, p. 1872, §§ 7, 8, effective June 29. **L. 96:** (4) repealed, p. 1242, § 102, effective August 7. **L. 2004:** Entire section repealed, p. 212, § 37, effective August 4.

**39-22-508.1. Short title. (Repealed)**

**Source: L. 78:** Entire section added, p. 497, § 1, effective July 1. **L. 79:** Entire section amended, p. 1442, § 29, effective July 3. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

**39-22-508.2. Definitions - construction of terms. (Repealed)**

**Source: L. 78:** Entire section added, p. 497, § 1, effective July 1; (3)(b) amended, p. 275, § 102, effective May 23 **L. 79:** (3)(b) and (5)(b) amended, p. 1443, § 30, effective July 3. **L. 89:** (2)(c) added, p. 1522, § 6, effective June 7. **L. 90:** (7) amended, p. 455, § 35, effective April 18. **L. 92:** IP(2)(c) amended, p. 2220, § 2, effective May 29. **L. 96:** IP(2)(c) and (2)(c)(I) amended, p. 1130, § 6, effective July 1. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

**39-22-508.3. Special credit available - new business facility - new employees. (Repealed)**

**Source: L. 78:** Entire section added, p. 502, § 1, effective July 1. **L. 79:** (1) amended, p. 1443, § 31, effective July 3. **L. 86:** (5) added, p. 1142, § 3, effective July 1. **L. 87:** (1) amended, p. 1448, § 20, effective June 22. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

**39-22-508.4. Election to defer commencement of credit. (Repealed)**

**Source: L. 78:** Entire section added, p. 502, § 1, effective May 5. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

**39-22-508.5. Effect of transfers of new business facilities. (Repealed)**

**Source: L. 78:** Entire section added, p. 503, § 1, effective May 5. **L. 89:** (4) amended, p. 1500, § 4, effective July 1, 1990. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

**39-22-508.6. Effect of termination of enterprise or facility. (Repealed)**

**Source: L. 78:** Entire section added, p. 504, § 1, effective May 5. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

**39-22-508.7. Effective date - termination date. (Repealed)**

**Source: L. 78:** Entire section added, p. 497, § 1, effective May 5. **L. 79:** Entire section repealed, p. 1443, § 32, effective July 3.

**39-22-509. Mass transit and ridesharing arrangements - employer deductions.** (1) There shall be allowed to corporate employers a deduction from Colorado gross income, to the extent not previously deducted in arriving at Colorado gross income, equal to the employer's contribution to:

(a) (I) Free or partially subsidized ridesharing arrangements for employees, including, but not limited to, providing vehicles for such arrangements, cash incentives (not to exceed the value of such transportation) for participation in ridesharing arrangements, and the payment of all or part of the administrative cost incurred in organizing, establishing, or administering a ridesharing program.

(II) For the purposes of this section, "ridesharing arrangement" means the vehicular transportation of passengers traveling together primarily to and from such passengers' places of business or work or traveling together on a regularly scheduled basis with a commonality of purposes if the vehicle used in such transportation is not operated for profit by an entity primarily engaged in the transportation business and if no charge is made therefor other than that reasonably calculated to recover the direct and indirect costs of the "ridesharing arrangement", including, but not limited to, a reasonable incentive to maximize occupancy of the vehicle. However, nothing in this subparagraph (II) shall be construed as excluding from this definition an arrangement by an employer engaged in the transportation business who provides ridesharing arrangements for its employees. The term includes "ridesharing arrangements" commonly known as carpools and vanpools; except that this term does not include school transportation vehicles operated by elementary and secondary schools when they are operated for the transportation of children to or from school or on school-related events.

(b) Free or partially subsidized mass transit tickets, tokens, passes, or fares for use by employees in going to and returning from their places of employment.

**Source: L. 79:** Entire section added, p. 1561, § 27, effective June 20. **L. 80:** IP(1) amended, p. 728, § 28, effective May 1. **L. 87:** IP(1) amended, p. 1448, § 21, effective June 22. **L. 2004:** (1)(a) amended, p. 905, § 30, effective May 21.

**39-22-510. State-employed chaplains - designation of rental allowance.** (1) In the case of a chaplain, "salary" means the amount of money or credit received as compensation for services rendered, exclusive of mileage, traveling allowances, and other sums received for actual and necessary expenses incurred in the performance of the state's business.

(2) The state of Colorado, being a tax-exempt entity, designates a portion of the annual compensation of every chaplain who is employed full-time by this state, in the amount of four thousand two hundred dollars, as the payment of a rental allowance for the purpose of renting or providing a home for the chaplain and his family when such rent or home is not provided by the state.

**Source: L. 79:** Entire section added, p. 1457, § 1, effective July 1.

**39-22-511. Credit against Colorado income taxes based on cost of certificate purchased by persons in the business of the transportation of ashes, trash, or other discarded materials. (Repealed)**

**Source: L. 80:** Entire section added, p. 746, § 8, effective June 29. **L. 85:** Entire section repealed, p. 1368, § 42, effective June 28.

**39-22-512. Commercial, industrial, and agricultural energy credit. (Repealed)**

**Source: L. 80:** Entire section added, p. 726, § 21, effective May 1. **L. 83:** (1)(a) and (1)(b) amended, p. 1515, § 9, effective January 1, 1984. **L. 87:** (5)(a)(I) to (5)(a)(III) and (5)(b) amended and (6) repealed, pp. 1449, 1457, §§ 22, 31, effective June 22. **L. 2004:** Entire section repealed, p. 213, § 38, effective August 4.

**39-22-513. Credit to lending institutions for making residential energy-related loans. (Repealed)**

**Source: L. 83:** Entire section added, p. 1523, § 2, effective May 20. **L. 87:** (1), (3)(c)(I), (3)(e)(III), (4)(b), and (4)(c) amended, p. 1449, § 23, effective June 22. **L. 88:** (2) amended, p. 419, § 17, effective April 11. **L. 2004:** Entire section repealed, p. 214, § 39, effective August 4.

**39-22-514. Tax credit for qualified costs incurred in preservation of historic properties.** (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), for income tax years commencing on or after January 1, 1991, but prior to January 1, 2020, there shall be allowed a credit with respect to the income taxes imposed pursuant to the provisions of this article to each taxpayer:

(I) Who is the owner or qualified tenant of qualified property and who incurs qualified costs in an amount equaling or exceeding five thousand dollars in the qualified rehabilitation of such qualified property; or

(II) Who is allowed a credit for costs incurred in the rehabilitation of property located in Colorado pursuant to the provisions of section 38 of the internal revenue code.

(b) Any taxpayer who is allowed a credit for qualified expenditures incurred in the rehabilitation of property pursuant to the provisions of section 39-30-105.6 shall not be allowed the credit provided in paragraph (a) of this subsection (1).

(2) (a) The credit provided for in paragraph (a) of subsection (1) of this section shall not exceed an aggregate of fifty thousand dollars per qualified property or an amount equal to twenty percent of the aggregate qualified costs incurred per qualified property, whichever is less.

(b) (Deleted by amendment, L. 99, p. 1278, § 1, effective June 3, 1999.)

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3) and subsection (6) of this section, in order for any taxpayer to qualify for the credit provided for in paragraph (a) of subsection (1) of this section, the taxpayer shall:

(I) Except as otherwise provided in this subparagraph (I), submit a fee of two hundred fifty dollars, the plans and specifications for such proposed restoration, rehabilitation, or preservation, and a signed agreement, if any, specified in subsection (4) of this section to the appropriate reviewing entity and receive preliminary approval, in writing, from said reviewing

entity stating that such proposed restoration, rehabilitation, or preservation constitutes qualified rehabilitation. In the discretion of the reviewing entity, the fee imposed pursuant to this subparagraph (I) may be reduced or eliminated when the amount of qualified costs expected to be incurred in connection with the restoration, rehabilitation, or preservation is less than fifteen thousand dollars. If any restoration, rehabilitation, or preservation has commenced prior to the submission of the application fee, plans and specifications, and signed agreement, if any, pursuant to the provisions of this subparagraph (I), the taxpayer shall also submit documentation satisfactory to the reviewing entity indicating the condition of the qualified property prior to commencement of the rehabilitation, including, but not limited to, photographs of the property and written declarations from persons knowledgeable about the property. For the purposes of this subparagraph (I), any owners of qualified property and any qualified tenants leasing said qualified property who wish to qualify for the credit provided for in paragraph (a) of subsection (1) of this section for said qualified property may jointly submit the fee and the plans and specifications, or such owners may submit the fee, the plans and specifications, and a list of qualified tenants leasing said qualified property and, if such owners or tenants have commenced restoration, rehabilitation, or preservation prior to the submission of the application fee, plans and specifications, and signed agreement, if any, pursuant to the provisions of this subparagraph (I), they shall also jointly submit such documentation as is required pursuant to this subparagraph (I).

(II) Except as otherwise provided in subsection (5) of this section, complete the qualified rehabilitation of the qualified property within a period of twenty-four months from the date upon which preliminary approval was given pursuant to the provisions of subparagraph (I) of this paragraph (a);

(III) Obtain a form from the reviewing entity verifying compliance with the provisions of this subsection (3). If more than one of the taxpayers have complied with the provisions of this subsection (3) for the same qualified property, the reviewing entity shall issue such verification form to each such taxpayer, and such verification form shall specify the proportion of the amount of the tax credit allowed to such taxpayer as determined pursuant to the provisions of subsection (4) of this section. The reviewing entity shall issue said verification form only upon the submittal of an accounting of total qualified costs incurred in said qualified rehabilitation and the names of the owners and qualified tenants who incurred such qualified costs, the payment of a fee in an amount determined pursuant to the provisions of paragraph (a) of subsection (11) of this section, and the making of the determination that such completed qualified rehabilitation:

(A) Conforms to the plans and specifications approved pursuant to subparagraph (I) of this paragraph (a);

(B) Was completed within the appropriate period of time; and

(C) Preserves and maintains those qualities of such qualified property which made it eligible for inclusion individually or as a contributing property in a district in the state register of historic places or for designation as a landmark or as a contributing property in a historic district by a certified local government.

(IV) Submit the verification form obtained pursuant to the provisions of subparagraph (III) of this paragraph (a) with the income tax return being filed by the taxpayer for the income tax year in which such qualified rehabilitation is completed.

(b) The provisions of paragraph (a) of this subsection (3) shall not apply to any taxpayer who is allowed a credit for costs incurred in the rehabilitation of property located in Colorado pursuant to the provisions of section 38 of the internal revenue code.

(4) When more than one taxpayer qualify for the tax credit provided for in paragraph (a) of subsection (1) of this section for the same qualified property, the amount of the tax credit allowed pursuant to the provisions of this section shall be divided pro rata according to the number of such taxpayers unless a binding agreement has been filed with the reviewing entity, as specified in subparagraph (I) of paragraph (a) of subsection (3) of this section, that is signed by all of the taxpayers who qualify for said tax credit for the same qualified property and that specifies the manner in which the amount of the tax credit allowed is to be divided among such taxpayers. Nothing in this subsection (4) shall preclude the state income tax credit created pursuant to this section from being allocated among taxpayers in a different manner than the allocation of any credit claimed pursuant to section 38 of the internal revenue code.

(5) The reviewing entity may grant, upon request, a one-time extension of the completion deadline specified in subparagraph (II) of paragraph (a) of subsection (3) of this section. Such extension shall be for a period not to exceed twenty-four months and shall be granted only upon a showing of good cause.

(6) (a) (I) Any taxpayer who was given preliminary approval prior to January 1, 2020, pursuant to the provisions of subparagraph (I) of paragraph (a) of subsection (3) of this section; whose completion deadline as set forth in subparagraph (II) of paragraph (a) of subsection (3) and in subsection (5) of this section is subsequent to December 31, 2019; and who has not completed the qualified rehabilitation prior to January 1, 2020, shall, in order to qualify for the credit provided for in paragraph (a) of subsection (1) of this section, obtain a form from the reviewing entity verifying compliance with the provisions of subparagraph (I) of paragraph (a) of subsection (3) of this section and this subsection (6). If more than one of the taxpayers have complied with said provisions for the same qualified property, the reviewing entity shall issue such verification form to each such taxpayer, and such verification form shall specify the proportion of the amount of the tax credit allowed to such taxpayer as determined pursuant to subsection (4) of this section.

(II) The reviewing entity shall issue said verification form only upon the submittal of an accounting of total qualified costs incurred in said qualified rehabilitation prior to January 1, 2020, and the names of the owners and qualified tenants who incurred such qualified costs, the payment of a fee in an amount determined pursuant to the provisions of paragraph (a) of subsection (11) of this section, and the making of the determination that the portion of such qualified rehabilitation that was completed as of January 1, 2020:

(A) Conforms to the plans and specifications approved pursuant to subparagraph (I) of paragraph (a) of subsection (3) of this section; and

(B) Preserves and maintains those qualities of such qualified property which made it eligible for inclusion individually or as a contributing property in a district in the state register of historic places or for designation as a landmark or as a contributing property in a historic district by a certified local government.

(III) The taxpayer shall submit the verification form obtained pursuant to this paragraph (a) with the income tax return being filed by the taxpayer for the income tax year commencing on or after January 1, 2019, but prior to January 1, 2020.

(b) (Deleted by amendment, L. 99, p. 1278, § 1, effective June 3, 1999.)

(7) (a) Except as otherwise provided in paragraph (b) of this subsection (7), if the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding ten years and shall be applied first to the earliest income tax years possible. Any amount of the credit that is not used after said period shall not be refundable to the taxpayer.

(b) Any taxpayer who has refunded an amount pursuant to the provisions of subsection (8) of this section shall no longer be eligible to carry forward any amount of the credit which had not been used as of the date such refund is made.

(8) Notwithstanding any other law to the contrary, if any taxpayer who is the owner of qualified property and who has claimed the credit pursuant to the provisions of this section sells such qualified property within five years of the completion of the qualified rehabilitation or if any taxpayer who is a qualified tenant leasing qualified property and who has claimed the credit pursuant to the provisions of this section terminates the lease of such qualified property within five years of the completion of the qualified rehabilitation, the taxpayer shall refund the amount of the credit which has been used to offset income taxes which exceeds the following amounts:

(a) Within the first year, an amount equal to zero percent of the amount of the credit allowed;

(b) Within the second year, an amount equal to twenty percent of the amount of the credit allowed;

(c) Within the third year, an amount equal to forty percent of the amount of the credit allowed;

(d) Within the fourth year, an amount equal to sixty percent of the amount of the credit allowed;

(e) Within the fifth year, an amount equal to eighty percent of the amount of the credit allowed.

(9) Within eight months after April 20, 1990, the state historical society shall create appropriate forms and shall establish and promulgate criteria and procedures by which the restoration, rehabilitation, and preservation of qualified properties shall be determined to be qualified rehabilitation for the purposes of the credit provided for in paragraph (a) of subsection (1) of this section.

(10) (a) Each certified local government shall adopt a resolution stating whether such certified local government will act as a reviewing entity for the purposes of subsections (3) and (6) of this section. A copy of such resolution shall be sent to the state historic preservation officer.

(b) Any certified local government which has decided to act as a reviewing entity for any given year for the purposes of subsections (3) and (6) of this section shall be required to perform all duties and responsibilities pursuant to said subsections (3) and (6) for all qualified rehabilitations which received preliminary approval from said reviewing entity during such year.

(11) (a) The amount of the fee required to be paid pursuant to the provisions of subparagraph (III) of paragraph (a) of subsection (3) and subparagraph (II) of paragraph (a) of subsection (6) of this section shall be an amount equal to the appropriate amount determined pursuant to the following schedule minus the amount of the fee paid pursuant to subparagraph (I)

of paragraph (a) of subsection (3) of this section; except that, in the discretion of the reviewing entity, the fee imposed pursuant to this paragraph (a) may be reduced or eliminated where the amount of the qualified costs incurred is less than fifteen thousand dollars:

**Amount of qualified costs incurredAmount of fee**

$5,000 up to and including $15,000$ 250
Over $15,000 up to and including $50,000$ 500
Over $50,000 up to and including $100,000$ 750
Over $100,000$ 1,000

(b) (I) Any certified local government which has decided to act as a reviewing entity for the purposes of subsections (3) and (6) of this section shall create a preservation fund. All fees collected pursuant to the provisions of subparagraphs (I) and (III) of paragraph (a) of subsection (3) and subparagraph (II) of paragraph (a) of subsection (6) of this section by a certified local government shall be credited to the preservation fund of such certified local government. The moneys in such fund shall be used for expenditures of such certified government incurred in the performance of its duties pursuant to the provisions of this section.

(II) All fees collected pursuant to the provisions of subparagraphs (I) and (III) of paragraph (a) of subsection (3) and subparagraph (II) of paragraph (a) of subsection (6) of this section by the state historic preservation officer shall be transmitted to the state treasurer, who shall credit said fees to the state historic preservation fund, which fund is hereby created. The moneys in the state historic preservation fund shall be subject to annual appropriation by the general assembly to the state historical society for expenditures of the state historic preservation officer and the state historical society incurred in the performance of their duties pursuant to the provisions of this section and for expenditures incurred in the administration and general operations of the state historical society.

(11.5) Notwithstanding the amount specified for any fee in this section, the executive director by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(11.7) (a) If the revenue estimate prepared by the staff of the legislative council in December 2010 and each December thereafter indicates that the amount of the total general fund revenues for that particular fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized in this section shall not be allowed for any income tax year commencing during the calendar year following the year in which the estimate is prepared; except that any taxpayer who would have been eligible to claim a credit pursuant to this section in the income tax year in which the credit is not allowed shall be allowed to claim the credit earned in such income tax year in the next income tax year in which the estimate indicates that the amount of the total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(b) The department of revenue shall, through its website, specify on or before January 1, 2011, and on or before each January 1 thereafter, whether the credit authorized in this section shall be allowed for a given income tax year pursuant to paragraph (a) of this subsection (11.7).

(12) As used in this section, unless the context otherwise requires:

(a) "Certified local government" means any local government certified by the state historic preservation officer pursuant to the provisions of 16 U.S.C. sec. 470a (c)(1), as amended.

(b) "Contributing property" means property which by location, design, setting, materials, workmanship, feeling, and association adds to the sense of time, place, and historical development of a historic district.

(c) "Designated" means established by local preservation ordinance.

(d) "Property" means a building or structure or a unit of a multiunit building where such units are individually owned.

(e) "Qualified costs" means costs associated with the qualified rehabilitation of a qualified property. "Qualified costs" includes, but is not limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors and windows, fire sprinkler systems, roofing and flashing, exterior repair, cleaning, tuckpointing, and cleanup. "Qualified costs" does not include costs, commonly referred to as soft costs, which include, but are not limited to, costs associated with appraisals; architectural, engineering, and interior design fees; legal, accounting, and realtor fees; loan fees; sales and marketing; closing; building permit, use, and inspection fees; bids; insurance; project signs and phones; temporary power; bid bonds; copying; and rent loss during construction. "Qualified costs" also does not include, but shall not be limited, costs associated with acquisition; interior furnishings; new additions except as may be required to comply with building and safety codes; excavation; grading; paving; landscaping; routine or periodic maintenance; repairs to outbuildings which are associated with a qualified property and which are less than fifty years old; and repairs to additions made to a qualified property after such property was included individually or as a contributing property in a district in the state register of historic places or was designated as a landmark or as a contributing property in a historic district by a certified local government.

(f) "Qualified property" means property located in Colorado which is:

(I) At least fifty years old; and

(II) (A) Listed individually or as a contributing property in a district on the state register of historic properties pursuant to the provisions of article 80.1 of title 24, C.R.S.;

(B) Designated as a landmark by a certified local government; or

(C) Listed as a contributing property within a designated historic district of a certified local government.

(g) "Qualified rehabilitation" means any exterior improvements, structural improvements, mechanical improvements, plumbing improvements, or electrical improvements undertaken to restore, rehabilitate, or preserve the historic character of a qualified property which meets the standards of rehabilitation of the United States secretary of the interior as adopted by the state historic preservation officer and certified local governments pursuant to federal law; but shall not include any improvements undertaken due to normal wear and tear which occurred to a qualified property. As used in this paragraph (g), "exterior improvements" includes, but is not limited to, improvements made to the exterior of the qualified property and to the exterior of any historic outbuildings which are associated with the qualified property and

which are fifty or more years old. "Exterior improvements" does not include enlargements, additions, landscaping, routine or periodic maintenance, paving, and site work.

(h) "Qualified tenant" means a taxpayer who holds a lease of five years or longer on qualified property or a portion of such qualified property.

(i) "Reviewing entity" means:

(I) A certified local government which has decided pursuant to the provisions of paragraph (a) of subsection (10) of this section to perform the duties specified in subparagraph (I) of paragraph (a) of subsection (3) of this section; or

(II) The state historic preservation officer when such qualified property either is not located within the jurisdiction of any certified local government or is located within the jurisdiction of any certified local government who has decided pursuant to the provisions of paragraph (a) of subsection (10) of this section not to perform the duties specified in subparagraph (I) of paragraph (a) of subsection (3) of this section.

(j) "State historic preservation officer" means the person designated and appointed pursuant to the provisions of 16 U.S.C. sec. 470a (b)(1)(A), as amended.

(k) "Taxpayer" means:

(I) A resident individual; or

(II) A domestic or foreign corporation subject to the provisions of part 3 of this article.

**Source: L. 90:** Entire section added, p. 1730, § 1, effective April 20. **L. 94:** (1)(a) and (6)(a) amended, p. 1369, § 1, effective May 25. **L. 98:** (11.5) added, p. 1347, § 82, effective June 1. **L. 99:** IP(1)(a), (2), IP(3)(a), (3)(a)(I), (4), (6), (7)(a), (10)(a), and (11)(a) amended, p. 1278, § 1, effective June 3. **L. 2008:** IP(1)(a), (6)(a)(I), IP(6)(a)(II), (6)(a)(III), and (10)(a) amended and (11.7) added, p. 2266, § 1, effective August 5. **L. 2009:** (11.7)(a) amended, (SB 09-228), ch. 410, p. 2265, § 19, effective July 1; (6)(a)(I) amended, (SB 09-292), ch. 369, p. 1980, § 114, effective August 5.

**Cross references:** For additional funding by the general assembly to the state historical society, see § 24-80-202.5.

**39-22-514.5. Tax credit for qualified costs incurred in preservation of historic structures - short title - definitions.** (1) **Short title.** The short title of this section is the "Colorado Job Creation and Main Street Revitalization Act".

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) (I) "Certified historic structure" means a property located in Colorado that has been certified by the historical society or other reviewing entity because it has been:

(A) Listed individually on, or as a contributing property in a district included within, the national register of historic places;

(B) Listed individually on, or as a contributing property in a district that is included within, the state register of historic properties pursuant to the provisions of article 80.1 of title 24; or

(C) Listed individually by, or as a contributing property within a designated historic district of, a certified local government.

(II) "Certified historic structure" may be either a residential or commercial structure.

(b) "Certified local government" means any local government that has been certified by the historical society in accordance with federal law.

(c) "Certified rehabilitation" means repairs or alterations to a certified historic structure that have been certified by the historical society or other reviewing entity as meeting the standards for rehabilitation of the United States secretary of the interior.

(d) "Contributing property" means property that adds to the sense of time, place, and historical development of a historic district as determined by the historical society or other reviewing entity.

(d.3) "Denver metropolitan area" means all of the land area within the boundaries of the counties of Adams, Arapahoe, Boulder, and Jefferson, all of the area within the boundaries of the city and county of Broomfield and the city and county of Denver, and all of the area within the boundaries of the county of Douglas; except that the area within the boundaries of the town of Castle Rock and the area within the boundaries of the town of Larkspur in the county of Douglas shall not be included in such area.

(e) "Department" means the Colorado department of revenue or any successor entity.

(f) "Designated" means established by local preservation ordinance.

(g) "Historical society" means the state historical society of Colorado, also known as history Colorado, or any successor entity.

(g.5) "Municipality" has the same meaning as specified in section 31-1-101 (6) and also includes any unincorporated area of a county, including without limitation an unincorporated community or a census-designated place.

(h) "Office" means the Colorado office of economic development or any successor entity.

(i) "Owner" means any taxpayer filing a state tax return or any entity that is exempt from federal income taxation pursuant to section 501 (c) of the internal revenue code, as amended, that owns:

(I) Title to a qualified structure;

(II) Prospective title to a qualified structure in the form of a purchase agreement or an option to purchase;

(III) A leasehold interest in a qualified commercial structure for a term of not less than thirty-nine years;

(III.5) A leasehold interest in a qualified commercial structure that is located in a rural community for a term of not less than five years; or

(IV) A leasehold interest in a qualified residential structure for a term of not less than five years.

(j) "Qualified commercial structure" means an income producing or commercial property located in Colorado that is:

(I) At least fifty years old; and

(II) (A) Listed individually on, or as a contributing property in a district included within, the state register of historic properties pursuant to article 80.1 of title 24; or

(B) (Deleted by amendment, L. 2018.)

(C) Listed individually by, or as a contributing property that is included within a designated historic district of, a certified local government.

(k) "Qualified rehabilitation expenditures" means:

(I) With respect to a qualified commercial structure, any expenditure as defined under section 47 (c)(2)(A) of the internal revenue code, as amended, and the related regulations thereunder; and

(II) With respect to a qualified residential structure, exterior improvements and interior improvements undertaken to restore, rehabilitate, or preserve the historic character of a qualified property that meet the standards for rehabilitation of the United States secretary of the interior as adopted by the historical society or the certified local government pursuant to federal law. As used in this subsection (2)(k)(II), "exterior improvements" is limited to any one or more of the following: Roof replacement or repair; exterior siding replacement or repair; masonry repair, re-pointing, or replacement; window repair or replacement; door repair or replacement; woodwork and trim repair or replacement; foundation repair or replacement; and excavation costs associated with foundation work. As used in this subsection (2)(k)(II), "interior improvements" is limited to one or more of the following: Electrical repairs and upgrades; plumbing repairs and upgrades; heating, venting, and air conditioning repairs and upgrades; repair of existing interior walls, ceilings, and finishes; repair or replacement of existing woodwork and trim; insulation; refinishing or replacing historic floor materials in-kind, excluding carpeting; and reconstructing missing historic elements when there is sufficient historical documentation to guide the reconstruction.

(l) "Qualified residential structure" means a nonincome producing and owner-occupied residential property located in Colorado that is:

(I) At least fifty years old; and

(II) (A) Listed individually on, or as a contributing property in a district included within, the state register of historic properties pursuant to article 80.1 of title 24; or

(B) (Deleted by amendment, L. 2018.)

(C) Listed individually by, or as a contributing property that is included within a designated historic district of, a certified local government.

(m) "Qualified structure" means a structure that satisfies the definition of either a qualified residential structure or a qualified commercial structure.

(n) "Rehabilitation plan" means construction plans and specifications for the proposed rehabilitation of a qualified structure that is in sufficient detail to enable the office or the reviewing entity, as applicable, to evaluate whether the structure is in compliance with the standards developed under subsection (4) of this section.

(o) "Reviewing entity" means:

(I) A certified local government that has decided pursuant to subsection (5.5)(c) of this section to perform the duties specified under this section; or

(II) The historical society if the qualified residential structure either is not located within the territorial boundaries of any certified local government or is located within the territorial boundaries of a certified local government that has decided pursuant to subsection (5.5)(c) of this section not to perform the duties specified under this section.

(o.5) "Rural community" means:

(I) A municipality with a population of less than fifty thousand people that is not located within the Denver metropolitan area; or

(II) An unincorporated area of any county the total population of which county is less than fifty thousand people that is not located within the Denver metropolitan area.

(p) "Substantial rehabilitation" means:

(I) With respect to a qualified commercial structure:

(A) For tax years commencing prior to January 1, 2020, rehabilitation for which the qualified rehabilitation expenditures exceed twenty-five percent of the owner's original purchase price of the qualified commercial structure less the value attributed to the land; and

(B) For tax years commencing on or after January 1, 2020, rehabilitation for which the qualified rehabilitation expenditures are in an aggregate amount of at least twenty thousand dollars; and

(II) With respect to a qualified residential structure, rehabilitation for which the qualified rehabilitation expenditures exceed five thousand dollars.

(3) **General provisions.** For income tax years commencing on or after January 1, 2016, but prior to January 1, 2030, there shall be allowed a credit with respect to the income taxes imposed pursuant to this article 22 to each owner of a qualified structure that complies with the requirements of this section.

(4) **Development of standards for approval of commercial or residential rehabilitation projects.** (a) The office, in consultation with the historical society, shall develop standards for the approval of the substantial rehabilitation of qualified commercial structures for which a tax credit under this section is being claimed. The standards must consider whether the substantial rehabilitation of a qualified commercial structure is consistent with the standards for rehabilitation adopted by the United States department of the interior.

(b) The historical society shall develop standards for the approval of the substantial rehabilitation of qualified residential structures for which a tax credit under this section is being claimed. The standards must consider whether the substantial rehabilitation of a qualified residential structure is consistent with the standards for rehabilitation adopted by the United States department of the interior.

(5) **Submission by owner of application and rehabilitation plan.** (a) The owner shall submit an application and rehabilitation plan to either the office for a qualified commercial structure or to the reviewing entity for a qualified residential structure, along with an estimate of the qualified rehabilitation expenditures under the rehabilitation plan. The owner, at the owner's own risk, may incur qualified rehabilitation expenditures no earlier than twenty-four months prior to the submission of the application and rehabilitation plan but only if satisfactory documentation is submitted to the office or the reviewing entity, as applicable, indicating the condition of the qualified structure prior to commencement of the rehabilitation, including but not limited to photographs of the qualified structure and written declarations from persons knowledgeable about the qualified structure. An owner may submit an application and rehabilitation plan and may commence rehabilitation before the property:

(I) Is listed individually on, or as a contributing property in a district included within, the national register of historic places;

(II) Is listed individually on, or as a contributing property in a district included within, the state register of historic properties pursuant to article 80.1 of title 24; or

(III) (Deleted by amendment, L. 2018.)

(IV) Is listed individually by, or as a contributing property within a designated historic district of, a certified local government.

(b) Notwithstanding the provisions of subsection (5)(a) of this section, an owner may incur qualified rehabilitation expenditures at the owner's own risk.

(c) Within ninety days after receipt of the application and rehabilitation plan, the office and the historical society, in the case of a qualified commercial structure, and the reviewing entity, in the case of a qualified residential structure, shall notify the owner in writing if the rehabilitation plan is preliminarily determined to be a certified rehabilitation.

(5.5) **Issuance of tax credit certificate for qualified residential structures - rules.** (a) (I) Following the completion of a rehabilitation of a qualified residential structure, the owner shall notify the reviewing entity that the rehabilitation has been completed and shall certify that the qualified rehabilitation expenditures incurred in connection with the rehabilitation plan. The owner shall also provide the reviewing entity with a cost and expense certification for the total qualified rehabilitation expenditures and the total amount of tax credits for which the owner is eligible. The reviewing entity shall review the documentation of the rehabilitation and verify its compliance with the rehabilitation plan. Except as otherwise provided in subsection (5.5)(a)(II) of this section, within ninety days after receipt of the foregoing documentation from the owner the reviewing entity shall issue a tax credit certificate in an amount equal to twenty percent of the actual qualified rehabilitation expenditures; except that the amount of the tax credit certificate shall not exceed fifty thousand dollars for each qualified residential structure, which amount is to be calculated over a ten-year rolling period that commences with each change in ownership of the qualified residential structure.

(II) For income tax years commencing prior to January 1, 2030, with respect to a qualified residential structure located in an area that the president of the United States has determined to be a major disaster area under section 102 (2) of the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", 42 U.S.C. sec. 5121 et seq., or that is located in an area that the governor has determined to be a disaster area under the "Colorado Disaster Emergency Act", part 7 of article 33.5 of title 24, the amount of the tax credit specified in subsection (5.5)(a)(I) of this section is increased to twenty-five percent for an application that is filed within six years after the disaster determination.

(III) **[*Editor's note: Subparagraph (III) is effective January 1, 2020.*]** For income tax years commencing on and after January 1, 2020, with respect to a qualified residential structure located in a rural community, the amount of the tax credit specified in subsection (5.5)(a)(I) of this section is increased to thirty-five percent for an application that is properly filed in accordance with this section.

(b) Notwithstanding any other provision of law, a taxpayer may claim the benefits offered by either subsection (5.5)(a)(II) or (5.5)(a)(III) of this section but shall not claim the benefits offered by both subsections (5.5)(a)(II) and (5.5)(a)(III) of this section.

(c) For the purposes of this section, a certified local government may act as a reviewing entity only for a qualified residential structure. Each certified local government shall adopt a resolution or ordinance stating whether the government will act as a reviewing entity for the purposes of this section. The local government shall send a copy of the resolution or ordinance to the historical society. Any certified local government that decides to act as a reviewing entity for the purposes of this section shall perform all duties and responsibilities in connection with a certified rehabilitation that receives preliminary approval from such entity. The historical society shall promulgate rules on standards and reporting, in accordance with article 4 of title 24, as it deems necessary to facilitate the effective implementation of this subsection (5.5)(c).

(d) In the case of a qualified residential structure, the reviewing entity may impose a reasonable application fee.

(e) The historical society shall promulgate any and all rules necessary to further implement the tax credits to be claimed for the substantial rehabilitation of qualified residential structures under this section. Any rules must be promulgated in accordance with article 4 of title 24.

(f) By March 15, 2019, and on a quarterly basis thereafter, the historical society shall provide a report to the department specifying the ownership of tax credits to be claimed for the rehabilitation of qualified residential structures under this section covering the period since the last report. The historical society shall share with the department all necessary information about the tax credit created by this section to enable the historical society and the department to properly administer the tax credit.

(6) **Application and issuance fees for qualified commercial structures.** (a) For a qualified commercial structure for which the amount of tax credit requested under this section is two hundred fifty thousand dollars or more, the office may impose a reasonable application fee that does not exceed five hundred dollars. For a qualified commercial structure for which the amount of tax credit requested under this section is less than two hundred fifty thousand dollars, the office may impose a reasonable application fee that does not exceed two hundred fifty dollars.

(b) (Deleted by amendment, L. 2018.)

(c) The office may impose on the owner a reasonable issuance fee of up to three percent of the amount of the tax credit issued, which must be paid before the tax credit is issued to the owner. With respect to both an application fee and an issuance fee, the office shall share on an equal basis any such fees collected with the historical society and the department. Moneys collected from such fees must be applied to the administration of the tax credit created by this section.

(d) (Deleted by amendment, L. 2018.)

(7) **Reservation of tax credits for qualified commercial structures.** (a) In the case of a qualified commercial structure, a reservation of tax credits is permitted in accordance with the provisions of this subsection (7). The office and the historical society shall review the application and rehabilitation plan for a qualified commercial structure to determine that the information contained in the application and plan is complete. If the office and the historical society determine that the application and rehabilitation plan are complete, the office shall reserve for the benefit of the owner an allocation of a tax credit as provided in subsection (12)(a) of this section and the office shall notify the owner in writing of the amount of the reservation. The reservation of tax credits does not entitle the owner to an issuance of any tax credits until the owner complies with all of the other requirements specified in this section for the issuance of the tax credit. The office must reserve tax credits in the order in which it receives completed applications and rehabilitation plans. The office shall issue any such reservation of tax credits authorized by this subsection (7) within a reasonable time, not to exceed ninety days after the filing of a completed application and rehabilitation plan. The office shall stamp each completed application and plan with the date and time it receives the application and plan and shall review a plan and application on the basis of the order in which such documents were submitted by date and time. The office shall only review an application and plan submitted in connection with a property for which a property address, legal description, or other specific location is provided in the application and plan. The owner shall not request the review of another property for approval in the place of the property that is the subject of the application and plan. Any application and

plan disapproved by the office will be removed from the review process, and the office shall notify the owner in writing of the decision to remove the property from the review process. Disapproved applications and plans lose their priority in the review process. An owner may resubmit a disapproved application and plan, but such resubmitted application and plan is deemed to be a new submission for purposes of the priority procedures described in this subsection (7)(a). If a resubmitted application and plan are submitted, the office may charge a new application fee in an amount specified in accordance with subsection (6) of this section.

(a.5) In the case of any project for a qualified commercial structure the qualified rehabilitation expenditures for which amount to less than fifty thousand dollars, if the total number of applications for such projects that are received but not reserved reach fifteen in number, the office may suspend the submission of additional applications for such projects until such time as these fifteen projects have been duly reserved or disapproved. The notification period that is specified in subsection (5)(a)(IV)(C) of this section is extended to one hundred twenty days after receipt of the application and rehabilitation plan for these fifteen projects. Any application for a qualified commercial structure the qualified rehabilitation expenditures for which amount to fifty thousand or more dollars is not subject to this subsection (7)(a.5).

(b) If, for any calendar year, the aggregate amount of reservations for tax credits the office has approved is equal to the total amount of tax credits available for reservation during that calendar year, the office shall notify all owners who have submitted applications and rehabilitation plans then awaiting approval or submitted for approval after the calculation is made that no additional approvals of applications and plans for reservations of tax credits will be granted during that calendar year and the office shall additionally notify the owner of the priority number given to the owner's application and plan then awaiting approval. The applications and plans will remain in priority status for two years from the date of the original application and plan and will be considered for reservations of tax credits in the priority order established in this subsection (7) in the event that additional credits become available resulting from the rescission of approvals under subsection (8)(a) of this section or because a new allocation of tax credits for a calendar year becomes available.

(c) Notwithstanding any other provision of this section, this subsection (7) does not apply to a qualified residential structure because no reservation of tax credits is necessary in the case of a qualified residential structure.

(8) **Deadline for incurring specified amount of estimated costs of rehabilitation - proof of compliance - audit of cost and expense certification - issuance of tax credit certificate - commercial structures.** (a) Any owner receiving a reservation of tax credits under subsection (7)(a) of this section shall incur not less than twenty percent of the estimated costs of rehabilitation contained in the application and rehabilitation plan not later than eighteen months after the date of issuance of the written notice from the office to the owner granting the reservation of tax credits. Any owner receiving a reservation of tax credits shall submit evidence of compliance with the provisions of this subsection (8)(a). If the office determines that an owner has failed to comply with the requirements of this subsection (8)(a), the office may rescind the issuance it previously gave the owner approving the reservation of tax credits and, if so, the total amount of tax credits made available for the calendar year for which reservations may be granted must be increased by the amount of the tax credits rescinded. The office shall promptly notify any owner whose reservation of tax credits has been rescinded and, upon receipt

of the notice, the owner may submit a new application and plan for which the office may charge a new application fee in accordance with subsection (6) of this section.

(b) Following the completion of a rehabilitation of a qualified commercial structure, the owner shall notify the office that the rehabilitation has been completed and shall certify the qualified rehabilitation costs and expenses. The cost and expense certification must be audited by a licensed certified public accountant that is not affiliated with the owner. The office and the historical society shall review the documentation of the rehabilitation and the historical society shall verify that the documentation satisfies the rehabilitation plan. Within ninety days after receipt of such documentation from the owner, the office shall issue a tax credit certificate in an amount equal to the following subject to subsection (8)(c) of this section:

(I) Twenty-five percent of the actual qualified rehabilitation expenditures that are less than two million dollars; plus

(II) Twenty percent of the actual qualified rehabilitation expenditures in excess of two million dollars.

(c) Notwithstanding subsection (8)(b) of this section:

(I) The total amount of the tax credit certificate issued for any particular project shall not exceed the amount of the tax credit reservation issued for the project under subsection (7)(a) of this section;

(II) The amount of a tax credit certificate to be issued for any one qualified commercial structure shall not exceed one million dollars in any one calendar year; and

(III) With respect to a certified historic structure that is a qualified commercial structure that is located in an area that the president of the United States has determined to be a major disaster area under section 102 (2) of the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", 42 U.S.C. sec. 5121 et seq., or that is located in an area that the governor has determined to be a disaster area under the "Colorado Disaster Emergency Act", part 7 of article 33.5 of title 24, the tax credit amounts specified in subsections (8)(b)(I) and (8)(b)(II) of this section must be increased as follows for an application that is filed within six years after the disaster determination:

(A) The twenty-five percent credit amount specified in subsection (8)(b)(I) of this section is increased to thirty percent; and

(B) The twenty percent credit amount specified in subsection (8)(b)(II) of this section is increased to twenty-five percent.

(IV) For income tax years commencing on or after January 1, 2020, with respect to a certified historic structure that is a qualified commercial structure that is located in a rural community, the tax credit amounts specified in subsections (8)(b)(I) and (8)(b)(II) of this section must be increased as follows for an application that is properly filed in accordance with this section:

(A) **[*Editor's note: Sub-subparagraph (A) is effective January 1, 2020.*]** The twenty-five percent credit amount specified in subsection (8)(b)(I) of this section is increased to thirty-five percent; and

(B) The twenty percent credit amount specified in subsection (8)(b)(II) of this section is increased to thirty percent.

(d) If the amount of qualified rehabilitation expenditures incurred by the owner would result in an owner being issued an amount of tax credits that exceeds the amount of tax credits reserved for the owner under subsection (7)(a) of this section, the owner may apply to the office

for the issuance of an amount of tax credits that equals the excess. The owner must submit its application for issuance of such excess tax credits on a form prescribed by the office. The office shall automatically approve the application, which it shall issue by means of a separate certificate, subject only to the availability of tax credits and the provisions concerning priority provided in subsection (7)(a) of this section.

(e) (Deleted by amendment, L. 2018.)

(f) Notwithstanding any other provision of law, a taxpayer may claim the benefits offered by either subsection (8)(c)(III) or (8)(c)(IV) of this section but shall not claim the benefits offered by both subsections (8)(c)(III) and (8)(c)(IV) of this section.

(9) **Filing tax credit certificate with income tax return.** In order to claim the credit authorized by this section, the owner shall file the tax credit certificate with the owner's state income tax return. The amount of the credit claimed that the owner may claim under this section is the amount stated on the tax credit certificate.

(10) (Deleted by amendment, L. 2018.)

(11) **Residential and commercial - carryforward - no refund to owner.** The entire tax credit to be issued under this section for either a qualified residential structure or a qualified commercial structure may be claimed by the owner in the taxable year in which the certified rehabilitation is placed in service. If the amount of the credit allowed under this section exceeds the amount of income taxes otherwise due on the income of the owner in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not to exceed ten years and will be applied to the earliest income tax years possible. Any amount of the credit that is not used after such period shall not be refunded to the owner.

(12) **Limit on aggregate amount of all tax credits that may be reserved for qualified commercial structures - assignability and transferability of tax credits for qualified commercial structures.** (a) Except as otherwise provided in this subsection (12), the aggregate amount of all tax credits in any tax year that may be reserved for qualified commercial structures by the office upon the certification of all rehabilitation plans under subsection (7)(a) of this section for such structures must not exceed:

(I) For qualified commercial structures estimating qualified rehabilitation expenditures in the amount of two million dollars or less, two and one-half million dollars in the aggregate for the 2016 calendar year, five million dollars in the aggregate for each of the 2017, 2018, and 2019 calendar years, in addition to the amount of any previously reserved tax credits that were rescinded under subsection (8)(a) of this section during the applicable calendar year;

(II) For qualified commercial structures estimating qualified rehabilitation expenditures in excess of two million dollars, two and one-half million dollars in the aggregate for the 2016 calendar year, five million dollars in the aggregate for each of the 2017, 2018, and 2019 calendar years, in addition to the amount of any previously reserved tax credits that were rescinded under subsection (8)(a) of this section during the applicable calendar year;

(III) For qualified commercial structures estimating qualified rehabilitation expenditures in any amount, ten million dollars in the aggregate for each of the 2020 through 2029 calendar years, in addition to the amount of any previously reserved tax credits that were rescinded under subsection (8)(a) of this section during the applicable calendar year; except that the aggregate amount of the ten million dollars in tax credits in any tax year that may be reserved by the office

must be equally split between qualified commercial structures for which the estimated qualified rehabilitation expenditures are equal to or less than two million dollars and qualified commercial structures for which the estimated qualified rehabilitation expenditures are in excess of two million dollars.

(b) Notwithstanding any other provision of this subsection (12), if the entirety of the allowable tax credit amount for any tax year is not requested and reserved under subsection (12)(a) of this section, the office may use any such unreserved tax credits in reserving tax credits in another category for that same income tax year, and the office may also use any remaining unreserved tax credits for that tax year in reserving tax credits in subsequent income tax years.

(c) Any tax credits issued under this section to a partnership, a limited liability company taxed as a partnership, or multiple owners of a property must be passed through to the partners, members, or owners, including any nonprofit entity that is a partner, member, or owner, respectively, on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method.

(d) Any tax credits issued under this section for a qualified commercial structure are freely transferable and assignable, subject to any notice and verification requirements to be determined by the office; except that the owner or a subsequent transferee may only transfer the portion of the tax credit that has neither been applied against the income tax imposed by this article 22 nor used to obtain a refund. Any transferee of a tax credit for a qualified commercial structure issued under this section may use the amount of tax credits transferred to offset against any other tax due under this article 22 or the transferee may freely transfer and assign all or any portion of the tax credits that have neither been applied against the income taxes imposed by this article 22 nor used to obtain a refund to any other person or entity, including an entity that is exempt from federal income taxation pursuant to section 501 (c) of the internal revenue code, as amended, and the other person or entity may freely transfer and assign all or any portion of the tax credits that have neither been applied against the income taxes imposed by this article 22 nor used to obtain a refund to any other person or entity. The tax credits may be transferred or assigned on multiple occasions until such time as the credit is claimed on a state tax return. The transferor and the transferee of the tax credits shall jointly file a copy of the written transfer agreement with the office within thirty days after the transfer. Any filing of the written transfer agreement with the office perfects the transfer. The office shall develop a system to track the transfers of tax credits and to certify the ownership of tax credits. A certification by the office of the ownership and the amount of tax credits may be relied on by the department and the transferee as being accurate, and the office shall not adjust the amount of tax credits as to the transferee; except that the office retains any remedies it may have against the owner. The office may promulgate rules to permit verification of the ownership and amount of the tax credits; except that any rules promulgated shall not unduly restrict or hinder the transfer of the tax credits. Notwithstanding any other provision of this section, only tax credits issued under this section for a qualified commercial structure, and not tax credits issued under this section for a qualified residential structure, are freely transferable and assignable in accordance with this subsection (12)(d).

(e) (Deleted by amendment, L. 2018.)

(13) **Appeal.** Any owner or any duly authorized representative of an owner may appeal any final determination made by the office, the historical society, or the department, including, without limitation, any preliminary or final reservation, or any approval or denial, in accordance

with the "State Administrative Procedure Act", article 4 of title 24. The owner or the owner's representative shall submit any such appeal within thirty days after receipt by the owner or the owner's representative of the final determination that is the subject of the appeal.

(14) **Deadline for submitting application and rehabilitation plan.** Notwithstanding any other provision of this section, the tax credits authorized by this section for the substantial rehabilitation of a qualified structure are not available to an owner of a qualified structure that submits an application and rehabilitation plan after December 31, 2029. No action or inaction on the part of the general assembly has the effect of limiting or suspending the issuing of tax credits authorized by this section in any past or future income tax year with respect to a qualified structure if the owner of the structure submits an application and rehabilitation plan with the office on or prior to December 31, 2029, even if the qualified structure is placed into service after December 31, 2029. Any tax credits that have been reserved for a qualified commercial structure in accordance with subsection (7)(a) of this section and any applicable rules promulgated under this section prior to December 31, 2029, may still be issued by the office through and including December 31, 2032.

(15) **Report to the department - rules - qualified commercial structures.** (a) On or before March 15, 2016, and on a quarterly basis thereafter, the office shall provide a report to the department specifying the ownership and transfers of tax credits for the rehabilitation of qualified commercial structures under this section covering the period since the last report.

(b) The office, in consultation with the historical society, may promulgate any and all rules necessary to further implement the tax credits to be claimed for the substantial rehabilitation of qualified commercial structures under this section and shall solicit advice from the department in promulgating rules for transfers of such tax credits. Any such rules must be promulgated in accordance with article 4 of title 24.

(c) Notwithstanding any other provision of law, a taxpayer shall not claim a credit under this section in connection with the rehabilitation of a historic structure for which the taxpayer is also claiming a credit under section 39-22-514.

**Source: L. 2014:** Entire section added, (HB 14-1311), ch. 183, p. 670, § 1, effective May 14. **L. 2015:** (2)(j) amended, (HB 15-1307), ch. 218, p. 804, § 1, effective August 5. **L. 2018:** Entire section amended, (HB 18-1190), ch. 344, p. 2046, § 1, effective May 30; (5.5)(a)(III) and (8)(c)(IV)(A) added, (HB 18-1190), ch. 344, p. 2046, § 1, effective January 1, 2020.

**39-22-515. Tax credit for qualified equipment utilizing postconsumer waste. (Repealed)**

**Source: L. 91:** Entire section added, p. 1990, § 1, effective June 1. **L. 92:** (6)(f) amended, p. 1262, § 30, effective August 1. **L. 2002:** (5) repealed, p. 862, § 5, effective August 7. **L. 2004:** Entire section repealed, p. 215, § 40, effective August 4.

**39-22-516. Tax credit for purchase of vehicles using alternative fuels - repeal. (Repealed)**

**Source: L. 92:** Entire section added, p. 2244, § 1, effective June 5. **L. 98:** Entire section amended, p. 1297, § 2, effective June 1. **L. 99:** (2.5)(i) amended, p. 984, § 10, effective May 28.

**L. 2000:** (2.5)(a)(III), (2.5)(b), (2.5)(d)(I), (2.5)(i), (2.7)(b), (2.7)(c), and (4) amended, p. 1445, § 1, effective August 2. **L. 2002:** (2.5)(a)(II), (2.5)(e), and (2.5)(i) amended, p. 1066, § 3, effective August 7. **L. 2003:** (2.5)(a)(II.5) added and (2.5)(b)(II)(B) and (2.5)(g) amended, p. 1234, §§ 1, 2, effective September 1. **L. 2005:** (2.5)(d)(I) amended, p. 681, § 1, effective August 8. **L. 2009:** (2.5)(b), (2.5)(d)(I), (2.5)(g), (2.5)(i), (3), and (4) amended and (2.5)(j) and (2.6) added, (HB 09-1331), ch. 416, pp. 2293, 2295, §§ 2, 3, effective June 4. **L. 2010:** (2.6)(b)(III) and (2.6)(d)(III) added and (2.6)(d)(I) amended, (HB 10-1196), ch. 12, p. 65, §§ 1, 2, effective February 24. **L. 2011:** (2.6)(a)(VI) amended, (HB 11-1081), ch. 262, p. 1142, § 1, effective January 1, 2014. **L. 2013:** (2.5)(h) and (2.6)(e) amended, (HB 13-1247), ch. 226, p. 1073, § 4, effective May 15; (2.6)(a)(VI)(B) added by revision, (HB 13-1247), ch. 226, p. 1073, § 3; (2.6)(a)(VI)(B) added by revision, (HB 13-1300), ch. 316, p. 1705, § 125.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective December 31, 2016. (See L. 2009, p. 2295.)

**39-22-516.5. Tax credit for innovative motor vehicles - repeal.** (1) As used in this section, unless the context otherwise requires:

(a) "Actual cost incurred" means the actual cost paid by the purchaser or lessee for the vehicle, conversion, or idling reduction technologies. The actual cost paid shall be calculated as the net of any credits, grants, or rebates, including federal credits, grants, or rebates for which the purchaser or lessee is eligible, but excluding the credit specified in this section.

(b) "Alternative fuel" means an alternative fuel as defined in section 25-7-106.8 (1)(a), C.R.S.

(c) "Category 1" means a motor vehicle that complies with bin 1 of the federal tier 2 emissions standards published by the federal environmental protection agency in the federal register at 65 FR 6698 (February 10, 2000), as amended.

(d) "Category 2" means light duty passenger vehicle diesel-electric hybrids with a minimum fuel economy of seventy miles per gallon.

(e) "Category 3" means light duty passenger vehicle, light duty truck, and medium duty truck diesel-electric hybrid conversions that increase the fuel economy of the original motor vehicle by forty percent or more.

(f) Repealed.

(g) "Category 5" means any idling reduction technologies.

(h) "Category 6" means a motor vehicle that complies with bin 2 or bin 3 of the federal tier 2 emissions standards published by the federal environmental protection agency in the federal register at 65 FR 6698 (February 10, 2000), as amended, with a minimum fuel economy of forty miles per gallon or miles per gallon gasoline equivalent or greater.

(i) "Gross vehicle weight rating" or "GVWR" shall have the same meaning as set forth in section 42-2-402 (6), C.R.S.

(j) "Hybrid vehicle" means a motor vehicle with a hybrid propulsion system that operates on both electricity and an alternative fuel or traditional fuel.

(k) "Idling reduction technologies" means idling reduction devices or advanced insulation, as those terms are defined in section 4053 of the internal revenue code, as amended, exempt from federal excise tax pursuant to said section 4053.

(l) "Light duty passenger vehicle" means a private passenger vehicle, including vans, capable of seating twelve passengers or less; except that the term does not include motor homes as defined in section 42-1-102 (57), C.R.S., or vehicles designed to travel on three or fewer wheels in contact with the ground.

(m) "Light duty truck" means a truck between zero and fourteen thousand pounds GVWR.

(n) "Medium duty truck" means a truck with a gross vehicle weight rating greater than fourteen thousand pounds up to twenty-six thousand pounds.

(o) "Miles per gallon gasoline equivalent" means the standard unit of measure that measures how many miles an alternative vehicle can travel on the equivalent energy of one United States gallon of traditional fuel.

(p) "Motor vehicle" means any self-propelled vehicle, including a vehicle that uses a hybrid propulsion system, that is:

(I) Titled and registered in the state; and

(II) Required to be licensed or subject to licensing for operation upon the highways of the state.

(q) "Plug-in hybrid electric vehicle" means:

(I) An original equipment manufacturer plug-in hybrid electric vehicle that can operate solely on electric power and that is capable of recharging its battery from an on-board generation source and an off-board electricity source; and

(II) A plug-in hybrid electric vehicle conversion that provides an increase in city fuel economy of seventy-five percent or more as compared to a comparable nonhybrid version vehicle for a minimum of twenty miles and that is capable of recharging its battery from an on-board generation source and an off-board electricity source. A vehicle shall be comparable if it is the same model year and the same vehicle class as established by the United States environmental protection agency and is comparable in weight, size, and use. Fuel economy comparisons shall be made using city fuel economy standards in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures set forth in 40 CFR 600, as in effect on August 8, 2005.

(r) "Power source" means the engine or motor and associated wiring, fuel lines, engine coolant system, fuel storage containers, and miscellaneous components.

(s) "Traditional fuel" means a petroleum-based motor fuel commonly used on the highways of the state in the year 2008.

(t) "Uses an alternative fuel" or "to use an alternative fuel" means to operate solely on an alternative fuel, to operate on both an alternative fuel and a traditional fuel, or to operate alternately on a traditional fuel and an alternative fuel.

(2) (a) With respect to the tax years commencing on or after January 1, 2012, but prior to January 1, 2014, there shall be allowed to any person a credit against the tax imposed by this article, not to exceed six thousand dollars, for each motor vehicle purchased or leased by such person that:

(I) Uses or is converted to use an alternative fuel;

(II) Is a hybrid vehicle;

(III) Is a plug-in hybrid electric vehicle;

(IV) Has its power source replaced with a power source that uses an alternative fuel; or

(V) Is modified to include idling reduction technology.

(b) With respect to the tax years commencing on or after January 1, 2012, but prior to January 1, 2014, there shall be allowed to any person a credit against the tax imposed by this article, not to exceed seven thousand five hundred dollars, for each motor vehicle purchased or leased by such person that is converted to a plug-in hybrid electric vehicle.

(c) If a motor vehicle is leased, the lessee, not the lessor, is allowed to claim the credit allowed pursuant to this section.

(3) The amount of the credit allowed pursuant to this section shall be an amount equal to the percentage, as set forth in subsection (4) of this section, of the following:

(a) The difference between the actual cost incurred by such person during the tax year in purchasing or leasing a motor vehicle that uses an alternative fuel and the cost of the same motor vehicle that uses a traditional fuel or, if the same vehicle is not available, then the cost of the most similar vehicle, taking into account the model, make, engine size, and options, that uses a traditional fuel;

(b) The difference between the actual cost incurred by such person during the tax year in replacing an existing power source in a motor vehicle that uses a traditional fuel with a power source that uses an alternative fuel and the cost of replacing the existing power source in the motor vehicle with the same type of power source that uses a traditional fuel;

(c) The actual cost incurred by such person during the tax year in converting the motor vehicle to a fuel system that uses an alternative fuel;

(d) The actual cost incurred by such person in purchasing or leasing idling reduction technologies; or

(e) (I) The actual cost incurred by such person during the tax year in converting a hybrid vehicle to a plug-in hybrid electric vehicle.

(II) Persons who claimed a tax credit in previous years for the purchase or lease of model year 2004 and newer hybrid vehicles are eligible to claim an additional credit for the conversion of such a hybrid vehicle to a plug-in hybrid electric vehicle.

(4) For the purposes of subsection (3) of this section, the percentage of the difference in actual cost incurred or the percentage of the actual cost incurred that may be claimed as a credit pursuant to subsection (2) of this section shall be as follows:

| **Category:** | **Income tax years commencing on or after January 1, 2012, but prior to January 1, 2013:** | **Income tax years commencing on or after January 1, 2013, but prior to January 1, 2014:** |
|---|---|---|
| **Category 1** | 75% | 75% |
| **Category 2** | 45% | 25% |
| **Category 3** | 55% | 35% |
| **Category 4** | 55% | 35% |
| **Category 5** | 25% | 25% |

**Category 6** 10% 10%

(5) Except as provided in subparagraph (II) of paragraph (e) of subsection (3) of this section, and notwithstanding the allowance of credits for any tax years commencing on or after January 1, 2013, but prior to January 1, 2014, under this section and section 39-22-516.7, no more than one tax credit shall be granted pursuant to this section, section 39-22-516, and section 39-22-516.7 for any individual motor vehicle.

(6) If a credit authorized in this section exceeds the income tax due on the income of the taxpayer for the taxable year, the excess credit may not be carried forward and shall be refunded to the taxpayer.

(7) This section is repealed, effective December 31, 2018.

**Source: L. 2009:** Entire section added, (HB 09-1331), ch. 416, p. 2299, § 4, effective June 4. **L. 2011:** (1)(f) amended, (HB 11-1081), ch. 262, p. 1142, § 2, effective January 1, 2014. **L. 2012:** (1)(a), IP(2)(a), (2)(b), (3)(a), (3)(d), and (3)(e)(II) amended and (2)(c) added, (HB 12-1299), ch. 98, p. 328, § 1, effective April 12. **L. 2013:** (1)(f)(II) added by revision, (HB 13-1247), ch. 226, p. 1074, § 5; IP(2)(a), (2)(b), (4), (5), and (7) amended, (HB 13-1247), ch. 226, p. 1074, § 6, effective May 15.

**Editor's note:** Subsection (1)(f)(II) provided for the repeal of subsection (1)(f), effective January 1, 2014. (See L. 2013, p. 1074.)

**Cross references:** (1) In 2009, this section was added by the "Motor Vehicle Innovation Act". For the short title, see section 1 of chapter 416, Session Laws of Colorado 2009.

(2) For the legislative declaration in the 2013 act amending subsection (1)(f), the introductory portion to subsection (2)(a), and subsections (2)(b), (4), (5), and (7), see section 1 of chapter 226, Session Laws of Colorado 2013.

**39-22-516.7. Tax credit for innovative motor vehicles - definitions - repeal.** (1) As used in this section, unless the context otherwise requires:

(a) (I) (A) **[*Editor's note: This version of sub-subparagraph (A) is effective until December 31, 2019.*]** "Actual cost incurred" means the actual cost paid by the purchaser for a used motor vehicle, conversion, or idling reduction technologies minus any credits, grants, or rebates, including federal credits, grants, or rebates for which the purchaser is eligible, but excluding the credit specified in this section.

(A) **[*Editor's note: This version of sub-subparagraph (A) is effective December 31, 2019.*]** "Actual cost incurred" means the actual cost paid by the purchaser for a used motor vehicle or conversion minus any credits, grants, or rebates, including federal credits, grants, or rebates for which the purchaser is eligible, but excluding the credit specified in this section.

(B) "Actual cost incurred" means the manufacturer's suggested retail price for a new motor vehicle that a person purchases minus any credits, grants, or rebates, including federal credits, grants, or rebates for which the person is eligible, but excluding the credit specified in this section.

(II) For purposes of a lease, the "actual cost incurred" means the total of payments contracted in the lease for the motor vehicle minus:

(A) Any security deposit included in the total of payments;

(B) The rent charge included in the total of payments;

(C) Any sales tax included in the total of payments;

(D) Any titling and registration fees included in the total of payments;

(E) Any disposition fee included in the total of payments;

(F) Any administrative fee or any other fee that does not reflect the value of the motor vehicle included in the total of payments; and

(G) Any credits, grants, or rebates, including federal credits, grants, or rebates for which the lessee or lessor is eligible, but excluding the credit specified in this section.

(b) "Alternative fuel" means an alternative fuel as defined in section 25-7-106.8 (1)(a), C.R.S.

(c) "Battery capacity" means the quantity of electricity that a battery is capable of storing, expressed in kilowatt hours, as measured from a one hundred percent state of charge to a zero percent state of charge.

(d) "Category 1" means an electric motor vehicle and a plug-in hybrid electric motor vehicle.

(e) "Category 1 A" means a conversion of a motor vehicle to an electric motor vehicle or a plug-in hybrid electric motor vehicle.

(f) "Category 2" means light duty passenger motor vehicle diesel-electric hybrids with a minimum fuel economy of seventy miles per gallon.

(g) "Category 3" means light duty passenger motor vehicle, light duty truck, and medium duty truck diesel-electric hybrid conversions that increase the fuel economy of the original motor vehicle by forty percent or more.

(h) (I) "Category 4" means original equipment manufacturer light duty passenger motor vehicles, light duty trucks, and medium duty trucks that are equipped to operate on compressed natural gas or on liquefied petroleum gas. For purposes of this paragraph (h), "operate on compressed natural gas or on liquefied petroleum gas" means a motor vehicle that operates exclusively on compressed natural gas or on liquefied petroleum gas or a bi-fuel motor vehicle with a multi-fuel engine capable of running on either compressed natural gas or traditional fuel, or either liquefied petroleum gas or traditional fuel.

(II) This paragraph (h) is repealed, effective December 31, 2019.

(i) (I) "Category 4 A" means light duty passenger motor vehicle, light duty truck, and medium duty truck compressed natural gas or liquefied petroleum gas conversions certified by the United States environmental protection agency. For purposes of this paragraph (i), "compressed natural gas or liquefied petroleum gas conversions" means a conversion to a motor vehicle that operates exclusively on compressed natural gas or on liquefied petroleum gas or a bi-fuel motor vehicle with a multi-fuel engine capable of running on either compressed natural gas or traditional fuel, or either liquefied petroleum gas or traditional fuel.

(II) This paragraph (i) is repealed, effective December 31, 2019.

(j) (I) "Category 5" means the installation of any idling reduction technologies on or in a motor vehicle.

(II) This paragraph (j) is repealed, effective December 31, 2019.

(k) "Electric motor vehicle" or "plug-in hybrid electric motor vehicle" means a motor vehicle that:

(I) Has a gross vehicle weight rating that does not exceed eight thousand five hundred pounds;

(II) Has a maximum speed capability of at least fifty-five miles per hour; and

(III) Is propelled to a significant extent by an electric motor that draws electricity from a battery that:

(A) Has a battery capacity of not less than four kilowatt hours; and

(B) Is capable of being recharged from an external source of electricity.

(k.5) "Financing entity" means the entity that finances the purchase or lease of a category 1 or category 1 A vehicle eligible for a credit allowed by this section.

(l) "Gross vehicle weight rating" or "GVWR" shall have the same meaning as set forth in section 42-2-402 (6), C.R.S.

(m) "Hybrid motor vehicle" means a motor vehicle with a hybrid propulsion system that operates on both electricity and an alternative fuel or traditional fuel.

(n) (I) "Idling reduction technologies" means idling reduction devices or advanced insulation, as those terms are defined in section 4053 of the internal revenue code, as amended, exempt from federal excise tax pursuant to said section 4053.

(II) This paragraph (n) is repealed, effective December 31, 2019.

(o) "Light duty passenger motor vehicle" means a private passenger motor vehicle, including vans, capable of seating twelve passengers or less; except that the term does not include motor homes as defined in section 42-1-102 (57), C.R.S., or motor vehicles designed to travel on three or fewer wheels in contact with the ground.

(p) "Light duty truck" means a truck between zero and fourteen thousand pounds GVWR.

(q) "Medium duty truck" means a truck with a gross vehicle weight rating greater than fourteen thousand pounds up to twenty-six thousand pounds.

(r) (I) "Motor vehicle" means, for tax years commencing prior to January 1, 2017, a self-propelled vehicle with four wheels, including a truck and a hybrid motor vehicle, that is:

(A) Titled and registered in the state; and

(B) Required to be licensed or subject to licensing for operation upon the highways of the state.

(II) "Motor vehicle" means, for tax years commencing on or after January 1, 2017, but prior to January 1, 2022, a self-propelled vehicle with four wheels, including a truck and a hybrid motor vehicle, that is:

(A) New, not used, unless the motor vehicle is being converted;

(B) Titled and registered in the state; and

(C) Required to be licensed or subject to licensing for operation upon the highways of the state.

(r.3) "Purchaser" means the buyer or the lessee of a category 1 or category 1 A vehicle, but does not include the state or any political subdivision of the state. For tax years commencing on or after January 1, 2017, a lessee seeking to claim a credit allowed in this section must enter into a lease with a term of not less than two years.

(s) "Traditional fuel" means a petroleum-based motor fuel commonly used on the highways of the state in the year 2008.

(2) (a) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2022, there is allowed to any person a credit against the tax imposed by this article, not to exceed the amount specified in subsection (4) of this section, for the purchase or lease of a motor vehicle defined as category 1.

(a.3) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2017, there is allowed to any person a credit against the tax imposed by this article, not to exceed six thousand dollars, for the purchase, lease, or conversion of a motor vehicle defined as category 2 or category 3.

(a.5) (I) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2015, there is allowed to any person a credit against the tax imposed by this article, not to exceed six thousand dollars, for the purchase, lease, or conversion of a motor vehicle defined as category 4 or category 4 A.

(II) This paragraph (a.5) is repealed, effective December 31, 2019.

(b) (I) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2014, there shall be allowed to any person a credit against the tax imposed by this article, not to exceed seven thousand five hundred dollars, for the conversion of a motor vehicle defined as category 1 A.

(II) This paragraph (b) is repealed, effective December 31, 2018.

(c) With respect to the tax years commencing on or after January 1, 2014, but prior to January 1, 2022, there is allowed to any person a credit against the tax imposed by this article, not to exceed the amount specified in subsection (4) of this section, for the conversion of a motor vehicle defined as category 1 A.

(d) (I) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2015, there is allowed to any person a credit against the tax imposed by this article, not to exceed six thousand dollars, for category 5.

(II) This paragraph (d) is repealed, effective December 31, 2019.

(e) (I) A purchaser may assign the tax credit allowed in this section for the purchase or lease of a category 1 or category 1 A vehicle completed on or after January 1, 2017, to a financing entity as follows:

(A) The assignment to the financing entity must be completed at the time of purchase or lease by entering into an election statement as set forth in subparagraph (III) of this paragraph (e);

(B) The purchaser must title and register the vehicle in the state as required by state law;

(C) The purchaser must assign the tax credit to the financing entity and forfeit the right to claim the tax credit on the purchaser's tax return in exchange for good and valuable consideration; and

(D) The financing entity shall compensate the purchaser for the full nominal value of the tax credit; except that the financing entity may collect an administrative fee not to exceed one hundred fifty dollars for processing the assignment. The compensation paid to the purchaser is considered a refund of state taxes and is not income.

(II) Notwithstanding section 39-21-108 (3), if a purchaser assigns the tax credit to a financing entity pursuant to this paragraph (e), the financing entity receives the full amount of the tax credit that the purchaser is allowed in this section. Any unpaid balance or unpaid debt of the purchaser may not be credited from the amount of the tax credit allowed in this section.

(III) To complete the tax credit assignment, the purchaser and the financing entity must enter into an election statement that must:

(A) Identify the vehicle identification number of the category 1 or category 1 A vehicle for which a credit is allowed in this section; and

(B) Affirm that the requirements specified in subparagraph (I) of this paragraph (e) were met.

(IV) The financing entity may authorize an agent or a designee to sign the election statement on its behalf.

(V) The financing entity shall electronically submit a report containing the information contained in the election statement described in subparagraph (III) of this paragraph (e) to the department of revenue within thirty days of the purchase or lease of a category 1 or category 1 A vehicle in such a form and in such a manner as required by the department.

(VI) The financing entity shall also file the election statement described in subparagraph (III) of this paragraph (e) with the original tax return for the taxable year in which the category 1 or category 1 A vehicle is purchased or leased.

(VII) The department of revenue, in consultation with the Colorado energy office created in section 24-38.5-101, C.R.S., shall develop a model report and election statement no later than December 1, 2016.

(3) If a motor vehicle is leased, the lessee, not the lessor, is allowed to claim the credit allowed pursuant to this section. The lessee may elect to assign the tax credit allowed pursuant to this section for the lease of a category 1 or category 1 A vehicle to a financing entity as specified in paragraph (e) of subsection (2) of this section.

(4) The amount of the credit allowed pursuant to this section is calculated as follows:

(a) **Category 1.** (I) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2017, the actual cost incurred by the taxpayer during the tax year for purchasing or leasing a category 1 motor vehicle multiplied by the battery capacity of the motor vehicle and divided by one hundred, not to exceed six thousand dollars;

(II) With respect to the tax years commencing on or after January 1, 2017, but prior to January 1, 2020, five thousand dollars for a purchase or two thousand five hundred dollars for a lease;

(III) With respect to the tax years commencing on or after January 1, 2020, but prior to January 1, 2021, four thousand dollars for a purchase or two thousand dollars for a lease;

(IV) With respect to the tax years commencing on or after January 1, 2021, but prior to January 1, 2022, two thousand five hundred dollars for a purchase or one thousand five hundred dollars for a lease.

(b) **Category 1 A.** (I) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2017, seventy-five percent of the actual cost incurred by the taxpayer during the tax year for the conversion of a motor vehicle defined as category 1 A, not to exceed six thousand dollars;

(II) With respect to the tax years commencing on or after January 1, 2017, but prior to January 1, 2020, five thousand dollars;

(III) With respect to the tax years commencing on or after January 1, 2020, but prior to January 1, 2021, four thousand dollars;

(IV) With respect to the tax years commencing on or after January 1, 2021, but prior to January 1, 2022, two thousand five hundred dollars.

(c) **Category 2.** (I) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2014, twenty-five percent of the difference between the actual cost incurred by such taxpayer during the tax year in purchasing or leasing a category 2 motor vehicle and the cost of the same motor vehicle that uses a traditional fuel or, if the same vehicle is not

available, then the cost of the most similar vehicle, taking into account the model, make, engine size, and options, that uses a traditional fuel;

(II) With respect to the tax years commencing on or after January 1, 2014, but prior to January 1, 2017, fifteen percent of the difference between the actual cost incurred by such taxpayer during the tax year in purchasing or leasing a category 2 motor vehicle and the cost of the same motor vehicle that uses a traditional fuel or, if the same vehicle is not available, then the cost of the most similar vehicle, taking into account the model, make, engine size, and options, that uses a traditional fuel.

(III) to (V) (Deleted by amendment, L. 2016.)

(VI) This paragraph (c) is repealed, effective December 31, 2021.

(d) **Category 3.** (I) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2014, thirty-five percent of the actual cost incurred by a taxpayer during the tax year for the conversion of a motor vehicle defined as category 3;

(II) With respect to the tax years commencing on or after January 1, 2014, but prior to January 1, 2017, twenty-five percent of the actual cost incurred by a taxpayer during the tax year for the conversion of a motor vehicle defined as category 3.

(III) to (V) (Deleted by amendment, L. 2016.)

(VI) This paragraph (d) is repealed, effective December 31, 2021.

(e) (I) **Category 4.** (A) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2014, ten and one-half percent of the actual cost incurred by a taxpayer during the tax year in purchasing or leasing a category 4 motor vehicle;

(B) With respect to the tax years commencing on or after January 1, 2014, but prior to January 1, 2015, twelve and one-quarter percent of the actual cost incurred by a taxpayer during the tax year in purchasing or leasing a category 4 motor vehicle.

(II) This paragraph (e) is repealed, effective December 31, 2019.

(f) (I) **Category 4 A.** (A) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2014, thirty-five percent of the actual cost incurred by a taxpayer during the tax year for the conversion of a motor vehicle defined as category 4 A;

(B) With respect to the tax years commencing on or after January 1, 2014, but prior to January 1, 2015, twenty-five percent of the actual cost incurred by a taxpayer during the tax year for the conversion of a motor vehicle defined as category 4 A.

(II) This paragraph (f) is repealed, effective December 31, 2019.

(g) **Category 5.** (I) With respect to the tax years commencing on or after January 1, 2013, but prior to January 1, 2015, twenty-five percent of the actual cost incurred by a taxpayer during the tax year for category 5.

(II) This paragraph (g) is repealed, effective December 31, 2019.

(5) With respect to any model year 2004 and newer hybrid motor vehicle, notwithstanding the limitation set forth in subsection (6) of this section, a taxpayer that converts such a motor vehicle to a category 1 A motor vehicle shall be eligible for the category 1 A credit.

(6) Except as provided in subsection (5) of this section, and notwithstanding the allowance of credits for any tax years commencing on or after January 1, 2013, but prior to January 1, 2014, under this section and section 39-22-516.5, no more than one tax credit shall be granted pursuant to this section and sections 39-22-516, 39-22-516.5, and 39-22-516.8 for any individual motor vehicle.

(7) If a credit authorized in this section exceeds the income tax due on the income of the taxpayer for the taxable year, the excess credit may not be carried forward and shall be refunded to the taxpayer.

(8) With respect to tax years commencing on or after January 1, 2017, the taxpayer claiming a credit allowed in this section shall provide the department of revenue with, and the department shall commence tracking, the vehicle identification number of the motor vehicle for which a credit is claimed as allowed in this section.

(9) Making the purchaser aware of the income tax credit allowed in this section or helping the purchaser assign the income tax credit to a financing entity as allowed in this section does not rise to the level of providing the purchaser with unauthorized tax advice.

(10) This section is repealed, effective December 31, 2026.

**Source: L. 2013:** Entire section added, (HB 13-1247), ch. 226, p. 1067, § 2, effective May 15. **L. 2014:** (1)(h) to (1)(j), (1)(n), (2)(a), (2)(d), (4)(e) to (4)(g), and (6) amended and (2)(a.5) added, (HB 14-1326), ch. 357, p. 1674, § 3, effective June 6; (1)(a)(I)(A) amended, (HB 14-1326), ch. 357, p. 1677, § 4, effective December 31, 2019. **L. 2016:** (1)(k.5), (1)(r.3), (2)(a.3), (2)(e), (9), and (10) added and (1)(r), (2)(a), (2)(c), (3), (4)(a), (4)(b), (4)(c), (4)(d), and (8) amended, (HB 16-1332), ch. 237, p. 955, § 1, effective June 6.

**Cross references:** (1) For the legislative declaration in the 2013 act adding this section, see section 1 of chapter 226, Session Laws of Colorado 2013.

(2) For the legislative declaration in HB 14-1326, see section 1 of chapter 357, Session Laws of Colorado 2014.

**39-22-516.8. Tax credit for innovative trucks - definitions - repeal.** (1) As used in this section, unless the context otherwise requires:

(a) (I) "Actual cost incurred" means the actual cost paid by the purchaser for a new or used truck or clean fuel refrigerated trailer, conversion of a truck or clean fuel refrigerated trailer, idling reduction technologies, or aerodynamic technologies, minus any credits, grants, or rebates, including federal credits, grants, or rebates for which the purchaser is eligible, but excluding the credit specified in this section.

(II) For purposes of a lease, "actual cost incurred" means the total of payments contracted in the lease for the truck minus:

(A) Any security deposit included in the total of payments;

(B) The rent charge included in the total of payments;

(C) Any sales tax included in the total of payments;

(D) Any titling and registration fees included in the total of payments;

(E) Any disposition fee included in the total of payments;

(F) Any administrative fee or any other fee that does not reflect the value of the truck included in the total of payments; and

(G) Any credits, grants, or rebates, including federal credits, grants, or rebates for which the lessee or lessor is eligible, but excluding the credit specified in this section.

(b) "Aerodynamic technologies" means a device on the United States environmental protection agency's smartway verified technology list that minimizes drag and improves air flow over a truck and trailer; except that "aerodynamic technologies" do not include tires.

(c) "Alternative fuel" means an alternative fuel as defined in section 25-7-106.8 (1)(a), C.R.S.

(d) "Battery capacity" means the quantity of electricity that a battery is capable of storing, expressed in kilowatt hours, as measured from a one hundred percent state of charge to a zero percent state of charge.

(e) "Bus" means a motor vehicle with a minimum seating capacity of thirty-three, including the driver.

(f) "Category 4" means original equipment manufacturer trucks that are equipped to operate on compressed natural gas or on liquefied petroleum gas. For purposes of this paragraph (f), "operate on compressed natural gas or on liquefied petroleum gas" means a truck that operates exclusively on compressed natural gas or on liquefied petroleum gas, or a bi-fuel truck with a multi-fuel engine capable of running on either compressed natural gas or traditional fuel, or on either liquefied petroleum gas or traditional fuel, or a dual-fuel truck with a multi-fuel engine capable of running on both compressed natural gas and traditional fuel, or on both liquefied petroleum gas and traditional fuel.

(g) "Category 4 A" means compressed natural gas or liquefied petroleum gas conversions certified by the United States environmental protection agency. For purposes of this paragraph (g), "compressed natural gas or liquefied petroleum gas conversions" means a conversion to a truck that operates exclusively on compressed natural gas or on liquefied petroleum gas, or a bi-fuel truck with a multi-fuel engine capable of running on either compressed natural gas or traditional fuel, or on either liquefied petroleum gas or traditional fuel, or a dual-fuel truck with a multi-fuel engine capable of running on both compressed natural gas and traditional fuel, or on both liquefied petroleum gas and traditional fuel.

(h) "Category 4 B" means original equipment manufacturer trucks that are equipped to operate on liquified natural gas or on hydrogen. For purposes of this paragraph (h), "operate on liquified natural gas or on hydrogen" means a truck that operates exclusively on liquified natural gas or on hydrogen, or a bi-fuel truck with a multi-fuel engine capable of running on either liquified natural gas or traditional fuel, or on either hydrogen or traditional fuel, or a dual-fuel truck with a multi-fuel engine capable of running on both liquified natural gas and traditional fuel, or on both hydrogen and traditional fuel.

(i) "Category 4 C" means liquefied natural gas or hydrogen conversions certified by the United States environmental protection agency. For purposes of this paragraph (i), "liquefied natural gas or hydrogen conversions" means a conversion to a truck that operates exclusively on liquefied natural gas or on hydrogen, or a bi-fuel truck with a multi-fuel engine capable of running on either liquefied natural gas or traditional fuel, or on either hydrogen or traditional fuel, or a dual-fuel truck with a multi-fuel engine capable of running on both liquified natural gas and traditional fuel, or on both hydrogen and traditional fuel.

(j) "Category 5" means the installation of any idling reduction technologies on or in a truck.

(k) "Category 6" means the installation of any aerodynamic technologies on or in a truck.

(l) "Category 7" means an original equipment manufacturer electric truck and plug-in hybrid electric truck.

(m) "Category 7 A" means a conversion of a truck to an electric truck or a plug-in hybrid electric truck.

(n) "Category 8" means a clean fuel refrigerated trailer.

(o) "Category 8 A" means a conversion of a refrigerated trailer to a clean fuel refrigerated trailer.

(p) "Category 9" means a hydraulic hybrid truck.

(q) "Clean fuel refrigerated trailer" means a trailer capable of being pulled by a truck with a gross vehicle weight rating greater than fourteen thousand pounds, with a power unit and fuel storage used for climate control that:

(I) (A) Is installed on the trailer by the original equipment manufacturer; or

(B) Is installed on the trailer through a conversion certified by the United States environmental protection agency; and

(II) Operates on either compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, or electricity, or any combination thereof.

(r) "Electric truck" or "plug-in hybrid electric truck" means a truck that:

(I) Has a gross vehicle weight rating that exceeds eight thousand five hundred pounds;

(II) Has a maximum speed capability of at least fifty-five miles per hour; and

(III) Is propelled to a significant extent by an electric motor that draws electricity from a battery that:

(A) Has a battery capacity of not less than four kilowatt hours; and

(B) Is capable of being recharged from an external source of electricity.

(r.5) "Financing entity" means the entity that finances the purchase or lease of a category 4, category 4 A, category 4 B, category 4 C, category 7, category 7 A, or category 9 vehicle eligible for a credit allowed by this section.

(s) "Gross vehicle weight rating" or "GVWR" has the same meaning as set forth in section 42-2-402 (6), C.R.S.

(t) "Heavy duty truck" means a truck with a gross vehicle weight rating greater than twenty-six thousand pounds.

(u) "Hybrid truck" means a truck with a hybrid propulsion system that operates on both electricity and an alternative fuel or traditional fuel.

(v) "Hydraulic hybrid truck" means the conversion of a truck with a gross vehicle weight rating of more than fourteen thousand pounds to a truck with a hybrid propulsion system that operates on both pressurized fluid and either compressed natural gas, liquified natural gas, liquified petroleum gas, hydrogen, electricity, or a traditional fuel; except that the converted hydraulic hybrid truck must increase the fuel economy of the original truck.

(w) "Idling reduction technologies" means idling reduction devices or advanced insulation, as those terms are defined in section 4053 of the internal revenue code, as amended, that are exempt from federal excise tax pursuant to said section 4053.

(x) "Light duty electric truck" means an electric truck with a gross vehicle weight rating less than or equal to ten thousand pounds but does not include a light duty passenger motor vehicle.

(y) "Light duty passenger motor vehicle" means a private passenger motor vehicle, including vans, capable of seating twelve passengers or less; except that the term does not include motor homes as defined in section 42-1-102 (57), C.R.S., or motor vehicles designed to travel on three or fewer wheels in contact with the ground.

(z) "Light duty truck" means a truck with a gross vehicle weight rating less than or equal to fourteen thousand pounds but does not include a light duty passenger motor vehicle.

(aa) "Medium duty electric truck" means an electric truck with a gross vehicle weight rating greater than ten thousand pounds and up to twenty-six thousand pounds.

(bb) "Medium duty truck" means a truck with a gross vehicle weight rating greater than fourteen thousand pounds and up to twenty-six thousand pounds.

(bb.3) "Purchaser" means the buyer or the lessee of a category 4, category 4 A, category 4 B, category 4 C, category 7, category 7 A, or category 9 vehicle, but does not include the state or any political subdivision of the state. For tax years commencing on or after January 1, 2017, a lessee seeking to claim a credit allowed in this section must enter into a lease with a term of not less than two years.

(cc) "Traditional fuel" means a petroleum-based motor fuel commonly used on the highways of the state in the year 2008.

(dd) "Trailer" has the same meaning as in section 42-1-102 (105), C.R.S.

(ee) (I) "Truck", for tax years commencing prior to January 1, 2017, has the same meaning as in section 42-1-102 (108), C.R.S., includes a hybrid truck, a light duty passenger motor vehicle, and a bus, has a maximum speed capability of at least fifty-five miles per hour, is licensed or subject to licensing for operation upon the highways of the state, and is either:

(A) Titled and registered in the state; or

(B) Registered under the international registration plan and base plated in the state.

(II) "Truck", for tax years commencing on or after January 1, 2017, has the same meaning as in section 42-1-102 (108), C.R.S., and includes a hybrid truck, a light duty passenger motor vehicle, and a bus, has a maximum speed capability of at least fifty-five miles per hour, is licensed or subject to licensing for operation upon the highways of the state, is new, not used, unless the truck is being converted, and is either:

(A) Titled and registered in the state; or

(B) Registered under the international registration plan and base plated in the state.

(2) **Category 4.** (a) With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2017, there is allowed to any person a credit against the tax imposed by this article as a percentage set forth in paragraph (b) of this subsection (2) of the actual cost incurred by the taxpayer during the tax year for each purchase or lease of a category 4 truck, not to exceed the amount set forth in paragraph (b) of this subsection (2). For purposes of the income tax year commencing on or after January 1, 2014, but before January 1, 2015, the purchase or lease of a category 4 truck must occur on or after July 1, 2014, but before January 1, 2015.

(b) **PLACE PDF INSERT HERE**

(2.3) **Category 4 purchase.** (a) Except as provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article in an amount set forth in paragraph (b) of this subsection (2.3) for each purchase of a category 4 truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(2.5) **Category 4 lease.** (a) Except as provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article in an amount set forth in paragraph (b) of this subsection (2.5) for each lease of a category 4 truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(3) **Category 4 A.** (a) With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2017, there is allowed to any person a credit against the tax imposed by this article as a percentage set forth in paragraph (b) of this subsection (3) of the actual cost incurred by the taxpayer during the tax year for the conversion of a category 4 A truck, not to exceed the amount set forth in paragraph (b) of this subsection (3). For purposes of the income tax year commencing on or after January 1, 2014, but before January 1, 2015, the conversion of a category 4 A truck must occur on or after July 1, 2014, but before January 1, 2015.

(b) **PLACE PDF INSERT HERE**

(3.5) **Category 4 A.** (a) Except as provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article an amount set forth in paragraph (b) of this subsection (3.5) for the conversion of a category 4 A truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(4) **Category 4 B.** (a) With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2017, there is allowed to any person a credit against the tax imposed by this article as a percentage set forth in paragraph (b) of this subsection (4) of the actual cost incurred by the taxpayer during the tax year for each purchase or lease of a category 4 B truck, not to exceed the amount set forth in paragraph (b) of this subsection (4). For purposes of the income tax year commencing on or after January 1, 2014, but before January 1, 2015, the purchase or lease of a category 4 B truck must occur on or after July 1, 2014, but before January 1, 2015.

(b) **PLACE PDF INSERT HERE**

(4.3) **Category 4 B purchase.** (a) Except as provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article an amount set forth in paragraph (b) of this subsection (4.3) for each purchase of a category 4 B truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(4.5) **Category 4 B lease.** (a) Except as provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article an amount set forth in paragraph (b) of this subsection (4.5) for each lease of a category 4 B truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(5) **Category 4 C.** (a) With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2017, there is allowed to any person a credit against the tax imposed by this article as a percentage set forth in paragraph (b) of this subsection (5) of the actual cost incurred by the taxpayer during the tax year for the conversion of a category 4 C truck, not to exceed the amount set forth in paragraph (b) of this subsection (5). For purposes of the income tax year commencing on or after January 1, 2014, but before January 1, 2015, the conversion of a category 4 C truck must occur on or after July 1, 2014, but before January 1, 2015.

(b) **PLACE PDF INSERT HERE**

(5.5) **Category 4 C.** (a) Except as provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article in the amount set forth in paragraph (b) of this subsection (5.5) for the conversion of a category 4 C truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(6) **Category 5.** With respect to the income tax years commencing on or after January 1, 2015, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article of twenty-five percent of the actual cost incurred by the taxpayer during a tax year for category 5, not to exceed six thousand dollars.

(7) **Category 6.** With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article of twenty-five percent of the actual cost incurred by the taxpayer during a tax year for category 6, not to exceed six thousand dollars for each installed device and not to exceed fifty thousand dollars during a tax year for the installation of multiple devices. For purposes of the income tax year commencing on or after January 1, 2014, but before January 1, 2015, the installation must occur on or after July 1, 2014, but before January 1, 2015.

(8) **Category 7.** (a) With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2017, there is allowed to any person a credit against the tax imposed by this article as a percentage set forth in paragraph (b) of this subsection (8) of the actual cost incurred by the taxpayer during the tax year for each purchase or lease of a category 7 truck, not to exceed the amount set forth in paragraph (b) of this subsection (8). For purposes of the income tax year commencing on or after January 1, 2014, but before January 1, 2015, the purchase or lease of a category 7 truck must occur on or after July 1, 2014, but before January 1, 2015.

(b) **PLACE PDF INSERT HERE**

(8.3) **Category 7 purchase.** (a) Except as provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article in an amount set forth in paragraph (b) of this subsection (8.3) for each purchase of a category 7 truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(8.5) **Category 7 lease.** (a) Except as provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article in an amount set forth in paragraph (b) of this subsection (8.5) for each lease of a category 7 truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(9) **Category 7 A.** (a) With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2017, there is allowed to any person a credit against the tax imposed by this article as a percentage set forth in paragraph (b) of this subsection (9) of the actual cost incurred by the taxpayer during the tax year for the conversion of a category 7 A truck, not to exceed the amount set forth in paragraph (b) of this subsection (9). For purposes of the income tax year commencing on or after January 1, 2014, but before January 1, 2015, the

conversion of a category 7 A truck must occur on or after July 1, 2014, but before January 1, 2015.

(b) **PLACE PDF INSERT HERE**

(9.5) **Category 7 A.** (a) Except as provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article in an amount set forth in paragraph (b) of this subsection (9.5) for the conversion of a category 7 A truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(10) **Category 8.** (a) With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article as a percentage set forth in paragraph (b) of this subsection (10) of the actual cost incurred by the taxpayer during the tax year for each purchase or lease of a category 8 trailer, not to exceed the amount set forth in paragraph (b) of this subsection (10). For purposes of the income tax year commencing on or after January 1, 2014, but before January 1, 2015, the purchase or lease of a category 8 trailer must occur on or after July 1, 2014, but before January 1, 2015.

(b) **PLACE PDF INSERT HERE**

(11) **Category 8 A.** (a) With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article as a percentage set forth in paragraph (b) of this subsection (11) of the actual cost incurred by the taxpayer during the tax year for the conversion of a refrigerated trailer to a category 8 A trailer, not to exceed the amount set forth in paragraph (b) of this subsection (11). For purposes of the income tax year commencing on or after January 1, 2014, but before January 1, 2015, the conversion of a refrigerated trailer to a category 8 A trailer must occur on or after July 1, 2014, but before January 1, 2015.

(b) **PLACE PDF INSERT HERE**

(11.5) **Category 9.** (a) With respect to the income tax years commencing on or after January 1, 2014, but before January 1, 2017, there is allowed to any person a credit against the tax imposed by this article as a percentage set forth in paragraph (b) of this subsection (11.5) of the actual cost incurred by the taxpayer during the tax year for the conversion of a category 9 truck, not to exceed the amount set forth in paragraph (b) of this subsection (11.5).

(b) **PLACE PDF INSERT HERE**

(11.6) **Category 9.** (a) Except as otherwise provided in subsection (14) of this section, with respect to the income tax years commencing on or after January 1, 2017, but before January 1, 2022, there is allowed to any person a credit against the tax imposed by this article in an amount set forth in paragraph (b) of this subsection (11.6) for the conversion of a category 9 truck during the tax year.

(b) **PLACE PDF INSERT HERE**

(12) A taxpayer claiming the credit authorized by this section shall not claim the credit in an amount that exceeds the incremental cost of the actual cost incurred for the category 4, 4 A, 4 B, 4 C, 7, or 7 A truck or motor vehicle over the manufacturer's suggested retail price of a comparable traditional fuel truck or light duty passenger motor vehicle.

(13) If a credit authorized in this section exceeds the income tax due on the income of the taxpayer for the taxable year, the excess credit may not be carried forward and must be refunded to the taxpayer.

(13.5) (a) A purchaser may assign the tax credit allowed in this section for the purchase or lease of a category 4, category 4 A, category 4 B, category 4 C, category 7, category 7 A, or category 9 vehicle completed on or after January 1, 2017, to a financing entity as follows:

(I) The assignment to the financing entity must be completed at the time of purchase or lease by entering into an election statement as set forth in paragraph (c) of this subsection (13.5);

(II) The purchaser must title and register the vehicle in the state or register the vehicle under the international registration plan and base plate the vehicle in the state as required by state law;

(III) The purchaser must assign the tax credit to the financing entity and forfeit the right to claim the tax credit on the purchaser's tax return in exchange for good and valuable consideration; and

(IV) The financing entity shall compensate the purchaser for the full nominal value of the tax credit; except that the financing entity may collect an administrative fee not to exceed one hundred fifty dollars for processing the assignment. The compensation paid to the purchaser is considered a refund of state taxes and is not income.

(b) Notwithstanding section 39-21-108 (3), if a purchaser assigns the tax credit to a financing entity pursuant to this subsection (13.5), the financing entity receives the full amount of the tax credit that the purchaser is allowed in this section. Any unpaid balance or unpaid debt of the purchaser may not be credited from the amount of the tax credit allowed in this section.

(c) To complete the tax credit assignment, the purchaser and the financing entity must enter into an election statement that must:

(I) Identify the vehicle identification number of the category 4, category 4 A, category 4 B, category 4 C, category 7, category 7 A, or category 9 vehicle for which a credit is allowed in this section; and

(II) Affirm that the requirements specified in paragraph (a) of this subsection (13.5) were met.

(d) The financing entity may authorize an agent or a designee to sign the election statement on its behalf.

(e) The financing entity shall electronically submit a report containing the information contained in the election statement described in paragraph (c) of this subsection (13.5) to the department of revenue within thirty days of the purchase or lease of a category 4, category 4 A, category 4 B, category 4 C, category 7, category 7 A, or category 9 vehicle in such a form and in such a manner as required by the department.

(f) The financing entity shall also file the election statement described in paragraph (c) of this subsection (13.5) with the original tax return for the taxable year in which the category 4, category 4 A, category 4 B, category 4 C, category 7, category 7 A, or category 9 vehicle is purchased or leased.

(g) The department of revenue, in consultation with the Colorado energy office created in section 24-38.5-101, C.R.S., shall develop a model report and election statement no later than December 1, 2016.

(14) (a) During the calendar year ending December 31, 2018, the Colorado energy office created in section 24-38.5-101, C.R.S., shall determine whether category 4, 4 A, 4 B, 4 C, 7, 7 A,

or 9 medium or heavy duty trucks generate life-cycle emissions materially greater than comparable medium or heavy duty trucks using traditional fuel. Such a life-cycle analysis must include the direct emissions regulated by the United States environmental protection agency or by the department of public health and environment that are associated with producing, transporting, and using the alternative or traditional fuels. The Colorado energy office shall consider the likely adoption of future technology at each stage of the life-cycle.

(b) In making the determinations described in paragraph (a) of this subsection (14), the Colorado energy office shall consider public input, any analysis or reports prepared by the department of public health and environment, other states, or the United States environmental protection agency, and any peer-reviewed studies conducted in the United States that evaluate similar matters.

(c) In the event that category 4, 4 A, 4 B, 4 C, 7, 7 A, or 9 medium or heavy duty trucks are shown to generate life-cycle emissions materially greater than comparable traditional fuel trucks, then the Colorado energy office shall notify the department of revenue that no tax credit specified in this section is available for such trucks for the income tax years commencing on or after January 1, 2019, but before January 1, 2022; except that the Colorado energy office may determine if a particular category 4, 4 A, 4 B, 4 C, 7, 7 A, or 9 truck model or engine does not generate life-cycle emissions materially greater than a comparable traditional fuel truck model or engine and is thus allowed a credit for a given income tax year, or the Colorado energy office may allow a credit if the taxpayer can demonstrate that the taxpayer has a long-term fuel contract for his or her category 4, 4 A, 4 B, 4 C, 7, 7 A, or 9 truck from a green fuel provider, such that the life-cycle emissions from such truck are not materially greater than the emissions of a comparable traditional fuel truck. For purposes of this paragraph (c), "green fuel provider" means the alternative fuel is produced and delivered by providers that have adopted best practices for low life-cycle emissions. On or before January 1, 2019, and on or before each January 1 thereafter through January 1, 2021, the Colorado energy office and the department of revenue shall, through their respective websites, specify which category 4, 4 A, 4 B, 4 C, 7, 7 A, or 9 medium or heavy duty trucks are not allowed a credit for a given income tax year.

(15) No more than one tax credit shall be granted pursuant to this section and sections 39-22-516, 39-22-516.5, and 39-22-516.7 for any individual motor vehicle or truck.

(16) With respect to tax years commencing on or after January 1, 2017, the taxpayer claiming a credit allowed in this section shall provide the department of revenue with, and the department shall commence tracking, the vehicle identification number of the motor vehicle or truck for which a credit is claimed as allowed in this section.

(17) Making the purchaser aware of the income tax credit allowed in this section or helping the purchaser assign the income tax credit to a financing entity as allowed in this section does not rise to the level of providing the purchaser with unauthorized tax advice.

(18) This section is repealed, effective December 31, 2026.

**Source: L. 2014:** Entire section added, (HB 14-1326), ch. 357, p. 1664, § 2, effective June 6. **L. 2016:** (1)(r.5), (1)(bb.3), (2.3), (2.5), (3.5), (4.3), (4.5), (5.5), (8.3), (8.5), (9.5), (11.6), (13.5), (17), and (18) added and (1)(ee), (2), (3), (4), (5), (8), (9), (11.5), and (16) amended, (HB 16-1332), ch. 237, p. 960, § 2, effective June 6.

**Cross references:** For the legislative declaration in HB 14-1326, see section 1 of chapter 357, Session Laws of Colorado 2014.

**39-22-517. Tax credit for child care center investments.** (1) With respect to taxable years commencing on or after January 1, 1992, there shall be allowed to any person operating a child care center, family child care home, or foster care home licensed pursuant to the provisions of section 26-6-104, C.R.S., a credit against the tax imposed by this article in the amount of twenty percent of the taxpayer's annual investment in tangible personal property to be used in such child care center, family child care home, or foster care home. Such credit shall be in addition to any credit for which the taxpayer may be eligible pursuant to the provisions of section 39-22-507.5 or section 39-22-507.6.

(2) With respect to taxable years commencing on or after July 1, 1992, there shall be allowed to any sole proprietorship, partnership, limited liability corporation, subchapter S corporation, or regular corporation which provides child care facilities which are incidental to their business and are licensed pursuant to section 26-6-104, C.R.S., for the use of its employees a credit against the tax imposed by this article in the amount of ten percent of the taxpayer's annual investment in tangible personal property to be used in such child care facilities. Such credit shall be in addition to any credit for which the taxpayer may be eligible pursuant to the provisions of section 39-22-507.5 or section 39-22-507.6.

(3) The credit allowed by this section for any income tax year shall not exceed the taxpayer's actual tax liability for such taxable year. If the amount of the credit allowed by this section exceeds the taxpayer's actual tax liability for any income tax year in which the child care center investment credit is claimed, referred to in this subsection (3) as the "unused credit year", such excess shall be an investment tax credit carryover to each of the three income tax years following the unused credit year and shall be applied first to the earliest income tax years possible.

**Source: L. 92:** Entire section added, p. 2245, § 1, effective June 5. **L. 96:** (1) amended, p. 267, § 22, effective July 1.

**39-22-518. Tax modification for net capital gains.** (1) For income tax years commencing on or after July 1, 1995, a modification, in the form of a reduction of income taxable by the state of Colorado, shall be allowed to any qualified taxpayer for the amount of income attributable to qualifying gains receiving capital treatment earned by the qualified taxpayer during the taxable year and included in federal taxable income.

(2) For the purposes of this section:

(a) (I) "Qualified taxpayer" means any taxpayer with no overdue state tax liabilities and not in default on any contractual obligations owed to the state or to any local government within Colorado at the time the modification created under this section is claimed.

(II) For the purposes of this paragraph (a), "overdue state tax liabilities" includes uncollectible tax liabilities resulting from bankruptcy.

(b) (I) "Qualifying gains receiving capital treatment" means the amount of net capital gains, as defined in section 1222 (11) of the internal revenue code, included in any qualified taxpayer's federal income tax return and:

(A) and (B) Repealed.

(B.5) Earned by the qualified taxpayer on either real or tangible personal property located within Colorado that was acquired on or after May 9, 1994, but before June 4, 2009, or on tangible personal property only located either within or outside Colorado that was acquired on or after June 4, 2009, and either of which has been owned by the qualified taxpayer for a holding period of at least five years prior to the date of the transaction from which the net capital gains arise if the transaction from which the net capital gains arise occurred during an income tax year that commenced on or after January 1, 2010; except that no more than one hundred thousand dollars of net capital gains described in this sub-subparagraph (B.5) shall be qualifying gains receiving capital treatment for any single income tax year.

(C) to (F) Repealed.

(II) For purposes of this paragraph (b):

(A) "Colorado company, limited liability company, or partnership" means an entity with fifty percent or more of its property and payroll, as determined in accordance with article IV of the multistate tax compact, section 24-60-1301, C.R.S., assigned to locations within Colorado.

(B) "Holding period" means an uninterrupted period of time.

(3) Any reduction in Colorado taxable income caused by the modification allowed by this section shall not create any right to a cash refund for the year for which the modification is claimed, nor shall the reduction create any right to a financial or other tax benefit which may be carried forward by the qualified taxpayer.

(4) Any taxpayer claiming a modification pursuant to this section shall submit with the taxpayer's income tax return in which such modification is claimed an affidavit, signed under penalty of perjury, stating that the taxpayer meets the definition of a qualified taxpayer as stated in paragraph (a) of subsection (2) of this section.

(5) to (8) Repealed.

**Source: L. 94:** Entire section added, p. 1104, § 1, effective May 9. **L. 99:** (2)(b)(I) and (2)(b)(II)(B) amended and (5), (6), and (7) added, p. 1284, § 1, effective August 4. **L. 2000:** (2)(b)(I), (5)(a), (5)(b)(I), (5)(b)(II), (5)(b)(V), (5)(b)(VI), (6), and (7) amended and (5)(c) and (5)(d) added, pp. 1456, 1459, §§ 1, 2, effective August 2. **L. 2001:** (7) amended, p. 1280, § 55, effective June 5; (5)(a), (5)(b)(I), (5)(b)(II), and (5)(b)(VI) amended, p. 394, § 5, effective August 8. **L. 2009:** (2)(b)(I)(A) and (2)(b)(I)(B) amended, (2)(b)(I)(B.5) and (8) added, and (2)(b)(I)(C), (2)(b)(I)(D), (2)(b)(I)(E), (2)(b)(I)(F), (5), (6), and (7) repealed, (HB 09-1366), ch. 432, pp. 2397, 2398, §§ 1, 2, 3, effective June 4.

**Editor's note:** Subsection (8) provided for the repeal of subsections (2)(b)(I)(A), (2)(b)(I)(B), and (8), effective January 1, 2015. (See L. 2009, p. 2398.)

**Cross references:** (1) For other provisions concerning adjustments to federal taxable income, see § 39-22-104.

(2) For the legislative declaration contained in the 2001 act amending subsections (5)(a), (5)(b)(I), (5)(b)(II), and (5)(b)(VI), see section 1 of chapter 133, Session Laws of Colorado 2001.

**39-22-519. Tax credit for book value of certificate for carriers of sludge - repeal. (Repealed)**

**Source: L. 94:** Entire section added, p. 2822, § 2, effective June 3.

**Editor's note:** Subsection (3) provided for the repeal of this section, effective January 1, 1999. (See L. 94, p. 2822.)

**39-22-520. Credit against tax - investment in school-to-career program - definitions.** (1) The general assembly hereby recognizes that businesses and other aspects of the economy need trained, educated, and motivated workers. It is therefore the intent of the general assembly to encourage private investment in programs that integrate traditional education with on-the-job training. It is further the intent of the general assembly to foster and encourage cooperation among the private sector and the educational community in creating programs that will open doors of opportunity for students and enable them to develop the knowledge and skills that will empower them to become productive members of society.

(2) (a) For income tax years beginning on or after January 1, 1997, there shall be allowed to any person as a credit against the tax imposed by this article an amount equal to ten percent of the total qualified investment made in a qualified school-to-career program.

(b) For purposes of this subsection (2):

(I) "Qualified investment" means moneys directly expended for wages, workers' compensation insurance, unemployment insurance, and training expenses to employ a student to work or to allow a student to participate in an internship through a qualified school-to-career program.

(II) "Qualified school-to-career program" means a program that integrates school curriculum with job training, that encourages placement of students in jobs or internships that will teach them new skills and improve their school performance, and that is approved by:

(A) The board of education of the school district in which the program is operating;

(B) The state board for community colleges and occupational education;

(C) The private occupational school division created pursuant to section 23-64-105; or

(D) The Colorado commission on higher education.

(3) If the amount of the credit provided for pursuant to subsection (2) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year shall not be allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding five years and shall be applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period shall not be refundable to the taxpayer.

**Source: L. 97:** Entire section added, p. 1395, § 1, effective June 3. **L. 2008:** (2)(b)(II)(C) amended, p. 1482, § 27, effective May 28. **L. 2017:** (2)(b)(II)(C) amended, (HB 17-1239), ch. 261, p. 1207, § 19, effective August 9.

**39-22-521. Credits against tax - employer expenses - public assistance recipients.** (1) With respect to taxable years commencing on or after January 1, 1998, there shall be allowed to an employer of any person receiving public assistance pursuant to the Colorado works program set forth in part 7 of article 2 of title 26, C.R.S., a credit, for not more than two years, against the

tax imposed by this article in the amount of twenty percent of the employer's annual investment in any one or more of the following services that are incidental to the employer's business:

(a) The provision of child care services or the payment of the costs associated with child care services for children of employees receiving public assistance;

(b) The provision of health or dental insurance for employees receiving public assistance, which health or dental insurance coverage, if less than the coverage provided through medicaid, shall be supplemented by medicaid to provide full medicaid benefits to the employee;

(c) The provision of job training or basic education of employees receiving public assistance;

(d) The provision of programs for the transportation of public assistance employees to and from work.

(2) The tax credit described in subsection (1) of this section shall be in addition to any other credits for which the employer may be eligible pursuant to the provisions of article 30 of this title.

(3) The credit allowed by this section for any income tax year shall not exceed the employer's actual tax liability for such taxable year. If the amount of the credit allowed by this section exceeds the employer's actual tax liability for any income tax year in which the credit authorized in this section is claimed, such excess shall be a tax credit carryover to each of the three income tax years following the unused credit year and shall be applied first to the earliest income tax years possible.

**Source: L. 97:** Entire section added, p. 1245, § 52, effective July 1.

**39-22-522. Credit against tax - conservation easements.** (1) For purposes of this section, "taxpayer" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article, a partnership, S corporation, or other similar pass-through entity, estate, or trust that donates a conservation easement as an entity, and a partner, member, and subchapter S shareholder of such pass-through entity.

(2) (a) For income tax years commencing on or after January 1, 2000, but prior to January 1, 2014, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation that is eligible to qualify as a qualified conservation contribution pursuant to section 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

(b) For income tax years commencing on or after January 1, 2014, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation

easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation that meets the requirements of section 170 of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in accordance with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

(2.5) Notwithstanding any other provision of this section and the requirements of section 12-61-1106, for income tax years commencing on or after January 1, 2011, a taxpayer conveying a conservation easement and claiming a credit pursuant to this section shall, in addition to any other requirements of this section and the requirements of section 12-61-1106, submit a claim for the credit to the division of conservation in the department of regulatory agencies. The division shall issue a certificate for the claims received in the order submitted. After certificates have been issued for credits that exceed an aggregate of twenty-two million dollars for all taxpayers for the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter, any claims that exceed the amount allowed for a specified calendar year shall be placed on a wait list in the order submitted and a certificate shall be issued for use of the credit in the next year for which the division has not issued credit certificates in excess of the amounts specified in this subsection (2.5); except that no more than fifteen million dollars in claims shall be placed on the wait list in any given calendar year. The division shall not issue credit certificates that exceed twenty-two million dollars in each of the 2011 and 2012 calendar years, thirty-four million dollars for the 2013 calendar year, and forty-five million dollars for each calendar year thereafter. No claim for a credit is allowed for any income tax year commencing on or after January 1, 2011, unless a certificate has been issued by the division. If all other requirements under section 12-61-1106 and this section are met, the right to claim the credit is vested in the taxpayer at the time a credit certificate is issued.

(2.7) Notwithstanding any other provision, for income tax years commencing on or after January 1, 2014, no claim for a credit shall be allowed unless a tax credit certificate is issued by the division of conservation in accordance with sections 12-61-1105 and 12-61-1106 and the taxpayer files the tax credit certificate with the income tax return filed with the department of revenue.

(3) For conservation easements donated prior to January 1, 2014, in order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall submit the following in a form approved by the executive director to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:

(a) A statement indicating whether a deduction was claimed on the taxpayer's federal income tax return for a conservation easement in gross;

(b) A statement that reflects the information included in the noncash charitable contributions form used to claim a deduction for a conservation easement in gross on a federal income tax return and whether the donation was made in order to get a permit or other approval from a local or other governing authority;

(c) A statement to be made available to the public by the department of revenue that includes a summary of the conservation purposes as defined in section 170 (h) of the internal revenue code that are protected by the easement; the county, township, and range where the

easement is located; the number of acres subject to the easement; the amount of the tax credit claimed; and the name of the organization holding the easement;

(d) A summary of a qualified appraisal that meets the requirements set forth in subsection (3.3) of this section; however, if requested by the department of revenue, the taxpayer shall submit the appraisal itself;

(e) A copy of the appraisal and accompanying affidavit from the appraiser submitted to the division of real estate in the department of regulatory agencies in accordance with the provisions of section 12-61-719, C.R.S., as said section existed prior to its repeal on July 1, 2013;

(f) If the holder of the conservation easement is an organization to which the certification program in section 12-61-1104 applies, a sworn affidavit from the holder of the conservation easement in gross that includes the following:

(I) Repealed.

(II) An acknowledgment of whether the transaction is part of a series of transactions by the same donor; and

(III) An acknowledgment that the holder has reviewed the completed Colorado gross conservation easement credit schedule to be filed by the taxpayer and that the property is accurately described in the schedule.

(3.3) The appraisal for a conservation easement in gross donated prior to January 1, 2014, and for which a credit is claimed shall be a qualified appraisal from a qualified appraiser, as those terms are defined in section 170 (f)(11) of the internal revenue code. The appraisal shall be in conformance with the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law. The appraiser shall hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S. The appraiser shall also meet any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-704 (1)(k), C.R.S. If there is a final determination, other than by settlement of the taxpayer, that an appraisal submitted in connection with a claim for a credit pursuant to this section is a substantial or gross valuation misstatement as such misstatements are defined in section 1219 of the federal "Pension Protection Act of 2006", Pub.L. 109-280, the department shall submit a complaint regarding the misstatement to the board of real estate appraisers for disciplinary action in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.

(3.5) (a) For conservation easements donated prior to January 1, 2014:

(I) The executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the appraisal value of the easement, the amount of the credit, and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, including the value of the conservation easement for which the credit is granted, the executive director shall have the authority, for good cause shown and in consultation with the division of conservation and the conservation easement oversight commission created in section 12-61-1103 (1) to review and accept or reject, in whole or in part, the appraisal value of the easement, the amount of the credit, and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation. If the executive director reasonably believes that the appraisal represents a gross valuation misstatement, receives notice of such a valuation misstatement from the division of real estate, or receives notice from the

division of real estate that an enforcement action has been taken by the board of real estate appraisers against the appraiser, the executive director shall have the authority to require the taxpayer to provide a second appraisal at the expense of the taxpayer. The second appraisal shall be conducted by a certified general appraiser in good standing and not affiliated with the first appraiser that meets qualifications established by the division of real estate. In the event the executive director rejects, in whole or in part, the appraisal value of the easement, the amount of the credit, or the validity of the credit, the procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and 39-21-105 shall apply.

(II) In consultation with the division of conservation and the conservation easement oversight commission created in section 12-61-1103 (1), the executive director shall develop and implement a separate process for the review by the department of revenue of gross conservation easements. The review process shall be consistent with the statutory obligations of the division and the commission and shall address gross conservation easements for which the department of revenue has been informed that an audit is being performed by the internal revenue service. The executive director shall share information used in the review of gross conservation easements with the division. Notwithstanding part 2 of article 72 of title 24, in order to protect the confidential financial information of a taxpayer, the division and the commission shall deny the right to inspect any information provided by the executive director in accordance with this subsection (3.5)(a)(II).

(b) For conservation easements donated on or after January 1, 2014, and subject to the restrictions of section 12-61-1106 (4), the executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the amount of the credit and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, the executive director shall have the authority, for good cause shown, to review and accept or reject, in whole or in part, the amount of the credit and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation, except those requirements for which authority is granted to the division of conservation, the director of the division of conservation, or the conservation easement oversight commission pursuant to section 12-61-1106.

(3.6) For conservation easements donated on or after January 1, 2014, in order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer must submit the following in a form, approved by the executive director, to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:

(a) (I) A tax credit certificate issued under section 12-61-1106; and

(II) The information required in subsections (3)(a), (3)(b), (3)(d), and (3)(f)(II) of this section.

(b) Notwithstanding any other provisions of law, the executive director retains the authority to administer all issues related to the claim or use of a tax credit for the donation of a conservation easement that are not granted to the director of the division of conservation or the conservation easement oversight commission under section 12-61-1106.

(c) The information required in paragraph (f) of subsection (3) of this section will no longer be required from the holder of the conservation easement.

(3.7) If the gain on the sale of a conservation easement in gross for which a credit is claimed pursuant to this section would not have been a long-term capital gain, as defined under

the internal revenue code, if, at the time of the donation, the taxpayer had sold the conservation easement at its fair market value, then the value of the conservation easement in gross for the purpose of calculating the amount of the credit shall be reduced to the taxpayer's tax basis in the conservation easement in gross. The tax basis of a taxpayer in a conservation easement shall be determined and allocated pursuant to sections 170 (e) and 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such sections. This subsection (3.7) shall be applied in a manner that is consistent with the tax treatment of qualified conservation contributions under the internal revenue code and the federal regulations promulgated under the internal revenue code.

(3.8) (a) The division of conservation shall convene a working group in conjunction with the department of law, the department of revenue, and the department of regulatory agencies to develop statutory and regulatory recommendations that do not conflict with federal law for the following:

(I) An alternate method to the appraisal process set forth in subsection (3.3) of this section to establish a baseline property value, using agreed upon publicly available datasets for rural and agricultural properties. The baseline valuation would then be subject to different levels of restriction including, but not limited to, a most restrictive, medium restrictive, and least restrictive easement to arrive at a final determination established through public policy from which the amount of a tax credit could be calculated pursuant to this section. The alternate method should work across the state of Colorado.

(II) A recommendation for a process to petition a court of competent jurisdiction consistent with federal laws and regulations to extinguish a conservation easement, including proposed definitions for the terms "impossible" and "impracticable" as they are applied for purposes of determining whether an easement may be extinguished under state and federal law;

(III) A process to provide retroactive tax credits to taxpayers who claimed tax credits pursuant to this section between January 1, 2000, and December 31, 2008, and whose tax credits were denied in whole or in part, including the development of eligibility criteria for such retroactive tax credits; and

(IV) The development of a written form to warn landowners who have conservation easements on their property of the legal and other consequences of terminating an easement on their property.

(b) The working group shall submit a report to the transportation and energy committee of the house of representatives, the agriculture, livestock, and natural resources committee of the house of representatives, the agriculture, natural resources, and energy committee of the senate, and the transportation committee of the senate no later than December 1, 2018. The report must include any recommendations for legislation or rulemaking to address the issues addressed pursuant to this subsection (3.8).

(4) (a) (I) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated prior to January 1, 2007, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to one hundred percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and forty percent of all amounts of the donation in excess of one hundred thousand dollars; except that in no case shall the credit exceed two hundred sixty thousand dollars per donation.

(II) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated on or after January 1, 2007, and prior to January 1, 2015, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to fifty percent of the fair market value of the donated portion of such conservation easement in gross when created; except that, in no case shall the credit exceed three hundred seventy-five thousand dollars per donation.

(II.5) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated on or after January 1, 2015, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to seventy-five percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and fifty percent of all amounts of the donation in excess of one hundred thousand dollars; except that, in no case shall the credit exceed one million five hundred thousand dollars per donation.

(III) In no event shall a credit claimed by a taxpayer filing a joint federal return, or the sum of the credits claimed by taxpayers who may legally file a joint federal return but actually file separate federal returns, exceed the dollar limitations of this paragraph (a).

(b) For income tax years commencing on or after January 1, 2000, in the case of a joint tenancy, tenancy in common, partnership, S corporation, or other similar entity or ownership group that donates a conservation easement as an entity or group, the amount of the credit allowed pursuant to subsection (2) of this section shall be allocated to the entity's owners, partners, members, or shareholders in proportion to the owners', partners', members', or shareholders' distributive shares of income or ownership percentage from such entity or group. For income tax years commencing on or after January 1, 2000, but prior to January 1, 2003, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed one hundred thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such partners, members, and shareholders shall not exceed twenty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2003, but prior to January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed two hundred sixty thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed three hundred seventy-five thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year.

(5) (a) If the tax credit provided in this section exceeds the amount of income tax due on the income of the taxpayer for the taxable year, the amount of the credit not used as an offset against income taxes in said income tax year and not refunded pursuant to paragraph (b) of this subsection (5) may be carried forward and applied against the income tax due in each of the

twenty succeeding income tax years but shall be first applied against the income tax due for the earliest of the income tax years possible. Any amount of the credit that is not used after said period shall not be refundable.

(b) (I) Subject to the requirements specified in subparagraphs (II) and (III) of this paragraph (b), for income tax years commencing on or after January 1, 2000, if the amount of the tax credit allowed in or carried forward to any tax year pursuant to this section exceeds the amount of income tax due on the income of the taxpayer for the year, the taxpayer may elect to have the amount of the credit not used as an offset against income taxes in said income tax year refunded to the taxpayer.

(II) A taxpayer may elect to claim a refund pursuant to subparagraph (I) of this paragraph (b) only if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year ending in the income tax year for which the refund is claimed exceeds the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution and the voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year.

(III) If any refund is claimed pursuant to subparagraph (I) of this paragraph (b), then the aggregate amount of the refund and amount of the credit used as an offset against income taxes for that income tax year shall not exceed fifty thousand dollars for that income tax year. In the case of a partnership, S corporation, or other similar pass-through entity that donates a conservation easement as an entity, if any refund is claimed pursuant to subparagraph (I) of this paragraph (b), the aggregate amount of the refund and the credit claimed by the partners, members, or shareholders of the entity shall not exceed the dollar limitation set forth in this subparagraph (III) for that income tax year. Nothing in this subparagraph (III) shall limit a taxpayer's ability to claim a credit against taxes due in excess of fifty thousand dollars in accordance with subsection (4) of this section.

(6) (a) For conservation easements donated prior to January 1, 2014, a taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits. A taxpayer who has carried forward or elected to receive a refund of part of the tax credit in accordance with subsection (5) of this section shall not claim an additional tax credit under this section for any income tax year in which the taxpayer applies the amount carried forward against income tax due or receives a refund. A taxpayer who has transferred a credit to a transferee pursuant to subsection (7) of this section shall not claim an additional tax credit under this section for any income tax year in which the transferee uses such transferred credit.

(b) For conservation easements donated on or after January 1, 2014, a taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits.

(7) For income tax years commencing on or after January 1, 2000, a taxpayer may transfer all or a portion of a tax credit granted pursuant to subsection (2) of this section to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:

(a) The taxpayer may only transfer such portion of the tax credit as the taxpayer has neither applied against the income taxes imposed by this article nor used to obtain a refund;

(b) The taxpayer may transfer a pro-rated portion of the tax credit to more than one transferee;

(c) A transferee may not elect to have any transferred credit refunded pursuant to paragraph (b) of subsection (5) of this section;

(d) For any tax year in which a tax credit is transferred pursuant to this subsection (7), both the taxpayer and the transferee shall file written statements with their income tax returns specifying the amount of the tax credit that has been transferred. A transferee may not claim a credit transferred pursuant to this subsection (7) unless the taxpayer's written statement verifies the amount of the tax credit claimed by the transferee.

(e) To the extent that a transferee paid value for the transfer of a conservation easement tax credit to such transferee, the transferee shall be deemed to have used the credit to pay, in whole or in part, the income tax obligation imposed on the transferee under this article, and to such extent the transferee's use of a tax credit from a transferor under this section to pay taxes owed shall not be deemed a reduction in the amount of income taxes imposed by this article on the transferee;

(f) The transferee shall submit to the department a form approved by the department. The transferee shall also file a copy of the form with the entity to whom the taxpayer donated the conservation easement.

(g) A transferee of a tax credit shall purchase the credit prior to the due date imposed by this article, including any extensions, for filing the transferee's income tax return;

(h) A tax credit held by an individual either directly or as a result of a donation by a pass-through entity, but not a tax credit held by a transferee unless used by the transferee's estate for taxes owed by the estate, shall survive the death of the individual and may be claimed or transferred by the decedent's estate. This paragraph (h) shall apply to any tax credit from a donation of a conservation easement made on or after January 1, 2000.

(i) The donor of an easement for which a tax credit is claimed or the transferor of a tax credit transferred pursuant to this subsection (7) shall be the tax matters representative in all matters with respect to the credit. The tax matters representative shall be responsible for representing and binding the transferees with respect to all issues affecting the credit, including, but not limited to, the charitable contribution deduction, the appraisal, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations. The transferee shall be subject to the same statute of limitations with respect to the credit as the transferor of the credit.

(j) Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, shall be binding on transferees.

(8) The executive director of the department of revenue may promulgate rules for the implementation of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(9) Any taxpayer who claims a credit for the donation of a conservation easement contrary to the provisions of this section shall be liable for such deficiencies, interest, and penalties as may be specified in this article or otherwise provided by law.

(10) On or before July 1, 2008, the department of revenue shall create a report, which shall be made available to the public, on the credits claimed in the previous year in accordance

with this section. For each credit claimed for a conservation easement in gross, the report shall summarize by county where the easement is located, the acres under easement, the appraised value of the easement, the donated value of the easement, and the name of any holders of the easement; except that the department shall combine such information for multiple counties where necessary to ensure that the information for no fewer than three easements is summarized for any county or combination of counties in the report. The report shall be updated annually to reflect the same information for any additional credits that have been granted since the previous report. This report shall not be required for conservation easements donated on or after January 1, 2014.

(11) On or before December 31, 2007, the department of revenue shall create a report, which shall be made available to the public, with as much of the information specified in paragraph (c) of subsection (3) of this section as is available to the department, summarized by county, for each tax credit claimed for a conservation easement in gross for tax years commencing on or after January 1, 2000. This report shall not be required for conservation easements donated on or after January 1, 2014.

**Source: L. 99:** Entire section added, p. 976, § 1, effective August 4. **L. 2000:** (4), (5), and (6) amended and (7) and (8) added, p. 894, § 1, effective August 2. **L. 2001:** (1), (2), (3), (4), and (5)(b)(III) amended, p. 395, § 6, effective August 8; (1), (2), (3), (4), (5)(b)(III), (6), (7)(a), (7)(b) amended and (7)(e) and (7)(f) added, p. 901, § 1, effective January 1, 2003. **L. 2002:** (2) amended and (9) added, p. 510, § 1, effective August 7; (2) amended and (9) added, p. 511, § 2, effective January 1, 2003. **L. 2005:** (3.5), (7)(g), (7)(h), (7)(i), and (7)(j) added, pp. 1479, 1480, §§ 1, 2, effective June 7. **L. 2006:** (4) amended, p. 822, § 1, effective August 7. **L. 2007:** (3), (3.5), and (7)(i) amended and (3.3), (10), and (11) added, p. 1228, § 3, effective August 3. **L. 2008:** (3)(b), (3)(e), IP(3)(f), (3)(f)(I), (3.3), and (3.5) amended and (3.7) added, p. 2316, § 8, effective July 1. **L. 2010:** (2.5) added, (HB 10-1197), ch. 175, p. 635, § 4, effective August 11. **L. 2011:** (2.5) amended, (HB 11-1300), ch. 193, p. 753, § 4, effective May 19. **L. 2013:** (2), (2.5), IP(3), (3.3), (3.5), (6), (10), and (11) amended and (2.7) and (3.6) added, (SB 13-221), ch. 251, p. 1330, § 9, effective August 7; (2.5) amended, (HB 13-1183), ch. 252, p. 1338, § 2, effective August 7. **L. 2014:** (4)(a)(III) amended, (SB 14-019), ch. 10, p. 99, § 6, effective February 27; (2.5), (2.7), (3)(e), IP(3)(f), (3.3), (3.5), (3.6)(a)(I), and (3.6)(b) amended, (SB 14-117), ch. 385, p. 1919, § 8, effective July 1. **L. 2015:** (4)(a)(II) amended and (4)(a)(II.5) added, (SB 15-206), ch. 272, p. 1086, § 1, effective June 4. **L. 2017:** IP(3)(f) amended and (3)(f)(I) repealed, (SB 17-294), ch. 264, p. 1414, § 108, effective May 25. **L. 2018:** (2.5), (2.7), IP(3)(f), (3.5), (3.6)(a)(I), (3.6)(b), and (7)(g) amended and (3.8) added, (HB 18-1291), ch. 273, p. 1689, § 6, effective May 29.

**Editor's note:** (1) Subsections (2), (4), and (5)(b)(III) were amended in House Bill 01-1364. Those amendments were superseded by the amendments to said subsections in House Bill 01-1090, effective January 1, 2003.

(2) Amendments to subsection (2.5) by House Bill 13-1183 and Senate Bill 13-221 were harmonized.

(3) Section 9 of chapter 10 (SB 14-019), Session Laws of Colorado 2014, provides that changes to this section by the act apply to income tax years commencing on or after January 1, 2013, and any other income tax years that are open under § 39-21-107 or 39-21-108.

**Cross references:** (1) For the legislative declaration contained in the 2001 act amending subsections (1), (2), (3), (4), and (5)(b)(III), see section 1 of chapter 133, Session Laws of Colorado 2001.

(2) For the legislative declaration contained in the 2008 act amending subsections (3)(b), (3)(e), the introductory portion to subsection (3)(f), subsections (3)(f)(I), (3.3), and (3.5) and enacting subsection (3.7), see section 1 of chapter 448, Session Laws of Colorado 2008.

(3) For the legislative declaration stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled in 2010, see sections 1 and 10 of chapter 448, Session Laws of Colorado 2008. To obtain a copy of the review, once completed, go to "Legislative Reports and Requirements" on the Colorado General Assembly's website.

(4) For the legislative declaration in the 2013 act amending subsections (2), (2.5), the introductory portion to subsection (3), and subsections (3.3), (6), (10), and (11) and adding subsections (2.7) and (3.6), see section 1 of chapter 251, Session Laws of Colorado 2013.

**39-22-522.5. Conservation easement tax credits - dispute resolution - legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) Colorado's conservation easement program is an important preservation tool used to balance economic needs with natural resources such as land and water preservation. Colorado's conservation easement tax credit and the federal tax deduction have allowed many farmers and ranchers the opportunity to donate their development rights to preserve a legacy of open spaces in Colorado for wildlife, agriculture, and ranching.

(b) Citizens throughout Colorado believe good, sound conservation practices are important to Colorado's quality of life, agriculture, and wildlife heritage;

(c) Colorado's conservation easement tax credit program was designed to give landowners an incentive to conserve and preserve their land in a predominantly natural, scenic, or open condition;

(d) While the department of revenue has allowed the great majority of claimed conservation easement tax credits, hundreds of claimed credits have been denied but have not yet been finally adjudicated through the existing administrative process;

(e) Due to the unique issues of confidentiality and multiple interested and related parties involved in the litigation of disputed conservation easement tax credits, the general assembly determines that it is appropriate to enact procedural changes that will provide for equitable and expedited litigation or resolution of these cases;

(f) It is the intent of the general assembly to enact procedural changes that further important matters of public policy concerning the equitable and efficient resolution of disputes regarding claimed conservation easement tax credits. It is the intent of the general assembly that any appeal brought pursuant to subsection (2) of this section shall be expedited to the extent practicable and administered in the manner deemed most efficient and fair by the executive director or the district court.

(g) The procedural changes set forth in this section shall apply to any dispute regarding a tax credit from a donation of a conservation easement made on or after January 1, 2000, for which a final determination has not been issued;

(h) It is the intent of the general assembly to provide taxpayers with incentives to waive an administrative hearing and proceed directly to a de novo appeal to the district court in

accordance with the procedures set forth in this section. The incentives include waiver of the bond requirement and waiver of accrual of interest and penalties during the time the matter is on appeal to the district court.

(i) The general assembly strongly encourages the executive director of the department of revenue to agree to waive interest and penalties for tax matters representatives and credit buyers who have acted in good faith to resolve disputed conservation easement tax credits; and

(j) This section is intended to effect changes to the law that are procedural or remedial in nature. The procedural changes set forth in this section shall not be construed to take away or impair any vested right acquired under existing law, or to create any new obligation, impose any new duty, or attach any new disability with respect to any past transaction or consideration. The provisions of this section are designed to address matters of public policy related to the fair and equitable resolution of conservation easement tax credit disputes in accordance with applicable laws and court rules.

(2) For any credit claimed pursuant to section 39-22-522, for which a notice of deficiency, notice of disallowance, or notice of rejection of refund claim has been mailed by the department of revenue as of May 1, 2011, but for which a final determination has not been issued before May 19, 2011, the tax matters representative may elect to waive the administrative process provided by section 39-21-103 and appeal the notice of deficiency, disallowance, or rejection of refund claim directly to a district court in accordance with the following provisions, which also apply to an appeal filed in accordance with subsection (6) of this section; except that paragraphs (a), (c), and (d) of this subsection (2) shall not apply to such an appeal:

(a) The tax matters representative shall make the election by mailing a written notice of appeal that includes the certified signature of the tax matters representative to the executive director and the district court for the county that has venue in the case as specified in paragraph (b) of this subsection (2) on or before October 1, 2011. The notice shall be sent by certified mail.

(b) Appeals brought pursuant to this section shall be filed in the district court for the county where the land encumbered by the easement is located. At the discretion of the chief justice, the state may be divided into three regions for purposes of consolidating appeals, with each region consisting of the following judicial districts:

| **Region** | **Judicial Districts** |
|---|---|
| Region 1 | 1st, 2nd, 8th, 13th, 17th, 18th, 19th, and 20th |
| Region 2 | 3rd, 4th, 10th, 11th, 12th, 15th, and 16th |
| Region 3 | 5th, 6th, 7th, 9th, 14th, 21st, and 22nd |

(c) If a tax matters representative elects to waive the administrative process and appeal directly to a district court pursuant to this subsection (2), no surety bond or other deposit shall be required in connection with the appeal. This paragraph (c) shall not apply to tax matters representatives who do not elect to waive the administrative process.

(d) If the tax matters representative elects to waive the administrative process and appeal directly to a district court pursuant to this subsection (2), additional interest and penalties shall cease to accrue while the matter is on appeal before the district court, beginning with the date the notice of appeal is received by the district court. This paragraph (d) shall not apply to tax matters representatives who do not elect to waive the administrative process.

(e) Upon receipt of the notice of appeal by the court, the executive director shall be deemed to be a party to such appeal, and the clerk of the district court shall docket the cause as a

civil action. The appellant shall cause summons to be issued and cause the same to be served upon the executive director in accordance with the manner provided by law in civil cases. The answer of the executive director shall contain a brief, plain statement of the legal issues, a detailed itemization of the total amount in controversy, and any proposal regarding the joinder or consolidation of related parties and appeals.

(f) Any transferee of the tax credit or any other person who has claimed a tax credit related to the tax matters representative's claimed conservation easement tax credit shall be allowed to intervene as a matter of right pursuant to the Colorado rules of civil procedure.

(g) Notice of the date of any hearing or any phase of the trial shall be mailed to the tax matters representative, any other party, and to the executive director at least thirty days prior thereto.

(h) Jurisdiction to hear and determine appeals pursuant to this section is conferred upon the district courts of this state. A court, in its discretion, may allow for the assertion, consolidation, and settlement of any claims at law or at equity, for the intervention of additional parties, and for such other matters as the court deems appropriate in accordance with any applicable laws or court rules governing such issues; except that resolution of disputes between private parties may be limited to the third phase of the case as described in paragraph (m) of this subsection (2). In determining matters regarding joinder or consolidation, the court may consider common issues of law and fact, including but not limited to ownership of the property subject to the easement, relationships of taxpayers, and location of the easements.

(i) Following the court's order identifying the parties and consolidating cases and parties, the court may hold a hearing to determine the validity of the conservation easement credit claimed pursuant to section 39-22-522 and to determine any other claims or defenses touching the regularity of the proceedings. The court shall determine whether the donation is eligible to qualify as a qualified conservation contribution. The court may set an expedited briefing schedule and give the matter priority on the docket. The court may order preliminary discovery, limited to validity of the easement credits and any other claims or defenses raised at this stage of the proceeding.

(j) Upon a determination of validity of the credit as claimed, the court may schedule a case management conference with all parties to the proceeding. Any case management conference shall address the proceedings as set forth in paragraph (m) of this subsection (2). Prior to the case management conference, the court may order all parties to make the following disclosures:

(I) The department of revenue shall disclose, consistent with any orders of the court, individuals with knowledge of, and documents related to:

(A) Notices to the tax matters representative disallowing the conservation easement credit;

(B) Notices to any taxpayer of deficiency or rejection of claim for refund;

(C) Correspondence with the tax matters representative or donee of the easement as well as any party to the conservation easement tax credit action;

(D) Appraisals and review appraisals or other expert reports used in connection with review of the tax matters representative's application for tax credit;

(E) Tax returns of the tax matters representative, transferee, or any party to the conservation easement tax credit action, for relevant tax years; and

(F) Statements of adjustment.

(II) The tax matters representative shall disclose individuals with knowledge of, and documents related to:

(A) Tax returns for the relevant tax years;

(B) The appraisal used to determine the value of the easement;

(C) The conservation easement deed and amendments;

(D) Agreements between the tax matters representative and the transferees; and

(E) Any other expert report, basis, or other evidence relating to the valuation and substantiation of the amount of the underlying easement or credit.

(III) Transferees or other persons claiming all or part of the conservation easement tax credit who are parties to the conservation easement tax credit action shall disclose individuals with knowledge of, and documents related to:

(A) Agreements related to the transfer of credits;

(B) Tax returns for the relevant tax years; and

(C) Any other expert report, basis, or other evidence relating to the valuation and substantiation of the amount of the underlying easement or credit.

(k) The court may make any order it deems appropriate to control and limit discovery to avoid unnecessary duplication between or among parties, including setting such limitations in accordance with the phases of the proceedings as set forth in paragraph (m) of this subsection (2).

(l) In advance of the trial date, the court may require the parties to confer and submit a proposed trial management order to the court.

(m) After a determination pursuant to paragraph (i) of this subsection (2) of the validity of the credit as claimed, the court shall resolve all remaining issues as follows:

(I) The first phase shall be limited to issues regarding the value of the easement.

(II) The second phase shall be limited to determinations of the tax, interest, and penalties due and apportionment of such tax liability among persons who claimed a tax credit in relation to the conservation easement. The conservation easement tax credit action shall be final at the conclusion of the second phase as to the department of revenue and as to any taxpayer, transferee, or other party with regard to that party's tax credit dispute with the department of revenue.

(III) The third phase shall address all other claims related to the conservation easement tax credit, including those between and among the tax matters representative, transferees, other persons claiming a tax credit in connection with the donation, and any third party joined as a party to the action. The department shall not be required to participate in or be a party to this third phase. Any participation in these proceedings by parties other than the tax matters representative, transferees, or other persons who have claimed all or part of a conservation easement tax credit is limited to this third phase.

(n) The district court shall hear the appeal in accordance with the Colorado rules of civil procedure and the rules of evidence.

(o) The chief justice of the supreme court may designate judges to hear appeals brought pursuant to this subsection (2), and may determine that only judges so designated may hear such appeals. For the convenience of the parties and in order to facilitate the use of available court facilities, hearings may be conducted at the discretion of the court in any county within the region for which venue has been established for a case pursuant to paragraph (b) of this subsection (2).

(p) The district court shall enter judgment on its findings. The court shall have the authority to establish the amount of any deficiency and to waive or otherwise modify the amount of any interest, penalties, or other amounts owed. The court shall indicate in any order whether the judgment of the court is a final judgment subject to appeal as to any party.

(q) It is the intent of the general assembly that any appeals brought pursuant to this subsection (2) shall be expedited to the extent practicable and administered in the manner deemed most efficient and fair by the courts.

(3) A tax matters representative who does not make an election to waive a hearing pursuant to subsection (2) of this section and appeal directly to a district court may send a written request for hearing and final determination by certified mail to the executive director on or before October 1, 2011. If a tax matters representative files a request pursuant to this subsection (3), the executive director shall issue a final determination on or before July 1, 2014, unless the executive director and the tax matters representative mutually agree in writing to extend such date to a specified date. The executive director shall send a copy of the final determination to the tax matters representative by certified mail on or before July 1, 2014. If the United States post office returns the final determination as undeliverable by certified mail, the department shall then mail the final determination in accordance with section 39-21-105.5. This subsection (3) shall apply only to those tax matters representatives for which a notice of deficiency, notice of disallowance, or notice of rejection of refund claim has been mailed by the department of revenue as of May 1, 2011, but for which a final determination has not been issued before May 19, 2011.

(4) The executive director shall issue a final determination on or before July 1, 2016, for any tax matters representative who does not make an election to waive a hearing pursuant to subsection (2) of this section or file a written request for final hearing and final determination with the executive director pursuant to subsection (3) of this section. The executive director shall send a copy of the final determination to the tax matters representative by certified mail on or before July 1, 2016. If the United States post office returns the final determination as undeliverable by certified mail, the department shall then mail the final determination in accordance with section 39-21-105.5. If a tax matters representative does not make an election to waive a hearing pursuant to subsection (2) of this section or file a written request for final hearing and final determination with the executive director pursuant to subsection (3) of this section, any person who has claimed a credit or who may be eligible to claim a tax credit in relation to the tax matters representative's donation may petition the department on or before November 1, 2011, to change the tax matters representative's designation. The executive director shall promulgate rules on or before September 1, 2011, specifying the procedures for a change to the tax matters representative's designation when the executive director determines that the tax matters representative is unavailable or unwilling to act as the tax matters representative. If the department grants the petition, the new tax matters representative may file an appeal pursuant to subsection (2) of this section or file a written request for final hearing and final determination with the executive director pursuant to subsection (3) of this section within thirty days of the department's order regarding the petition. This subsection (4) shall apply only to those tax matters representatives for which a notice of deficiency, notice of disallowance, or notice of rejection of refund claim has been mailed by the department of revenue as of May 1, 2011, but for which a final determination has not been issued before May 19, 2011.

(5) In order to expedite the equitable resolution of requests for an administrative hearing regarding any conservation easement tax credit, avoid inconsistent determinations, and allow the executive director or the executive director's designee to consider the full scope of applicable issues of law and fact, the executive director or the executive director's designee shall have discretion to issue orders as set forth in paragraphs (a) to (e) of this subsection (5) as follows:

(a) To consolidate cases involving common or related issues of fact or law. In identifying related cases, the executive director or the executive director's designee may consider any common issues of law or fact, including but not limited to common ownership of the property subject to the easement, relationships of the taxpayers, and location of the easements.

(b) To issue a final order finding that a case cannot reasonably be resolved through the administrative process and transferring jurisdiction of the case to the district court in accordance with subsection (2) of this section. Such a final order may issue for reasons including but not limited to a waiver of administrative process pursuant to paragraph (a) of subsection (2) of this section by another tax matters representative where consolidation would otherwise be appropriate pursuant to paragraph (a) of this subsection (5). Prior to issuance of such a final order, the parties shall have the opportunity to file written briefs addressing the proposed transfer.

(c) If a tax matters representative fails to appear at a hearing or the tax matters representative has failed to adequately participate in such hearing, including but not limited to a failure to file the required pleadings or to appear at a scheduled conference, the executive director may without further proceedings issue a final determination.

(d) To invite participation in the administrative process by any person who may be affected or aggrieved by a final determination, including but not limited to transferees. Such participation shall include the right to be admitted as a party to a hearing. Upon the person's filing of a written request setting forth a brief and plain statement of the facts that entitle the person to be admitted and the matters to be decided, the executive director or the executive director's designee shall have the authority to admit such person for limited purposes. This process shall be available only to persons who have claimed a credit or who may be eligible to claim a tax credit in relation to the conservation easement.

(e) If a tax matters representative has not provided any document related to the credit that was required to be provided as part of the taxpayer's return, including the return itself, or, if requested by the department for conservation easements donated prior to January 1, 2014, a copy of the complete appraisal obtained at the time of donation, the department may send a written request to the taxpayer for such document. Failure to provide the requested documents within sixty days of any such request shall constitute grounds for the issuance of a final determination denying the credit.

(6) For any tax matters representative for which the executive director issued a final determination on or after May 1, 2011, the tax matters representative may appeal the final determination of the executive director pursuant to the provisions of section 39-21-105. The procedure governing such appeal shall be in accordance with the provisions of subsection (2) of this section; except that paragraphs (a), (c), and (d) of said subsection (2) shall not apply. If a tax matters representative fails to file a timely appeal pursuant to this subsection (6), any person who has claimed a credit or who may be eligible to claim a tax credit in relation to the tax matters representative's donation may petition the department to change the tax matters representative's designation within ten days after the final date for filing an appeal. The executive director shall

promulgate rules on or before September 1, 2011, specifying the procedures for a change to the tax matters representative's designation when the executive director determines that the tax matters representative is unavailable or unwilling to act as the tax matters representative. If the department of revenue grants the petition, the new tax matters representative may file an appeal pursuant to the provisions of this subsection (6) within thirty days of the department's order regarding the petition.

(7) If the executive director fails to issue a final determination on or before the dates specified or agreed to in subsection (3) or (4) of this section, the authority of the executive director to dispute the claim of the credit shall be waived, the full amount of the credit in dispute shall be allowed, and no interest or penalties shall be imposed upon such amount.

(8) Repealed.

(9) The executive director shall send a notice to each tax matters representative eligible to waive a hearing and appeal a notice of deficiency, notice of rejection of refund claim, or notice of disallowance to a district court pursuant to subsection (2) of this section to notify the tax matters representative of the provisions of this section. The notice shall be sent by certified mail to the tax matters representative's last-known address on or before July 1, 2011. If the United States post office returns the notice as undeliverable by certified mail, the department shall then mail the notice in accordance with section 39-21-105.5. The notice shall not be included with any other mailing and shall include the words "Important Tax Document Enclosed" on the exterior of the mailing. The executive director shall further provide notice of the provisions of this section on the department of revenue's website and by such other means as the executive director deems appropriate. The executive director shall maintain adequate records to verify compliance with the provisions of this subsection (9).

(10) If the executive director makes a determination that the tax matters representative has transferred a disputed credit to another person who has not claimed the credit or that a person who claimed or may claim a disputed credit pursuant to section 39-22-522 cannot be identified or located, the executive director shall provide notice to such person as follows:

(a) The executive director shall file an affidavit with the district court having jurisdiction over an appeal of the credit setting forth that the executive director has made diligent inquiry and has been unable to locate such person.

(b) The district court shall then order a notice to be published by the department of revenue in some local newspaper of general circulation named by the judge and on the department's website. The notice shall identify the property that is subject to the conservation easement and the date of the donation, and shall explain the right of the person to request joinder in the action on the disputed credit before the court, the time and place at which such request must be filed, and the title and address of the court at which the request must be filed.

(11) If a tax matters representative proceeds with the hearing process before the executive director rather than appeal to a district court pursuant to subsection (2) of this section and either the tax matters representative or one or more transferees pays an amount on or before June 30, 2012, that satisfies a deficiency in an amount agreed to by the department of revenue for the tax owed by the tax matters representative or the transferee, all additional amounts of penalties and interest owed shall be waived.

(12) and (13) Repealed.

(14) Prior to the issuance of a final determination or the conclusion of an appeal of a notice of deficiency, notice of disallowance, or notice of rejection of refund claim for a tax credit

claimed by a tax matters representative or a transferee pursuant to section 39-22-522, the executive director shall cease all actions to collect any amount of the disputed taxes, interest, or other charges asserted to be owed. The executive director shall provide notice of the provisions of this subsection (14) in accordance with subsection (9) of this section.

**Source: L. 2011:** Entire section added, (HB 11-1300), ch. 193, p. 741, § 1, effective May 19. **L. 2013:** (5)(e) and (12) amended, (SB 13-221), ch. 251, p. 1334, § 10, effective August 7. **L. 2014:** (8), (12)(a)(II), and (12)(a)(III) amended, (SB 14-117), ch. 385, p. 1922, § 9, effective July 1. **L. 2017:** (12) and (13) repealed, (HB 17-1137), ch. 45, p. 134, § 6, effective August 9. **L. 2018:** (8) repealed, (HB 18-1291), ch. 273, p. 1692, § 7, effective May 29.

**Cross references:** For the legislative declaration in the 2013 act amending subsections (5)(e) and (12), see section 1 of chapter 251, Session Laws of Colorado 2013.

**39-22-523. Credit against tax - contributions to high technology scholarship program - mechanism to refund excess state revenues. (Repealed)**

**Source: L. 2000:** Entire section added, p. 1319, § 2, effective August 2. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; entire section repealed, (HB 10-1256), ch. 133, p. 440, § 4, effective August 11.

**39-22-524. Tax credit for individuals contributing matching funds for individual development accounts - repeal. (Repealed)**

**Source: L. 2000:** Entire section added, p. 1473, § 2, effective May 31. **L. 2001:** (4) amended, p. 413, § 3, effective April 19; (5) amended, p. 396, § 7, effective August 8. **L. 2002:** (7)(a) amended, p. 863, § 6, effective August 7. **L. 2010:** (10) amended, (SB 10-212), ch. 412, p. 2035, § 9, effective July 1.

**Editor's note:** Subsection (10) provided for the repeal of this section, effective July 1, 2010. (See L. 2010, p. 2035.)

**39-22-525. Contributions to Colorado institute of technology - credit against tax. (Repealed)**

**Source: L. 2000:** Entire section added, p. 1438, § 1, effective May 31. **L. 2002:** (1), (4)(a), and (4)(c)(I) amended, p. 227, § 1, effective April 5. **L. 2007:** Entire section repealed, p. 27, § 1, effective August 3; entire section repealed, p. 58, § 2, effective August 3.

**39-22-526. Credit for environmental remediation of contaminated land - definition - repeal.** (1) (a) For income tax years commencing on or after January 1, 2014, but prior to January 1, 2023, there is allowed a credit against the income taxes imposed by this article for any approved environmental remediation of contaminated property to any taxpayer who meets the following requirements:

(I) The property where the environmental remediation takes place must be located within the state; and

(II) The taxpayer seeking the credit must possess a certificate issued by the department of public health and environment pursuant to section 25-16-306 (5)(b), C.R.S., and subsection (3) of this section.

(b) The tax credit allowed in this section must not exceed forty percent of the first seven hundred fifty thousand dollars expended for the approved remediation, and must not exceed thirty percent of the next seven hundred fifty thousand dollars expended for the approved remediation. A tax credit is not allowed for expenditures exceeding one million five hundred thousand dollars on any individual project.

(c) A credit must be first applied to taxes due or transferred to another taxpayer pursuant to paragraph (d) of this subsection (1) no later than the tax year following the tax year in which the certification is provided to the department pursuant to section 25-16-306 (5)(a), C.R.S. If the credit allowed by this section exceeds the tax otherwise due, the excess credit may be carried forward and claimed on the earliest possible subsequent tax return for a period not to exceed five years.

(d) A taxpayer may transfer all or a portion of a tax credit granted pursuant to this subsection (1) to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:

(I) The taxpayer may only transfer a portion of the tax credit that the taxpayer has neither applied against the income taxes imposed by this article nor used to obtain a refund.

(II) The taxpayer may transfer a prorated portion of the tax credit to more than one transferee.

(III) For any tax year in which a tax credit is transferred pursuant to this paragraph (d), both the taxpayer and the transferee shall file written statements with their income tax returns specifying the amount of the tax credit transferred. A transferee may only claim a credit transferred pursuant to this paragraph (d) if the taxpayer's written statement verifies the amount of the tax credit claimed by the transferee.

(IV) A transferor may transfer a credit pursuant to this paragraph (d) regardless of whether the transferor receives value in exchange for the transfer. The transferee may use the credit to pay, in whole or in part, the income tax obligation imposed on the transferee under this article. The transferee's use of a tax credit from a transferor under this section to pay taxes owed is not deemed a reduction in the amount of income taxes imposed by this article on the transferee.

(V) The transferee shall submit to the department of revenue a form approved by the department establishing that the taxpayer has satisfied the requirements of this section. The transferee shall also file a copy of the form with the department of public health and environment.

(VI) The transfer of a tax credit must occur prior to the due date imposed by this article, not including any extensions, for filing the transferee's income tax return.

(VII) A tax credit held by an individual either directly or as a result of a donation by a pass-through entity, but not a tax credit held by a transferee unless used by the transferee's estate for taxes owed by the estate, survives the death of the individual and may be claimed or transferred by the decedent's estate.

(VIII) The transferor of a tax credit transferred pursuant to this paragraph (d) is the tax matters representative in all matters with respect to the credit. The tax matters representative is responsible for representing and binding the transferees with respect to all issues affecting the credit, including the amounts expended for the approved remediation, the certificate issued by the department of public health and environment, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations. The transferee is subject to the same statute of limitations with respect to the credit as the transferor of the credit.

(IX) Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, is binding on transferees.

(X) Any person who has claimed a credit or who may be eligible to claim a tax credit either as a taxpayer or a transferee may petition the department of revenue to change the tax matters representative's designation. The executive director shall promulgate rules specifying the procedures for a change to the tax matters representative's designation when the executive director determines that the tax matters representative is unavailable or unwilling to act as the tax matters representative. If the department grants the petition, the new tax matters representative shall serve in that capacity on and after the date the department grants the petition.

(2) (a) For income tax years commencing on or after January 1, 2014, but prior to January 1, 2023, there is allowed to any qualified entity a transferable expense amount for expenses incurred by the qualified entity in performing approved environmental remediation. The transferable expense amount may only be transferred to a taxpayer to be claimed by the taxpayer as a credit pursuant to the provisions of this subsection (2). The transferrable expense amount is allowed to any qualified entity that meets the following requirements:

(I) The property where the environmental remediation takes place must be located within the state; and

(II) The department of public health and environment must have issued a certificate for the property pursuant to section 25-16-306 (5)(b), C.R.S., and subsection (3) of this section.

(b) The transferable expense amount allowed in this section must not exceed forty percent of the first seven hundred fifty thousand dollars expended by the qualified entity for the approved remediation, and must not exceed thirty percent of the next seven hundred fifty thousand dollars expended by the qualified entity for the approved remediation. A transferable expense amount is not allowed for expenditures exceeding one million five hundred thousand dollars on any individual project.

(c) A qualified entity may transfer all or a portion of a transferable expense amount allowed pursuant to this subsection (2) to a taxpayer for such taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:

(I) The qualified entity may transfer a prorated portion of the transferable expense amount to more than one transferee.

(II) For any tax year in which a transferable expense amount is transferred pursuant to this subsection (2), the qualified entity shall file a written statement with the department of revenue on a form approved by the department of revenue and the transferee shall file a written statement with the transferee's income tax return specifying the amount transferred to the transferee to be claimed as a credit. A transferee may only claim a credit pursuant to this

subsection (2) if the qualified entity's written statement verifies the amount of the tax credit claimed by the transferee.

(III) A qualified entity may transfer a transferable expense amount to be claimed as a credit by a transferee pursuant to this subsection (2) regardless of whether the qualified entity receives value in exchange for the transfer. The transferee may use the credit to pay, in whole or in part, the income tax obligation imposed on the transferee under this article. The transferee's use of a tax credit from a qualified entity under this section to pay taxes owed is not deemed a reduction in the amount of income taxes imposed by this article on the transferee.

(IV) The transferee shall submit to the department of revenue a form approved by the department establishing that the transferee has satisfied the requirements of this section. The transferee shall also file a copy of the form with the department of public health and environment.

(V) The transfer of a transferable expense amount to a transferee must occur prior to the due date imposed by this article, not including any extensions, for filing the transferee's income tax return.

(VI) A tax credit held by a transferee's estate for taxes owed by the estate, survives the death of the transferee and may be claimed or transferred by the decedent's estate.

(VII) The qualified entity that transfers a transferable expense amount to be claimed as a credit by a transferee pursuant to this subsection (2) is the tax matters representative in all matters with respect to the credit. The tax matters representative is responsible for representing and binding the transferees with respect to all issues affecting the credit, including the amounts expended for the approved remediation, the certificate issued by the department of public health and environment, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations.

(VIII) Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, is binding on transferees.

(d) For purposes of this subsection (2), "qualified entity" means a county, home rule county, city, town, home rule city, home rule city and county, or a private nonprofit entity that is exempt from the income taxes imposed by this article.

(3) In addition to any other requirements of this section, a taxpayer shall submit a claim for a credit and a qualified entity shall submit a claim for a transferrable expense amount to the department of public health and environment. The department shall issue certificates for the claims received in the order submitted. After certificates have been issued for credits and transferrable expense amounts in the aggregate amount of three million dollars for all taxpayers and qualified entities combined for the 2014 calendar years and three million dollars for each calendar year thereafter, any claims that exceed the amount allowed for the calendar year shall be placed on a wait list in the order submitted and a certificate shall be issued for use of the credit or transferrable expense amount in the next year for which the department has not issued credit certificates in excess of three million dollars; except that no more than one million dollars in claims shall be placed on the wait list for any given calendar year. The department shall not issue certificates for any calendar year, including certificates placed on a wait list for that year, in an aggregate amount that exceeds three million dollars. No claim for a credit or a transferrable

expense amount is allowed for any income tax year commencing on or after January 1, 2014, unless a certificate has been issued by the department pursuant to this subsection (3).

(4) This section is repealed, effective December 31, 2029.

**Source: L. 2000:** Entire section added, p. 891, § 2, effective January 1, 2001. **L. 2005:** IP(1) and (4) amended, p. 1471, § 1, effective June 7. **L. 2014:** Entire section R&RE, (SB 14-073), ch. 213, p. 793, § 1, effective August 6.

**39-22-527. Agricultural value-added tax credit. (Repealed)**

**Source: L. 2001:** Entire section added, p. 628, § 3, effective May 30. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

**39-22-528. Tax credit for participation in agriculture value-added cash fund. (Repealed)**

**Source: L. 2001:** Entire section added, p. 628, § 3, effective May 30. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

**39-22-529. Business expense deduction - labor services - unauthorized alien - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Labor services" means the physical performance of services in this state.

(b) "Unauthorized alien" shall have the same meaning as set forth in 8 U.S.C. sec. 1324a (h)(3), as amended.

(2) On or after January 1, 2008, no wages or remuneration for labor services paid to an unauthorized alien of six hundred dollars or more in a year shall be claimed as a deductible business expense for state income tax purposes by a taxpayer who, at the time the taxpayer hired the unauthorized alien, knew of the unauthorized status of the alien. The provisions of this subsection (2) shall apply regardless of whether an internal revenue service form 1099-MISC is issued in conjunction with the wages or remuneration.

(3) This section shall not apply to:

(a) Any business domiciled in the state that is exempt from compliance with federal employment verification procedures under federal law that makes the employment of unauthorized aliens unlawful;

(b) Any individual hired by the taxpayer before December 31, 2006;

(c) Any taxpayer where the individual being paid is not directly compensated or employed by the taxpayer; or

(d) Wages or remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the department of revenue.

(4) The executive director is authorized to prescribe forms and promulgate rules that are necessary to administer this section.

**Source: Referred 2006:** Entire section added, L. 2006, 1st Ex. Sess., p. 2, § 3, effective December 31.

**Editor's note:** This section was enacted by House Bill 06S-1020 at the first extraordinary session of the sixty-fifth general assembly. That bill contained a referendum clause and was approved by a vote of the registered electors of the state of Colorado on November 7, 2006. This section was effective upon proclamation of the governor, December 31, 2006. The vote count for the measure was as follows:

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|---|---|
| FOR: | 744,475 |
| AGAINST: | 722,651 |

**39-22-530. Credit for employers that hire persons with intellectual and developmental disabilities - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Designated county" means the counties of Adams, Arapahoe, El Paso, Jefferson, Logan, Montrose, and Morgan.

(b) "Developmental disability" has the same meaning as "intellectual and developmental disability" as set forth in section 25.5-10-202, C.R.S., and in the rules adopted by the department of health care policy and financing pursuant to section 25.5-10-204 (2), C.R.S.

(c) "Person with a developmental disability" has the same meaning as "person with an intellectual and developmental disability" as set forth in section 25.5-10-202, C.R.S.

(d) "Qualified employee" means an employee first hired on or after January 1, 2009, who is:

(I) A person with a developmental disability;

(II) Employed at a workplace located in a designated county; and

(III) Compensated in accordance with applicable minimum wage laws.

(e) "Taxpayer" means an employer that deducts and withholds amounts from the wages paid to a qualified employee pursuant to section 39-22-604 (3).

(2) (a) For the income tax years beginning January 1, 2009, through January 1, 2011, a credit against the tax imposed by this article shall be allowed to a taxpayer who hires a qualified employee during that period.

(b) The amount of the credit allowed by this section is fifty percent of the amount of gross wages paid to a qualified employee during the employee's first three months of continuous employment and thirty percent of the amount of gross wages paid to a qualified employee during the employee's subsequent nine months of continuous employment.

(3) A taxpayer may claim the credit allowed by this section for the income tax year in which the wages on which the credit is based are paid to a qualified employee. If the amount of the credit exceeds a taxpayer's actual tax liability for an income tax year, the amount of the credit not used to offset income tax liability for the income tax year shall not be allowed as a refund, but the taxpayer may claim the excess amount of the credit in a subsequent income tax year; except that the credit allowed by this section may not be claimed for any income tax year beginning after January 1, 2011. Any amount of the credit that is not used shall not be refunded to the taxpayer. A taxpayer may not claim the credit allowed by this section more than once for the same qualified employee.

(4) A partnership, S corporation, limited liability company, or other entity electing not to be taxed as a corporation may pass through the credit allowed by this section in a tax year to its participating partners, shareholders, or members, referred to in this subsection (4) as the

"investors", in any percentage the entity chooses, up to the amount of the credit earned in the tax year. Credits earned but unclaimed in a tax year for which the entity elects to be taxed as a corporation may not be distributed to investors in a later tax year for which the entity elects not to be taxed as a corporation. In a tax year for which the entity elects not to be taxed as a corporation, all credits passed through to investors may be carried forward at the investor level for the carryover period specified in subsection (3) of this section.

(5) (a) If the revenue estimate prepared by the staff of the legislative council in December 2008, December 2009, or December 2010 indicates that the amount of total general fund revenues for the current fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized by this section shall not be allowed for the income tax year following the year in which the estimate is prepared; except that a taxpayer who would have been eligible to claim a credit pursuant to this section in an income tax year in which the credit is not allowed may claim the credit in the next income tax year in which the revenue estimate indicates that the amount of total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(b) On or before January 1, 2009, January 1, 2010, and January 1, 2011, the department of revenue shall publish a notice on its website indicating whether the credit authorized by this section is allowed pursuant to paragraph (a) of this subsection (5) for the income tax year beginning on that day.

**Source: L. 2008:** Entire section added, p. 2203, § 1, effective August 5. **L. 2009:** (1)(b) amended, (SB 09-044), ch. 57, p. 210, § 19, effective March 25; (5)(a) amended, (SB 09-228), ch. 410, p. 2265, § 20, effective July 1. **L. 2013:** (1)(b) and (1)(c) amended, (HB 13-1314), ch. 323, p. 1813, § 55, effective March 1, 2014.

**39-22-531. Colorado job growth incentive tax credit - rules - definitions - repeal.** (1) As used in this section, unless the context otherwise requires:

(a) (I) "Affiliated group" means one or more chains of persons connected through stock or other ownership interests with a person if:

(A) One or more of the other persons in the chain owns interests possessing more than fifty percent of the voting power of all classes of ownership interests except ownership interests of the common parent and more than fifty percent of each class of nonvoting ownership interests of each of the persons except ownership interests of the common parent; and

(B) The common parent owns interests possessing more than fifty percent of the voting power of all classes of ownership interests and more than fifty percent of each class of the nonvoting ownership interests of at least one of the other persons in the chain.

(II) As used in this paragraph (a), the term "ownership interest" does not include nonvoting stock that is limited and preferred as to dividends; employer securities, within the meaning of section 409 (1) of the internal revenue code, while such securities are held under a tax credit employee stock ownership plan; or qualifying employer securities, within the meaning of section 4975 (e)(8) of the internal revenue code, while such securities are held under an employee stock ownership plan that meets the requirements of section 4975 (e)(7) of the internal revenue code.

(III) As used in this paragraph (a), the term "person" does not include natural persons.

(b) "Commission" means the Colorado economic development commission created in section 24-46-102, C.R.S.

(c) "Credit certificate" means a statement issued by the commission certifying that the project qualifies for the job growth incentive tax credit allowed in this section and specifying the amount of the credit allowed.

(d) (I) For income tax years commencing before January 1, 2014, "credit period" means a period not to exceed sixty consecutive months from the first month of the initial tax year in which a credit allowed pursuant to this section is first claimed, for which a taxpayer may claim a credit that is calculated annually by the commission.

(II) For income tax years commencing on or after January 1, 2014, "credit period" means a period not to exceed ninety-six consecutive months from the first month of the initial tax year in which a credit allowed pursuant to this section is first claimed, for which a taxpayer may claim a credit that is calculated annually by the commission.

(e) "Department" means the department of revenue.

(f) "Net job growth" means the difference between the total number of full-time equivalent employees employed by the taxpayer in the state for the project at the end of each calendar year of the project and the total number of full-time equivalent employees employed by the taxpayer in the state for the project at the commencement of the project.

(g) "Person" shall have the same meaning as provided in section 39-21-101 (3).

(h) "Project" means a project that encourages, promotes, and stimulates economic development in key economic sectors, including, but not limited to, aerospace, bioscience, life science, clean energy technology, tourism, film and television production, and information technology, and that is approved by the commission as specified in subsection (3) of this section.

(h.3) "Qualified partnership" means an agreement between the taxpayer and a state institution of higher education that aligns with or furthers the academic mission of the state institution of higher education, results in positive benefits for the community and the local economy, and allows a taxpayer to utilize the following for a project:

(I) The tangible intellectual property of the state institution of higher education;

(II) The body of academic knowledge and expert skills of the state institution of higher education; or

(III) Any specialized equipment owned or developed by the state institution of higher education.

(h.5) "State institution of higher education" means a state institution of higher education as defined in section 23-18-102 (10), C.R.S., a local district college, or an area technical college.

(i) "Taxpayer" means any person doing business in the state. For purposes of this section, taxpayer includes an affiliated group.

(2) For income tax years commencing on or after January 1, 2009, but prior to January 1, 2027, at the discretion of the commission as specified in subsection (3) of this section, there may be allowed to any taxpayer an annual job growth incentive tax credit with respect to the income taxes imposed by this article that a taxpayer may claim for a credit period in an amount determined by the commission pursuant to subsection (5) of this section.

(3) The commission may approve any job growth incentive tax credits allowed pursuant to subsection (2) of this section subject to the following:

(a) During a credit period a project must:

(I) (A) For income tax years commencing before January 1, 2014, except as provided in sub-subparagraph (B) of this subparagraph (I), bring a net job growth of at least twenty new jobs to the state with an average yearly wage of at least one hundred ten percent of the average yearly wage of the county in which the taxpayer is located and, for income tax years commencing on or after January 1, 2014, except as provided in sub-subparagraphs (B) and (C) of this subparagraph (I), bring a net job growth of at least twenty new jobs to the state with an average yearly wage of at least one hundred percent of the average yearly wage of the county in which the taxpayer is located.

(B) For income tax years commencing before January 1, 2014, if the project will be located in a designated enhanced rural enterprise zone as such zone is described in section 39-30-103.2 (1) and the local community of the designated enhanced rural enterprise zone provides rationale to the commission outlining the project's economic importance to the community, the project shall, during a credit period, bring a net job growth of at least five new jobs to the state with an average yearly wage of at least one hundred ten percent of the average yearly wage of the enhanced rural enterprise zone in which the taxpayer is located. For income tax years commencing on or after January 1, 2014, if the project will be located in a designated enhanced rural enterprise zone as such zone is described in section 39-30-103.2 (1) and the local community of the designated enhanced rural enterprise zone provides rationale to the commission outlining the project's economic importance to the community, the project shall, during a credit period, bring a net job growth of at least five new jobs to the state with an average yearly wage of at least one hundred percent of the average yearly wage of the enhanced rural enterprise zone in which the taxpayer is located.

(C) For income tax years commencing on or after January 1, 2015, but prior to January 1, 2018, if the project is a qualified partnership the project must bring a net job growth of at least five new jobs to the state with an average yearly wage of at least one hundred percent of the statewide average yearly wage, be located on or within one mile of the campus of or on other property owned by the state institution of higher education, and include a description of the project's alignment with or furtherance of the academic mission of the state institution of higher education.

(II) Result in the retention of any new employees hired for the project for at least one year; and

(III) (A) For income tax years commencing before January 1, 2014, be approved by the commission only if the project would not occur but for the credit allowed in this section;

(B) For income tax years commencing on or after January 1, 2014, be approved by the commission only if the credit allowed in this section is a major factor in the decision to locate or retain the project in Colorado; except that, if the project is a qualified partnership, then the limitation in this sub-subparagraph (B) does not apply.

(b) A taxpayer shall submit a complete written application for a credit allowed in this section to the commission before the project commences in the state. The application must include:

(I) An identification of the specific jobs that will be created.

(II) An identification of the cost differential in the projected costs of the project compared to the projected costs were the project commenced in a competing state; except that, if the project is a qualified partnership, then the identification of the cost differential is not

required. The cost differential shall include any impact of the competing state's incentive programs and may include:

(A) Specific costs for labor, utilities, taxes, and any other costs of a competing state's site; and

(B) The cost structure of the taxpayer's industry in the competing state.

(III) For income tax years commencing before January 1, 2014, documentation to demonstrate that without the credit allowed in this section, the project would not occur in this state. Such documentation shall include information that indicates that:

(A) The taxpayer could reasonably and efficiently locate the project outside of this state;

(B) At least one other state is being considered for the project;

(C) Receipt of the credit allowed in this section is a major factor in the taxpayer's decision; and

(D) Without the credit allowed in this section, the taxpayer is not likely to commence the project in the state.

(IV) For income tax years commencing on or after January 1, 2014, documentation to demonstrate that the credit allowed in this section is a major factor in the decision to locate the project in Colorado; except that, if the project is a qualified partnership, then such documentation is not required. Such documentation shall include information that indicates that:

(A) The taxpayer could reasonably and efficiently locate the project outside of this state;

(B) At least one other state is being considered for the project;

(C) Receipt of the credit allowed in this section is a major factor in the taxpayer's decision; and

(D) Without the credit allowed in this section, the taxpayer has a reduced probability of commencing the project in the state.

(c) In the exercise of the commission's discretion granted by this subsection (3), the commission shall only consider the following:

(I) The economic health of this state;

(II) The economic viability of the proposed new jobs;

(III) The economic benefits to the state of the new jobs; and

(IV) The maximum amount of the credit needed to attract the new jobs to this state.

(4) (a) (I) The commission shall review each application for a credit allowed in this section submitted by any taxpayer. Based on the application submitted, the commission may offer conditional approval to a taxpayer for a credit. The conditional approval shall include the maximum amount of the credit available to the taxpayer for the credit period calculated pursuant to paragraph (a) of subsection (5) of this section and the specific terms that shall be met to qualify for the credit.

(II) A taxpayer that receives conditional approval for a credit allowed in this section shall notify the commission promptly if the project is canceled or otherwise becomes ineligible for the estimated credit, in which case the conditional approval may be canceled. The conditional approval shall be void and any credit claimed shall be repaid if a taxpayer that receives conditional approval does not commence the project within one and a half years of the receipt of the conditional approval or fails to meet the terms of subsection (3) of this section.

(b) By March 1 of the calendar year after the commencement of the project, and each March 1 of any calendar year following a year of the credit period, a taxpayer that received conditional approval as specified in paragraph (a) of this subsection (4) shall submit an annual

request for a credit certificate. The request shall include documents that detail the number of employees hired for the project, the net job growth for the taxpayer, all documentation necessary to calculate the credit as specified in subsection (5) of this section, and any other information requested by the commission.

(c) If the project has commenced and the project meets or exceeds the conditions of a project as specified in paragraphs (a) and (b) of subsection (3) of this section, the commission shall calculate the annual amount of the credit allowed in this section as specified in paragraph (b) of subsection (5) of this section and shall issue a credit certificate for that calendar year in that amount to the taxpayer. The credit certificate shall be submitted by the taxpayer to the department with the taxpayer's income tax return for the tax year that includes the December 31 of the calendar year for which the credit certificate is issued.

(5) The credit allowed in this section shall be calculated by the commission as follows:

(a) For the maximum amount of the credit allowed in this section available to the taxpayer for the credit period, the commission shall multiply the estimated net job growth for each of the years in the credit period by fifty percent of the taxpayer's total estimated taxes imposed on the employer each year for the new employees of the project under the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3111 (a) and (b). The maximum amount of the credit shall be the result of this calculation or such lesser amount as the commission deems proper under its discretion as specified in paragraph (c) of subsection (3) of this section.

(b) For the annual amount of the credit allowed in this section available to the taxpayer, the commission shall multiply the actual net job growth for that year by fifty percent of the taxpayer's taxes imposed on the employer for the new employees of the project under the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3111 (a) and (b). The amount of the credit allowed in this section shall be the result of this calculation; except that no credit certificate shall be issued if the aggregate of all credits claimed or to be claimed by the taxpayer, including the current credit certificate, exceeds the maximum amount of the credit as calculated pursuant to paragraph (a) of this subsection (5).

(6) Except as provided in section 24-46-104.3, if the amount of the credit allowed in this section exceeds the amount of income taxes otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in the current income tax year may be carried forward and used as a credit against subsequent years' income tax liability for a period not to exceed ten years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(7) The commission or its designee may audit the accounts of a taxpayer up to twelve months following the issuance of any credit certificate.

(8) The commission shall include information regarding all conditional approvals granted and credit certificates issued pursuant to this section, including the credits claimed, the names of the recipients of the credits, and the amounts claimed, in its annual report required to be presented to the general assembly pursuant to section 24-46-104 (2), C.R.S.

(9) If a taxpayer receiving a credit allowed in this section is a partnership, limited liability company, S corporation, or similar pass-through entity, the taxpayer may allocate the credit among its partners, shareholders, members, or other constituent taxpayers in any manner agreed to by such partners, shareholders, members, or other constituent taxpayers. The taxpayer shall certify to the commission and the department the amount of the credit allocated to each

partner, shareholder, member, or other constituent taxpayer, and the commission shall issue credit certificates in the appropriate amounts to each partner, shareholder, member, or other constituent taxpayer. Each partner, shareholder, member, or other constituent taxpayer shall be allowed to claim such amount subject to any restrictions set forth in this section.

(10) No later than September 1, 2010, and no later than September 1 of each year thereafter through September 1, 2024, the commission shall provide the department with an electronic report of the taxpayers receiving a credit allowed in this section for the preceding calendar year or any fiscal year ending in the preceding calendar year, and any credits disallowed pursuant to subparagraph (II) of paragraph (a) of subsection (4) of this section for any year, that includes the following information:

(a) The taxpayer's name;

(b) The taxpayer's Colorado account number and federal employer identification number;

(c) The amount of the credit allowed in this section; and

(d) Any associated taxpayer's names, Colorado account numbers, and federal employer identification numbers or social security numbers, if the credit allowed in this section is allocated from a pass-through entity pursuant to subsection (9) of this section.

(11) The executive director of the department may promulgate rules as may be necessary to administer and enforce any provision of this section. The rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(12) Any taxpayer who offsets a tax deficiency with a credit allowed in this section that is disallowed pursuant to this section shall be liable for such tax deficiency, interest, and penalties as may be specified in this article or otherwise provided by law.

(13) This section is repealed, effective January 1, 2031.

**Source: L. 2009:** Entire section added, (HB 09-1001), ch. 220, p. 995, § 1, effective August 5. **L. 2013:** (1)(d), (2), IP(10), and (13) amended, (HB 13-1287), ch. 212, p. 888, § 1, effective May 13. **L. 2014:** (1)(d), (2), (3)(a)(I), (3)(a)(III), (3)(b)(III), and (13) amended and (3)(b)(IV) added, (HB 14-1014), ch. 216, p. 810, § 1, effective May 16. **L. 2015:** (1)(h.3), (1)(h.5), and (3)(a)(I)(C) added and IP(3)(a), (3)(a)(I)(A), (3)(a)(III)(B), IP(3)(b), IP(3)(b)(II), and IP(3)(b)(IV) amended, (HB 15-1366), ch. 331, p. 1349, § 1, effective June 5. **L. 2016:** (1)(h.5) amended, (HB 16-1082), ch. 58, p. 153, § 44, effective August 10. **L. 2017:** (6) amended, (HB 17-1356), ch. 237, p. 973, § 2, effective May 24.

**39-22-532. Advanced industry investment tax credit - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Advanced industry investment tax credit" or "tax credit" means the credit against income tax created in this section.

(b) "Qualified investment" shall have the same meaning as set forth in section 24-48.5-112 (1)(e), C.R.S.

(c) "Qualified investor" shall have the same meaning as set forth in section 24-48.5-112 (1)(f), C.R.S.

(d) "Qualified small business" shall have the same meaning as set forth in section 24-48.5-112 (1)(g), C.R.S.

(e) "Tax credit certificate" means a tax credit certificate issued to a qualified investor pursuant to section 24-48.5-112 (3), C.R.S.

(2) There shall be allowed an advanced industry investment tax credit against the income taxes imposed pursuant to this article for a qualified investment in a qualified small business. The amount of the credit is the amount determined and authorized by the Colorado office of economic development pursuant to section 24-48.5-112, C.R.S., and set forth in a tax credit certificate.

(3) To claim the advanced industry investment tax credit, the taxpayer shall attach to the taxpayer's tax return a copy of the tax credit certificate. No tax credit is allowed under this section unless the taxpayer provides the copy of the tax credit certificate.

(4) If the allowable advanced industry investment tax credit exceeds the amount of income tax due on the income of the taxpayer for the tax year during which the qualified investment was made, the amount of the tax credit not used as an offset against income taxes in such income tax year is not allowed as a refund. The taxpayer may carry forward and apply the unused credit against the income tax due in each of the five succeeding income tax years, but the taxpayer shall apply the credit against the income tax due for the earliest of the income tax years possible. Any amount of the tax credit that is not used after this period is not refundable.

(5) Individuals who are co-owners of a business, including partners in a partnership and shareholders of an S corporation, may each claim only their individual pro rata shares of the Colorado innovation investment tax credit allowed under this section based on their ownership interests. The total of the tax credits allowed to all such owners may not exceed the amount that would have been allowed to a sole owner.

(6) If the department of revenue determines that there has been a misrepresentation on an application submitted to the Colorado office of economic development pursuant to section 24-48.5-112, C.R.S., the department of revenue shall deny the advanced industry investment tax credit if the misrepresentation relates to whether the applicant was a qualified investor or made a qualified investment. If the misrepresentation relates to whether the investment was made to a qualified small business, the department of revenue shall deny the tax credit only if the applicant knew or should have known at any time before the certification that the representation was false.

**Source: L. 2009:** Entire section added, (HB 09-1105), ch. 378, p. 2059, § 4, effective September 1. **L. 2011:** (4) amended, (HB 11-1045), ch. 209, p. 907, § 3, effective May 23. **L. 2014:** (1)(a), (2) to (4), and (6) amended, (HB 14-1012), ch. 274, p. 1102, § 3, effective May 29.

**Cross references:** (1) For the legislative declaration in the 2011 act amending subsection (4), see section 1 of chapter 209, Session Laws of Colorado 2011.

(2) For the legislative declaration in HB 14-1012, see section 1 of chapter 274, Session Laws of Colorado 2014.

**39-22-533. Instream flow incentive tax credit for water rights holders - rules - definitions - repeal.** (1) As used in this section, unless the context otherwise requires:

(a) "Board" means the Colorado water conservation board created in section 37-60-102, C.R.S.

(b) "Credit certificate" means a statement issued by the board certifying that a given water right donation qualifies for the credit authorized in this section and specifying the amount of the credit allowed.

(c) "Department" means the department of revenue.

(d) "Owner of a water right" means a taxpayer who owns a water right.

(e) "Person" means any individual, firm, corporation, partnership, limited liability company, joint venture, estate, trust, or group or combination acting as a unit that donates during the taxable year all or part of a water right to the board with the intent that such right be converted to an instream flow right pursuant to section 37-92-102 (3), C.R.S.

(f) "Taxpayer" has the same meaning as set forth in section 39-21-101 (4).

(g) "Water right" means a right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same.

(h) "Waters of the state" means all surface and underground water in or tributary to all natural streams within the state of Colorado, except waters referred to in section 37-90-103 (6), C.R.S.

(2) (a) Except as provided in subsection (6) of this section, for income tax years commencing on or after January 1, 2009, but prior to January 1, 2015, there may, at the discretion of the board, be allowed to any person an instream flow incentive tax credit with respect to the income taxes imposed by this article in the amount determined by the board pursuant to paragraph (b) of this subsection (2).

(b) The board shall have the exclusive authority to approve any instream flow incentive tax credits allowed pursuant to paragraph (a) of this subsection (2). The credit shall only be available for permanent transfers of water rights acquired pursuant to the board's public review process specified in 2 CCR 408-2, paragraphs 6m. and 11., and upon a finding by the board, in accordance with section 37-92-102 (3), C.R.S., that the proposed donation will preserve the environment to a reasonable degree. The credit shall not be available for a water right that is decreed for irrigation on land for which a conservation easement tax credit is claimed pursuant to section 39-22-522 unless such water right is specifically excluded from the terms of such conservation easement. The board shall approve a credit by issuing to the person a credit certificate on or before September 1 of the tax year in which the donation is accepted.

(c) The amount of a credit authorized in this section shall be determined by the board, subject to the following guidelines:

(I) The credit shall be in an amount equal to or less than one-half of the value of the water right proposed to be donated to the board;

(II) The value of the water right shall be determined by the board, in consultation with the proposed donor. In determining the value of the water right, the board may consider, in addition to other factors the board deems appropriate, the following:

(A) Any appraisal or other documentation submitted by the donor;

(B) The seniority, historic consumptive use, and decreed use of the water right;

(C) The location of the existing point of diversion of the water right; and

(D) The extent to which aquatic and riparian habitat would be preserved by conversion of the water right to an instream flow.

(d) In no event shall the board issue a credit certificate if the aggregate sum of credits approved by the board pursuant to this section and not yet eligible to be taken as described in subsection (6) of this section exceeds two million dollars.

(e) No later than January 30, 2010, and no later than January 30 each year thereafter, the board shall report to the finance committees of the senate and house of representatives, the agriculture and natural resources committee of the senate, and the agriculture, livestock, and natural resources committee of the house of representatives, or any successor committees, regarding all instream flow rights acquired and tax credit certificates issued pursuant to this section.

(3) If a person receiving a credit authorized in this section is a partnership, limited liability company, S corporation, or similar pass-through entity, the person may allocate the credit among its partners, shareholders, members, or other constituent taxpayers in any manner agreed to by such persons. The person shall certify to the board and the department the amount of credit allocated to each constituent taxpayer, and the board shall issue credit certificates in the appropriate amounts to each partner, shareholder, member, or other constituent taxpayer. Each constituent taxpayer shall be allowed to claim such amount subject to any restrictions set forth in this section.

(4) If a credit authorized in this section approved by the board exceeds the income tax due on the income of the taxpayer for the taxable year, the excess credit may not be carried forward and shall be refunded to the taxpayer.

(5) No later than November 30, 2009, and no later than November 30 of each year thereafter, the board shall provide the department an electronic report of the taxpayers receiving a credit for that income tax year that includes the following information:

(a) The taxpayer's name;

(b) The taxpayer's Colorado account number or social security number;

(c) The amount of the credit allocated; and

(d) The associated pass-through entity name and Colorado account number if the credit is allocated from a pass-through entity pursuant to subsection (3) of this section.

(6) If the revenue estimate prepared by the staff of the legislative council in June 2009 and each June thereafter indicates that the amount of the total general fund revenues for that particular fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized in this section shall not be allowed for any income tax year commencing during the calendar year in which the forecast is prepared. The credit certificate shall remain valid for the next tax year in which the revenue estimate prepared by the staff of the legislative council indicates that the amount of the total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(7) The executive director of the department may promulgate rules as may be necessary to administer and enforce any provision of this section. The rules shall be promulgated in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms.

(8) Any taxpayer who offsets a tax deficiency with a credit that is disallowed pursuant to this section shall be liable for such tax deficiency, interest, and penalties as may be specified in this article or otherwise provided by law.

(9) This section is repealed, effective December 31, 2024.

**Source: L. 2009:** Entire section added and (6) amended, (HB 09-1067), ch. 426, pp. 2377, 2380, §§ 1, 2, effective August 5.

**39-22-534. Credit for estate taxes paid - agricultural land - recapture - definitions.** (1) (a) Except as set forth in subsection (3) of this section, for income tax years specified in paragraph (b) of this subsection (1), a person who inherits agricultural land located within the state is allowed a credit in an amount equal to the amount of estate taxes paid pursuant to article 23.5 of this title that are attributable to the transfer of such agricultural land. A taxpayer must claim the credit for the income tax year in which the estate taxes are paid. For purposes of this section, the value of the agricultural land is the current assessed valuation. If more than one person inherits the agricultural land, the tax credit is apportioned among all beneficiaries.

(b) The credit shall not apply until the first income tax year:

(I) After congress enacts a law delaying to a date after December 31, 2012, the sunset of the amendments to section 26 U.S.C. sec. 2011 that were included in the "Economic Growth and Tax Relief Reconciliation Act of 2001", Public Law 107-16; and

(II) That an estate tax is owed pursuant to article 23.5 of this title.

(2) If the amount of the credit exceeds the income taxes owed by the taxpayer, the department of revenue shall refund the excess amount to the taxpayer.

(3) (a) If, within ten years from the date the income tax credit created by this section is claimed, the property that was the basis of the credit is no longer classified as agricultural land for property tax purposes, the credit shall be disallowed and, within thirty days of the change in use, the taxpayer who received the tax credit shall file an amended Colorado income tax return for the tax year that the credit was claimed. Interest shall be due on the taxes owed from the due date of the original return. Notwithstanding any provision of law to the contrary, the annual rate of interest for an amount owed pursuant to this subsection (3) for a given year shall be equal to the rate of inflation for the prior year.

(b) Notwithstanding the provisions of section 39-21-107 (2), the assessment of the tax due as a result of any disallowance of the credit allowed by this section, plus any penalty or interest, shall be made within eleven years of the due date of the return claiming the credit. If the taxpayer does not file the amended return within the prescribed thirty-day period, then the statute of limitations shall be tolled from the end of such thirty-day period until the date that such amended return is filed with the executive director or until the executive director discovers such determination or change, whichever occurs first.

(4) As used in this section:

(a) "Agricultural land" has the same meaning as set forth in section 39-1-102.

(b) "Rate of inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its applicable predecessor or successor index.

**Source: L. 2012:** Entire section added, (HB 12-1042), ch. 193, p. 771, § 2, effective August 8. **L. 2018:** (4)(b) amended, (HB 18-1375), ch. 274, p. 1722, § 81, effective May 29.

**Cross references:** For the legislative declaration in the 2012 act adding this section, see section 1 of chapter 193, Session Laws of Colorado 2012.

**39-22-535. Credit for purchase of uniquely valuable motor vehicle registration numbers.** (1) For tax years commencing on or after January 1, 2013, a person who buys a

registration number under section 42-1-402, C.R.S., is allowed a credit against the income taxes imposed by this article for twenty percent of the portion of the purchase price that the license plate auction group, created in section 42-1-403, C.R.S., certifies exceeds the registration number's fair market value. This is the value the license plate auction group expects from the sale of the registration number, not the cost of registering the vehicle.

(2) If the credit allowed by this section exceeds the tax otherwise due, the taxpayer may carry it forward for up to five years but shall claim it on the earliest possible subsequent tax return.

**Source: L. 2013:** Entire section added, (SB 13-170), ch. 254, p. 1347, § 4, effective May 23.

**39-22-536. Credit for food contributed to hunger-relief charitable organizations - definitions - repeal.** (1) As used in this section:

(a) "Food bank" means a charitable organization exempt from federal income taxation under the provisions of the internal revenue code that annually distributes over ten million pounds of food and nonfood essentials to hunger-relief programs.

(b) "Food contribution" means a contribution by a taxpayer of food usable for human beings, such as livestock, big game as defined in section 33-1-102 (2), C.R.S., that is processed at a processing facility certified by the United States department of agriculture, eggs, milk, or an agricultural crop, including but not limited to grains, fruits, and vegetables.

(c) "Hunger-relief charitable organization" means a charitable organization exempt from federal income taxation under the provisions of the internal revenue code that uses food contributions for hunger-relief in its community.

(d) "Most recent sale price" means an amount equal to the price that a taxpayer would have received for the food contribution, determined as if the food contribution had been sold on the date of the most recent sale of such food and at the same price per unit as such food that was sold on that date.

(e) "Taxpayer" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article who files a schedule F with their federal income tax return.

(f) "Wholesale market price" means the average wholesale market price for the food contribution in the nearest regional market during the month in which the contribution is made, determined as if the food contribution were marketable.

(2) (a) Except as provided in subsection (4) of this section, for income tax years commencing on or after January 1, 2015, but before January 1, 2020, a taxpayer who makes a food contribution during the tax year to a hunger-relief charitable organization and receives a credit certificate as described in paragraph (b) of this subsection (2) is allowed a credit against the income taxes imposed by this article in an amount equal to either twenty-five percent, not to exceed five thousand dollars, of the wholesale market price or twenty-five percent, not to exceed five thousand dollars, of the most recent sale price of the food contribution.

(b) (I) A food bank shall issue a credit certificate to the taxpayer that:

(A) Indicates the food contribution was accepted by a hunger-relief charitable organization, and sets forth the name of the hunger-relief charitable organization;

(B) Certifies that the use of the food contribution is related to the purpose or function constituting the basis for the hunger-relief charitable organization's tax exempt status and that the food contribution will not be transferred by the hunger-relief charitable organization in exchange for money, other property, or services;

(C) Sets forth the quantity of the food contribution; and

(D) Determines either the wholesale market price or recent sale price of the food contribution.

(II) The taxpayer shall include the credit certificate with the income tax return filed with the department of revenue.

(c) A hunger-relief charitable organization has a right to refuse a food contribution from a taxpayer if the hunger-relief charitable organization believes that the food contribution is not usable for human beings or if the hunger-relief charitable organization does not believe it will be able to use the food contribution prior to the food spoiling. If a food contribution is refused, a credit certificate described in paragraph (b) of this subsection (2) may not be issued by a food bank.

(3) If the credit exceeds the amount of income tax due on the income of the taxpayer for the tax year during which the contribution was made, the amount of the tax credit not used as an offset against income taxes in such income tax year may not be allowed as a refund, but may be carried forward and applied against the income tax due in each of the five succeeding income tax years, but must first be applied against the income tax due for the earliest of the income tax years possible.

(4) (a) A taxpayer may not claim the credit allowed in this section if the taxpayer claims a deduction for charitable contributions as allowed in section 39-22-104 (4)(m) for the food contribution to the hunger-relief charitable organization.

(b) A taxpayer may not claim the credit allowed in this section if the taxpayer claims the corporate income tax credit for crop or livestock contributions allowed in section 39-22-301 (3) for the food contribution to the hunger-relief charitable organization.

(5) This section is repealed, effective January 1, 2025.

**Source: L. 2014:** Entire section added, (HB 14-1119), ch. 286, p. 1173, § 2, effective May 30.

**Cross references:** For the legislative declaration in HB 14-1119, see section 1 of chapter 286, Session Laws of Colorado 2014.

**39-22-537. Credit for personal property taxes paid - legislative declaration - definitions - repeal.** (1) The general assembly declares that the purpose of the tax expenditure in this section is to assist small businesses in expanding their operations in Colorado.

(2) As used in this section, unless the context otherwise requires:

(a) "Federal marginal income tax rate" means the federal income tax rate at which an additional dollar of taxable income would be taxed.

(b) "Inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its applicable predecessor or successor index.

(c) "Property tax" means the ad valorem tax imposed pursuant to section 3 of article X of the state constitution but does not include the graduated annual specific ownership tax imposed pursuant to section 6 of article X of the state constitution.

(d) "Taxpayer" includes an organization exempt from federal taxation pursuant to section 501 (c) of the internal revenue code.

(3) (a) For any income tax year commencing on or after January 1, 2015, but prior to January 1, 2019, a taxpayer who qualifies under subsection (3)(b) of this section is allowed a credit against the tax imposed by this article 22 that is equal to a percentage of the property taxes paid for personal property in Colorado during the income tax year. For a given income tax year, a taxpayer's percentage is equal to one hundred percent minus the sum of the taxpayer's federal marginal income tax rate for the year and the state income tax rate for the year; except that the percentage is equal to one hundred percent for an organization that:

(I) Is exempt from federal taxation pursuant to section 501 (c) of the internal revenue code; and

(II) Does not have business personal property that is used in a trade or business on which the organization pays unrelated business income tax.

(b) To qualify for a tax credit under this section, a taxpayer must have fifteen thousand dollars or less worth of personal property on which property taxes are paid in Colorado during an income tax year commencing in 2015, or have less than an inflation-adjusted amount for each income tax year thereafter. These annual limits are based on the total actual value of the taxpayer's personal property.

(c) A taxpayer may not claim a tax credit under this section for the payment of delinquent property taxes that were owed for a prior property tax year.

(d) The amount of the credit under this section that exceeds the taxpayer's income taxes due is refunded to the taxpayer.

(4) To claim a credit under this section, a taxpayer must submit to the department of revenue a copy of a property tax statement described in section 39-10-103 for all of the taxpayer's personal property for the property tax year for which the credit is claimed.

(5) The department of revenue shall provide the joint budget committee with a copy of the portion of the 2017 tax profile and expenditure report created pursuant to section 39-21-303 that relates to the credit created in this section.

(6) This section is repealed, effective July 1, 2021.

**Source: L. 2014:** Entire section added, (HB 14-1279), ch. 340, p. 1513, § 1, effective August 6. **L. 2017:** IP(3)(a) and (6) amended, (SB 17-267), ch. 267, p. 1468, § 25, effective May 30. **L. 2018:** (2)(b) amended, (HB 18-1375), ch. 274, p. 1722, § 82, effective May 29.

**Cross references:** For the legislative declaration in SB 17-267, see section 1 of chapter 267, Session Laws of Colorado 2017.

**39-22-537.5. Credit for personal property taxes paid - legislative declaration - definitions - repeal.** (1) The general assembly declares that the purpose of the tax expenditure in this section is to minimize the negative impact of the business personal property tax on businesses.

(2) As used in this section, unless the context otherwise requires:

(a) "Property tax" means the ad valorem tax imposed pursuant to section 3 of article X of the state constitution but does not include public utilities assessed pursuant to section 39-4-102, and does not include the graduated annual specific ownership tax imposed pursuant to section 6 of article X of the state constitution.

(b) "Taxpayer" includes an organization exempt from federal taxation pursuant to section 501 (c) of the internal revenue code.

(3) (a) For income tax years commencing on or after January 1, 2019, a taxpayer is allowed a credit against the tax imposed by this article 22 equal to the property tax paid in Colorado during the income tax year on up to eighteen thousand dollars of the total actual value of the taxpayer's personal property.

(b) A taxpayer may not claim a tax credit under this section for the payment of delinquent property taxes that were owed for a prior property tax year.

(c) The amount of the credit under this section that exceeds the taxpayer's income taxes due is refunded to the taxpayer.

(4) To claim a credit under this section, a taxpayer must submit to the department of revenue a copy of a property tax statement described in section 39-10-103 for all of the taxpayer's personal property for the property tax year for which the credit is claimed.

**Source: L. 2017:** Entire section added, (SB 17-267), ch. 267, p. 1469, § 26, effective May 30.

**Cross references:** For the legislative declaration in SB 17-267, see section 1 of chapter 267, Session Laws of Colorado 2017.

**39-22-538. Credit for health care preceptors working in health professional shortage areas - legislative declaration - definitions - repeal.** (1) (a) The general assembly finds, determines, and declares that:

(I) It is vital to the well-being, quality of life, and economic development of the entire state that excellent health care be available in all regions of the state, including rural and frontier areas;

(II) Rural areas of the state currently suffer from a shortage of primary health care providers and, as a result, these communities experience reduced access to such providers and poorer health care outcomes; and

(III) A consistent problem is a lack of professional instruction, training, and supervision in rural and frontier areas that allows students studying primary care to obtain the requisite professional mentoring and supervision to allow them to practice in such areas upon obtaining a professional degree.

(b) The general assembly intends that the tax credit created in this section is to be used to provide sufficient financial incentives to encourage preceptors to offer professional instruction, training, and supervision to students seeking careers as primary health care providers in rural and frontier areas of the state.

(c) The general assembly further intends that the tax credit provide sufficient financial incentives to encourage preceptors to offer professional instruction, training, and supervision to students matriculating at Colorado institutions of higher education seeking careers as primary health care providers in rural and frontier areas of the state.

(2) As used in this section, unless the context otherwise requires:

(a) "AHEC" or "AHEC program" means the area health education center.

(b) "Frontier area" means a county in the state that has a population density of six or fewer individuals per one square mile.

(c) "Graduate student" means an individual matriculating at the graduate level at any accredited Colorado institution of higher education seeking a degree either in the areas of doctor of medicine, doctor of osteopathy, advanced nursing practice, doctor of dental surgery, or doctor of dental medicine, or as a physician assistant.

(d) "Preceptor" means a medical doctor, doctor of osteopathic medicine, advanced practice nurse, physician assistant, doctor of dental surgery, or doctor of dental medicine who has been licensed in his or her primary health care field in the state by the applicable licensing authority.

(e) "Preceptorship" means an uncompensated mentoring experience in which a preceptor provides a program of personalized instruction, training, and supervision for a total of not less than four weeks per calendar year that is offered to eligible graduate students to enable the students to obtain eligible professional degrees.

(f) "Primary health care" means health care provided by a health care professional with whom a patient has initial contact, who is the principal point of continuing care for the patient, and who coordinates other specialist care that the patient may need.

(g) "Rural area" means a county that is located in a nonmetropolitan area in the state that either has no municipality within its territorial boundaries with fifty thousand or more permanent residents based upon the most recent population estimates published by the United States census bureau or that satisfies alternate criteria for the designation of a rural area as may be promulgated by the federal office of management and budget.

(h) "Taxpayer" means a preceptor who files an income tax return under this article.

(3) (a) For income tax years commencing on or after January 1, 2017, but prior to January 1, 2020, and subject to the requirements of paragraph (b) of this subsection (3), a taxpayer is allowed a credit against the income taxes imposed by this article in an amount equal to one thousand dollars for a preceptorship provided by him or her during the applicable income tax year for which the credit is claimed.

(b) Notwithstanding any other provision of this section:

(I) The aggregate amount of the credit awarded to any one taxpayer under this section shall not exceed one thousand dollars for any one income tax year regardless of the number of preceptorships undertaken by the taxpayer during the applicable income tax year or the number of eligible graduate students the taxpayer instructs, trains, or supervises during the applicable income tax year;

(II) A taxpayer is eligible to claim the credit allowed by this section if he or she performs a preceptorship that lasts a total of not less than four weeks during the income tax year in which the credit is claimed and the preceptor is practicing in his or her primary health care field in a rural or frontier area; and

(III) Not more than two hundred preceptors are entitled to claim the credit authorized by this section for any one income tax year. The department shall promulgate by rule, in accordance with article 4 of title 24, C.R.S., a method for determining the manner in which taxpayers who have obtained certification under subsection (4) of this section are able to claim the tax credit.

(4) To qualify for the credit provided by this section, the taxpayer shall submit a certification form with each income tax return. Certification may be provided by either the institution for which the taxpayer teaches, whether it is an institution of higher education or a hospital, clinic, or other medical facility, or by the particular regional office of the AHEC program with jurisdiction over the area in which the preceptor's medical practice is located. In the case of certification by an institution for which the taxpayer teaches, the institution must execute the form certifying that the taxpayer has satisfied the requirements for allowance of the tax credit as specified in this section. In the case of certification by the AHEC program, the certification form must be obtained from the particular regional office of the AHEC program with jurisdiction over the area in which the preceptor is practicing, which office shall certify that the taxpayer has satisfied the requirements for allowance of the tax credit as specified in this section. The AHEC program may charge the taxpayer a reasonable fee for providing such certification, which fee shall not exceed the actual costs incurred by the AHEC in completing the certification.

(5) Where a taxpayer claims the credit provided by this section but fails to satisfy the requirements of this section during the income tax year for which the credit is claimed, the taxpayer shall repay the entire amount of the total credit that is attributed to him or her pursuant to this section. The taxpayer shall report the recapture required by this subsection (5) by increasing his or her income tax liability by the amount of the total credit claimed for the year in which the recapture occurs.

(6) If the amount of the credit allowed pursuant to this section exceeds the amount of the income tax otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in the income tax year is not allowed as a refund but may be carried forward and applied against the income tax due in each of the five succeeding income tax years, but must first be applied against the income tax due for the earliest of the income tax years possible.

(7) Nothing in this section modifies or changes the definition of "public employee" specified in section 24-10-103 (4)(b)(II) and (4)(b)(V), C.R.S.

(8) This section is repealed, effective July 1, 2027.

**Source: L. 2016:** Entire section added, (HB 16-1142), ch. 229, p. 891, § 1, effective August 10. **L. 2017:** (2)(e) amended, (SB 17-294), ch. 264, p. 1418, § 119, effective May 25.

**39-22-539. Credit for employer contributions to employee 529 qualified state tuition programs - legislative declaration - definitions - repeal.** (1) The general assembly hereby finds and declares that the qualified state tuition savings program administered by collegeinvest helps empower families to save for higher education and enables residents to further educational opportunities and pursue professional goals. The purpose of this section is to provide an incentive for employers to help their employees enhance education savings goals by contributing directly to the employees' qualified state tuition program accounts administered by collegeinvest.

(2) As used in this section:

(a) "529 qualified state tuition program account" means a qualified state tuition program account established by collegeinvest created in section 23-3.1-203.

(b) "Employee" means any person in the employment of an employer for a salary or for hourly wages, whether full-time or part-time and whether temporary or permanent.

(c) "Employer" means any person doing business in the state.

(3) For income tax years commencing on or after January 1, 2019, but prior to January 1, 2022, if an employer makes a contribution of money to a 529 qualified state tuition program account owned by an employee during the income tax year, without regard to the named beneficiary of the account, then the employer is allowed a credit against the income taxes imposed by this article 22 in an amount equal to twenty percent of the contribution. The maximum total credit an employer may claim under this section for each employee in a taxable year is five hundred dollars.

(4) If the amount of the credit allowed in this section exceeds the amount of income taxes otherwise due on the employer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in the current income tax year may be carried forward and used as a credit against subsequent years' income tax liability for a period not to exceed three years and must be applied first to the earliest income tax years possible. Any credit remaining after the period may not be refunded or credited to the employer.

(5) No later than January 1, 2019, and quarterly thereafter, collegeinvest shall provide the department with an electronic report containing information for 529 qualified state tuition program account holders, beneficiaries, and donors that the department determines is necessary for the administration of the credit allowed in this section. The report must include, but is not limited to:

(a) The name and social security number of the account holder of each 529 qualified state tuition program account;

(b) The name, date of birth, and social security number of the beneficiary of each 529 qualified state tuition program account; and

(c) Contribution data that contains the:

(I) Amount of each contribution;

(II) Date of each contribution; and

(III) Source of each contribution, including the social security number or federal employee identification number of the contributor.

(6) The department of revenue may seek, accept, and expend gifts, grants, or donations from private or public sources for the department's costs in administering the income tax credit allowed in this section. The department may expend money received through gifts, grants, or donations consistent with any terms and conditions imposed as a condition of receiving such money for administering the income tax credit allowed in this section within existing appropriations; except that, notwithstanding part 13 of article 75 of title 24, the general assembly may appropriate state funds to the department in the future to administer the income tax credit allowed in this section.

(7) This section is repealed, effective December 31, 2024.

**Source: L. 2018:** Entire section added, (HB 18-1217), ch. 287, p. 1777, § 2, effective August 8.

**Cross references:** For the short title ("Working Families College Savings Act") in HB 18-1217, see section 1 of chapter 287, Session Laws of Colorado 2018.

**39-22-540. Credit - organ donor - leave of absence period - legislative declaration - definitions.** (1) (a) The general assembly hereby finds and declares that:

(I) Nearly two thousand four hundred Coloradans are currently on the waiting list for lifesaving organ transplants, and ninety-six percent of those people could receive an organ, such as a kidney or liver, from a living donor;

(II) Last year, two hundred fifty-eight Coloradans died or became too sick to remain on the waiting list, which is thirty-eight percent more than all the homicides in the state;

(III) These lives would be saved if more people became living donors;

(IV) If just one out of one thousand one hundred adults in the state became living donors, the waiting list for kidney and liver transplants in the state would be eradicated; and

(V) The ability to get paid time off work is an enormous barrier for living organ donors, and the loss of income and fear of losing their job has deterred many would-be donors.

(b) Now, therefore, the general assembly declares that the intended purpose of the tax credit in this section is to support living donors and the companies that employ them.

(2) As used in this section:

(a) "Employee" has the same meaning as set forth in section 39-22-604 (2)(a).

(b) "Leave of absence period" means the period, not exceeding ten working days or the hourly equivalent of ten working days per employee, during which a taxpayer provides a paid leave of absence to an employee for the purpose of organ donation. The term does not include a period during which an employee utilizes any annual leave or sick days that the employee has been given by the employer.

(c) "Taxpayer" means an employer that deducts and withholds amounts from the wages paid to a qualified employee pursuant to section 39-22-604 (3).

(d) "Wages" has the same meaning as set forth in section 3401 (a) of the internal revenue code.

(3) Except as set forth in subsection (4) of this section, for any income tax year commencing on or after January 1, 2020, but before January 1, 2025, a taxpayer is allowed a credit against the tax imposed by this article 22 that is an amount equal to thirty-five percent of the taxpayer's expenses incurred:

(a) Paying an employee during his or her leave of absence period; and

(b) For the cost of temporary replacement help, if any, during an employee's leave of absence period.

(4) A taxpayer shall not claim a tax credit under this section related to a leave of absence period for an employee who the taxpayer pays wages of eighty thousand dollars or more during the income tax year.

(5) If the amount of a credit under this section exceeds a taxpayer's actual tax liability for an income tax year, the amount of the credit not used to offset income tax liability for the income tax year is not refunded to the taxpayer. The taxpayer may carry forward and apply the unused credit against the income tax due in each of the five succeeding income tax years, but the taxpayer shall apply the credit against the income tax due for the earliest of the income tax years possible. Any amount of the tax credit that is not used after this period is not refundable.

(6) Upon request of the department of revenue as part of an audit, a taxpayer must provide the department with documentation from the employee's medical provider, which the taxpayer received from the employee, that verifies the employee's organ donation. If the taxpayer

cannot provide the documentation, then the taxpayer is ineligible for the credit under this section.

**Source: L. 2018:** Entire section added, (HB 18-1202), ch. 310, p. 1869, § 2, effective August 8.

**Cross references:** For the short title ("Living Organ Donor Support Act") in HB 18-1202, see section 1 of chapter 310, Session Laws of Colorado 2018.

**39-22-541. Credit for retrofitting a residence to increase a residence's visitability - legislative declaration - definitions - repeal.** (1) The general assembly hereby finds and declares that the intended purpose of the tax credit created in this section is to make retrofitting a residence for health, welfare, and safety reasons more affordable.

(2) As used in this section:

(a) "Dependent" has the same meaning as in section 152 (a) of the internal revenue code.

(b) "Division of housing" means the division of housing in the department of local affairs created in section 24-32-704.

(c) "Qualified individual" means an individual with a family income at or below one hundred fifty thousand dollars for the income tax year commencing on or after January 1, 2019, and as adjusted for inflation for each income tax year thereafter.

(d) "Retrofit" means changes made to a residence that must:

(I) Be necessary to ensure the health, welfare, and safety of a qualified individual;

(II) Increase the residence's visitability;

(III) Enable greater accessibility and independence in the residence for a qualified individual;

(IV) Be required due to a qualified individual's illness, impairment, or disability; and

(V) Allow a qualified individual to age in place.

(e) "Visitability" means a measure of a residence's ease of access for persons with disabilities.

(3) (a) (I) Except as provided in subsection (3)(b)(III) of this section, for income tax years commencing on or after January 1, 2019, but prior to January 1, 2024, an individual who retrofits or hires someone to retrofit the individual's residence and who meets any additional requirements established by the division of housing is allowed a credit against the income taxes imposed by this article 22 in an amount equal to the cost of the retrofit or five thousand dollars, whichever is less.

(II) The division of housing shall consult with stakeholders in establishing any additional requirements for the income tax credit as required in subsection (3)(a)(I) of this section.

(b) (I) The division of housing is responsible for issuing credit certificates to qualified individuals. The credit certificate must identify the taxpayer and certify that the individual meets the requirements set forth in this section.

(II) To claim the credit under this section, the individual must include the credit certificate with the income tax return filed with the department of revenue.

(III) The division of housing shall track all the credit certificates issued under this section in each income tax year and, when the total amount of credit certificates issued equals one million dollars per income tax year, shall cease issuing credit certificates in that income tax

year. Until the one million dollar per income tax year cap is reached, the credit certificates shall be issued in the order in which they are requested.

(4) If the amount of the credit allowed in this section exceeds the amount of income taxes otherwise due on the individual's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in the current income tax year may be carried forward and used as a credit against subsequent years' income tax liability for a period not to exceed five years and must be applied first to the earliest income tax years possible. Any credit remaining after the period may not be refunded or credited to the individual.

(5) No later than January 1, 2020, and no later than January 1 of each year thereafter through January 1, 2024, the division of housing shall provide the department of revenue with an electronic report of the taxpayers receiving a credit certificate as allowed in this section for the previous calendar year that includes the following information:

(a) Each taxpayer's name;

(b) Each taxpayer's social security number or federal employee identification number; and

(c) The amount of the credit allocated.

(6) This section is repealed, effective December 31, 2028.

**Source: L. 2018:** Entire section added, (HB 18-1267), ch. 345, p. 2061, § 1, effective August 8.

PART 6

PROCEDURE AND ADMINISTRATION

SUBPART 1

GENERAL

**39-22-601. Returns.** (1) (a) (I) Whenever a resident individual or a nonresident individual with income from Colorado sources is required to file a federal income tax return under the provisions of section 6012 of the internal revenue code or whenever a resident individual or a nonresident individual has incurred any tax liability under any provision of this article, the individual shall make a return that shall contain a written declaration that it is made under the penalty of perjury in the second degree. The return shall set forth, in such detail as the executive director shall prescribe by regulations, the said individual's federal taxable income, the deductions, modifications, exemptions, and credits required or allowed under this article, and any other information necessary to carry out the purposes of this article. For the purpose of this section, the residence of the individual taxpayer shall be the address supplied by the taxpayer to the department of revenue on the return.

(II) For purposes of this paragraph (a), a nonresident individual whose only source of income from this state is compensation that is subtracted from federal taxable income under section 39-22-104 (4)(t) need not file a return.

(III) For purposes of this paragraph (a), an individual whose only source of income is compensation that is subtracted from federal taxable income under section 39-22-104 (4)(u) need not file a return.

(b) If any individual is unable to make his own return, the return shall be made by a duly authorized agent, guardian, executor, administrator, or other person charged with the care of the person or property of such taxpayer.

(c) Repealed.

(2) Every C corporation subject to taxation under this article shall make a return which shall contain a written declaration that it is made under the penalties of perjury in the second degree. Such return shall set forth, in such detail as the executive director shall prescribe by regulations, federal taxable income and the modifications and credits required or allowed under this article and any other information necessary to carry out the purposes of this article. The return shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or other officer duly authorized to act. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns shall be collected in the same manner as if collected from the corporation for which the return is made.

(2.5) (a) Every S corporation which engages in activities in this state which would subject a C corporation to the requirement to make a return under this section shall make a return which shall contain a written declaration that it is made under the penalties of perjury in the second degree. Such return shall set forth, in such detail as the executive director shall prescribe by regulations, federal taxable income and the modifications and credits required or allowed under this article and any other information necessary to carry out the purposes of this article. The return shall be signed by an officer of the S corporation duly authorized to act, which authorization shall be conclusively presumed by the signature.

(b) In addition to other information which the executive director may by regulation prescribe, the return shall set forth:

(I) The name, address, and social security or federal identification number of each shareholder of the S corporation;

(II) The income attributable to the state and the income not attributable to the state with respect to each shareholder of the S corporation as determined under subpart 2 of part 3 of this article; and

(III) The modifications required by section 39-22-323.

(c) The S corporation shall, on or before the day on which such return is filed, furnish to each person who was a shareholder of the S corporation during the year a copy of such information shown on the return as the executive director may by regulation prescribe.

(d) The department of revenue shall permit S corporations to file composite returns and to make composite payments of tax on behalf of some or all of its nonresident shareholders. The department of revenue may permit composite returns and payments to be made on behalf of resident shareholders.

(e) With respect to each of its nonresident shareholders, an S corporation shall, for each taxable period, either timely file with the department of revenue an agreement, as provided in paragraph (f) of this subsection (2.5), or make a payment to this state as provided in paragraph (h) of this subsection (2.5).

(f) The agreement referred to in paragraph (e) of this subsection (2.5) is an agreement of a nonresident shareholder of the S corporation:

(I) To file a return in accordance with the provisions of paragraph (a) of this subsection (2.5) and to make timely payment of all taxes imposed on the shareholder by this state with respect to the income of the S corporation; and

(II) To be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the shareholder by this state with respect to the income of the S corporation.

(g) An S corporation that timely files an agreement as provided in paragraph (e) of this subsection (2.5) with respect to a nonresident shareholder of the S corporation for a taxable period shall be considered to have timely filed such an agreement for each subsequent taxable period. An S corporation that does not timely file such an agreement for a taxable period shall not be precluded from timely filing such an agreement for subsequent taxable periods. The agreement will be considered to be timely filed for a taxable period and for all subsequent taxable periods if it is filed at or before the time the annual return for such taxable period is required to be filed pursuant to paragraph (a) of this subsection (2.5).

(h) The payment referred to in subsection (2.5)(e) of this section shall be in an amount equal to the highest marginal tax rate in effect under section 39-22-104 multiplied by the shareholder's pro rata share of the income attributable to the state as reflected on the S corporation's return for the taxable period. An S corporation shall be entitled to recover a payment made pursuant to this subsection (2.5)(h) from the shareholder on whose behalf the payment was made. Any such payment for a taxable period must be made at or before the time the annual return for such taxable period is required to be filed pursuant to subsection (2.5)(a) of this section.

(i) Any amount paid by the S corporation to this state pursuant to paragraph (d) or paragraph (h) of this subsection (2.5) shall be considered to be a payment by the shareholder on account of the income tax imposed on the shareholder for the taxable period pursuant to section 39-22-104.

(3) Every fiduciary, except a receiver appointed by authority of law in possession of part only of the property of an individual, shall make a return for any individuals, estates, or trusts for which he acts, which return shall contain a declaration that it is made under the penalties of perjury in the second degree. Such return shall set forth, in such detail as the executive director shall prescribe by regulation, the federal taxable income and the deductions, modifications, exemptions, and credits required or allowed under this article and any other information necessary to carry out the purposes of this article. The individuals, estates, or trusts for which a fiduciary acts are as follows:

(a) Every individual for whom a return is required to be filed under subsection (1) of this section;

(b) Every resident estate or trust and every nonresident estate or trust with income from Colorado sources for which a federal income tax return is required to be filed and every resident estate or trust and every nonresident estate or trust which has incurred any tax liability under any provision of this article.

(c) Repealed.

(4) Every fiduciary of an estate or trust with a nonresident beneficiary which receives net income from real or tangible personal property within Colorado shall withhold and pay over to

the executive director, out of the income to be distributed to such nonresident beneficiary, a tax upon the beneficiary's share of said income computed at the rate provided in section 39-22-104 unless the nonresident beneficiary files a timely return of his total income from sources within Colorado, in which case the fiduciary shall withhold and pay over only the amount of tax disclosed by the beneficiary's return. The nonresident beneficiary, at his option within the time limited by this article, may file a return of his income and may claim a refund for the amount of tax withheld in excess of the amount of tax due as shown by said return.

(4.5) Repealed.

(5) (a) Every partnership that engages in activities in this state that would subject a C corporation to the requirement to make a return under this section shall make a return that shall contain a written declaration that it is made under the penalties of perjury in the second degree. Such return shall set forth, in such detail as the executive director shall prescribe, federal ordinary income and the modifications and credits required or allowed under this article and any other information necessary to carry out the purposes of this article. The return shall be signed by any one of the partners.

(b) In addition to other information that the executive director may prescribe, the return shall set forth:

(I) The name, address, and social security or federal identification number of each partner of the partnership;

(II) The income attributable to the state and the income not attributable to the state with respect to each partner of the partnership as determined under section 39-22-203; and

(III) The modifications required by section 39-22-202.

(c) The partnership shall, on or before the day on which the return is filed, furnish to each person who was a partner of the partnership during the year a copy of such information shown on the return as the executive director may prescribe.

(d) The department of revenue shall permit partnerships to file composite returns and to make composite payments of tax on behalf of any or all of its nonresident partners.

(e) With respect to each of its nonresident partners, a partnership shall, for each taxable period, either timely file with the department of revenue an agreement, as provided in paragraph (f) of this subsection (5), or make payment to this state, as provided in paragraph (h) of this subsection (5).

(e.5) Paragraphs (d) and (e) of this subsection (5) shall not apply to a publicly traded partnership, as defined in section 7704 (b) of the internal revenue code, that meets any of the exceptions under section 7704 (c) of the internal revenue code and is not treated as a corporation under section 7704 (a) of the internal revenue code.

(f) The agreement referred to in paragraph (e) of this subsection (5) is an agreement of a nonresident partner of the partnership:

(I) To file a return in accordance with the provisions of paragraph (a) of this subsection (5) and to make timely payment of all taxes imposed on the member by this state with respect to the income of the partnership; and

(II) To be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the partner by this state with respect to the income of the partnership.

(g) A partnership that timely files an agreement as provided in paragraph (e) of this subsection (5) with respect to a nonresident partner of the partnership for a taxable period shall

be considered to have timely filed such an agreement for each subsequent taxable period. A partnership that does not timely file such an agreement for a taxable period shall not be precluded from timely filing such an agreement for subsequent taxable periods. The agreement will be considered to be timely filed for a taxable period and for all subsequent taxable periods if it is filed at or before the time the annual return for such taxable period is required to be filed pursuant to paragraph (a) of this subsection (5).

(h) The payment referred to in subsection (5)(e) of this section shall be in an amount equal to the highest marginal tax rate in effect under section 39-22-104 multiplied by the nonresident partner's share of the income attributable to the state as reflected on the partnership's return for the taxable period. A partnership shall be entitled to recover a payment pursuant to this subsection (5)(h) from the nonresident partner on whose behalf the payment was made. Any such payment for a taxable period must be made at or before the time the annual return for such taxable period is required to be filed pursuant to subsection (5)(a) of this section.

(i) Any amount paid by the partnership to this state pursuant to paragraph (d) or (h) of this subsection (5) shall be considered to be a payment by the nonresident partner on account of the income tax imposed on the nonresident partner for the taxable period pursuant to section 39-22-104 or 39-22-301.

(6) (a) Any final determination of federal taxable income made pursuant to the provisions of federal law under which federal taxable income is found to differ from the taxable income originally reported to the federal government shall be reported by the taxpayer to the executive director by making and filing a Colorado amended return within thirty days of such final determination with a statement of the reasons for the difference, in such detail as the executive director may require. In addition thereto, any taxpayer filing an amended return with the federal internal revenue service that reflects any change in income reportable to the state of Colorado shall, within thirty days of such federal filing, make and file a corresponding Colorado amended return.

(b) For purposes of this subsection (6), final determination means only the first of the following to occur:

(I) The taxpayer's execution of a waiver with and acceptance by the internal revenue service of restrictions on assessment and collection of deficiency in federal tax or acceptance of overassessment in said tax;

(II) The acceptance by the internal revenue service of an offer of waiver of restrictions on assessment and collection of deficiency in tax or acceptance of overassessment;

(III) The execution by the taxpayer of acceptance of an examining officer's findings by a partnership, limited liability company, or fiduciary;

(IV) The payment of any additional tax by the taxpayer; or

(V) Any judgment becoming final, whether by stipulation or otherwise, in any judicial proceeding affecting such change in reported federal taxable income.

(c) If, from such return or from investigation, it appears that the tax with respect to income imposed by this article has not been fully assessed, the executive director shall, within one year after the receipt of such return or within one year of discovery of such final determination, if unreported, assess the deficiency with interest at the rate prescribed in section 39-22-621.

(d) If the taxpayer does not file such amended return within the prescribed thirty-day period, then the statute of limitations shall be tolled from the end of such thirty-day period until

the date that such amended return is filed with the executive director or until the executive director discovers such determination or change, whichever shall first occur.

(e) If any taxpayer agrees with the internal revenue service for an extension, or renewals thereof, of the period for assessing deficiencies or paying refunds in federal income tax or for changing reported federal taxable income of a partnership, limited liability company, or fiduciary for any year or if any taxpayer files a federal income tax refund claim or initiates administrative or judicial proceedings which have the effect of extending said period for any year, the period within which the executive director may issue a notice of deficiency for any such year shall be four years after the applicable Colorado return was filed or one year after the date of expiration of the extended period for assessing deficiencies in federal income tax or changing reported federal taxable income of a partnership, limited liability company, or fiduciary, whichever is later.

(f) Repealed.

(g) Notwithstanding any provision of this article or of article 21 of this title, any assessment made by reason of the applicability of the provisions of paragraphs (a) to (f) of this subsection (6), which could not have been made except for the extension or tolling, pursuant to said provisions, of the period of limitations otherwise applicable for assessing income taxes, shall be limited to deficiencies arising as a result of adjustments made by the commissioner of internal revenue in any final determination of federal taxable income, if the taxpayer has been audited by the department of revenue for the year in question and the issues raised in the audit have been settled by agreement for payment or payment of deficiencies arising therefrom.

(7) Every person or organization exempt from taxes pursuant to section 39-22-112 shall make and file a return only if said person or organization is required to file a federal return of unrelated business income, which Colorado return shall contain such information as the executive director may prescribe. All procedures of law relating to the determination, assessment, collection, and refund of tax shall apply to such return and the tax payable thereon.

(8) Repealed.

(9) (a) Any person who is required by section 6053 or 6041A of the internal revenue code to file annual information reports concerning tips or remunerations for services or remunerations for direct sales may be required, by rules promulgated by the executive director, to file copies of such reports or otherwise furnish the same to the executive director within the time required by the internal revenue service for the filing of such reports. Such reports shall show, in addition to the information required by the internal revenue service, any amounts deducted and withheld by the payor for income tax due to the state of Colorado from the payee listed on such reports.

(a.5) The executive director may require any magnetic media taxpayer to file the reports described in paragraph (a) of this subsection (9) by magnetic media or in other machine-readable form. For the purposes of this paragraph (a.5), "magnetic media taxpayer" means a taxpayer who is required to file information returns described in section 6041A, 6051, or 6053 of the internal revenue code by magnetic media or in other machine-readable form under section 6011 (e) of the internal revenue code.

(b) Any person required by paragraph (a) of this subsection (9) to file a report who fails to timely file such report shall be subject to a fine of fifty dollars for each such failure.

(10) Repealed.

**Source: L. 64:** R&RE, p. 780, § 1. **C.R.S. 1963:** § 138-1-65. **L. 70:** p. 394, §§ 2, 3. **L. 72:** p. 570, § 57. **L. 73:** p. 1447, § 1. **L. 77:** (6)(g) added, p. 1799, § 1, effective July 1. **L. 78:** (1)(a) and (3)(b) amended, p. 485, § 9, effective May 5. **L. 79:** (1)(a) amended, p. 1426, § 3, effective July 3. **L. 83:** (9) added, p. 1526, § 1, effective July 1. **L. 87:** (1)(a), (3)(b), (4), (7), and (9)(a) amended and (1)(c), (3)(c), and (8) repealed, pp. 1450, 1457, §§ 24, 31, effective June 22. **L. 88:** (1)(a) amended, p. 1315, § 11, effective May 29. **L. 89:** (1)(a), (2), IP(3), and (5) amended, p. 1500, § 5, effective July 1, 1990. **L. 90:** (4.5) added and (6)(b)(III) and (6)(e) amended, p. 455, § 36, effective April 18. **L. 91:** (1)(a) and (3)(b) amended, p. 1987, § 3, effective April 20. **L. 92:** (2) amended and (2.5) added, p. 2263, § 2, effective April 16. **L. 95:** (1)(a) amended, p. 304, § 1, effective April 21; (4.5) repealed, p. 818, § 46, effective May 24. **L. 96:** (5) amended, p. 335, § 2, effective April 16. **L. 99:** (9)(a) amended and (9)(a.5) added, p. 276, § 2, effective August 4; (10) added, p. 1377, § 3, effective August 4. **L. 2000:** (10) amended, p. 1414, § 4, effective August 2. **L. 2001:** (6)(a), (6)(c), and (6)(d) amended, p. 96, § 1, effective August 8; (6)(f) repealed, p. 234, § 3, effective August 8. **L. 2005:** (5)(e.5) added, p. 213, § 1, effective August 8. **L. 2014:** (1)(a) amended, (HB 14-1003), ch. 224, p. 838, § 3, effective August 6. **L. 2015:** (1)(a)(III) added, (HB 15-1181), ch. 233, p. 865, § 5, effective August 5. **L. 2018:** (2.5)(h) and (5)(h) amended, (HB 18-1375), ch. 274, p. 1722, § 83, effective May 29; (10) repealed, (SB 18-127), ch. 127, p. 845, § 2, effective August 8.

**Cross references:** (1) For the legislative declaration contained in the 2001 act repealing subsection (6)(f), see section 1 of chapter 95, Session Laws of Colorado 2001.

(2) For the legislative declaration in HB 14-1003, see section 1 of chapter 224, Session Laws of Colorado 2014.

(3) For the short title ("Colorado is Honoring Our Military Exemption (Colorado is HOME) Act") and the legislative declaration in HB 15-1181, see sections 1 and 2 of chapter 233, Session Laws of Colorado 2015.

(4) For the legislative declaration in SB 18-127, see section 1 of chapter 127, Session Laws of Colorado 2018.

**39-22-602. Failure to make return - director may make.** (1) If any person fails or refuses to make any return required by this article, the executive director may make such return for such person from such information as may be available, and any assessment based on such return made by the executive director shall be as good and sufficient as if such return had been made and filed by the person liable therefor.

(2) If the executive director finds that any nonresident whose name and address were furnished by a county assessor pursuant to section 39-5-102 (3) has not made a return as required by this article, the executive director shall mail notice by first-class mail as set forth in section 39-21-105.5 to the nonresident setting a time within which the return shall be made and may thereafter proceed pursuant to subsection (1) of this section, as necessary.

**Source: L. 64:** R&RE, p. 783, § 1. **C.R.S. 1963:** § 138-1-66. **L. 69:** p. 1132, § 2. **L. 96:** (2) amended, p. 165, § 6, effective July 1.

**39-22-603. Returns not made under oath.** Wherever in this article it is required that a return be made under oath, the signing of the return by the person therein required to make oath

shall be sufficient compliance with the provisions of said sections if such return contains or is verified by a written declaration that it is made under the penalties of perjury in the second degree. Any individual who willfully makes and signs a return which he does not believe to be true and correct as to every material matter is guilty of perjury in the second degree.

**Source: L. 64:** R&RE, p. 784, § 1. **C.R.S. 1963:** § 138-1-67. **L. 72:** p. 571, § 58.

**Cross references:** For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

**39-22-603.5. Frivolous returns.** (1) As used in this part 6, unless the context otherwise requires, "frivolous return" means a return filed by any person that purports to be a return of the tax imposed by this article but that:

(a) Does not contain information on which the substantial correctness of the return may be judged; or

(b) Contains information that on its face indicates that the return is substantially incorrect; and

(c) The conduct described in either paragraph (a) or (b) of this subsection (1) is due to either:

(I) A position that is frivolous; or

(II) A desire, which appears on the purported return, to delay or impede the administration of state income tax laws.

(2) (a) If any person files a frivolous return, the executive director may calculate the person's Colorado taxable income and make an assessment based on such information as is available at the time the return is filed.

(b) If the tax calculated by the executive director 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.

**Source: L. 2002:** Entire section added, p. 530, § 2, effective August 7.

**39-22-604. Withholding tax - requirement to withhold - tax lien - exemption from lien - definitions.** (1) All of the other provisions of this article shall apply to and be effective as to the provisions of this section to the extent to which they are not inconsistent with this section, and all of the remedies available to the department of revenue for the administration, assessment, enforcement, and collection of tax under other sections of this article and article 21 of this title shall be available to the department and shall apply to the amounts required to be deducted and withheld under the provisions of this section, and all of the penalties, both civil and criminal, shall apply to this section.

(2) As used in this section, unless the context otherwise requires:

(a) "Employee" means and includes every individual who is a resident or domiciled in the state of Colorado performing services for an employer, either within or without or both within and without the state of Colorado, or any individual performing services within the state of Colorado, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee, and includes officers of

corporations and individuals, including elected officials, performing services for the United States government or any agency or instrumentality thereof or the state of Colorado or any county, city or municipality, or political subdivision thereof; except that the term shall not include an individual who is not a resident or domiciled in the state of Colorado and who performs services in connection with any phase of motion picture or television production or television commercials for less than one hundred twenty days during any calendar year.

(b) "Employer" means a person transacting business in or deriving any income from sources within the state of Colorado for whom an individual performs or performed any services, of whatever nature, who has control of the payment of wages for such services or is the officer, agent, or employee of the person having control of the payment of wages.

(b.5) "Magnetic media taxpayer" means a taxpayer who is required to file information returns described in section 6041A, 6051, or 6053 of the internal revenue code by magnetic media or in other machine-readable form under section 6011 (e) of the internal revenue code.

(c) "Wages" shall have the same meaning as is given in section 3401 (a) of the internal revenue code.

(3) (a) Every employer making payment of wages shall deduct and withhold from wages an amount measured by a percentage or percentages of the total amount required to be deducted and withheld by an employer from wages of an employee for federal income tax purposes, or measured by withholding tax tables promulgated by the executive director, or by such other methods as the executive director may prescribe if such percentage, percentages, tables, or other methods result in the withholding from the employee's wages during each pay period an amount which shall approximate as nearly as possible the income tax due to the state of Colorado by such employee.

(b) The executive director may, upon written application having been made to him, approve a method of withholding in lieu of the method provided in paragraph (a) of this subsection (3) to authorize a withholding based upon a percentage fixed by the executive director of the adjusted gross income, which percentage shall approximate as nearly as possible the amount of income tax due to the state of Colorado and as nearly as possible the amount so deducted and withheld in paragraph (a) of this subsection (3).

(c) Every employer, irrespective of whether or not said employer deducts and withholds the amounts as provided in this section, shall be liable for the amounts required to be deducted and withheld unless, in the case of any failure to deduct and withhold such amounts, it is shown that such failure was due to reasonable cause and not due to willful neglect. If the employer, in violation of the provisions of this section, fails to deduct and withhold the amounts as provided in this section and thereafter the tax against which such deducted and withheld amounts would have been credited is paid, the amounts so required by this section to be deducted and withheld shall not be collected from the employer; but in no such case, unless due to reasonable cause, shall the employer be relieved from liability for any penalties or additions to the amounts required under this section to be deducted and withheld otherwise applicable to any such failure to deduct and withhold.

(4) (a) The executive director may require any taxpayer who has an annual estimated withheld tax liability of more than fifty thousand dollars to remit withheld tax by electronic funds transfer. The executive director may promulgate rules to implement remittances by electronic funds transfer and shall promulgate rules prescribing withholding tax periods and the corresponding tax return filing and tax payment due dates. The executive director shall consult

with the state treasurer regarding the formulation of such rules and regulations in order to minimize the amount of lost interest to the state general fund.

(b) The rules and regulations promulgated pursuant to this section shall not prescribe filing or withholding requirements which are more frequent or more stringent than corresponding federal requirements.

(5) All amounts deducted and withheld shall be considered as tax collected under the provisions of this section and no employee shall have any right of action against his employer in respect to any moneys so deducted and withheld from his wages and paid over to the department in compliance or in intended compliance with this section.

(6) (a) Every employer shall, in accordance with such rules as shall be prescribed by the department of revenue, provide each employee with a statement of the amounts of moneys deducted and withheld from such employee's wages in accordance with the provisions of this section. Every employer shall also make an annual statement for each employee to the department of revenue, on such forms as are provided or approved by the department, a copy of which shall be provided each employee, summarizing the total compensation paid and the tax withheld for such employee during the preceding calendar year or any portion thereof, and the said annual statement shall be filed on or before the date established pursuant to section 6071 of the internal revenue code for filing similar federal statements. Failure to file the statements within the time prescribed therefor, unless shown to have been due to reasonable cause, or the willful filing or furnishing of false or fraudulent statements shall subject the employer to a penalty, at the discretion of the executive director, of not less than five dollars nor more than fifty dollars, which shall be in addition to any criminal penalty otherwise provided for failure to file a return or for filing a false or fraudulent return.

(b) The executive director may require any magnetic media taxpayer to file the annual statements described in paragraph (a) of this subsection (6) by magnetic media or in other machine-readable form.

(7) (a) Every employer who deducts and withholds any amounts under the provisions of this section shall hold the same in trust for the state of Colorado for the payment thereof to the department in the manner and at the time provided for in this section, and the state of Colorado and the department shall have a lien to secure the payment of any amounts withheld and not remitted as provided in this section upon all of the assets of the employer and all property, including stock in trade, business fixtures, and equipment, owned or used by the employer in the conduct of his business, so long as any delinquency continues, which lien shall be prior to any lien of any kind whatsoever, including existing liens for taxes.

(b) The owner, conditional vendor, or mortgagee of any property, real or personal, or any stock in trade, business fixtures, or equipment owned or used by an employer subject to the lien provided by this subsection (7), may exempt such property from the lien granted in this section to the state of Colorado and the department by requiring the employer to procure a certificate from the department certifying that such employer has posted with the department security for the payment of the amounts withheld under the provisions of this section. When such certificate is procured by the employer and transmitted to the owner, conditional vendor, or mortgagee of any of the assets of the employer, such assets shall thereafter be exempt from attachment under the lien granted to the state of Colorado and the department by this subsection (7).

(c) Any employer shall provide a copy of any lease with an owner to the department of revenue within ten days of seizure of the property and assets described in paragraph (a) of this subsection (7). The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in paragraph (a) of this subsection (7). The real or personal property of an owner who has made a bona fide lease to an employer shall be exempt from the lien created in paragraph (a) of this subsection (7) if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in paragraph (a) of this subsection (7); except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(c.5) Any coin-operated vending machine or video or other game machine shall be exempt from the lien created in paragraph (a) of this subsection (7) if:

(I) The machine is placed on the premises of an employer under the terms of a lease or other agreement under which the employer is given no right to become the owner of the machine;

(II) The machine is plainly marked in a location accessible to agents of the department of revenue with information sufficient to permit identification of the owner of said machine; and

(III) The owner of the machine has filed with the executive director a schedule listing the machine by serial number and including thereon the owner's full name and the address of his business and such other information as the executive director may require. To protect the anonymity of owners of property, the executive director may permit property covered by this paragraph (c.5) to be marked using numbers or other coded identification.

(d) Any employer who is in possession of property under the terms of a lease, which property is exempt from lien as provided in paragraph (c) of this subsection (7), may be required by the executive director to remit tax funds collected at more frequent intervals than would otherwise be required, but no more frequently than the employer's payroll period, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

(8) The entire amount of income from wages upon which tax was deducted and withheld shall be included in the gross income of the income tax return required to be made by the employee, the recipient of the wages, without exclusion of such amounts deducted and withheld under this section, and any tax so deducted and withheld shall be credited against the total income tax, as computed in the employee's return, made in accordance with the provisions of this section.

(9) Repealed.

(10) In the event the excess tax deducted and withheld is one dollar or less, no refund shall be made, unless a specific claim for refund is filed by the taxpayer at the time the return is filed. The excess, subject to being refunded, shall in no event and under no condition be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which the wages were received, and can only be credited against a tax accruing upon a return of wages from which such excess was deducted and withheld.

(11) Separate refunds may be made by the department to two taxpayers who have filed a joint return, at the written request of either, the amount payable to each taxpayer being proportioned upon the gross earnings of each as shall be established to the satisfaction of the department. If an employee entitled to a refund dies, payment of such refund shall be made in such manner as provided for by law for distribution of moneys payable by the state of Colorado to a decedent.

(12) (a) (I) Moneys remitted by employers under this section shall be deposited with the state treasurer and by him or her credited to a fund hereby established, denominated the "income tax withholding fund". Refunds as provided for by this section shall be made from this fund in the same manner as refunds are made under section 39-21-108. Except for moneys to be transferred to the state treasurer pursuant to section 39-21-108 (5), all unexpended balances on hand in said fund on June 30, 1971, and each June 30 thereafter, or at any time as shall be determined by the controller, with the approval of the state treasurer, shall be credited to the general fund of the state. The unexpended balance shall include all moneys that for any reason cannot be refunded. All warrants that cannot be delivered to the taxpayer and that are not presented for payment within six months from the date of issuance thereof shall be void, and the moneys represented thereby shall be included in the unexpended balance in said fund at the expiration of said year. Except as provided in subparagraph (II) of this paragraph (a), persons entitled to the refund of moneys represented by warrants that cannot be delivered to the taxpayer and that are not presented for payment within six months from the date of issuance thereof may file claims for refund at any time within four years from the date the income tax return that establishes the right to the refund was required to be filed. Claims for refund not filed within the prescribed four-year period shall not be allowed or paid by the department of revenue.

(II) On and after October 1, 2002, if the department of revenue has cancelled a warrant pursuant to section 39-21-108 that has not been presented and has forwarded to the state treasurer information and an amount of money equal to the amount of the warrant as required by section 39-21-108 (5), the taxpayer must file the claim for the amount of the refund with the state treasurer pursuant to the "Unclaimed Property Act", article 13 of title 38, C.R.S. The department and the state treasurer shall cooperate to ensure that any taxpayer who contacts the department of revenue to claim the amount of a refund represented by a cancelled warrant is provided with the information or assistance necessary to obtain the refund from the state treasurer.

(b) All of the additional interest derived from moneys deposited in the income tax withholding fund created in paragraph (a) of this subsection (12) as a result of the enactment of House Bill 91S2-1027 at the second extraordinary session of the fifty-eighth general assembly shall be credited to the general fund.

(13) The department is empowered to make rules and regulations for the enforcement of the provisions of this section, including rules and regulations for determining the amount, up to

but not exceeding the amount limited in this section, to be deducted and withheld by employers from wages of nonresident employees, only a part of whose wages are paid for services performed within the state of Colorado.

(14) Nothing in this section shall be construed to prevent any employee, with consent of his employer, from voluntarily subjecting himself to the provisions of this section, and in all such cases, same will be handled by the department of revenue in the same manner as those subjected by the provisions of this section.

(15) Repealed.

(16) (a) On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding certificate. A comparable withholding certificate filed pursuant to the internal revenue code shall be deemed to satisfy the filing requirement under this subsection (16). Where necessary to cause the proper amount to be withheld, the executive director may adjust the employee's withholding to the amount properly allowable under the internal revenue code.

(b) (I) To enforce the provisions of this section, the executive director may file with the employer a withholding certificate on behalf of the employee. Prior to the filing of such certificate, the executive director shall first notify the employee that the certificate previously filed by the employee is being examined and that the employee may submit satisfactory evidence pursuant to the internal revenue code within ten days of receipt of said notice as to the correct number of withholding exemptions and allowances. Should the executive director, after reviewing any evidence so submitted, find the certificate filed by the employee to be defective, the employer shall accept the certificate filed by the director in lieu of any certificate previously filed by the employee, and such certificate filed by the executive director shall thereafter form the basis for withholding wages as required by this section. The executive director may also require from the employer a copy of any withholding certificate signed by the employee.

(II) Any employer who fails to provide a copy of any withholding certificate signed by the employee required by the executive director shall be subject to a civil penalty of not more than five hundred dollars. Such civil penalty may be assessed and collected by the executive director.

(c) Any employee may request a hearing to protest such certificate filed on his behalf by the executive director. Such hearing shall be conducted pursuant to section 39-21-103, and any final determination shall be appealable in the district court in accordance with section 39-21-105.

(17) Any person making any payment of winnings which are subject to withholding for federal income tax purposes shall deduct and withhold from such payment for Colorado income tax purposes a percentage of such winnings established by rule and regulation of the department of revenue. The amount withheld shall be remitted to the department of revenue in the manner required pursuant to rules and regulations authorized in subsection (4) of this section.

(18) (a) Any person who makes a payment for services to any natural person that is not otherwise subject to state income tax withholding but that requires an information return, including but not limited to any payment for which internal revenue service form 1099-B, 1099-DIV, 1099-INT, 1099-MISC, 1099-OID, or 1099-PATR, the issuance of any of which allows taxpayer identification number verification through the taxpayer identification number matching program administered by the internal revenue service, or any other version of form 1099 is required, shall deduct and withhold state income tax at the rate of four and sixty-three one-hundredths percent if the person who performed the services:

(I) Fails to provide a validated taxpayer identification number; or

(II) Provides an internal revenue service-issued taxpayer identification number issued for nonresident aliens.

(b) Any person other than a natural person and any natural person who in the course of conducting a trade or business as a sole proprietor makes any payment for services to a natural person that is not reported on any information return shall deduct and withhold state income tax at the rate of four and sixty-three one-hundredths percent, unless the employer making payment has a validated taxpayer identification number from the person to whom payment is made.

(c) The requirement to withhold and deduct pursuant to paragraph (a) of this subsection (18) shall not apply to an individual who is exempt from federal withholding pursuant to a properly filed internal revenue service form 8233 if a copy of such form has been filed with the department of revenue.

(d) For purposes of all other provisions of this section, excluding paragraph (a) of subsection (3) of this section, a person who deducts and withholds state income tax from a person who performs services pursuant to the provisions of this subsection (18) shall be treated as an employer withholding and deducting wages from an employee, and such other provisions of this section shall apply accordingly. This paragraph (d) shall not be construed as making the person who performed the services an employee of the person who deducts and withholds state income tax for any other purpose in law.

(e) The executive director may promulgate rules to authorize any amounts deducted and withheld pursuant to this subsection (18) to be paid to the department of revenue as part of the state income tax return.

(f) For purposes of this subsection (18), "validated taxpayer identification number" means a social security number or an internal revenue service individual taxpayer identification number that has been confirmed by the person or employer making a payment to a person through the portal described in section 24-37.5-107, C.R.S., or through any other equally effective form of third-party verification approved by the department of revenue as having been assigned by the social security administration or the internal revenue service to the person to whom payment is made and, in the case of an individual taxpayer identification number, as not having been assigned as a taxpayer identification number issued for nonresident aliens.

(g) This subsection (18) shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(19) No amount is required to be deducted and withheld from an employee's wages pursuant to this section for income tax due to the state if the employee's withholding certificate indicates that the compensation is eligible to be subtracted from federal taxable income pursuant to section 39-22-104 (4)(t).

(20) No amount is required to be deducted and withheld from an employee's wages pursuant to this section for income tax due to the state if the employee's withholding certificate indicates that the compensation is eligible to be subtracted from federal taxable income pursuant to section 39-22-104 (4)(u).

**Source: L. 64:** R&RE, p. 784, § 1. **C.R.S. 1963:** § 138-1-68. **L. 69:** pp. 1134, 1136, §§ 1, 1. **L. 71:** pp. 1253, 1255, §§ 1, 1. **L. 73:** p. 1448, § 1. **L. 75:** (4) R&RE, p. 1494, § 1, effective July 14. **L. 76:** (15) added, p. 783, § 1, effective May 27. **L. 77:** (7)(c) amended, p. 1802, § 1, effective June 19; (2)(a), (4)(a), (4)(b), and (4)(d) amended, pp. 1405, 1800, §§ 4, 1, effective

July 1. **L. 78:** (15) repealed, p. 275, § 103, effective May 23. **L. 81:** (9) amended, p. 1864, § 5, effective June 8; (16) added, p. 1879, § 2, effective July 1. **L. 82:** (4)(a), (4)(b), and (4)(d) amended and (4)(c) repealed, pp. 566, 567, §§ 1, 2, effective January 1, 1983. **L. 83:** (17) added, p. 1526, § 2, effective July 1. **L. 84:** (17) amended, p. 1123, § 36, effective June 7. **L. 88:** (16)(a), (16)(b), and (17) amended, p. 1315, § 12, effective May 29. **L. 89:** (7)(c.5) added, p. 1509, § 1, effective April 6; (6) amended, p. 1501, § 6, effective July 1, 1990. **L. 91, 2nd Ex. Sess.:** (4) R&RE and (12) amended, p. 97, §§ 2, 3, effective January 1, 1992. **L. 92:** (7)(c) amended, p. 2200, § 3, effective April 16; (4)(a) and (6) amended, p. 2217, § 1, effective May 27. **L. 93:** (17) amended, p. 871, § 2, effective May 6; (2)(c), (4), and (7)(d) amended, p. 870, § 1, effective January 1, 1994. **L. 98:** (2)(b.5) added and (6) amended, p. 320, §§ 1, 2, effective April 17. **L. 99:** (2)(b.5) amended, p. 277, § 3, effective August 4. **L. 2001:** (10) amended, p. 234, § 4, effective August 8; (12)(a) amended, p. 619, § 6, effective August 8. **L. 2002:** (16)(b) amended, p. 531, § 3, effective August 7. **L. 2006, 1st Ex. Sess.:** (18) added, p. 34, § 2, effective January 1, 2008 (see editor's note). **L. 2009:** (9) repealed, (HB 09-1219), ch. 71, p. 241, § 2, effective March 25. **L. 2014:** (11) amended, (SB 14-019), ch. 10, p. 99, § 7, effective February 27; (19) added, (HB 14-1003), ch. 224, p. 838, § 4, effective August 6. **L. 2015:** (20) added, (HB 15-1181), ch. 233, p. 865, § 6, effective August 5. **L. 2017:** (4)(a) amended, (HB 17-1136), ch. 76, p. 237, § 1, effective March 23.

**Editor's note:** (1) Section 4 of House Bill 06S-1015 provides that the act enacting subsection (18) applies to services performed and obligations accrued on or after January 1, 2008, unless the portal described in § 24-37.5-107, Colorado Revised Statutes, is not accessible to a person seeking to verify whether a taxpayer identification number is valid on or before said date, in which case said subsection shall take effect on the January 1 that immediately follows the date on which the portal becomes accessible and shall apply to services performed and payment obligations accrued on or after said January 1.

(2) Section 9 of chapter 10 (SB 14-019), Session Laws of Colorado 2014, provides that changes to this section by the act apply to income tax years commencing on or after January 1, 2013, and any other income tax years that are open under § 39-21-107 or 39-21-108.

**Cross references:** (1) For the legislative declaration contained in the 1991 act amending subsections (4) and (12) in 1991, see section 1 of chapter 20 of the supplement to the Session Laws of Colorado 1991, Second Extraordinary Session.

(2) For the legislative declaration contained in the 2001 act amending subsection (10), see section 1 of chapter 95, Session Laws of Colorado 2001.

(3) For the legislative declaration in HB 14-1003, see section 1 of chapter 224, Session Laws of Colorado 2014.

(4) For the short title ("Colorado is Honoring Our Military Exemption (Colorado is HOME) Act") and the legislative declaration in HB 15-1181, see sections 1 and 2 of chapter 233, Session Laws of Colorado 2015.

**39-22-604.3. Innovation reinvestment - withholding - transfers - bioscience - clean technology - short title - legislative declaration - definitions - repeal.** (1) This section shall be known and may be cited as the "Colorado Bioscience and Clean Technology Innovation Reinvestment Act".

(2) (a) The general assembly hereby finds, determines, and declares that:

(I) Recent legislative initiatives to expand the bioscience and clean technology segments of the Colorado economy have been both economically successful and supportive of Colorado's higher education research institutions;

(II) Such initiatives have demonstrated the potential for establishing Colorado as a national leader in bioscience and clean technology;

(III) Colorado efforts have been recognized as best practices for economic development of these industry sectors;

(IV) Those efforts have also demonstrated the potential to expand the role of Colorado's higher education research institutions in these areas; and

(V) The partnerships created between higher education research institutions and industry through these initiatives provide a model for economic development.

(b) The general assembly therefore declares that it is in the best interest of the state to build on past successes and provide a long-term funding stream that enables the growth of the bioscience and clean technology industries in the state and to support Colorado's higher education research institutions.

(3) As used in this section, unless the context otherwise requires:

(a) "Bioscience and clean technology income tax withholding growth" means an amount equal to the withholding base subtracted from the prior year's withholding total.

(b) "Bioscience or clean technology industry code" means any of the following codes within the North American industry classification system established by the federal office of management and budget: 311221, 311222, 311223, 325193, 325199, 325221, 325311, 325312, 325314, 325320, 325411, 325412, 325413, 325414, 334510, 334516, 334517, 339111, 339112, 339113, 339114, 339115, 339116, 541380, 541710, 621511, 621512, 221111, 221114, 221115, 221116, 221117, 221118, 221330, 237110, 237130, 238220, 325188, 333414, 333611, 334413, 334512, 335312, 335911, 335999, 336111, 336510, 423720, 541620, 541690, 541712, and any successor codes.

(c) "Prior year's withholding total" means the total amount deducted and withheld from employees' wages and paid to the department of revenue pursuant to section 39-22-604 by employers with a clean technology industry code for the target year.

(d) "Target year" means 2013 with respect to the moneys required to be credited to the specified cash funds beginning on March 1, 2014, pursuant to subsection (4) of this section and one calendar year later for each successive year in which moneys are credited pursuant to said subsection (4).

(e) "Withholding base" means the annual average of the total amount deducted and withheld from employees' wages and paid to the department of revenue pursuant to section 39-22-604 by employers with a bioscience or clean technology industry code for the three calendar years prior to the target year.

(4) Notwithstanding any provision of law to the contrary, beginning March 1, 2014, and March 1 of the next nine years thereafter, the state treasurer shall credit an amount equal to one-half of the bioscience and clean technology income tax withholding growth from the moneys remitted by employers to the department of revenue pursuant to section 39-22-604 to the advanced industries acceleration cash fund created in section 24-48.5-117 (7), C.R.S.

(5) No later than February 1, 2014, and February 1 of the next nine years thereafter, the executive director shall notify the state treasurer of the withholding base and the prior year's

withholding total that apply to the moneys required to be credited beginning on March 1 of that year.

(6) This section is repealed, effective July 1, 2024.

**Source: L. 2011:** Entire section added, (SB 11-047), ch. 213, p. 934, § 1, effective July 1, 2012. **L. 2013:** (3)(b) and (4) amended, (HB 13-1001), ch. 227, p. 1085, § 7, effective August 7.

**Cross references:** In 2013, subsections (3)(b) and (4) were amended by the "Colorado Advanced Industries Acceleration Act". For the short title, see section 1 of chapter 227, Session Laws of Colorado 2013.

**39-22-604.5. Withholding tax - transfers of Colorado real property - nonresident transferors.** (1) Except as otherwise provided in this section, in the case of any conveyance of a Colorado real property interest, the title insurance company or its authorized agent or any attorney, bank, savings and loan association, savings bank, corporation, partnership, association, joint stock company, trust, or unincorporated organization or any combination thereof, acting separately or in concert, that provides closing and settlement services as defined herein shall be required to withhold an amount equal to two percent of the sales price of the Colorado real property interest conveyed or the net proceeds resulting from such conveyance, whichever is less, when:

(a) The transferor is a person and either the return required to be filed with the secretary of the treasury pursuant to section 6045 (e) of the internal revenue code indicates or the authorization for the disbursement of the funds resulting from such transaction instructs that such funds be disbursed to a transferor with a last-known street address outside the boundaries of this state at the time of the transfer of the title to such Colorado real property interest or to the escrow agent of such transferor; or

(b) (I) The transferor is a corporation which immediately after the transfer of the title to the Colorado real estate interest has no permanent place of business in Colorado.

(II) For purposes of this section, a corporation has no permanent place of business in Colorado if all of the following apply:

(A) Such corporation is a foreign corporation;

(B) Such corporation does not qualify pursuant to law to transact business in Colorado; and

(C) Such corporation does not maintain and staff a permanent office in Colorado.

(2) No title insurance company or its authorized agent or any attorney, bank, savings and loan association, savings bank, corporation, partnership, association, joint stock company, trust, or unincorporated organization or any combination thereof, acting separately or in concert, that provides closing and settlement services as defined herein shall be required to withhold any amount pursuant to this section:

(a) If the sales price of the Colorado real property conveyed does not exceed one hundred thousand dollars;

(b) When the transferee is a bank or corporate beneficiary under a mortgage or beneficiary under a deed of trust and the Colorado real property interest is acquired in judicial or nonjudicial foreclosure or by deed in lieu of foreclosure;

(c) If the title insurance company or its authorized agent or any attorney, bank, savings and loan association, savings bank, corporation, partnership, association, joint stock company, trust, or unincorporated organization or any combination thereof, acting separately or in concert, that provides closing and settlement services as defined herein in good faith relies upon a written affirmation executed by the transferor, certifying under penalty of perjury one of the following:

(I) That the transferor, if a person, is a resident of Colorado;

(II) That the transferor, if a corporation, has a permanent place of business in Colorado;

(III) That the Colorado real property being conveyed is the principal residence of the transferor; or

(IV) That the transferor will not owe tax reasonably estimated to be due pursuant to this article from the inclusion of the actual gain required to be recognized on the transaction in the gross income of the transferor.

(3) Any title insurance company or its authorized agent which is required to withhold any amount pursuant to this section and fails to do so shall be liable for the greater of the following amounts for such failure to withhold:

(a) Five hundred dollars;

(b) Ten percent of the amount required to be withheld pursuant to this section, not to exceed two thousand five hundred dollars.

(4) (a) Amounts withheld and payments made in accordance with this section shall be reported and remitted to the department of revenue in such form and at such time as specified by rule and regulation of the executive director. Written affirmations executed pursuant to paragraph (c) of subsection (2) of this section shall be submitted to the department of revenue pursuant to procedures specified by rule and regulation of the executive director.

(b) All of the other provisions of this article shall apply to and be effective as to the provisions of this section to the extent to which they are not inconsistent with this section, and all of the remedies available to the department of revenue for the administration, assessment, enforcement, and collection of tax under other sections of this article and article 21 of this title shall be available to the department of revenue and shall apply to the amounts required to be deducted and withheld pursuant to the provisions of this section, and all of the penalties, both civil and criminal, shall apply to this section.

(5) Whenever a title insurance company or its authorized agent provides escrow services as directed by the parties in compliance with the withholding requirements of this section, such title insurance company or its authorized agent shall charge the parties pursuant to the rates in effect at the time and filed with the division of insurance of the department of regulatory agencies as required by law.

(6) For purposes of this section, unless the context otherwise requires:

(a) "Authorized agent" means a title insurance agent, as defined in section 10-11-102 (9), C.R.S., who is responsible for closing and settlement services in the transaction.

(b) "Closing and settlement services" means closing and settlement services as defined in section 10-11-102 (3.5), C.R.S., and section 38-35-125, C.R.S.

(c) "Colorado real property interest" means an interest in real property located in Colorado and defined in section 897 (c)(1)(A)(i) of the internal revenue code.

(d) "Escrow agent" means an agent for the purpose of receiving and transferring funds to a principal.

(e) "Person" means any individual, estate, or trust who may be subject to taxation pursuant to part 1 of this article.

(f) "Sales price" means the sum of all of the following:

(I) The cash paid or to be paid, but shall not include stated or unstated interest or original issue discount as determined pursuant to sections 1271 to 1275 of the internal revenue code;

(II) The fair market value of other property transferred or to be transferred;

(III) The outstanding amount of any liability assumed by the transferee to which the Colorado real property interest is subject immediately before and after the transfer.

(g) "Title insurance company" means the title insurance company, as defined in section 10-11-102 (10), C.R.S., responsible for closing and settlement services in the transaction.

**Source: L. 92:** Entire section added, p. 2274, § 1, effective July 1. **L. 96:** (6)(e) amended, p. 337, § 3, effective April 16. **L. 2016:** (2)(c)(III) amended, (SB 16-189), ch. 210, p. 794, § 111, effective June 6.

**39-22-605. Failure by individual to pay estimated income tax.** (1) Every individual subject to taxation under the provisions of this article shall make and file estimated payments in the amounts and as otherwise specified in this section.

(2) As used in this section, unless the context otherwise requires:

(a) An individual is a "farmer" or "fisherman" for any taxable year if:

(I) The individual's gross income from farming or fishing for the taxable year is at least two-thirds of the total gross income from all sources for the taxable year; or

(II) The individual's gross income from farming or fishing shown on the return of the individual for the preceding taxable year is at least two-thirds of the total gross income from all sources shown on such return.

(b) "Return" means a Colorado return required to be made or filed under section 39-22-601.

(c) "Tax" or "tax liability" means the tax imposed under this article minus the credits against tax provided by this article other than the credits against tax for withholding pursuant to sections 39-22-604 and 39-22-604.5 and credits against tax for the sales tax refund pursuant to section 39-22-2003.

(3) Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under this article for the taxable year an amount determined by applying the rate of interest established under section 39-21-110.5 to the amount of the underpayment for the period of the underpayment. The penalty imposed by this section shall be the only penalty imposed for underpayment of the estimated tax required by this section.

(4) For purposes of subsection (3) of this section:

(a) The amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(b) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is earlier:

(I) The fifteenth day of the fourth month following the close of the taxable year; or

(II) With respect to any portion of the underpayment, the date on which such portion is paid.

(c) For purposes of subparagraph (II) of paragraph (b) of this subsection (4), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(5) For purposes of this section:

(a) There shall be four required installments for each taxable year.

(b) Except as provided in paragraph (c) of this subsection (5), in the case of the following required installments, the due date shall be as follows:

| **Installment** | **Due date** |
|---|---|
| 1st | April 15 |
| 2nd | June 15 |
| 3rd | September 15 |
| 4th | January 15 of the following taxable year |

(c) If the due date of any installment payment required pursuant to this section falls on a legal federal holiday, then the due date shall be delayed and due on the adjusted federal due date.

(6) For purposes of this section, the amount of the required installments shall be as follows:

(a) The amount of any required installment shall be twenty-five percent of the required annual payment.

(b) For purposes of paragraph (a) of this subsection (6), the term "required annual payment" means the lesser of:

(I) Seventy percent of the taxpayer's actual Colorado tax liability shown on the return for the taxable year or, if no return is filed, seventy percent of the tax for such year; or

(II) (A) One hundred percent of the taxpayer's actual Colorado tax liability shown on the return of the individual for the preceding taxable year.

(B) Sub-subparagraph (A) of this subparagraph (II) shall not apply if the preceding taxable year was not a taxable year of twelve months or if the individual did not file a Colorado return for such preceding taxable year.

(c) Limitation on use of preceding year's tax:

(I) If the taxpayer's federal adjusted gross income shown on the return of the individual for the preceding taxable year beginning in any calendar year exceeds one hundred fifty thousand dollars, sub-subparagraph (A) of subparagraph (II) of paragraph (b) of this subsection (6) shall be applied by substituting one hundred ten percent for one hundred percent.

(II) In the case of a taxpayer who may legally file a joint federal return but actually files a separate return for the taxable year for which the amount of the installment is being determined, subparagraph (I) of this paragraph (c) shall be applied by substituting seventy-five thousand dollars for one hundred fifty thousand dollars.

(III) For purposes of returns for the 2001 tax year, the limitation described in this paragraph (c) shall not apply.

(d) When the taxpayer has elected annualized installments for the payment of federal income tax, the amount of the required installment pursuant to this section and the calculation of any addition to tax shall be determined under rules promulgated by the department of revenue.

(7) (a) No addition to tax shall be imposed under subsection (3) of this section for any taxable year if the tax shown on the return for such taxable year or, if no return is filed, the tax,

reduced by the credits allowable under sections 39-22-604, 39-22-604.5, and 39-22-2003, is less than one thousand dollars.

(b) No addition to tax shall be imposed under subsection (3) of this section for any taxable year if:

(I) The preceding taxable year was a taxable year of twelve months;

(II) The individual did not have any liability for tax for the preceding taxable year; and

(III) The individual was a resident of Colorado throughout the preceding taxable year.

(c) No addition to tax shall be imposed under subsection (3) of this section with respect to any underpayment to the extent the executive director determines that the underpayment was due to good cause shown by the taxpayer.

(d) No addition to tax shall be imposed under subsection (3) of this section with respect to any underpayment if the executive director determines that:

(I) The taxpayer either retired after having attained age sixty-two or became disabled in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year; and

(II) Such underpayment was due to reasonable cause and not to willful neglect.

(8) (a) For purposes of applying this section, the amount of the credits allowed under sections 39-22-604, 39-22-604.5, and 39-22-2003 for the taxable year shall be deemed a payment of estimated tax and an equal part of such amount shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(b) The taxpayer may apply paragraph (a) of this subsection (8) separately with respect to the following:

(I) Wage withholding; and

(II) All other amounts withheld for which credits are allowed under sections 39-22-604, 39-22-604.5, and 39-22-2003.

(9) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (3) of this section with respect to any underpayment of the fourth required installment for the taxable year.

(10) For purposes of this section, if an individual is a farmer or fisherman for any taxable year:

(a) There shall be only one required installment for the taxable year;

(b) The due date for the installment shall be January 15 of the following taxable year;

(c) The amount of the installment shall be equal to the required annual payment determined under paragraph (b) of subsection (6) of this section by substituting fifty percent for seventy percent and without regard to paragraph (c) of said subsection (6); and

(d) Subsection (9) of this section shall be applied by:

(I) Substituting March 1 for January 31; and

(II) Treating the required installment described in paragraph (a) of this subsection (10) as the fourth required installment.

(11) (a) In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months that correspond thereto.

(b) This section shall be applied to taxable years of less than twelve months in accordance with rules prescribed by the department of revenue.

(12) Two taxpayers who file a joint federal declaration of estimated tax shall file a joint Colorado declaration of estimated tax. In such case, if such taxpayers do not file a joint Colorado return for the taxable year, the estimated tax may be treated as the estimated tax of either taxpayer or may be divided between them.

(13) All of the provisions of this section shall also apply to nonresident or part-year resident taxpayers.

(14) All of the provisions of this article and article 21 of this title relating to the powers of the executive director for the administration, assessment, and enforcement of taxes required to be paid under this article shall apply to the provisions of this section.

(15) The department of revenue shall prescribe such rules as may be necessary to carry out the purposes of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

**Source: L. 64:** R&RE, p. 789, § 1. **C.R.S. 1963:** § 138-1-69. **L. 77:** (1) R&RE and (2) and (6) amended, p. 1805, §§ 1, 2, effective January 1, 1978. **L. 79:** (2) amended, p. 1458, § 1, effective July 1. **L. 81:** (5) amended, p. 1865, § 6, effective June 8; (1) and (6) amended, p. 1881, § 1, effective January 1, 1982. **L. 86:** (1), (5), and (6) amended and (4) R&RE, pp. 1125, 1126, §§ 1, 3, 2, effective January 1, 1987. **L. 88:** (4)(d) added, p. 1319, § 1, effective April 20. **L. 89:** (2) R&RE, p. 1511, § 1, effective January 1, 1990. **L. 2001:** Entire section R&RE, p. 877, § 1, effective August 8. **L. 2011:** (5)(b) amended and (5)(c) added, (HB 11-1260), ch. 59, p. 155, § 1, effective March 25. **L. 2014:** (6)(c)(II) amended, (SB 14-019), ch. 10, p. 99, § 8, effective February 27.

**Editor's note:** Section 9 of chapter 10 (SB 14-019), Session Laws of Colorado 2014, provides that changes to this section by the act apply to income tax years commencing on or after January 1, 2013, and any other income tax years that are open under § 39-21-107 or 39-21-108.

**Cross references:** For withholding tax, see § 39-22-604.

**39-22-606. Failure by corporation to pay estimated income tax.** (1) Every corporation subject to taxation under the provisions of this article and article 29 of this title shall make and file estimated payments in the amounts as specified in this section.

(2) As used in this section, unless the context otherwise requires:

(a) "Return" means a Colorado return required to be made or filed under section 39-22-601 or 39-29-112.

(b) "Tax" or "tax liability" means:

(I) (A) The tax imposed under this article; minus

(B) The credits against tax provided by this article. For purposes of this section, credits include all credits without regard to whether they are prepayment credits or refunds of excess state revenue; and

(II) (A) The tax imposed under article 29 of this title; minus

(B) The credits against tax provided by article 29 of this title other than the credit against tax for withholding provided pursuant to section 39-29-111. For purposes of this section, credits include all credits without regard to whether they are prepayment credits.

(3) (a) Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under this article and article 29 of this title for the taxable year an amount determined by applying the rate of interest established under section 39-21-110.5 to the amount of the underpayment for the period of the underpayment.

(b) For purposes of this subsection (3), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(c) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is earlier:

(I) The fifteenth day of the fourth month following the close of the taxable year; or

(II) With respect to any portion of the underpayment, the date on which such portion is paid.

(d) For purposes of subparagraph (II) of paragraph (c) of this subsection (3), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(4) (a) Except as otherwise set forth in paragraph (b) of this subsection (4), for purposes of this section, there shall be four required installments for each taxable year. The due dates for such installments shall be as follows:

| **Installment** | **Due date** |
|---|---|
| 1st | April 15 |
| 2nd | June 15 |
| 3rd | September 15 |
| 4th | December 15 |

(b) (I) If the due date of any installment payment required pursuant to this section falls on a legal federal holiday, then the due date shall be delayed and due on the adjusted federal due date.

(II) On and after July 1, 2007, for purposes of this section, there shall be twelve installments for the tax imposed pursuant to section 39-29-105 for each taxable year. The due date for such installments shall be the fifteenth day of each month, and the installments shall be paid electronically. The department of revenue shall promulgate rules in accordance with article 4 of title 24, C.R.S., governing electronic payment.

(5) (a) For purposes of this section, the amount of the required installments set forth in paragraph (a) of subsection (4) of this section for the tax imposed under this article and for the tax imposed under article 29 of this title shall be twenty-five percent of the required annual payment for each such tax.

(a.5) On and after July 1, 2007, for purposes of this section, the amount of the required installments set forth in paragraph (b) of subsection (4) of this section for the tax imposed pursuant to section 39-29-105 shall be one-twelfth of the required annual payment for the tax.

(b) For purposes of paragraphs (a) and (a.5) of this subsection (5), "required annual payment" means the lesser of:

(I) Seventy percent of the taxpayer's actual Colorado tax liability shown on the return for the taxable year or, if no return is filed, seventy percent of the tax for such year; or

(II) (A) One hundred percent of the taxpayer's actual Colorado tax liability shown on the return of the corporation for the preceding taxable year.

(B) Sub-subparagraph (A) of this subparagraph (II) shall not apply if the preceding taxable year was not a taxable year of twelve months or if the taxpayer did not file a Colorado return for such preceding taxable year.

(c) (I) If the taxpayer is a large corporation as defined in section 6655 of the internal revenue code, sub-subparagraph (A) of subparagraph (II) of paragraph (b) of this subsection (5) shall not apply; except that the first required installment set forth in paragraph (a) of subsection (4) of this section for any taxable year may be based on twenty-five percent of the taxpayer's actual Colorado tax liability shown on the return of the corporation for the preceding year and except that the first required installment set forth in paragraph (b) of subsection (4) of this section for any taxable year may be based on one-twelfth of the taxpayer's actual Colorado tax liability shown on the return of the corporation for the preceding year. Any reduction in the first installment pursuant to this subparagraph (I) shall be recaptured by increasing the amount of the next required installment.

(II) For purposes of returns and estimated payments for the 2001 tax year, the limitation on the use of the preceding year's tax liability pursuant to subparagraph (I) of this paragraph (c) shall not apply.

(d) When the taxpayer has elected annualized installments or adjusted seasonal installments for the payment of federal income tax, the amount of the required installment pursuant to this section and the calculation of any addition to tax shall be determined under rules promulgated by the department of revenue.

(6) (a) (I) No addition to tax shall be imposed under subsection (3) of this section for any taxable year if the tax imposed under part 3 of this article shown on the return for such taxable year or, if no return is filed, the tax, is less than five thousand dollars.

(II) No addition to tax shall be imposed under subsection (3) of this section for any taxable year if the tax imposed under article 29 of this title shown on the return for such taxable year, or if no return is filed, the tax, reduced by the credit allowable under section 39-29-111, is less than five thousand dollars.

(b) No addition to tax shall be imposed under subsection (3) of this section with respect to any underpayment to the extent the executive director determines that the underpayment was due to good cause shown by the taxpayer.

(7) (a) Except as otherwise provided in paragraph (b) of this subsection (7), for purposes of applying this section, the amount of the credit allowed pursuant to section 39-29-111 for the taxable year shall be deemed a payment of estimated tax and an equal part of such amount shall be deemed paid on each due date for such taxable year.

(b) If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(8) (a) In applying this section to a taxable year beginning on any date other than January 1, the corresponding months shall be substituted for the months specified in this section.

(b) This section shall be applied to taxable years of less than twelve months in accordance with rules prescribed by the department of revenue.

(9) All of the provisions of this article, article 29 of this title, and article 21 of this title relating to the powers of the executive director for the administration, assessment, and enforcement of taxes required to be paid pursuant to said articles shall apply to the provisions of this section.

(10) The department of revenue shall prescribe such rules as may be necessary to carry out the provisions of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

**Source: L. 64:** R&RE, p. 791, § 1. **C.R.S. 1963:** § 138-1-70. **L. 77:** (1) and (10) amended, p. 1855, § 12, effective January, 1978. **L. 81:** (5) amended, p. 1865, § 7, effective June 8; (8)(b) and (10) amended, p. 1881, § 2, effective January 1, 1982. **L. 2001:** Entire section R&RE, p. 881, § 2, effective August 8. **L. 2007:** (4), (5)(a), IP(5)(b), and (5)(c)(I) amended and (5)(a.5) added, p. 1407, § 2, effective May 30. **L. 2011:** (4)(b) amended, (HB 11-1260), ch. 59, p. 155, § 2, effective March 25.

**39-22-607. Estimated tax deposited with treasurer.** All moneys remitted as payments of estimated tax shall be deposited daily with the state treasurer and shall be allocated in accordance with the provisions of section 39-22-623.

**Source: L. 64:** R&RE, p. 794, § 1. **C.R.S. 1963:** § 138-1-71.

**39-22-608. Form, place, and date of filing return - extension - electronic filing.** (1) All returns required by this article shall be made as nearly as practicable in the same form as the corresponding form of income tax return required by the United States.

(2) All returns shall be filed in the office of the executive director on or before the fifteenth day of the fourth month following the close of the taxable year. The executive director may grant a reasonable extension of time for filing returns and for paying the tax under such rules and regulations as he shall prescribe.

(3) Residents who are traveling or temporarily residing outside the United States at the time provided in subsection (2) of this section shall be allowed an automatic extension to and including the fifteenth day of the sixth month following the close of the taxable year in which to file returns.

(4) Notwithstanding subsection (2) of this section, if the time for electronic filing of a federal income tax return pursuant to the internal revenue code is changed to a date later than the date specified in subsection (2) of this section, the executive director may adopt a rule changing the time for electronic filing of a return required by this article to the same date.

**Source: L. 64:** R&RE, p. 794, § 1. **C.R.S. 1963:** § 138-1-72. **L. 71:** p. 1256, § 1. **L. 89:** (2) amended, p. 1502, § 7, effective July 1, 1990. **L. 2003:** (4) added, p. 752, § 1, effective March 25.

**39-22-609. Payment of tax - applicable when.** (1) All taxes imposed under the provisions of this article shall be paid on the fifteenth day of the fourth month following the close of the taxable year; but the executive director may grant any taxpayer, upon application therefor, an extension of time for the payment of the tax, or any portion thereof, with interest to

be charged on the unpaid balance at a rate imposed under section 39-21-110.5 for the period of such extension. No extension of time shall be authorized for payment of amounts of tax due upon deficiency assessments, or on amended or delinquent returns.

(2) Payment of the estimated income tax or any installment thereof shall be considered payment on account of the income taxes imposed by this article.

**Source: L. 64:** R&RE, p. 795, § 1. **C.R.S. 1963:** § 138-1-73. **L. 81:** (1) amended, p. 1865, § 8, effective June 8.

**39-22-610. Relief for members of the armed forces of the United States - when.** (1) The period of time commencing with the declaration of war by congress and ending twelve months after the termination of any such declared war during which an individual is a member of the armed forces of the United States, shall be disregarded in determining, under the provisions of this article, any income tax liability, including any interest, penalty, or additional tax, of any such individual, whether any act required of or permitted by such individual or the state of Colorado, in respect to the income tax liability, was performed within the time prescribed therefor; but this section shall not revive any right or liability previously barred by law.

(2) The period of time during which an individual is serving in the armed forces of the United States or in support thereof in an area designated by presidential order as a combat zone, and a period of one hundred eighty days after such service, shall be disregarded in determining under the provisions of this article any income tax liability, including any interest, penalty, or additional tax, of any such individual, whether any act required of or permitted by such individual or the state of Colorado, in respect to such income tax liability, was performed within the time prescribed therefor.

**Source: L. 64:** R&RE, p. 795, § 1. **C.R.S. 1963:** § 138-1-74. **L. 71:** p. 1256, § 2.

**39-22-611. Property exempt from ad valorem taxes.** Notwithstanding any other provisions of law, all intangible personal property, whether or not owned by a resident of Colorado, and whether or not such property or evidence thereof is situated or held or has its legal situs within the state, shall be exempt from ad valorem tax imposed by the state of Colorado, or by any political subdivision thereof; but nothing in this section shall be construed to repeal, or in any way affect, the use or inclusion of intangible property other than licenses granted by the federal communications commission to a wireless carrier, as defined in section 29-11-101, C.R.S., as a factor in arriving at the valuation of public utility property assessed by the property tax administrator under provisions of articles 1 to 13 of this title.

**Source: L. 64:** R&RE, p. 795, § 1. **C.R.S. 1963:** § 138-1-75. **L. 98:** Entire section amended, p. 1267, § 2, effective June 1. **L. 2004:** Entire section amended, p. 1209, § 92, effective August 4. **L. 2008:** Entire section amended, p. 685, § 6, effective August 5.

**39-22-612. Certificate of nonresidence. (Repealed)**

**Source: L. 64:** R&RE, p. 795, § 1. **C.R.S. 1963:** § 138-1-76. **L. 77:** Entire section repealed, p. 1779, § 2, effective July 1.

**39-22-613. Oath and affidavit. (Repealed)**

**Source: L. 64:** R&RE, p. 796, § 1. **C.R.S. 1963:** § 138-1-77. **L. 77:** Entire section repealed, p. 1779, § 2, effective July 1.

**39-22-614. Contents of application. (Repealed)**

**Source: L. 64:** R&RE, p. 796, § 1. **C.R.S. 1963:** § 138-1-78. **L. 77:** Entire section repealed, p. 1779, § 2, effective July 1.

**39-22-615. Duration and renewal of certificate. (Repealed)**

**Source: L. 64:** R&RE, p. 796, § 1. **C.R.S. 1963:** § 138-1-79. **L. 77:** Entire section repealed, p. 1779, § 2, effective July 1.

**39-22-616. Fees. (Repealed)**

**Source: L. 64:** R&RE, p. 797, § 1. **C.R.S. 1963:** § 138-1-80. **L. 77:** Entire section repealed, p. 1779, § 2, effective July 1.

**39-22-617. Exemption of holder of certificate. (Repealed)**

**Source: L. 64:** R&RE, p. 797, § 1. **C.R.S. 1963:** § 138-1-81. **L. 77:** Entire section repealed, p. 1779, § 2, effective July 1.

**39-22-618. False statements deemed perjury. (Repealed)**

**Source: L. 64:** R&RE, p. 797, § 1. **C.R.S. 1963:** § 138-1-82. **L. 77:** Entire section repealed, p. 1779, § 2, effective July 1.

**39-22-619. Certificate improperly procured. (Repealed)**

**Source: L. 64:** R&RE, p. 797, § 1. **C.R.S. 1963:** § 138-1-83. **L. 77:** Entire section repealed, p. 1779, § 2, effective July 1.

**39-22-620. Review of action of executive director. (Repealed)**

**Source: L. 64:** R&RE, p. 798, § 1. **C.R.S. 1963:** § 138-1-84. **L. 77:** Entire section repealed, p. 1779, § 2, effective July 1.

**39-22-621. Interest and penalties.** (1) If any tax due under this article is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate imposed under section 39-21-110.5 from the due date thereof, in addition to any penalties which may be imposed by other provisions of this section. Interest on any deficiency in tax shall begin to accrue on the date prescribed in this article for payment of the tax.

(2) (a) If any person fails to file a return at the time required by the provisions of this article and no intent to evade the tax exists, and if there is a balance due to be paid with such return, there shall be collected as a penalty the sum of five dollars for such failure or five percent of the proper amount of tax on such return if the failure is for not more than one month, with an additional one-half percent for each additional month or fraction thereof during which such failure continues, not exceeding twelve percent in the aggregate, whichever is greater.

(b) If any person fails to pay any tax by the due date under the provisions of this article, there shall be collected as a penalty the sum of five dollars for such failure or five percent of the amount of such tax if the failure is for not more than one month, with an additional five-tenths of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twelve percent in the aggregate, whichever is greater.

(c) As used in paragraphs (a) and (b) of this subsection (2), "tax" means the net amount of tax required to be shown on the return reduced by any amount paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return. If the penalties provided for in paragraphs (a) and (b) of this subsection (2) both apply, then only the larger of the two penalties shall be assessed.

(d) If any person fraudulently or willfully fails to file any return, there shall be collected as a penalty for such failure the sum of seventy-five dollars or one hundred percent of the amount of the tax, if any, whichever is greater.

(e) If any person files a fraudulent, frivolous, or willfully false return, there shall be collected as a penalty the sum of one hundred fifty dollars or one hundred fifty percent of the amount of the tax, if any, whichever is greater.

(f) If, after determination and assessment of any tax imposed by this article, any person fails to pay the same within the time limited by any notice and demand sent to him by the executive director, there shall be collected as a penalty for such failure a sum equal to fifteen percent of the amount of the tax demanded.

(g) If any person fraudulently fails to pay any tax when due under the provisions of this article or willfully seeks to evade the payment thereof, there shall be collected as a penalty for such failure a sum equal to one hundred fifty percent of the amount of the tax.

(g.5) (I) If a tax return or a claim for refund is prepared, for compensation, by a person other than the taxpayer and if an understatement of liability with respect to such return or claim is due to the preparer's willful or reckless disregard of applicable laws or rules, as evidenced by the repeated assertion of a position that the preparer knew or should have known did not have a realistic possibility of being sustained on its merits, there shall be collected from the preparer a penalty of five hundred dollars. If the tax return preparer is employed by another person in the business of tax return preparation and if the employer either ordered the understatement of liability or had knowledge of the understatement of liability and did not attempt to prevent the tax return preparer from making the understatement of liability, an equivalent penalty may also be collected from the employer. A separate penalty shall be collected for each tax return or claim for refund prepared as described in this paragraph (g.5).

(II) This paragraph (g.5) shall not apply to:

(A) A certified public accountant who is permitted to practice under article 2 of title 12, C.R.S. If the executive director becomes aware of conduct by a tax return preparer exempted by this subparagraph (II) that would, but for such exemption, subject the tax return preparer to a

penalty under subparagraph (I) of this paragraph (g.5), the executive director may disclose the name of such tax return preparer to the state board of accountancy.

(B) A person who is regularly or continuously employed by another and, acting at the direction of the employer, prepares that employer's return or claim for refund; or

(C) A person who furnishes only typing, reproducing, or other ministerial or administrative assistance to a tax return preparer.

(h) If any part of any deficiency is due to negligence or disregard of the laws or rules or regulations but without intent to defraud, twenty-five percent of the total amount of the deficiency, in addition to such deficiency, shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(i) All of the penalties provided in paragraphs (a) to (h) of this subsection (2) shall be cumulative and shall be collected at the same time and in the same manner as the tax.

(j) The executive director, for good cause, may waive or reduce any penalties assessed pursuant to this article and interest imposed in excess of the rate imposed pursuant to section 39-21-110.5, upon making a record of his reasons therefor.

(k) The provisions of this section shall not apply to any estimated tax required to be paid by or under the provisions of sections 39-22-605 and 39-22-606.

(3) (a) Any person required under this article or required by regulations made under authority thereof, to make a return, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of any tax imposed by this article, who willfully fails to make such return, keep such records, or supply such information at the time required by law or regulations, in addition to other penalties provided by law, shall be punished as provided in section 39-21-118.

(b) Any person required under this article to collect, account for, and pay over any tax imposed by this article, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully fails to pay any tax, or in any manner evades or defeats any tax imposed by this article or the payment thereof, in addition to other penalties provided by law, shall be punished as provided in section 39-21-118.

(c) "Person", as used in this subsection (3), includes an officer or employee of a corporation or a member or employee of a partnership or limited liability company, who as such an officer, employee, or member is under a duty to perform the act in respect to which the violation occurs.

**Source: L. 64:** R&RE, p. 799, § 1. **C.R.S. 1963:** § 138-1-87. **L. 75:** (2) R&RE, p. 1496, § 1, effective February 27. **L. 77:** (3)(b) amended, p. 886, § 73, effective July 1, 1979. **L. 81:** (1) and (2)(a) amended, p. 1865, § 9, effective June 8 . **L. 85:** (2)(d) to (2)(g), (2)(j), (3)(a), and (3)(b) amended, p. 1254, § 5, effective January 1, 1986. **L. 90:** (3)(c) amended, p. 457, § 37, effective April 18. **L. 2002:** (2)(e) amended, p. 531, § 4, effective August 7. **L. 2008:** (2)(g.5) added, p. 433, § 2, effective July 1.

**Editor's note:** The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

**39-22-622. Refunds.** (1) A reserve, in an amount to be determined periodically by the controller, shall be set aside and maintained by the state treasurer from taxes collected under this article and held by the state treasurer for the prompt payment of all refunds.

(2) (a) The department of revenue shall pay refunds within the applicable time period specified in paragraph (b) of this subsection (2). For purposes of this subsection (2), the date of filing shall be the date of receipt of any income tax return by the department of revenue; except that the date of filing of any income tax return received during the month of April shall be deemed to be May 1.

(b) (I) Refunds for income tax returns filed by January 31 of any given year shall be made within fourteen calendar days of the date of filing.

(II) Refunds for income tax returns filed after January 31 but prior to or on the last day of February of any given year shall be made within twenty-one calendar days of the date of filing.

(III) Refunds for income tax returns filed after the last day of February but prior to or on March 31 of any given year shall be made within twenty-eight calendar days of the date of filing.

(IV) Refunds for income tax returns filed after March 31 of any given year shall be made within forty-five calendar days of the date of filing.

(3) If any refund due under this article is not paid when due, interest shall be added thereto at the rate imposed under section 39-21-110.5 from the due date of the refund, as prescribed in subsection (2) of this section, until the refund is mailed to the taxpayer by the department of revenue. In addition to the interest, a penalty equal to five percent of the amount of tax to be refunded shall be added.

(4) (a) The provisions of subsection (2) of this section shall not apply:

(I) To any return that is being audited;

(II) To any return that may take longer than normal to process due to the mathematical or clerical errors contained in said return;

(III) To unforeseen delays caused by the failure of processing equipment;

(IV) Because of a tax credit allowed in section 39-22-531;

(V) Because the taxpayer claimed an enterprise zone tax credit pursuant to article 30 of this title 39 and the department of revenue is awaiting confirmation from the Colorado office of economic development that the taxpayer is eligible for such credit; or

(VI) To any return where there is a suspicion of identity theft or other refund-related fraud.

(b) The department of revenue shall make a determination, in good faith, whether any of the exceptions set forth in subsection (4)(a) of this section apply.

(5) Repealed.

**Source: L. 64:** R&RE, p. 803, § 1. **C.R.S. 1963:** § 138-1-90. **L. 65:** p. 1131, § 1 (1). **L. 81:** Entire section amended, p. 1866, § 10, effective June 8. **L. 91:** (5) added, p. 1999, § 2, effective May 1. **L. 91, 2nd Ex. Sess.:** (2) amended, p. 98, § 4, effective January 1, 1992. **L. 99:** (5) repealed, p. 629, § 42, effective August 4. **L. 2009:** (2) and (4) amended, (HB 09-1219), ch. 71, p. 242, § 3, effective March 25; (4) amended, (HB 09-1001), ch. 220, p. 1000, § 2, effective August 5. **L. 2010:** (4) amended, (SB 10-162), ch. 395, p. 1879, § 5, effective January 1, 2012. **L. 2017:** (4) amended, (SB 17-194), ch. 93, p. 284, § 1, effective March 30.

**Editor's note:** Amendments to subsection (4) by House Bill 09-1219 and House Bill 09-1001 were harmonized.

**Cross references:** For the legislative declaration contained in the 1991 act amending subsection (2), see section 1 of chapter 20 of the supplement to the Session Laws of Colorado 1991, Second Extraordinary Session.

**39-22-623. Disposition of collections.** (1) The proceeds of all moneys collected under this article, less the reserve retained for refunds, shall be credited as follows:

(a) (I) Repealed.

(II) (A) Effective July 1, 1987, an amount equal to twenty-seven percent of the gross state cigarette tax shall be apportioned to incorporated cities and incorporated towns which levy taxes and adopt formal budgets and to counties. For the purposes of this section, a city and county shall be considered as a city. The city or town share shall be apportioned according to the percentage of state sales tax revenues collected by the department of revenue in an incorporated city or town as compared to the total state sales tax collections that may be allocated to all political subdivisions in the state; the county share shall be the same as that which the percentage of state sales tax revenues collected in the unincorporated area of the county bears to total state sales tax revenues which may be allocated to all political subdivisions in the state. The department of revenue shall certify to the state treasurer, at least annually, the percentage for allocation to each city, town, and county, and such percentage for allocation so certified shall be applied by said department in all distributions to cities, towns, and counties until changed by certification to the state treasurer. In order to qualify for distributions of state income tax moneys, units of local government are prohibited from imposing fees, licenses, or taxes on any person as a condition for engaging in the business of selling cigarettes or from attempting in any manner to impose a tax on cigarettes. For purposes of this paragraph (a), the "gross state cigarette tax" means the total tax before the discount provided for in section 39-28-104 (1).

(B) Moneys apportioned pursuant to this subparagraph (II) shall be included for informational purposes in the general appropriation bill or in supplemental appropriation bills for the purpose of complying with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103, C.R.S.

(b) Following apportionment of the city, town, and county shares pursuant to paragraph (a) of this subsection (1) and pursuant to section 29-21-101, C.R.S., all remaining funds, less the amount credited to the reserve created in section 39-29-107.8, in accordance with subsection (2) of said section, shall be credited to the general fund, and the general assembly shall make appropriations therefrom for the expenses of the administration of this article.

(c) Distribution to each city, town, and county shall be made monthly, no later than the fifteenth day of the second successive month after the month for which cigarette tax collections are made, commencing in October 1973.

(d) Each city, town, and county, upon request and at reasonable times, shall be entitled to verify with the executive director or his designated representative the proceeds to which the local government is entitled pursuant to the provisions of this section.

(e) Where, prior to July 1, 1973, a city or town has pledged the proceeds of all or a portion of its local cigarette tax or tax on the occupation of selling cigarettes for the payment of bonds or other obligations, the city or town shall pledge or place in trust an equivalent amount

from its share of the proceeds of the state cigarette tax for the payment of such bonds or other obligations.

(f) Repealed.

**Source: L. 64:** R&RE, p. 809, § 1. **C.R.S. 1963:** § 138-1-94. **L. 73:** p. 1450, § 1. **L. 74:** (1)(b) amended, p. 432, § 1, effective May 17. **L. 77:** (1)(a) amended, p. 1793, § 3, effective July 1; (1)(f) added, p. 1811, § 2, effective January 1, 1978. **L. 83:** (1)(a) amended, p. 2099, § 12, effective October 13; (1)(a) amended, p. 2053, § 27, effective October 14. **L. 85:** (1)(a) amended, p. 1267, § 5, effective May 30. **L. 86:** (1)(a) amended, p. 1111, § 10, effective July 1. **L. 93:** (1)(a)(II) amended, p. 1509, § 10, effective June 6. **L. 94:** (1)(a)(II) amended, p. 1804, § 2, effective May 31. **L. 2002:** (1)(f) repealed, p. 1362, § 19, effective July 1. **L. 2016:** (1)(b) amended, (SB 16-218), ch. 289, p. 1172, § 2, effective June 10.

**Editor's note:** (1) Amendments to subsection (1)(a) by Senate Bill 83-414 and House Bill 83-1595 were harmonized.

(2) Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I), effective July 1, 1987. (See L. 86, p. 1111.)

**Cross references:** For the procedure for refunds, see § 39-21-108.

**39-22-624. Prior rights and liabilities not affected.** Nothing in this article shall be construed to affect any right, duty, or liability arising under statutes in effect immediately prior to January 1, 1965, but the same shall be continued and concluded under such prior statutes. Nothing in this article shall revive or reinstate any right or liability previously barred by statute.

**Source: L. 64:** R&RE, p. 810, § 1. **C.R.S. 1963:** § 138-1-96.

**39-22-625. Application of article - effective date.** This article shall apply only with respect to taxable years beginning after December 31, 1964, and became effective on January 1, 1965.

**Source: L. 64:** R&RE, p. 810, § 1. **C.R.S. 1963:** § 138-1-97.

**39-22-626. Applicability of amendments to this article to income tax years.** For purposes of determining the applicability of any addition to, modification of, or deletion from this article, an income tax year which varies from a fifty-two to a fifty-three week period shall be deemed to have commenced on the first day of the calendar month beginning nearest to the first day of the fifty-two or fifty-three week year.

**Source: L. 79:** Entire section added, p. 1446, § 36, effective July 3.

**39-22-627. Temporary adjustment of rate of income tax - refund of excess state revenues - authority of executive director.** (1) (a) Subject to the provisions of this section, if, for any state fiscal year commencing on or after July 1, 2010, the amount of state revenues in excess of the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of

the state constitution that are required to be refunded for such state fiscal year exceeds the amount specified in paragraph (b) of this subsection (1), the executive director shall temporarily reduce the state income tax rate for the income tax year commencing during the calendar year in which the state fiscal year ended from four and sixty-three one-hundredths percent of the federal taxable income of every individual, estate, trust, and corporation, as specified in sections 39-22-104 (1.7) and 39-22-301 (1)(d)(I)(I), to four and one-half percent of the federal taxable income of every individual, estate, trust, and corporation to refund excess state revenues that are required to be refunded pursuant to section 20 (7)(d) of article X of the state constitution.

(b) In order for the provisions of subsection (1)(a) of this section to take effect, the amount of state revenues required to be refunded for the specified state fiscal year must exceed the total of the amount of reimbursement for property tax revenues lost as a result of the property tax exemptions allowed by part 2 of article 3 of this title 39 paid by the state treasurer to each county treasurer as required by section 39-3-207 (4) for the property tax year that commenced during the specified state fiscal year plus the estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate from four and sixty-three one-hundredths percent to four and one-half percent of federal taxable income, as determined pursuant to this section.

(2) Except as otherwise provided in subsection (3) of this section, no later than October 1, 2011, and no later than each October 1 thereafter of any calendar year during which it is certified in accordance with the provisions of section 24-77-106.5, C.R.S., that state revenues exceed the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution for the state fiscal year ending in that calendar year and exceed any amount that the voters statewide have authorized the state to retain and spend for the state fiscal year ending in that calendar year, the executive director shall estimate the amount by which state revenues would be decreased as the result of a reduction in the state income tax rate from four and sixty-three one-hundredths percent to four and one-half percent of federal taxable income for the income tax year commencing during the calendar year in which the state fiscal year ended.

(3) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any given calendar year that seek authorization for the state to retain and spend all or any portion of the amount of excess state revenues for the state fiscal year ending during said calendar year, the executive director shall not reduce the state income tax rate until the results of said election are known so that the state income tax rate may be reduced only if, after the results of said election, the amount of excess state revenues required to be refunded for the state fiscal year exceeds the total of the amount of reimbursement for property tax revenues lost as a result of the property tax exemptions allowed by part 2 of article 3 of this title 39 paid by the state treasurer to each county treasurer as required by section 39-3-207 (4) for the property tax year that commenced during the specified state fiscal year plus the estimated amount by which state revenues would be decreased as a result of a reduction in the state income tax rate from four and sixty-three one-hundredths percent to four and one-half percent of federal taxable income pursuant to this section.

(4) In estimating the amount by which state revenues would be decreased as the result of a reduction in the state income tax rate in accordance with the provisions of this section, the executive director shall utilize the most recent data available from the staff of the legislative council regarding the estimate of state revenues generated by the state income tax for the applicable income tax year.

(5) (a) Upon estimating the amount by which state revenues would be decreased as the result of a reduction in the state income tax rate for any income tax year in accordance with the provisions of this section, the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of any amount so estimated and the basis for such estimate. Such written notification shall be given within five working days after such estimate is completed, but such written notification shall be given no later than October 1 of the calendar year.

(b) It is the function of the executive committee of the legislative council to review and approve or disapprove such estimated amount within twenty days of receipt of such written notification from the executive director. Any estimate of the amount by which state revenues would be decreased as the result of a reduction in the state income tax rate as estimated pursuant to the provisions of this section that is not approved or disapproved by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate reduction, such automatic approval shall not occur unless the executive committee does not approve or disapprove such estimated amount after the conclusion of such hearing. Any hearing conducted by the executive committee pursuant to the provisions of this paragraph (b) shall be held no later than twenty-five days after receipt of such written notification from the executive director.

(c) (I) If the executive committee of the legislative council disapproves the estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate as estimated by the executive director, the executive committee shall specify the estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate so that the executive director can determine whether to implement the reduced state income tax rate. Any estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate as specified by the executive committee pursuant to this subparagraph (I) shall be estimated in accordance with the provisions of this section.

(II) The executive director shall not adjust the state income tax rate until the estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate estimate has been approved pursuant to the provisions of paragraph (b) of this subsection (5).

(d) Any income tax rate adjustment made pursuant to the provisions of this section shall be made by rules promulgated by the executive director in accordance with article 4 of title 24, C.R.S.

(6) If, based on the financial report prepared by the controller in accordance with section 24-77-106.5, the controller certifies that the amount of the state revenues for any state fiscal year commencing on or after July 1, 2017, exceeds the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution for that state fiscal year and exceeds the amount of excess state revenues that the voters statewide have authorized the state to retain and spend for that state fiscal year by less than the total of the amount of reimbursement for property tax revenues lost as a result of the property tax exemptions allowed by part 2 of article 3 of this title 39 paid by the state treasurer to each county treasurer as required by section 39-3-207 (4) for the property tax year that commenced during the specified state fiscal year plus the estimated amount by which state revenues would be decreased as the result of a reduction in

the state income tax rate from four and sixty-three one-hundredths percent to four and one-half percent of federal taxable income as calculated by the executive director pursuant to subsection (2) of this section, then the reduction in the state income tax rate allowed pursuant to subsection (1) of this section shall not be allowed for the income tax year commencing during the calendar year in which the state fiscal year ended.

(7) Repealed.

(8) The general assembly finds and declares that a temporary state income tax rate reduction is a reasonable method of refunding a portion of the excess state revenues required to be refunded in accordance with section 20 (7)(d) of article X of the state constitution.

(9) Repealed.

**Source: L. 2005:** Entire section added, p. 1362, § 3, effective June 6. **L. 2010:** (7) repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; (1)(b), (3), and (6) amended, (HB 10-1002), ch. 69, p. 239, § 1, effective August 11. **L. 2013:** (9) added, (SB 13-001), ch. 381, p. 2231, § 5, effective August 7. **L. 2017:** (1)(b), (3), and (6) amended and (9) repealed, (SB 17-267), ch. 267, p. 1469, § 27, effective May 30.

**Cross references:** (1) In 2013, subsection (9) was added by the "Colorado Working Families Economic Opportunity Act of 2013". For the short title, see 1 of chapter 381, Session Laws of Colorado 2013.

(2) For the legislative declaration in SB 17-267, see section 1 of chapter 267, Session Laws of Colorado 2017.

**39-22-628. Direct deposit of refund to collegeinvest savings accounts - modification of individual income tax return forms - legislative declaration - definition.** (1) In addition to the rationale for creation of the college savings program set forth in section 23-3.1-301, C.R.S., the general assembly hereby finds, determines, and declares that it is in the best interest of Colorado citizens to provide them the option of making direct deposits to collegeinvest savings accounts through the Colorado state individual income tax return form.

(2) (a) For Colorado state individual income tax return forms used for tax years beginning on and after January 1, 2013, each such form must allow an individual taxpayer who is owed a refund the option of making a direct deposit to a collegeinvest savings account.

(b) Each form must permit the direct deposit to only a single collegeinvest savings account.

(3) The department of revenue shall collaborate with the department of higher education to:

(a) Modify the state individual income tax return form to enable an individual taxpayer to make a direct deposit of his or her refund to a collegeinvest savings account; and

(b) Include, in the portion of the form allowing direct deposit to a collegeinvest savings account, information or a means to obtain information describing collegeinvest savings accounts and how to establish such an account.

(4) As used in this section, "colleginvest savings account" means an account established pursuant to part 3 of article 3.1 of title 23, C.R.S.

**Source: L. 2013:** Entire section added, (SB 13-206), ch. 345, p. 2006, § 1, effective May 28.

SUBPART 2

REPORTABLE TRANSACTIONS

**Cross references:** For the legislative declaration contained in the 2009 act adding this subpart 2, see section 1 of chapter 75, Session Laws of Colorado 2009.

**39-22-651. Short title - citation.** This subpart 2 shall be comprised of sections 39-22-651 to 39-22-659 and may be cited as subpart 2. This subpart 2 shall be known and may be cited as the "Colorado Reportable Transactions Act".

**Source: L. 2009:** Entire section added, (HB 09-1093), ch. 75, p. 271, § 4, effective April 2.

**39-22-652. Definitions.** For purposes of this subpart 2, unless the context otherwise requires:

(1) "Colorado combined group" means a group of affiliated C corporations required or allowed to file a combined report pursuant to section 39-22-303.

(2) "Department" means the department of revenue.

(3) "Income tax" means a tax imposed under this article.

(4) "Income tax return" means a return filed under section 39-22-601.

(5) "Listed transaction" means a transaction that is:

(a) The same as, or substantially similar to, a transaction or arrangement specifically identified as a listed transaction by the United States secretary of the treasury in written materials interpreting the requirements of section 6011 of the internal revenue code;

(b) A transaction between a captive real estate investment trust as defined in section 39-22-503 (2) and its more than fifty percent beneficial owner as described in section 39-22-503 (2)(a); or

(c) A transaction between a captive regulated investment company as defined in section 39-22-501 (2) and its more than fifty percent beneficial owner as described in section 39-22-501 (2)(a).

(6) "Material advisor" shall have the same meaning as set forth in section 6111 of the internal revenue code.

(7) "Reportable transaction" means any transaction or arrangement that is the same as any transaction or arrangement described in 26 CFR 1.6011-4 (b)(2) to (b)(6) but shall not include any transactions specifically excluded by the internal revenue service.

**Source: L. 2009:** Entire section added, (HB 09-1093), ch. 75, p. 271, § 4, effective April 2.

**39-22-653. Taxpayer disclosure of reportable or listed transactions.** (1) A taxpayer shall be subject to the provisions of this section for each taxable year in which the taxpayer participates in a reportable or listed transaction.

(2) A taxpayer subject to the provisions of this section shall disclose any reportable or listed transaction to the department in a disclosure statement as specified in subsection (5) of this section; except that, in the case of multiple transactions described in section 39-22-652 (5)(b) or (5)(c) that occur within a single tax year, in lieu of a disclosure for each transaction with a regulated investment company or a real estate investment trust, a taxpayer may file a disclosure for multiple transactions with a regulated investment company or real estate investment trust showing the name and ownership of each such entity and each such entity's total assets and total income earned prior to any dividend paid deduction.

(3) If a taxpayer participates in or has participated in any reportable or listed transaction for any period that is still open for assessment pursuant to section 39-21-107 as of the due date of the taxpayer's income tax return, then the taxpayer shall file a disclosure statement as specified in subsection (5) of this section with respect to the reportable or listed transaction.

(4) (a) Any statement that is required to be filed or disclosure required to be made by this section with respect to any tax year for which the return has already been filed by a date sixty days after April 2, 2009, and that is filed or made prior to or together with the taxpayer's next filed return shall be considered timely filed or made.

(b) Any statement that is required to be filed or disclosure required to be made by this section with respect to any tax year the return for which has not been filed by a date sixty days after April 2, 2009, and that is filed or made on or before July 1, 2010, shall be considered timely filed or made.

(c) The statute of limitations with respect to any return for which a statement is required to be filed or disclosure required to be made by this section shall be tolled from April 2, 2009, until such statement or disclosure is filed or made, but in no event shall the statute of limitations be tolled for more than twenty-four months.

(5) (a) With respect to any reportable transaction or with respect to any listed transaction as specified in section 39-22-652 (5)(a), the taxpayer shall, at the taxpayer's discretion, file with the taxpayer's next filed return a copy of the federal disclosure form or a form specified by the department.

(b) With respect to any listed transaction not specified in section 39-22-652 (5)(a), the department may specify the form and manner of any statement required to be filed or disclosure required to be made, which statement shall be filed with the taxpayer's next filed return.

**Source: L. 2009:** Entire section added, (HB 09-1093), ch. 75, p. 272, § 4, effective April 2.

**39-22-654. Additional listed transactions - report.** (1) The department shall submit a report to the finance committees of the senate and house of representatives, or any successor committees, by January 31, 2010, and on or before every January 31 thereafter, its recommendation for the inclusion of any additional listed transactions for purposes of this subpart 2.

(2) The department shall consult with any interested parties prior to the submission of the report as specified in subsection (1) of this section.

**Source: L. 2009:** Entire section added, (HB 09-1093), ch. 75, p. 273, § 4, effective April 2.

**39-22-655. Penalty for failure to disclose a reportable or listed transaction.** (1) (a) Except as provided in paragraph (b) of this subsection (1), a taxpayer that fails to disclose a reportable transaction as required by section 39-22-653 shall be subject to a penalty of up to fifteen thousand dollars.

(b) A taxpayer that fails to disclose a listed transaction as required by section 39-22-653 shall be subject to a penalty of up to fifty thousand dollars.

(2) Any penalty imposed by this section shall be in addition to any other penalty imposed by articles 21 and 22 of this title.

(3) For purposes of this section, if two or more members of the same combined report or consolidated return participate in the same reportable or listed transaction, the penalty imposed by subsection (1) of this section shall only be imposed once on the combined report or consolidated return.

**Source: L. 2009:** Entire section added, (HB 09-1093), ch. 75, p. 273, § 4, effective April 2.

**39-22-656. Material advisor - disclosure of reportable or listed transactions.** (1) (a) A material advisor shall disclose any reportable or listed transaction to the department on a form provided by the department within six months of each transaction.

(b) The disclosure described in paragraph (a) of this subsection (1) shall include information identifying and describing the reportable or listed transaction and any potential tax benefits expected to result from the transaction, and the disclosure may include other information as required by the department by rules promulgated in accordance with section 39-21-112 (1).

(2) If a material advisor is required to file an income tax return disclosing a reportable transaction under section 6111 of the internal revenue code, the material advisor shall provide the department with a copy of the income tax return.

**Source: L. 2009:** Entire section added, (HB 09-1093), ch. 75, p. 274, § 4, effective April 2.

**39-22-657. Material advisor - maintenance of list.** (1) For each reportable or listed transaction, a material advisor shall maintain a list of the persons to which the material advisor provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out a reportable or listed transaction.

(2) The list required by subsection (1) of this section shall include:

(a) The name of each person described in subsection (1) of this section that is doing business in this state, a member of a Colorado combined group, or a member of an affiliated group as defined in section 1504 of the internal revenue code that includes a taxpayer doing business in this state;

(b) The same information required to be contained in the list described in 26 CFR 301.6112-1; and

(c) Any additional information required by the department by rules promulgated in accordance with section 39-21-112 (1).

(3) The list required by subsection (1) of this section shall be maintained in the same form and manner as the list described in 26 CFR 301.6112-1.

(4) A material advisor required to maintain a list under subsection (1) of this section shall:

(a) Make the list available to the department upon written request by the department; and

(b) Retain the information that is required to be included on the list for seven years from the date that the information is included.

(5) The department shall promulgate rules in accordance with section 39-21-112 (1) establishing procedures to implement this section.

**Source: L. 2009:** Entire section added, (HB 09-1093), ch. 75, p. 274, § 4, effective April 2.

**39-22-658. Material advisor - penalties.** (1) The penalty for the failure of a material advisor to disclose a reportable or listed transaction as required by section 39-22-656 (1)(a) shall be up to twenty thousand dollars.

(2) If a material advisor that is required to disclose a reportable or listed transaction in accordance with section 39-22-656 (1)(a) provides false or incomplete information to the department, then an additional penalty shall be imposed of up to twenty thousand dollars.

(3) If a material advisor that is required to maintain a list under section 39-22-657 (1) fails to make that list available to the department within a twenty-day period after the day on which the department mails a written request for that list, the material advisor shall be subject to a penalty of ten thousand dollars for each day that the material advisor fails to make that list available to the department after the expiration of the twenty-day period.

(4) A penalty imposed by this section shall be in addition to any other penalty imposed by articles 21 and 22 of this title.

**Source: L. 2009:** Entire section added, (HB 09-1093), ch. 75, p. 275, § 4, effective April 2.

**39-22-659. Waiver, reduction, or compromise of penalty for reasonable cause.** Upon making a record of its actions, and upon reasonable cause shown, the department may waive, reduce, or compromise a penalty imposed by this subpart 2.

**Source: L. 2009:** Entire section added, (HB 09-1093), ch. 75, p. 275, § 4, effective April 2.

## PART 7

## COLORADO NONGAME CONSERVATION AND WILDLIFE RESTORATION VOLUNTARY CONTRIBUTION

**39-22-701. Legislative declaration.** (1) (a) The general assembly hereby declares that wildlife species that are endangered, threatened with extinction, or not commonly pursued, killed, or consumed either for sport or profit, referred to in this part 7 as "nongame and endangered wildlife", have need of special protection and that it is in the public interest to preserve, protect, perpetuate, and enhance nongame and endangered wildlife resources of this state through preservation of a satisfactory environment and an ecological balance. The general assembly specifically recognizes that such nongame and endangered wildlife includes protected wildlife, endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife, both terrestrial and aquatic types, and mollusks, crustaceans, and other invertebrates under the jurisdiction of the division of parks and wildlife.

(b) The general assembly further declares that wildlife rehabilitation helps Colorado's game and nongame and endangered wildlife species survive and represents responsible stewardship for the animals in need of assistance. The general assembly recognizes that little public or private funding or formal support exists to finance wildlife rehabilitation, and therefore wildlife rehabilitators provide their services free of charge. Because they perform a vital public service, providing a method by which some rehabilitators' activities may be funded or expenses defrayed is in the public interest.

(2) This part 7 is enacted to provide a means by which the conservation and restoration of wildlife in the state may be financed through a voluntary contribution designation on state income tax return forms. The intent of the general assembly is that this program is supplemental to any funding and in no way is intended to supplant funding that would otherwise be appropriated for this purpose.

**Source: L. 77:** Entire part added, p. 1807, § 1, effective January 1, 1978. **L. 84:** Entire section amended, p. 1019, § 1, effective April 5. **L. 2017:** Entire part amended, (HB 17-1250), ch. 362, p. 1893, § 1, effective August 9.

**39-22-702. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2017, but prior to January 1, 2022, the executive director shall ensure that each Colorado state individual income tax return form contains a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado nongame conservation and wildlife restoration cash fund created in section 33-1-125.

**Source: L. 77:** Entire part added, p. 1808, § 1, effective January 1, 1978. **L. 79:** (1) amended, p. 1459, § 1, effective June 21. **L. 83:** Entire section amended, p. 1528, § 1, effective April 21. **L. 84:** Entire section R&RE, p. 1019, § 2, effective April 5. **L. 90:** Entire section amended, p. 1738, § 1, effective April 3. **L. 2006:** Entire section amended, p. 1155, § 1, effective August 7. **L. 2009:** Entire section amended, (HB 09-1294), ch. 171, p. 770, § 1, effective April 22. **L. 2012:** Entire section amended, (HB 12-1050), ch. 20, p. 54, § 1, effective August 8. **L. 2017:** Entire part amended, (HB 17-1250), ch. 362, p. 1894, § 1, effective August 9.

**39-22-703. Contributions credited to Colorado nongame conservation and wildlife restoration cash fund - administration - transfer - repeal.** (1) The department of revenue shall determine annually the total amount of voluntary contributions designated pursuant to

section 39-22-702 and shall report the amount to the state treasurer, who shall credit that amount to the Colorado nongame conservation and wildlife restoration cash fund created in section 33-1-125. The general assembly shall appropriate annually from the Colorado nongame conservation and wildlife restoration cash fund to the department of revenue its costs of administering the moneys designated as contributions to the fund. After subtracting the appropriation to the department, all designated moneys in the fund are hereby continuously appropriated for the purposes of this part 7 and section 33-1-125. At the end of each fiscal year, the state treasurer shall transfer all designated moneys in the fund and all interest earned through the investment of fund moneys, after subtracting the appropriation to the department of revenue, as specified in section 33-1-125.

(2) (a) The division of parks and wildlife in the department of natural resources shall expend any moneys transferred to it under this part 7 for tax years commencing on or before January 1, 2016, in accordance with this part 7, as this part 7 existed prior to the enactment of House Bill 17-1250, enacted in 2017.

(b) This subsection (2) is repealed, effective January 1, 2019.

**Source: L. 77:** Entire part added, p. 1808, § 1, effective January 1, 1978. **L. 79:** Entire section amended, p. 1459, § 2, effective June 21. **L. 85:** (2) amended, p. 1277, § 1, effective June 2. **L. 90:** (1), IP(2), and (2)(a) amended, p. 1738, § 2, effective April 3. **L. 92:** (2)(c) repealed, p. 1068, § 3, effective March 16. **L. 94:** (1) amended, p. 1735, § 3, effective January 1, 1995. **L. 2002:** (2)(a) amended, p. 863, § 7, effective August 7. **L. 2004:** (1) amended, p. 1210, § 93, effective August 4. **L. 2017:** Entire part amended, (HB 17-1250), ch. 362, p. 1894, § 1, effective August 9.

**39-22-704. Repeal of part.** This part 7 is repealed, effective January 1, 2023, unless the voluntary contribution to the Colorado nongame conservation and wildlife restoration cash fund created in section 33-1-125 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 77:** Entire part added, p. 1808, § 1, effective January 1, 1978. **L. 83:** Entire section amended, p. 1528, § 2, effective April 21. **L. 84:** Entire section amended, p. 1020, § 3, effective April 5. **L. 87:** Entire section amended, p. 1459, § 1, effective May 8. **L. 90:** Entire section amended, p. 1739, § 3, effective April 3. **L. 95:** Entire section amended, p. 122, § 1, effective March 31. **L. 2006:** Entire section amended, p.1155, § 2, effective August 7. **L. 2009:** Entire section amended, (HB 09-1294), ch. 171, p. 770, § 2, effective April 22. **L. 2012:** Entire section amended, (HB 12-1050), ch. 20, p. 54, § 2, effective August 8. **L. 2017:** Entire part amended, (HB 17-1250), ch. 362, p. 1895, § 1, effective August 9.

## PART 8

## DOMESTIC ABUSE PROGRAM VOLUNTARY CONTRIBUTION

**Editor's note:** (1) This part 8 was repealed in 2000 and was subsequently recreated and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as

subject matter. For amendments to this part 8 prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Prior to this part 8 being recreated and reenacted, § 39-22-803 provided for the repeal of this part 8, effective January 1, 2000. (See L. 94, p. 968.)

**39-22-801. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2010, but prior to January 1, 2020, each Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the taxpayer wishes to make to the Colorado domestic abuse program fund created in section 39-22-802.

**Source: L. 2000:** Entire part RC&RE, p. 1013, § 7, effective July 1; entire part RC&RE, p. 1866, § 91, effective August 2. **L. 2006:** Entire section amended, p.1157, § 1, effective August 7. **L. 2010:** Entire section amended, (SB 10-172), ch. 186, p. 671, § 1, effective August 11.

**39-22-802. Contributions credited to Colorado domestic abuse program fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-801 and shall report such amount to the state treasurer. The state treasurer shall credit such amount to the Colorado domestic abuse program fund, a cash fund hereby established in the state treasury. The controller, upon presentation of vouchers properly drawn and signed by the executive director of the department of human services, pursuant to section 26-7.5-105, C.R.S., shall issue warrants drawn on the Colorado domestic abuse program fund. All moneys in the Colorado domestic abuse program fund at the end of a fiscal year, after appropriations made pursuant to subsection (3) of this section, shall remain in the fund to be used for the purposes set forth in article 7.5 of title 26, C.R.S., and shall not revert to the general fund. Any interest earned on moneys in the fund shall remain in the fund to be used for the purposes of article 7.5 of title 26, C.R.S.

(2) The executive director of the department of human services shall sign vouchers to draw on the Colorado domestic abuse program fund exclusively for the purpose of exercising his authority under section 26-7.5-104, C.R.S.

(3) The general assembly shall appropriate annually from the Colorado domestic abuse program fund:

(a) To the department of human services such amount as is necessary for carrying out the purposes set forth in article 7.5 of title 26, C.R.S., including the department's administrative costs in connection therewith;

(b) To the department of revenue its costs of administering the income tax refunds designated as contributions to the fund.

(4) Notwithstanding any provision of subsection (1) of this section to the contrary, on June 30, 2011, the state treasurer shall deduct two hundred thousand dollars from the Colorado domestic abuse program fund and transfer such sum to the general fund. The transfer required by this subsection (4) shall be from moneys deposited in the Colorado domestic abuse program fund that were generated from fees collected pursuant to sections 13-32-101 (1)(a) and (1)(b) and 14-2-106 (1)(a), C.R.S., and such transfer shall not include any moneys that were voluntary contributions received pursuant to section 39-22-801.

**Source: L. 2000:** Entire part RC&RE, p. 1013, § 7, effective July 1; entire part RC&RE, p. 1866, § 91, effective August 2. **L. 2002:** (1) amended, p. 863, § 8, effective August 7. **L. 2011:** (4) added, (SB 11-164), ch. 33, p. 94, § 8, effective March 18.

**39-22-803. Repeal of part.** This part 8 is repealed, effective January 1, 2021, unless the voluntary contribution to the Colorado domestic abuse program fund established in section 39-22-802 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2000:** Entire part RC&RE, p. 1013, § 7, effective July 1; entire part RC&RE, p. 1866, § 91, effective August 2. **L. 2006:** Entire section amended, p. 1157, § 2, effective August 7. **L. 2010:** Entire section amended, (SB 10-172), ch. 186, p. 671, § 2, effective August 11.

PART 9

UNITED STATES OLYMPIC COMMITTEE
VOLUNTARY CONTRIBUTION

**39-22-901 to 39-22-903. (Repealed)**

**Editor's note:** (1) This part 9 was added in 1983, repealed in 1986, recreated and reenacted in 1988, and repealed in 2006. For amendments to this part 9 prior to its repeal in 2006, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-22-903 (1) provided for the repeal of this part 9, effective January 1, 2006. (See L. 2002, p. 443.)

PART 10

LIMITATION ON VOLUNTARY
CONTRIBUTION PROGRAMS

**39-22-1001. Limitations on voluntary contribution programs - queue - notice - reestablishment of certain programs.** (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), it is the intent of the general assembly that any program funded by voluntary contributions of income tax refunds that is created on or after June 2, 1985, shall have a sunset clause providing that the program shall apply to no more than three income tax years, unless the program is continued or reestablished by the general assembly acting by bill prior to the date that the program is scheduled to sunset.

(b) There shall be no requirement for a sunset clause for the homeless prevention activities program fund voluntary contribution established in part 13 of this article 22, the western slope military veterans' cemetery voluntary contribution established in part 19 of this article 22, or the donate to a Colorado nonprofit fund voluntary contribution established in part 51 of this article 22. All other voluntary contribution programs shall remain on Colorado income

tax returns for the income tax years specified in the part in which the voluntary contribution is established and shall be repealed or reestablished as directed in such part.

(2) to (4) (Deleted by amendment, L. 2003, p. 2060, § 2, effective May 22, 2003.)

(5) Every voluntary contribution established in this article 22 must receive a minimum dollar amount of contributions in each income tax year as follows:

(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection (5), for each period running from January 1 through September 30, if the amount designated on Colorado income tax returns as contributed to any voluntary contribution established in this article does not equal or exceed fifty thousand dollars according to the records of the department of revenue, then such voluntary contribution is no longer effective and shall not be reflected on the Colorado income tax returns made for any subsequent income tax year, unless the voluntary contribution is reestablished by the general assembly pursuant to subsection (1) of this section.

(b) (I) (A) Notwithstanding subsection (5)(a) of this section, for any voluntary contribution that appears on Colorado income tax returns for the first time in the 2002 income tax year or any income tax year thereafter, the amount designated on Colorado income tax returns as contributed under any voluntary contribution established in this article 22 must equal or exceed fifty thousand dollars according to the records of the department of revenue during the January 1 through September 30 period for which moneys are collected for the third income tax year in which the voluntary contribution appears on Colorado income tax returns. Any such voluntary contribution shall not be required to collect fifty thousand dollars in either the first or the second year that it appears on Colorado income tax returns.

(B) For the purposes of sub-subparagraph (A) of this subparagraph (I), a voluntary contribution that previously appeared on income tax returns and was removed for failure to receive the requisite amount of contributions pursuant to either paragraph (a) of this subsection (5) or subparagraph (II) of this paragraph (b) is deemed to be appearing on the form "for the first time" if three income tax years or more elapses between the last year the voluntary contribution appeared on the form and the first year it is replaced on the form.

(II) If any voluntary contribution subject to the requirements of subparagraph (I) of this paragraph (b) does not equal or exceed the requisite amount of contributions for the third income tax year for which it appears on Colorado income tax returns, then the voluntary contribution shall no longer be effective and shall not be reflected on Colorado income tax returns for any subsequent income tax year, regardless of whether the voluntary contribution is reestablished by the general assembly pursuant to subsection (1) of this section.

(III) After any voluntary contribution subject to the requirements of this paragraph (b) has been on Colorado income tax returns for three years, the provisions of paragraph (a) of this subsection (5) shall apply to such voluntary contribution and the provisions of this paragraph (b) shall no longer apply.

(c) (I) Subsections (5)(a) and (5)(b) of this section shall not apply to the western slope military veterans' cemetery voluntary contribution established in part 19 of this article 22 or the donate to a Colorado nonprofit fund voluntary contribution established in part 51 of this article 22. Such voluntary contributions shall not be required to receive a minimum amount of contributions in any income tax year.

(II) (Deleted by amendment, L. 2005, p. 738, § 1, effective August 8, 2005.)

(6) Repealed.

(7) (a) No more than twenty voluntary contributions are permitted to appear on the Colorado income tax return form in any income tax year. If the general assembly, acting by bill in any year, requires more voluntary contributions to appear on the income tax return form than there are lines available on the form, an existing voluntary contribution that is renewed or continued takes precedence and must be placed on the form over a voluntary contribution that does not appear on the form. Any voluntary contribution that does not appear on the form and is not being renewed or continued but does not take effect pursuant to this subsection (7) must be placed in the queue created by subsection (8) of this section and only becomes effective in any year in which there is a line available on the income tax return form, as specified in subsection (8) of this section.

(b) Repealed.

(8) (a) If the general assembly, acting by bill in any year, requires more voluntary contributions to appear on the income tax return form than there are lines available on the form, any voluntary contribution that is to appear on the form for the first time shall, notwithstanding the language in or the effective date of the bill creating the voluntary contribution, be placed in a queue, which queue is hereby created. The order of voluntary contributions that are placed in the queue shall be determined by the date and time on which the governor signs the bill creating the voluntary contribution, or at such time that the bill becomes law without the governor's signature, with the bill that was signed or becomes law without a signature first in time being first in the queue, the bill that was signed or becomes law without a signature next in time being second in the queue, and so on.

(b) On November 1 of each year, the executive director shall certify to the revisor of statutes the amount of lines available for voluntary contributions on the income tax return form for the state income tax year commencing on January 1 of the following year.

(c) If a line becomes available on the income tax return form, and notwithstanding the language in or the effective date of the bill creating the voluntary contribution, the voluntary contribution first in the queue shall appear on the form for the number of consecutive tax years specified in the part creating the voluntary contribution beginning with the tax year immediately following the year in which the executive director certifies that there is a line available as specified in paragraph (b) of this subsection (8). If there are two lines available on the form, the voluntary contribution that is second in the queue shall appear on the form for the number of consecutive tax years specified in the part creating the voluntary contribution beginning with the tax year immediately following the year in which the executive director certifies that there are lines available as specified in paragraph (b) of this subsection (8), and so on.

(9) The department of revenue shall post and periodically update on its official website the amount of donations received for each voluntary contribution appearing on the Colorado state individual income tax return form.

(10) One year prior to the date on which a voluntary contribution program is scheduled to repeal pursuant to its sunset clause, the department of revenue shall electronically notify the organization to which that voluntary contribution program's moneys are transferred of the upcoming repeal.

**Source: L. 85:** Entire part added, p. 1278, § 4, effective June 2. **L. 88:** Entire section amended, p. 1316, § 13, effective May 29. **L. 91:** (2) amended, p. 1999, § 3, effective May 1. **L. 94:** (1) amended, p. 726, § 2, effective April 19; (1) and (2)(a) amended and (3) added, p. 931, §

3, effective April 28. **L. 98:** (3) amended, p. 87, § 3, effective March 23. **L. 99:** (1) amended, p. 305, § 1, effective August 4. **L. 2001:** (2)(a) amended and (4) added, p. 1150, § 5, effective June 5. **L. 2002:** (3) RC&RE, p. 444, § 2, effective August 7. **L. 2003:** Entire section amended, p. 2060, § 2, effective May 22. **L. 2005:** (1)(a), IP(5), (5)(a), (5)(b)(I), (5)(c)(II), and (6) amended, p. 738, § 1, effective August 8. **L. 2011:** (7), (8), and (9) added, (HB 11-1295), ch. 245, p. 1070, § 1, effective May 27; (7) and (8) added, (HB 11-1097), ch. 140, p. 485, § 1, effective August 10; (7) and (8) added, (HB 11-1071), ch. 294, p. 1395, § 1, effective August 10; (7) and (8) added, (SB 11-102), ch. 238, p. 1033, § 1, effective August 10. **L. 2012:** (5)(b)(I) and (7) amended and (6) repealed, (SB 12-055), ch. 119, p. 405, § 1, effective August 8. **L. 2013:** (10) added, (HB 13-1237), ch. 133, p. 441, § 2, effective August 7. **L. 2016:** IP(5), (5)(a), and (7) amended, (HB 16-1297), ch. 92, p. 257, § 1, effective April 14. **L. 2017:** IP(5) and (5)(b)(I)(A) amended, (SB 17-294), ch. 264, p. 1414, § 109, effective May 25. **L. 2018:** (1)(b) and (5)(c)(I) amended, (SB 18-141), ch. 290, p. 1791, § 2, effective August 8.

**Editor's note:** (1) Amendments to subsection (1) by Senate Bill 94-156 and House Bill 94-1221 were harmonized.

(2) Subsection (2)(b)(III) provided for the repeal of subsection (2)(b), effective January 1, 1995. (See L. 91, p. 1999.)

(3) Subsection (3)(b) provided for the repeal of subsection (3), effective January 1, 2002. (See L. 98, p. 87.)

(4) Subsection (7)(b)(III) provided for the repeal of subsection (7)(b), effective July 1, 2017. (See L. 2016, p. 257.)

PART 11

COLORADO VETERANS' MEMORIAL FUND
VOLUNTARY CONTRIBUTION

**39-22-1101. Voluntary contribution designation - procedure - repeal. (Repealed)**

**Source: L. 88:** Entire part added, p. 1323, § 1, effective April 29.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective January 1, 1989. (See L. 88, p. 1323.)

**39-22-1102. Fund established - contributions - appropriation - repeal. (Repealed)**

**Source: L. 88:** Entire part added, p. 1323, § 1, effective April 29.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective January 1, 1989. (See L. 88, p. 1323.)

PART 12

SPECIAL RESERVE FUND FOR

PAYMENT OF CERTAIN REFUNDS

**39-22-1201. Fund established - revenue - appropriation - discontinuance of fund - repeal. (Repealed)**

**Source: L. 89:** Entire part added, p. 1505, § 2, effective June 10. **L. 90:** (4) amended and (5) added, p. 1150, § 2, effective May 8. **L. 92:** Entire section amended, p. 2197, §1, effective February 25.

**Editor's note:** Subsection (7) provided for the repeal of this section, effective March 1, 1992. (See L. 92, p. 2197.)

PART 13

HOMELESS PREVENTION ACTIVITIES
PROGRAM FUND - VOLUNTARY CONTRIBUTION

**Law reviews:** For article, "Hunger and Homelessness in America: A Survey of State Legislation", see 66 Den. U.L. Rev. 277 (1989).

**39-22-1301. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 1989, each Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, he wishes to make to the homeless prevention activities program fund.

**Source: L. 89:** Entire part added, p. 1228, § 2, effective July 1. **L. 91:** Entire section amended, p. 1947, § 5, effective April 17. **L. 94:** Entire section amended, p. 726, § 1, effective April 19.

**39-22-1302. Contributions credited to homeless prevention activities program fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-1301 and shall report such amount to the state treasurer. The state treasurer shall credit such amount to the homeless prevention activities program fund, a cash fund hereby established in the state treasury. All moneys in the homeless prevention activities program fund at the end of a fiscal year, after appropriations made pursuant to subsection (3) of this section, are designated for the purposes set forth in article 7.8 of title 26, C.R.S., and shall not revert to the general fund. Any interest earned on moneys in the fund shall remain in the fund to be used for the purposes of article 7.8 of title 26, C.R.S. At the end of each fiscal year, the state treasurer shall transfer all designated moneys in the fund and all interest earned through the investment of fund moneys to the division of housing within the department of local affairs created in section 24-32-704, C.R.S., for distribution as directed by the advisory committee pursuant to article 7.8 of title 26, C.R.S.

(2) (Deleted by amendment, L. 91, p. 1947, § 6, effective April 17, 1991.)

(3) The general assembly shall appropriate annually from the homeless prevention activities program fund:

(a) (Deleted by amendment, L. 91, p. 1947, § 6, effective April 17, 1991.)

(b) To the department of revenue its costs of administering the income tax refunds designated as contributions to the fund.

(c) Repealed.

(4) The amount of administrative and indirect costs assessed under this section shall be based on the number of FTE allocated by each department referenced in this section for the administration of this part 13, expressed as a percentage of the total FTE of that department. In no case shall the administrative and indirect costs assessed exceed this percentage.

(5) The division of housing within the department of local affairs created in section 24-32-704, C.R.S., is authorized to spend up to five percent of all voluntary contributions to the homeless prevention activities program fund or fifteen thousand dollars, whichever is greater, for costs incurred in administering such program.

**Source: L. 89:** Entire part added, p. 1228, § 2, effective July 1. **L. 91:** Entire section amended, p. 1947, § 6, effective April 17. **L. 92:** (3)(c) repealed, p. 1068, § 6, effective March 16; (5) added, p. 2145, § 3, effective March 25. **L. 2002:** (1) amended, p. 864, § 9, effective August 7. **L. 2012:** (1) and (5) amended, (SB 12-158), ch. 151, p. 545, § 7, effective May 3.

**39-22-1303. Repeal of part. (Repealed)**

**Source: L. 89:** Entire part added, p. 1229, § 2, effective July 1. **L. 91:** Entire section amended, p. 1948, § 7, effective April 17. **L. 94:** Entire section repealed, p. 727, § 3, effective April 19.

PART 14

OPERATION DESERT STORM ACTIVE DUTY
MILITARY VOLUNTARY CONTRIBUTION

**39-22-1401. Voluntary contribution designation - procedure - repeal. (Repealed)**

**Source: L. 91:** Entire part added, p. 2000, § 4, effective May 1.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective March 15, 1994. (See L. 91, p. 2000.)

**39-22-1402. Contributions credited to Operation Desert Storm active duty military fund - appropriations - repeal. (Repealed)**

**Source: L. 91:** Entire part added, p. 2000, § 4, effective May 1. **L. 92:** (3)(b) repealed, p. 1068, § 7, effective March 16.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective June 15, 1994. (See L. 91, p. 2000.)

**39-22-1403. Late filing of income tax returns. (Repealed)**

**Source: L. 91:** Entire part added, p. 2001, § 4, effective May 1. **L. 2004:** Entire section repealed, p. 218, § 42, effective August 4.

PART 15

ACTION OLDER AMERICAN VOLUNTEER
PROGRAMS - VOLUNTARY CONTRIBUTION

**39-22-1501 to 39-22-1504. (Repealed)**

**Editor's note:** (1) This part 15 was added in 1993. For amendments to this part 15 prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-22-1504 provided for the repeal of this part 15, effective January 1, 2000. (See L. 99, p. 1097.)

PART 16

DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.)
VOLUNTARY CONTRIBUTION

**39-22-1601 to 39-22-1604. (Repealed)**

**Editor's note:** (1) This part 16 was added in 1996. For amendments to this part 16 prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-22-1604 provided for the repeal of this part 16, effective January 1, 2000. (See L. 96, p. 1569.)

PART 17

CHILD CARE VOLUNTARY CONTRIBUTION

**39-22-1701 to 39-22-1705. (Repealed)**

**Editor's note:** (1) This part 17 was added in 1996. For amendments to this part 17 prior to its repeal in 2010, consult the 2009 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-1705 (1) provided for the repeal of this part 17, effective January 1, 2010. (See L. 99, p. 307.)

PART 18

SPECIAL OLYMPICS COLORADO
VOLUNTARY CONTRIBUTION

**Editor's note:** (1) This part 18 was added in 1997. It was repealed in 2013 and was subsequently recreated and reenacted in 2013, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this part 18 prior to 2013, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Prior to this part 18 being recreated and reenacted, § 39-22-1804 provided for the repeal of this part 18, effective January 1, 2013. (See L. 2009, p. 1786.)

**39-22-1801. Legislative declaration.** The general assembly hereby finds, determines, and declares that Special Olympics Colorado provides children and adults with developmental disabilities with a unique opportunity to build confidence and social skills through athletic competition. The general assembly recognizes that Special Olympics Colorado benefits all Coloradans by helping children and adults with developmental disabilities successfully integrate into society and become useful and productive citizens. The general assembly further recognizes that citizens of Colorado would be willing to provide additional funds to the Special Olympics Colorado program if given the opportunity. Therefore, the general assembly has enacted this part 18 to provide funding to the Special Olympics Colorado program through voluntary contributions on state individual income tax returns.

**Source: L. 2013:** Entire part RC&RE, (HB 13-1237), ch. 133, p. 440, § 1, effective August 7.

**39-22-1802. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Special Olympics Colorado fund voluntary contribution is next in the queue, the Colorado state individual income tax return form must contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Special Olympics Colorado fund created in section 39-22-1803.

**Source: L. 2013:** Entire part RC&RE, (HB 13-1237), ch. 133, p. 440, § 1, effective August 7.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the Special Olympics Colorado fund was added to the state income tax return form beginning January 1, 2016.

**39-22-1803. Contributions credited to the Special Olympics Colorado fund - creation - appropriation.** (1) The department of revenue shall determine annually the total

amount designated pursuant to section 39-22-1802 and shall report such amount to the state treasurer. The state treasurer shall credit such amount to the Special Olympics Colorado fund, which fund is hereby created in the state treasury. At the end of each fiscal year, the state treasurer shall transfer all designated moneys in the fund and all interest derived from the deposit and investment of such moneys to Special Olympics Colorado. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) Special Olympics Colorado shall use moneys received pursuant to subsection (1) of this section only for equipment, training, competitions, and awards for participants in the Special Olympics Colorado program.

**Source: L. 2013:** Entire part RC&RE, (HB 13-1237), ch. 133, p. 441, § 1, effective August 7.

**39-22-1804. Repeal of part.** This part 18 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Special Olympics Colorado fund voluntary contribution is next in the queue, unless the voluntary contribution to the Special Olympics Colorado fund established by this part 18 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2013:** Entire part RC&RE, (HB 13-1237), ch. 133, p. 441, § 1, effective August 7.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the Special Olympics Colorado fund was added to the state income tax return form beginning January 1, 2016.

## PART 19

## WESTERN SLOPE MILITARY VETERANS' CEMETERY VOLUNTARY CONTRIBUTION

**39-22-1901. Legislative declaration.** The general assembly hereby finds and declares that there is no veterans' cemetery to serve the military veterans who reside on the western slope of Colorado. The general assembly believes that the state owes a duty to all of its military veterans to assist in providing adequate burial facilities close to where surviving relatives of deceased military veterans reside. The general assembly further finds that the federal department of veterans affairs will reimburse the state for one hundred percent of the costs to establish, expand, or improve a state veterans' cemetery. The general assembly further recognizes that citizens of Colorado may be willing to provide additional funds for the operation and maintenance of such cemetery if given the opportunity. Therefore, the general assembly has enacted this part 19 to provide funding to the western slope military veterans' cemetery fund through voluntary contributions on state individual income tax returns.

**Source: L. 99:** Entire part added, p. 780, § 1, effective May 21.

**39-22-1902. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2001, each Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, such individual wishes to make to the western slope military veterans' cemetery fund created in section 28-5-708 (1)(a), C.R.S. Such moneys credited to the fund shall be used for the operation and maintenance of a western slope military veterans' cemetery pursuant to section 28-5-708, C.R.S.

**Source: L. 99:** Entire part added, p. 781, § 1, effective May 21. **L. 2001:** Entire section amended, p. 1150, § 3, effective June 5. **L. 2002:** Entire section amended, p. 362, § 25, effective July 1. **L. 2004:** Entire section amended, p. 1210, § 94, effective August 4.

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 121, Session Laws of Colorado 2002.

**39-22-1903. Contributions credited to the fund - appropriation.** The department of revenue shall determine annually the total amount designated pursuant to section 39-22-1902 and shall report such amount to the state treasurer. The state treasurer shall credit such amount to the western slope military veterans' cemetery fund created in section 28-5-708 (1)(a), C.R.S.

**Source: L. 99:** Entire part added, p. 781, § 1, effective May 21. **L. 2002:** Entire section amended, p. 362, § 26, effective July 1; entire section amended, p. 865, § 11, effective August 7.

**Editor's note:** Amendments to this section by House Bill 02-1333 and House Bill 02-1413 were harmonized.

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 121, Session Laws of Colorado 2002.

**39-22-1904. Repeal of part. (Repealed)**

**Source: L. 99:** Entire part added, p. 781, § 1, effective May 21. **L. 2001:** Entire section amended, p. 1150, § 4, effective June 5. **L. 2003:** (3) amended, p. 2063, § 3, effective May 22. **L. 2004:** Entire section repealed, p. 1210, § 95, effective August 4.

PART 20

REFUND OF REVENUES IN EXCESS OF STATE FISCAL YEAR SPENDING LIMITATION

**39-22-2001. Legislative declaration - revenues exceeding TABOR limit - sales tax refund.** (1) The general assembly hereby finds and declares that:

(a) Section 20 of article X of the state constitution, which was approved by the registered electors of this state in 1992, limits the annual growth of state fiscal year spending;

(b) It is estimated that for fiscal years commencing on or after July 1, 1998, state revenues from sources not excluded from state fiscal year spending will exceed the limitation on state fiscal year spending;

(c) When revenues exceed the state fiscal year spending limitation for any given fiscal year, section 20 (7)(d) of article X of the state constitution requires that the excess revenues be refunded in the next fiscal year unless voters approve a revenue change allowing the state to keep the revenues;

(d) In addition, section 20 (1) of article X of the state constitution states that refunds need not be proportional when prior payments are impractical to identify or return and authorizes the use of any reasonable method for refunding excess revenues;

(e) If voters statewide either do not authorize the state to retain and spend all of the excess revenues for that fiscal year or authorize the state to retain and spend only a portion of the excess revenues for that fiscal year, the state is required to refund the revenues in excess of the state fiscal year spending limitation for that fiscal year that voters have not authorized the state to retain and spend;

(f) It is within the legislative prerogative of the general assembly to enact legislation to implement the refund of state excess revenues for fiscal years commencing on or after July 1, 1998, in compliance with section 20 of article X of the state constitution;

(g) It is a reasonable and necessary exercise of the legislative prerogative to determine that, due to the impossibility of identifying or returning prior payments, it is not feasible to make proportional refunds of state excess revenues;

(h) It is also a reasonable and necessary exercise of the legislative prerogative to determine what constitutes a reasonable method of refunding state excess revenues after consideration of the best information available at the time regarding: The amount and source of excess revenues to be refunded; the qualifications for and number of eligible recipients; and the related administrative expenses;

(i) It is the considered judgment of the general assembly that:

(I) The state excess revenues that are subject to the state fiscal year spending limitation under section 20 of article X of the state constitution for fiscal years commencing on or after July 1, 1998, will be derived from a wide variety of state taxes and state fees ranging from state sales tax to severance and transportation taxes to health service fees to court fines to permit and license fees to higher education fees and should, therefore, be returned to as large a group of Colorado residents as is identifiable and economically feasible;

(II) It is not feasible to make proportional refunds of state excess revenues for fiscal years commencing on or after July 1, 1998, due to the impossibility of identifying or returning prior payments;

(III) It is reasonable and fair to refund state excess revenues, if any, for fiscal years commencing on or after July 1, 1998, to a large group of individuals as a refund of state sales tax revenues since more Coloradans pay state sales tax than any other state tax;

(IV) Notwithstanding the provisions of subparagraphs (I) to (III) of this paragraph (i), it is reasonable and fair to simplify the process used to refund state excess revenues for any fiscal year for which the amount of such state excess revenues falls below a certain threshold by allowing an identical refund of state sales tax revenues to each qualified individual; and

(V) Refunding state excess revenues for fiscal years commencing on or after July 1, 1998, through the state income tax system in the manner set forth in sections 39-22-2002 and 39-22-2003 is a reasonable method for refunding such excess revenues.

**Source: L. 99:** Entire part added, p. 1305, § 1, effective August 4.

**39-22-2002. Fiscal years commencing on or after July 1, 1998 - state sales tax refund - authority of executive director.** (1) If, for any state fiscal year commencing on or after July 1, 1998, the amount of state revenues exceeds the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution and voters statewide either have not authorized the state to retain and spend all of the excess revenues for that fiscal year or have authorized the state to retain and spend only a portion of the excess revenues for that fiscal year, the executive director shall, if the amount of the identical individual refund calculated pursuant to paragraph (a) of subsection (2) of this section exceeds fifteen dollars, for the taxable year commencing on or after January 1 of the calendar year in which that fiscal year ended, but prior to January 1 of the subsequent calendar year, calculate a temporary state sales tax refund in accordance with the provisions of this section to refund the amount of excess state revenues that is not refunded by another method established by law.

(2) (a) Subject to the provisions of paragraph (b) of subsection (7) of this section, as applicable, for the taxable year commencing on or after January 1 of the calendar year in which that fiscal year ended, but prior to January 1 of the subsequent calendar year, the executive director shall divide the total amount of excess state revenues that is not refunded by another method established by law and is required to be refunded by the number of qualified individuals expected to claim a refund in order to determine the amount of the refund that each such qualified individual would receive if each individual received an identical refund.

(b) If the amount of the identical individual refund calculated pursuant to paragraph (a) of this subsection (2) is less than or equal to fifteen dollars, the executive director shall allow each qualified individual an identical refund in the manner set forth in section 39-22-2003 (3)(a) and (3)(b).

(3) As used in this section, unless the context otherwise requires, "excess state revenues" means the total combined amount of:

(a) Excess revenues that voters statewide have not authorized the state to retain and spend and that are required to be refunded pursuant to section 20 (7)(d) of article X of the state constitution and that are not refunded by another method established by law for said fiscal year ending in that calendar year;

(b) Excess revenues that voters statewide did not authorize the state to retain and spend and were required to be refunded pursuant to section 20 (7)(d) of article X of the state constitution for any other fiscal year and that were not refunded by another method established by law prior to said fiscal year, but that were not refunded by the state as required; and

(c) Repealed.

(4) No later than October 1 of any given calendar year commencing on or after January 1, 1999, during which the controller certifies, in accordance with the provisions of section 24-77-106.5, C.R.S., that state revenues exceed the limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution for the fiscal year ending in that calendar year, the executive director shall, if the amount of the identical individual refund calculated

pursuant to subsection (2) of this section exceeds fifteen dollars, calculate the income classifications and the amount of the refund allowed for each income classification pursuant to section 39-22-2003 (3) for the taxable year commencing during said fiscal year that would refund the amount of excess state revenues that is not refunded by another method established by law.

(5) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any given calendar year commencing on or after January 1, 1999, that seek authorization for the state to retain and spend all or any portion of the amount of excess revenues for the fiscal year ending during said calendar year, no later than October 1 of said calendar year, the executive director shall, in addition to the calculations required by subsection (4) of this section:

(a) (I) Calculate the amount of the state sales tax refund that each qualified individual would receive if each individual received an identical refund by dividing the total amount of excess state revenues required to be refunded if one or more of such ballot questions are approved by voters statewide and that is not refunded by another method established by law by the number of qualified individuals expected to claim a refund;

(II) Calculate the amount of the state sales tax refund that each qualified individual would receive if each individual received an identical refund by dividing the total amount of excess state revenues required to be refunded if all of such ballot questions are not approved by voters statewide and that is not refunded by another method established by law by the number of qualified individuals expected to claim a refund;

(b) If the amount of any identical refund calculated pursuant to subparagraph (I) of paragraph (a) of this subsection (5) exceeds fifteen dollars, calculate income classifications and the amount of the refund to be allowed for each income classification pursuant to section 39-22-2003 (3) for the taxable year commencing during said fiscal year that would refund the amount of excess state revenues, if any, required to be refunded if one or more of such ballot questions are approved by voters statewide and that is not refunded by another method established by law;

(c) If the amount of the identical refund calculated pursuant to subparagraph (II) of paragraph (a) of this subsection (5) exceeds fifteen dollars, calculate income classifications and the amount of the refund to be allowed for each income classification pursuant to section 39-22-2003 (3) for the taxable year commencing during said fiscal year that would refund the amount of excess state revenues, if any, required to be refunded if all of such ballot questions are not approved by voters statewide and that is not refunded by another method established by law.

(6) (a) Upon calculating the amount of any identical individual sales tax refund and, if necessary, income classifications and the amount of the refund for each income classification in accordance with the provisions of this section, the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of any such calculations and the basis for such calculations. Such written notification shall be given within five working days after such calculations are completed, but such written notification shall be given no later than October 1 of the calendar year.

(b) It is the function of the executive committee to review and approve or disapprove such calculated identical individual sales tax refund or such calculated income classifications and refund amount for each income classification within twenty days after receipt of such written notification from the executive director. Any such income classification or refund amount calculated pursuant to the provisions of this section that is not approved or disapproved

by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such income classification or refund amount, such automatic approval shall not occur unless the executive committee does not approve or disapprove such income classification or refund amount after the conclusion of such hearing. Any hearing conducted by the executive committee pursuant to the provisions of this paragraph (b) shall be concluded no later than twenty-five days after receipt of such written notification from the executive director.

(c) (I) If the executive committee disapproves any income classification or refund amount calculated by the executive director pursuant to this section, the executive committee shall specify such income classification or refund amount to be implemented by the executive director. Any income classification or refund amount specified by the executive committee pursuant to this subparagraph (I) shall be calculated or adjusted in accordance with the provisions of this section.

(II) The executive director shall not adjust any income classification or refund amount that has not been approved pursuant to the provisions of paragraph (b) of this subsection (6) or otherwise specified pursuant to subparagraph (I) of this paragraph (c).

(7) (a) The amount of any sales tax refund calculated pursuant to the provisions of this section shall be published in rules promulgated by the executive director in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms for that taxable year.

(b) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any calendar year commencing on or after January 1, 1999, that seek authorization for the state to retain and spend all or any portion of the amounts of excess state revenues for the fiscal year ending during said calendar year, the executive director shall not publish rules or income tax forms containing any sales tax refund calculated pursuant to this section until such rules and forms may be published to reflect the impact of the results of said election on the amount of the refund to be allowed pursuant to section 39-22-2003 and that is not refunded by another method established by law.

**Source: L. 99:** Entire part added, p. 1307, § 1, effective August 4. **L. 2002:** (1), (4), (5)(b), and (5)(c) amended, p. 1075, § 1, effective June 1; (1), (4), (5)(b), and (5)(c) amended, p. 716, § 6, effective August 7; (1), (4), (5)(b), and (5)(c) amended, p. 736, § 6, effective August 7. **L. 2015:** (3) amended, (HB 15-1367), ch. 271, p. 1077, § 16, effective June 4.

**Editor's note:** Subsection (3)(c)(II) provided for the repeal of subsection (3)(c), effective July 1, 2017. (See L. 2015, p. 1077.)

**Cross references:** For the legislative declaration in HB 15-1367, see section 1 of chapter 271, Session Laws of Colorado 2015.

**39-22-2003. State sales tax refund - offset against state income tax - qualified individuals.** (1) (a) For purposes of this section, "qualified individual" means:

(I) A natural person who is domiciled in this state for the entire taxable year commencing January 1 and ending December 31 of such taxable year and who has state income tax liability under section 39-22-104 for the taxable year or who files a Colorado individual

income tax return to claim a refund of Colorado income tax withheld from wages for that tax year;

(II) A natural person who is domiciled in this state for the entire taxable year commencing January 1 and ending December 31 of such taxable year and who is at least eighteen years of age as of December 31 of the taxable year preceding such taxable year;

(III) A natural person who died during the taxable year commencing January 1 and ending December 31, who was domiciled in this state from January 1 of the taxable year until the date of death, and whose estate or spouse has state income tax liability under section 39-22-104 for the taxable year or whose estate or spouse files a Colorado income tax return to claim a refund of Colorado income tax withheld from wages for that tax year; or

(IV) A natural person who died during the taxable year commencing on January 1 and ending December 31, who was domiciled in this state from January 1 of the taxable year until the date of death, and who was at least eighteen years of age as of December 31 immediately prior to that taxable year.

(b) "Qualified individual" does not include:

(I) Any natural person who was convicted of a felony and who served a sentence of incarceration in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to the department of corrections pursuant to section 16-11-308, C.R.S., or in both such facility and jail for a total of one hundred eighty days or more during the fiscal year ending during the taxable year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (1);

(II) Any natural person who is convicted of a misdemeanor or is adjudicated for an offense that would constitute a misdemeanor if committed by an adult and who is incarcerated in a county or municipal jail for a total of one hundred eighty days or more during the fiscal year ending during the taxable year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (1);

(III) Any natural person under eighteen years of age who is adjudicated for an offense that would constitute a felony if committed by an adult and who was committed to the department of human services for a total of one hundred eighty days or more during the fiscal year ending during the taxable year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (1).

(1.5) For purposes of this section, "adjusted gross income" means:

(a) For the taxable year commencing on January 1, 1999, and ending December 31, 1999, and for the taxable year commencing on January 1, 2000, and ending December 31, 2000, the combined total of:

(I) Federal adjusted gross income; and

(II) Social security benefits excluded from federal adjusted gross income for the tax year.

(b) For the taxable year commencing on January 1, 2001, and ending December 31, 2001, and for each subsequent taxable year thereafter, the combined total of:

(I) Federal adjusted gross income;

(II) Social security benefits excluded from federal adjusted gross income for the tax year; and

(III) Repealed.

(IV) The amount of interest income from state and local bonds added to federal taxable income pursuant to section 39-22-104 (3)(b).

(2) With respect to the taxable year commencing on January 1, 1999, and ending December 31, 1999, and for each subsequent taxable year, there shall be allowed to each qualified individual a state sales tax refund in an amount specified in subsection (3) of this section to be claimed in the manner specified in subsection (4) of this section if there were excess state revenues for the fiscal year ending in that tax year that voters statewide have not authorized the state to retain and spend and that are required to be refunded pursuant to section 20 (7)(d) of article X of the state constitution.

(3) The amount of the refund allowed under this section shall be as follows:

(a) For a qualified individual filing a single return, the amount of the identical individual sales tax refund calculated pursuant to section 39-22-2002 (2) or (5)(a) if the amount of such identical individual refund is less than or equal to fifteen dollars;

(b) For any two qualified individuals filing a joint return, double the amount of the identical individual sales tax refund calculated pursuant to section 39-22-2002 (2) or (5)(a) if the amount of such identical individual refund is less than or equal to fifteen dollars;

(c) For a qualified individual filing a single return, if the amount of the identical individual sales tax refund calculated pursuant to section 39-22-2002 (2) or (5)(a) exceeds fifteen dollars:

(I) If the qualified individual's adjusted gross income for the tax year is less than or equal to twenty-five thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by twenty-five percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(II) If the qualified individual's adjusted gross income for the tax year is greater than twenty-five thousand dollars but not more than fifty thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by twenty-three percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(III) If the qualified individual's adjusted gross income for the tax year is greater than fifty thousand dollars but not more than seventy-five thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by nineteen percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(IV) If the qualified individual's adjusted gross income for the tax year is greater than seventy-five thousand dollars but not more than one hundred thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by twelve percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(V) If the qualified individual's adjusted gross income for the tax year is greater than one hundred thousand dollars but not more than one hundred twenty-five thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by six percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(VI) If the qualified individual's adjusted gross income for the tax year is greater than one hundred twenty-five thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by fifteen percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(d) For two qualified individuals filing a joint return, if the amount of the identical individual sales tax refund calculated pursuant to section 39-22-2002 (2) or (5)(a) exceeds fifteen dollars, the amount of the refund shall be based upon the aggregate adjusted gross income of the qualified individuals and shall be an amount equal to double the amount of the refund allowed under paragraph (c) of this subsection (3) for such aggregate income amount.

(4) (a) The amount of the refund allowed under subsection (2) of this section for the taxable year commencing January 1, 2000, and ending December 31, 2000, and for each subsequent taxable year, shall be the same as provided in subsection (3) of this section; except that, for each such taxable year, the executive director shall adjust:

(I) The amount of adjusted gross income, to the nearest thousand dollars, for each income classification such that the percentage of all qualified individuals who are expected to claim a refund under each income classification for such taxable year remains the same as the percentage of all qualified individuals who claimed a refund under such income classification for the 1999 tax year; and

(II) The amount of the refund allowed for each income classification such that the percentage of excess state revenues to be refunded to all qualified individuals for such income classification for such taxable year remains the same as the percentage of excess state revenues refunded to all qualified individuals for such income classification for the 1999 tax year.

(b) In calculating income classifications or the amount of refund allowed for a given income classification in accordance with the provisions of this section, the executive director shall use the most recent estimate of general fund revenues for the applicable taxable year prepared by the staff of the legislative council of the general assembly.

(5) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (1) of this section by timely filing an income tax return with the department of revenue for a taxable year for which the refund is allowed in compliance with the provisions of this article.

(II) Any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (1) of this section or by a qualified individual that is required to file a Colorado individual income tax return for that tax year pursuant to section 39-22-601 (1)(a) who is granted an extension of time to file an income tax return by filing an income tax return with the department of revenue no later than October 15 of the calendar year following the taxable year for which the refund is being claimed. Such qualified individual shall not be required to pay all or any portion of the qualified individual's net tax liability due prior to October 15 of said calendar year in order to be granted an extension of time to file said tax return; except that, pursuant to section 39-22-621, such qualified individual may be subject to a late payment penalty and interest on any net income tax liability not paid by April 15 of said calendar year.

(III) The department of revenue shall not allow said refund claimed on any income tax return not filed in compliance with the provisions of this article. In no event shall the refund

claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (1) of this section on any income tax return be:

(A) Disallowed if said return is filed on or before October 15 of the calendar year following the tax year for which the refund is being claimed; and

(B) Allowed if said return is filed after October 15 of the calendar year following the tax year for which the refund is being claimed.

(b) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (5), any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (1) of this section by filing an income tax return for the taxable year for which the refund is allowed with the department of revenue no later than April 15 of the calendar year following the tax year for which the refund is being claimed. The department of revenue shall not allow said refund claimed by a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (1) of this section on any income tax return filed with the department of revenue after April 15 of the calendar year following the tax year for which the refund is being claimed.

(c) (I) Notwithstanding any provision of paragraph (b) of this subsection (5) to the contrary, a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (1) of this section who claims a property tax assistance grant pursuant to section 39-31-101 or a heat or fuel expenses assistance grant pursuant to section 39-31-104 may claim a refund authorized by this section on the assistance grant application form described in section 39-31-102 (2). Claiming a refund on such assistance grant application form shall be in lieu of claiming the refund on an income tax return pursuant to paragraph (b) of this subsection (5). Any refund claimed pursuant to this paragraph (c) shall be claimed on or before April 15 of the calendar year following the tax year for which the refund is being claimed.

(II) The department of revenue shall not allow a refund authorized by this section that is claimed on an assistance grant application form if:

(A) The assistance grant application form is filed after April 15 of the calendar year following the tax year for which the refund is being claimed; or

(B) The qualified individual has claimed the refund authorized by this section on an income tax form filed in accordance with paragraph (b) of this subsection (5) for the tax year for which the refund is allowed.

(6) Except as otherwise provided in this subsection (6), if the refund allowed under this section exceeds the income taxes otherwise due on the claimant's income, the amount of the refund shall be refunded to the claimant. The claimant may elect to carry forward the amount of the refund not used as an offset against income taxes or as an offset against subsequent years' income tax liability.

(7) In addition to any other penalties allowed by law, any person who claims but is not eligible to claim the refund allowed pursuant to this section shall be subject to the criminal penalties imposed pursuant to section 39-21-118, as applicable.

(8) The state sales tax refund allowed to any qualified individual under this section shall not be reported by the department of revenue as a payment of a refund, credit, or offset of state income taxes to such qualified individual in any information return required to be filed pursuant to federal law.

(9) (a) The department of revenue shall identify any qualified individual who has been convicted of a felony and who, at the time of filing for a refund pursuant to this section, is

incarcerated in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to a correctional facility pursuant to section 16-11-308, C.R.S. The department of revenue shall transfer the amount of any refund owed to said qualified individual to the department of corrections.

(b) The department of corrections shall transmit the amount of said refund as follows:

(I) Except as otherwise provided in paragraph (c) of this subsection (9), if the qualified individual is under a valid court order to pay restitution or costs and under a valid court order or administrative order to pay child support then:

(A) One-half of the refund to the clerk of the district court that issued an order for payment of restitution entered pursuant to article 18.5 of title 16, C.R.S., or an order for costs pursuant to section 18-1.3-701, C.R.S. Such refund shall be credited in the priority specified in section 16-11-101.6 (1), C.R.S.; and

(B) One-half of the refund to the department of human services for application toward the qualified individual's child support obligation for individuals receiving services pursuant to section 26-13-106, C.R.S.; or

(II) If the qualified individual is not under a valid court order or administrative order to pay child support but is under a valid court order to pay restitution or costs, then to the clerk of the district court that issued an order for payment of restitution entered pursuant to article 18.5 of title 16, C.R.S., or an order for costs pursuant to section 18-1.3-701, C.R.S., whereupon such refund shall be credited in the priority specified in section 16-11-101.6 (1), C.R.S.; or

(III) If the qualified individual is not under a valid court order to pay restitution or costs but is under a valid court order or administrative order to pay child support, then to the department of human services for application toward the qualified individual's child support obligation for individuals receiving services pursuant to section 26-13-106, C.R.S.; or

(IV) If the qualified individual is not under a valid court order or administrative order to pay child support and is not under a valid court order to pay restitution or costs, then to the qualified individual subject to other applicable provisions of law.

(c) If a refund is transmitted in accordance with the provisions of subparagraph (I), (II), or (III) of paragraph (b) of this subsection (9) and results in excess refund moneys remaining after satisfaction of the qualified individual's restitution or child support obligation, the excess refund moneys shall be first applied toward any outstanding restitution obligation or child support obligation of the qualified individual before being returned to the qualified individual.

(10) The department of corrections, the department of human services, and each county of the state, to the extent each such county has the capability within existing resources, shall provide in a timely manner the information requested by the department of revenue necessary to identify the persons specified in paragraph (b) of subsection (1) of this section and in subsection (9) of this section. The information shall be provided in the form requested by the department of revenue. The department of revenue shall maintain the confidentiality of any social security number received pursuant to this subsection (10).

**Source: L. 99:** Entire part added, p. 1310, § 1, effective August 4. **L. 2001:** (1)(a)(I), (1)(a)(III), (3)(c), (3)(d), (4)(a)(I), (5)(a)(II), and (5)(b) amended and (1.5) added, pp. 73, 71, §§ 2, 1, effective August 8. **L. 2002:** (9) amended, p. 1557, § 351, effective October 1. **L. 2003:** (9) amended, p. 2002, § 68, effective May 22. **L. 2004:** (9) amended, p. 171, § 1, effective August 4.

**L. 2013:** (4)(b) amended, (SB 13-036), ch. 2, p. 6, § 2, effective January 31. **L. 2016:** (1)(b)(II) amended and (1)(b)(III) repealed, (SB 16-189), ch. 210, p. 795, § 112, effective June 6.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (9), see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 21

COLORADO AFFORDABLE HOUSING TAX CREDIT

**39-22-2101. Definitions.** As used in this part 21, unless the context otherwise requires:

(1) "Allocation certificate" means a statement issued by the authority certifying that a given development qualifies for the credit and specifying the amount of the credit allowed.

(2) "Authority" means the Colorado housing and finance authority created pursuant to section 29-4-704, C.R.S.

(3) "Compliance period" means the period of fifteen years beginning with the first taxable year of the credit period.

(4) "Credit" means the Colorado affordable housing tax credit allowed pursuant to section 39-22-2102.

(5) "Credit period" means the period of six taxable years beginning with the taxable year in which a qualified development is placed in service. If a qualified development is comprised of more than one building, the development shall be deemed to be placed in service in the taxable year during which the last building of the qualified development is placed in service.

(6) "Department" means the Colorado department of revenue.

(7) "Federal tax credit" means the federal low-income housing tax credit provided by section 42 of the internal revenue code.

(8) "Qualified allocation plan" means the qualified allocation plan adopted by the authority pursuant to section 42 (m) of the internal revenue code.

(9) "Qualified basis" means the qualified basis of the development as determined pursuant to section 42 of the internal revenue code.

(10) "Qualified development" means a "qualified low-income housing project", as that term is defined in section 42 of the internal revenue code, that is located in Colorado and is determined by the authority to be eligible for a federal tax credit whether or not a federal tax credit is allocated with respect to said development.

(11) "Qualified taxpayer" means an individual, a person, firm, corporation, or other entity that owns an interest, direct or indirect, in a qualified development and is subject to the taxes imposed by this article.

**Source: L. 2000:** Entire part added, p. 875, § 1, effective August 2. **L. 2014:** (5), (7), and (11) amended, (HB 14-1017), ch. 277, p. 1125, § 3, effective May 29. **L. 2018:** (4) amended, (SB 18-007), ch. 228, p. 1439, § 1, effective May 22.

**39-22-2102. Credit against tax - affordable housing developments.** (1) For income tax years during the credit period, there shall be allowed to any qualified taxpayer a credit with

respect to the income taxes imposed by this article in the amount determined by the authority pursuant to this part 21.

(2) The authority may allocate a credit to an owner of a qualified development by issuing to the owner an allocation certificate. The authority may determine the time at which such allocation certificate is issued. The credit shall be in an amount determined by the authority, subject to the following guidelines:

(a) The credit shall be necessary for the financial feasibility of such development;

(b) In no event shall a credit exceed thirty percent of the qualified basis of the qualified development;

(c) All allocations shall be made pursuant to the qualified allocation plan; and

(d) The aggregate sum of credits allocated annually shall not exceed the limits set forth in subsection (7) of this section, except for credits allocated in 2015 and 2016 for qualified developments that are located in a county that is designated by the qualified allocation plan as having been impacted by a natural disaster.

(3) If an owner of a qualified development receiving an allocation of a credit is a partnership, limited liability company, S corporation, or similar pass-through entity, the owner may allocate the credit among its partners, shareholders, members, or other qualified taxpayers in any manner agreed to by such persons regardless of whether any such persons are deemed a partner for federal income tax purposes. The owner shall certify to the department the amount of credit allocated to each partner, shareholder, member, or other qualified taxpayer. Each partner, shareholder, member, or other qualified taxpayer admitted as a partner, shareholder, member, or other qualified taxpayer of the owner prior to the filing of a tax credit claiming the credit is allowed to claim such amount subject to any restrictions set forth in this part 21.

(4) No credit shall be allocated pursuant to this part 21 unless the qualified development is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development, and is in accordance with the accessibility and adaptability requirements of the federal tax credits and Title VIII of the "Civil Rights Act of 1968", as amended by the "Fair Housing Amendments Act of 1988", for a period of fifteen taxable years, or such longer period as may be agreed to between the authority and the owner, beginning with the first taxable year of the credit period unless corrected within the time provided by sec. 42(h)(6)(J) of the internal revenue code as applicable to the covenant described in this subsection (4).

(5) The authority shall not allocate a credit pursuant to this part 21 unless:

(a) The developer of the proposed qualified development has conducted a public hearing in the community in which the proposed qualified development is located concerning the project for which the allocation has been applied. At such hearing, the developer of the proposed qualified development shall specify the total cost of the project, the estimated present value of the allocation, and the estimated total amount of the allocation. Public comments and other information shall be solicited at the hearing. The hearing shall be recorded by the developer of the proposed qualified development and the developer shall make copies of the recording available to interested parties. The authority shall consider any comments or other information provided at the hearing when ranking an application for a credit pursuant to this section.

(b) The authority has obtained a written commitment approved by a public vote of the governing body of a local government to provide some monetary, in-kind, or other contribution benefitting the qualified development.

(6) The allocated credit amount may be taken against the taxes imposed by this article for each taxable year of the credit period. Any amount of credit that exceeds the tax due for a taxable year may be carried forward as a tax credit against subsequent years' income tax liability up to eleven tax years following the tax year in which the allocation was made and must be applied first to the earliest years possible. Any amount of the credit that is not used shall not be refunded to the taxpayer.

(7) During each calendar year of the period beginning January 1, 2015, and ending December 31, 2024, the authority may allocate a credit, the full amount of which may be claimed against the taxes imposed by this article 22 for each taxable year of the six-year credit period. The aggregate amount of all credits allocated by the authority in each calendar year of the period beginning January 1, 2015, and ending December 31, 2024, shall not exceed the amount of:

(a) Five million dollars for credits allocated pursuant to subsection (1) of this section and section 39-22-2105 combined, except for credits allocated in 2015 and 2016 for qualified developments that are located in a county that is designated by the qualified allocation plan as having been impacted by a natural disaster;

(b) Unallocated credits, if any, for the preceding calendar years; and

(c) Any credit recaptured or otherwise returned to the authority in the calendar year.

(8) Unless otherwise provided in this part 21 or the context clearly requires otherwise, the authority shall determine eligibility for a credit and allocate credits in accordance with the standards and requirements set forth in section 42 of the internal revenue code; however, any combination of federal and state credits allowed shall be the least amount necessary to ensure the financial feasibility of a qualified development.

**Source: L. 2000:** Entire part added, p. 876, § 1, effective August 2. **L. 2014:** (2)(d), (4), (6), IP(7), and (7)(a) amended, (HB 14-1017), ch. 277, p. 1125, § 4, effective May 29. **L. 2016:** (2)(d), IP(7), and (7)(a) amended, (HB 16-1465), ch. 243, p. 990, § 1, effective June 6. **L. 2018:** (3), (4), and IP(7) amended, (SB 18-007), ch. 228, p. 1439, § 2, effective May 22.

**39-22-2103. Recapture.** (1) As of the last day of any taxable year during the compliance period, if the amount of the qualified basis of a qualified development with respect to a taxpayer is less than the amount of the qualified basis as of the last day of the prior taxable year, then the amount of the taxpayer's state income tax liability for that taxable year shall be increased by the credit recapture amount.

(2) For purposes of subsection (1) of this section, the credit recapture amount is an amount equal to the aggregate decrease in the credit allowed to the taxpayer pursuant to this part 21 for all prior taxable years that would have resulted if the accelerated portion of the credit allowable by reason of this part 21 were not allowed for all prior taxable years with respect to the reduced amount of qualified basis described in subsection (1) of this section.

(3) For purposes of subsection (2) of this section, the accelerated portion of the credit for the prior taxable years with respect to any amount of qualified basis is the difference between:

(a) The aggregate credit allowed pursuant to this part 21, notwithstanding this subsection (3), for the years with respect to such qualified basis; and

(b) The aggregate credit that would be allowable pursuant to this part 21 for such years with respect to the qualified basis if the aggregate credit that would have been allowable, but for this subsection (3), for the entire compliance period were allowable ratably over fifteen years.

(4) In the event that recapture of any credit is required in any tax year, the return submitted for that tax year to the department shall include the proportion of credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of credit previously allocated to such taxpayer.

**Source: L. 2000:** Entire part added, p. 878, § 1, effective August 2.

**39-22-2104. Filing requirements.** An owner of a qualified development to which a credit has been allocated and each qualified taxpayer to which such owner has allocated a portion of said credit, if any, shall file with their state income tax return a copy of the allocation certificate issued by the authority with respect to such development and a copy of the owner's certification to the department as to the allocation of the credit among the qualified taxpayers having ownership interests in such development.

**Source: L. 2000:** Entire part added, p. 879, § 1, effective August 2.

**39-22-2105. Parallel credits - insurance premium taxes.** (1) Any taxpayer who is subject to the tax on insurance premiums established by sections 10-3-209, 10-5-111, and 10-6-128, C.R.S., and who is therefore exempt from the payment of income tax and who is otherwise eligible to claim a credit pursuant to this part 21 may claim such credit and carry such credit forward against such insurance premium tax to the same extent as the taxpayer would have been able to claim or carry forward such credit or refund against income tax. All other provisions of this part 21 with respect to the credit, including the amount, allocation, and recapture of the credit and the years for which the credit may be claimed shall apply to a credit claimed pursuant to this section.

(2) For purposes of administering this section, any reference in this article to "income tax year" means calendar year.

**Source: L. 2000:** Entire part added, p. 879, § 1, effective August 2.

**39-22-2106. Rules.** The authority and the executive director of the department, in consultation with each other, shall promulgate rules necessary for their respective administration of this part 21. Rules of the executive director of the department shall be promulgated in accordance with article 4 of title 24, C.R.S. Rules of the authority shall be adopted pursuant to section 29-4-708, C.R.S.

**Source: L. 2000:** Entire part added, p. 879, § 1, effective August 2.

**39-22-2107. Compliance monitoring.** The authority, in consultation with the department, shall monitor and oversee compliance with the provisions of this part 21 and shall report specific occurrences of noncompliance to the department.

**Source: L. 2000:** Entire part added, p. 879, § 1, effective August 2.

**39-22-2108. Report to the general assembly.** (1) For each allocation year, the authority shall, by December 31 of that year, provide a written report to the general assembly and shall further make the report available to the public. With respect to allocated state affordable housing tax credits under section 39-22-2102, the report must:

(a) Specify the number of qualified developments that have been allocated such tax credits during the allocation year and the total number of units supported by each development;

(b) Describe each qualified development that has been allocated such credits including, without limitation, the geographic location of the development, the household type and any specific demographic information available about residents intended to be served by the development, the income levels intended to be served by the development, and the rents or set-asides authorized for each development; and

(c) Provide housing market and demographic information that demonstrates how the qualified developments supported by the tax credits are addressing the need for affordable housing within the communities they are intended to serve as well as information about any remaining disparities in the affordability of housing within those communities.

**Source: L. 2014:** Entire section added, (HB 14-1017), ch. 277, p. 1126, § 5, effective May 29. **L. 2018:** IP(1) amended, (SB 18-007), ch. 228, p. 1440, § 3, effective May 22.

PART 22

PET OVERPOPULATION FUND VOLUNTARY CONTRIBUTION

**Editor's note:** (1) This part 22 was repealed in 2004 and was subsequently recreated and reenacted in 2004, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 22 prior to 2004, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Prior to this part 22 being recreated and reenacted, § 39-22-2203 (1) provided for the repeal of this part 22, effective January 1, 2004. (See L. 2001, p. 1056.)

**39-22-2201. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2010, but prior to January 1, 2020, each Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the taxpayer wishes to make to the pet overpopulation fund.

**Source: L. 2004:** Entire part RC&RE, p. 1894, § 3, effective June 4. **L. 2007:** Entire section amended, p. 361, § 1, effective August 3. **L. 2010:** Entire section amended, (SB 10-172), ch. 186, p. 671, § 3, effective August 11.

**39-22-2202. Contributions credited to the fund - administration - transfer.** The department of revenue shall determine annually the total amount designated pursuant to section 39-22-2201 and shall report the amount to the state treasurer, who shall credit such amount to the

pet overpopulation fund created in section 35-80-116.5 (5), C.R.S. The general assembly shall appropriate annually from the pet overpopulation fund to the department the department's costs of administering the moneys designated as contributions to the fund. After subtracting the appropriation to the department, all designated moneys in the fund are hereby continuously appropriated for the purposes of this part 22. At the end of each fiscal year, the state treasurer shall transfer all designated moneys in the fund and all interest earned through the investment of fund moneys, after subtracting the appropriation to the department, as specified in section 35-80-116.5 (5)(b), C.R.S.

**Source: L. 2004:** Entire part RC&RE, p. 1895, § 3, effective June 4.

**39-22-2203. Repeal of part.** This part 22 is repealed, effective January 1, 2021, unless the voluntary contribution to the pet overpopulation fund established by section 39-22-2201 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2004:** Entire part RC&RE, p. 1895, § 3, effective June 4. **L. 2005:** Entire section amended, p. 739, § 2, effective August 8. **L. 2007:** Entire section amended, p. 361, § 2, effective August 3. **L. 2010:** Entire section amended, (SB 10-172), ch. 186, p. 672, § 4, effective August 11.

## PART 23

## COURT-APPOINTED SPECIAL ADVOCATES VOLUNTARY CONTRIBUTION

**39-22-2301 to 39-22-2304. (Repealed)**

**Editor's note:** (1) This part 23 was added in 2002. For amendments to this part 23 prior to its repeal in 2009, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-2304 provided for the repeal of this part 23, effective January 1, 2009. (See L. 2005, p. 966.)

## PART 24

## COLORADO HEALTHY RIVERS FUND VOLUNTARY CONTRIBUTION

**39-22-2401. Legislative declaration.** The general assembly hereby finds and declares that the natural heritage and quality of life in Colorado are of fundamental importance to the citizens of the state, and the protection of this natural heritage and quality of life are essential to sustainable economic development in the state. The general assembly further finds and declares that locally based watershed groups have emerged around the state over the past decade that are committed to collaborative approaches to the restoration and protection of lands and natural resources within Colorado's watersheds in concert with economic development. The general

assembly recognizes that the Colorado watershed assembly, a nonprofit corporation, serves as a state-level umbrella organization for such local groups. The general assembly further recognizes that the citizens of Colorado may be willing to provide funds to assist in the restoration and protection of lands and natural resources within watersheds in the state. It is therefore the intent of the general assembly enacting this part 24 to provide Colorado citizens the opportunity to support local watershed efforts by allowing citizens to make a voluntary contribution on their state income tax returns for such purpose.

**Source: L. 2002:** Entire part added, p. 1096, § 1, effective August 7.

**39-22-2402. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2016, but prior to January 1, 2021, the Colorado state individual income tax return form must contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado healthy rivers fund created in section 39-22-2403.

**Source: L. 2002:** Entire part added, p. 1097, § 1, effective August 7. **L. 2005:** Entire section amended, p. 666, § 1, effective June 1. **L. 2008:** Entire section amended, p. 1548, § 1, effective August 5. **L. 2011:** Entire section amended, (HB 11-1177), ch. 50, p. 131, § 1, effective August 10. **L. 2015:** Entire section amended, (HB 15-1252), ch. 303, p. 1247, § 1, effective August 5. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 258, § 2, effective April 14.

**39-22-2403. Contributions credited to Colorado healthy rivers fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-2402 and shall report such amount to the state treasurer and to the general assembly. The state treasurer shall credit such amount to the Colorado healthy rivers fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) (a) The general assembly shall appropriate annually from the Colorado healthy rivers fund to the department of revenue its costs of administering money designated as contributions to the fund.

(b) All money remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the Colorado water conservation board in the department of natural resources. Two designees of the board, in cooperation with two designees of the water quality control commission in the department of public health and environment and upon consultation with the Colorado watershed assembly, shall administer the money in accordance with subsection (3) of this section. Money in the fund may be used to cover all reasonable costs incurred in administering the fund. The money transferred to the Colorado water conservation board pursuant to this subsection (2)(b) is continuously appropriated to the board for the purposes specified in subsection (3) of this section.

(3) The water quality control commission and the Colorado water conservation board shall use the moneys transferred pursuant to subsection (2) of this section to award grants, on a competitive basis and in a manner to be determined jointly by such commission and board, to any qualified resident of Colorado to work toward the restoration and protection of land and

natural resources within watersheds in Colorado. Qualifications for such grants shall be determined jointly by the commission and the board in cooperation with the Colorado watershed assembly.

(4) Moneys granted pursuant to subsection (3) of this section shall not be used for lobbying or for any other political purpose, the costs of litigation, or to remove any diversion or improvement structure.

**Source: L. 2002:** Entire part added, p. 1097, § 1, effective August 7. **L. 2008:** (1) and (2) amended, p. 1548, § 2, effective August 5. **L. 2018:** (2) amended, (SB 18-218), ch. 336, p. 2019, § 27, effective May 30.

**39-22-2404. Repeal of part.** This part 24 is repealed, effective January 1, 2022, unless the voluntary contribution to the Colorado healthy rivers fund created in section 39-22-2403 is continued or reestablished by the general assembly acting by bill prior to that date.

**Source: L. 2016:** Entire section added, (HB 16-1297), ch. 92, p. 259, § 3, effective April 14.

PART 25

FAMILY RESOURCE CENTERS FUND VOLUNTARY CONTRIBUTION

**39-22-2501 to 39-22-2504. (Repealed)**

**Editor's note:** (1) This part 25 was added in 2003. For amendments to this part 25 prior to its repeal in 2010, consult the 2009 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-2504 provided for the repeal of this part 25, effective January 1, 2010. (See L. 2006, p. 157.)

PART 26

COLORADO STATE FAIR VOLUNTARY CONTRIBUTION

**39-22-2601 to 39-22-2604. (Repealed)**

**Editor's note:** (1) This part 26 was added in 2004. For amendments to this part 26 prior to its repeal in 2008, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-2604 provided for the repeal of this part 26, effective January 1, 2008. (See L. 2004, p. 927.)

PART 27

ORGAN DONOR AWARENESS VOLUNTARY CONTRIBUTION

**39-22-2701 to 39-22-2704. (Repealed)**

**Editor's note:** (1) This part 27 was added in 2004. For amendments to this part 27 prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-2704 provided for the repeal of this part 27, effective January 1, 2011. (See L. 2007, p. 310.)

PART 28

DROPOUT PREVENTION ACTIVITY PROGRAMS
VOLUNTARY CONTRIBUTION

**39-22-2801 to 39-22-2804. (Repealed)**

**Editor's note:** (1) This part 28 was added in 2005 and was not amended prior to its repeal in 2009. For the text of this part 28 prior to 2009, consult the 2008 Colorado Revised Statutes.

(2) Section 39-22-2804 provided for the repeal of this part 28, effective January 1, 2009. (See L. 2005, p. 518.)

PART 29

ALZHEIMER'S ASSOCIATION
VOLUNTARY CONTRIBUTION

**Cross references:** For the legislative declaration contained in the 2005 act enacting this part 29, see section 1 of chapter 142, Session Laws of Colorado 2005.

**39-22-2901. Voluntary contribution designation - procedure.** For income tax years that commence on or after January 1, 2016, but before January 1, 2021, the Colorado state individual income tax return form must contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Alzheimer's Association fund created in section 39-22-2902.

**Source: L. 2005:** Entire part added, p. 496, § 2, effective May 12. **L. 2008:** Entire section amended, p. 52, § 2, effective August 5. **L. 2011:** Entire section amended, (HB 11-1028), ch. 16, p. 44, § 2, effective August 10. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 259, § 4, effective April 14.

**Cross references:** (1) For the legislative declaration in the 2008 act amending this section, see section 1 of chapter 24, Session Laws of Colorado 2008.

(2) For the legislative declaration in the 2011 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 2011.

**39-22-2902. Contributions credited to the Alzheimer's Association fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-2901 and shall report such amount to the state treasurer and to the general assembly. The state treasurer shall credit such amount to the Alzheimer's Association fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Alzheimer's Association fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the Alzheimer's Association Colorado chapter, a Colorado nonprofit agency. The Alzheimer's Association Colorado chapter shall administer such moneys in furtherance of the work of the association in providing family support services and caregiver education.

**Source: L. 2005:** Entire part added, p. 496, § 2, effective May 12.

**39-22-2903. Repeal of part.** This part 29 is repealed, effective January 1, 2022, unless the voluntary contribution to the Alzheimer's Association fund established by section 39-22-2902 is continued or reestablished by the general assembly acting by bill prior to that date.

**Source: L. 2005:** Entire part added, p. 496, § 2, effective May 12. **L. 2008:** Entire section amended, p. 52, § 3, effective August 5. **L. 2011:** Entire section amended, (HB 11-1028), ch. 16, p. 44, § 3, effective August 10. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 259, § 5, effective April 14.

**Cross references:** (1) For the legislative declaration in the 2008 act amending this section, see section 1 of chapter 24, Session Laws of Colorado 2008.

(2) For the legislative declaration in the 2011 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 2011.

## PART 30

## MILITARY FAMILY RELIEF VOLUNTARY CONTRIBUTION

**39-22-3001. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2016, but prior to January 1, 2021, the Colorado state individual income tax return form must contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the military family relief fund created in section 28-3-1502, C.R.S.

**Source: L. 2005:** Entire part added, p. 654, § 2, effective May 27. **L. 2008:** Entire section amended, p. 54, § 1, effective August 5. **L. 2011:** Entire section amended, (HB 11-1037), ch. 7, p. 14, § 1, effective August 10. **L. 2016:** Entire section amended, (HB 16-1349), ch. 219, p. 835, § 1, effective August 10.

**39-22-3002. Contributions credited to the military family relief fund - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3001 and shall report such amount to the state treasurer, the adjutant general, and the house and senate state, veterans and military affairs committees. The state treasurer shall credit such amount to the military family relief fund.

(2) The general assembly shall appropriate annually from the military family relief fund to the department of revenue its costs of administering moneys designated as contributions to the fund.

**Source: L. 2005:** Entire part added, p. 654, § 2, effective May 27.

**39-22-3003. Repeal of part.** This part 30 is repealed, effective January 1, 2022, unless the voluntary contribution to the military family relief fund is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2005:** Entire part added, p. 654, § 2, effective May 27. **L. 2008:** Entire section amended, p. 54, § 2, effective August 5. **L. 2011:** Entire section amended, (HB 11-1037), ch. 7, p. 14, § 2, effective August 10. **L. 2016:** Entire section amended, (HB 16-1349), ch. 219, p. 835, § 2, effective August 10.

PART 31

COLORADO EASTER SEALS
VOLUNTARY CONTRIBUTION

**39-22-3101 to 39-22-3104. (Repealed)**

**Editor's note:** (1) This part 31 was added in 2006. For amendments to this part 31 prior to its repeal in 2013, consult the 2012 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-3104 provided for the repeal of this part 31, effective January 1, 2013. (See L. 2009, p. 148.)

PART 32

NATIONAL MULTIPLE SCLEROSIS SOCIETY
VOLUNTARY CONTRIBUTION

**39-22-3201. Legislative declaration.** The general assembly hereby finds and declares that the quality of life for individuals with multiple sclerosis, and their families, is of fundamental importance to the citizens of the state. The general assembly further declares that the state has one of the highest prevalence rates for multiple sclerosis in the United States: One in five hundred and eighty citizens, of which seventy-three percent are women. The general assembly recognizes that there are many costs associated with the care of individuals with multiple sclerosis because it is a disease that starts in young adulthood and usually becomes

progressively disabling, thereby significantly impacting people's lives for many years. The general assembly further declares that the Colorado chapter of the National Multiple Sclerosis Society was founded in 1959 and provides programs and services across the state for people with multiple sclerosis, their families, and friends. The general assembly recognizes that the National Multiple Sclerosis Society funds research in Colorado toward finding the cause of and cure for multiple sclerosis. The general assembly further recognizes that the Colorado chapter of the National Multiple Sclerosis Society has regional offices in the Denver metro area, Fort Collins, Grand Junction, and Colorado Springs. The general assembly further recognizes that many Colorado citizens would be willing to provide funds for multiple sclerosis programs if given the opportunity. It is therefore the intent of the general assembly in enacting this part 32 to provide those committed and concerned Colorado citizens the opportunity to financially foster the growth and success of the National Multiple Sclerosis Society by allowing citizens to make voluntary contributions on their state income tax returns for such purpose.

**Source: L. 2006:** Entire part added, p. 828, § 1, effective August 7.

**39-22-3202. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2016, but prior to January 1, 2021, the Colorado state individual income tax return form must contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado multiple sclerosis fund created in section 39-22-3203.

**Source: L. 2006:** Entire part added, p. 829, § 1, effective August 7. **L. 2009:** Entire section amended, (SB 09-126), ch. 213, p. 967, § 1, effective August 5. **L. 2011:** Entire section amended, (HB 11-1295), ch. 245, p. 1071, § 2, effective May 27. **L. 2015:** Entire section amended, (HB 15-1340), ch. 329, p. 1344, § 1, effective August 5. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 259, § 6, effective April 14.

**39-22-3203. Contributions credited to the Colorado multiple sclerosis fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3202 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Colorado multiple sclerosis fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado multiple sclerosis fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the National Multiple Sclerosis Society, Colorado chapter, a Colorado nonprofit organization. The National Multiple Sclerosis Society, Colorado chapter, shall administer the moneys in furtherance of the work of the National Multiple Sclerosis Society statewide.

**Source: L. 2006:** Entire part added, p. 829, § 1, effective August 7. **L. 2011:** Entire section amended, (HB 11-1295), ch. 245, p. 1071, § 3, effective May 27.

**39-22-3204. Repeal of part.** This part 32 is repealed, effective January 1, 2022, unless the voluntary contribution to the Colorado multiple sclerosis fund established by section 39-22-3203 is continued or reestablished by the general assembly acting by bill prior to that date.

**Source: L. 2006:** Entire part added, p. 829, § 1, effective August 7. **L. 2009:** Entire section amended, (SB 09-126), ch. 213, p. 967, § 2, effective August 5. **L. 2011:** Entire section amended, (HB 11-1295), ch. 245, p. 1072, § 4, effective May 27. **L. 2015:** Entire section amended, (HB 15-1340), ch. 329, p. 1344, § 2, effective August 5. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 259, § 7, effective April 14.

PART 33

COLORADO CANCER FUND
VOLUNTARY CONTRIBUTION

**39-22-3301. Legislative declaration.** (1) The general assembly hereby finds and declares that the eradication of all cancers is essential to the quality of life of Coloradans. The general assembly recognizes that the mission of the Colorado Cancer Coalition is to bring together and coordinate cancer prevention, early detection, treatment support, and research efforts to improve the quality of life of every person in Colorado.

(2) The general assembly further finds and declares that the Colorado Cancer Coalition is a network of organizations and individuals that provide leadership and coordination of services for cancer patients and their families. The general assembly further finds and declares that the coalition serves as a catalyst for cancer prevention and control activities throughout the state. The general assembly further recognizes that the coalition partners with many organizations that strive to ensure that adequate prevention, early detection, treatment, and survivorship care are available and accessible to all Coloradans.

(3) The general assembly further finds and declares that cancer affects not only those who are diagnosed but also their families, friends, communities, and places of work. Education, awareness, and personal advocacy are essential to the eradication of all cancers. The general assembly further finds and declares that the Colorado Cancer Coalition strives to achieve the goals and objectives set forth in the coalition's Colorado cancer plan throughout the state, which are integral in addressing the needs of cancer patients, survivors, and health care providers.

(4) In order to assist the Colorado Cancer Coalition in fulfilling its mission, the general assembly recognizes that the citizens of Colorado may be willing to provide moneys to assist in the coalition's education, personal advocacy, treatment, and health promotion efforts. The general assembly further recognizes that the Colorado cancer fund advisory board, consisting of appropriate members and partners of the Colorado Cancer Coalition, will be established to ensure moneys are distributed in a fair and equitable manner. It is therefore the intent of the general assembly to provide Colorado citizens the opportunity to support the efforts of the Colorado Cancer Coalition and its partners by allowing citizens to make a voluntary contribution on their state income tax returns for such purpose.

**Source: L. 2007:** Entire part added, p. 1500, § 1, effective September 1. **L. 2012:** Entire part amended, (HB 12-1104), ch. 63, p. 224, § 1, effective August 8.

**39-22-3302. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2016, but prior to January 1, 2021, the Colorado state individual income tax return form must contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado cancer fund created in section 39-22-3303.

**Source: L. 2007:** Entire part added, p. 1501, § 1, effective September 1. **L. 2010:** Entire section amended, (SB 10-172), ch. 186, p. 672, § 5, effective August 11. **L. 2012:** Entire part amended, (HB 12-1104), ch. 63, p. 225, § 1, effective August 8. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 259, § 8, effective April 14.

**39-22-3303. Contributions credited to the Colorado cancer fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3302 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Colorado cancer fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado cancer fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the Colorado Cancer Coalition, an organization under the direction of the Colorado Foundation for Public Health and the Environment, a Colorado nonprofit organization. The coalition shall administer the moneys in furtherance of its work on behalf of the cancer community.

**Source: L. 2007:** Entire part added, p. 1501, § 1, effective September 1. **L. 2012:** Entire part amended, (HB 12-1104), ch. 63, p. 225, § 1, effective August 8.

**39-22-3304. Repeal of part.** This part 33 is repealed, effective January 1, 2022, unless the voluntary contribution to the Colorado cancer fund established by section 39-22-3303 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2007:** Entire part added, p. 1502, § 1, effective September 1. **L. 2010:** Entire section amended, (SB 10-172), ch. 186, p. 672, § 6, effective August 11. **L. 2012:** Entire part amended, (HB 12-1104), ch. 63, p. 226, § 1, effective August 8. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 259, § 9, effective April 14.

PART 34

9HEALTH FAIR VOLUNTARY CONTRIBUTION

**39-22-3401. Legislative declaration.** (1) The general assembly hereby finds and declares that 9Health Fair, a nonprofit entity, offers free and low-cost health screenings and education through volunteer-run, community-initiated programs and provides needed services for thousands of people in Colorado. The general assembly further finds that, for some people,

their only contact with a health care professional is at a 9Health Fair location, and 9Health Fair provides free vouchers to those who could not otherwise afford important health screenings. 9Health Fair's mission is to promote health awareness and to encourage individuals to assume responsibility for their own health. The general assembly further finds that 9Health Fair impacts lives and communities, identifying thousands of previously undetected health issues each year, and contributes to improvement in the health of the state's population. Eighty-seven thousand individuals participated in the 2007 9Health Fair at over one hundred sixty locations in fifty counties. Since 1980, with the help of volunteer forces from religious institutions, schools, recreation centers, service organizations, and hospitals and with the support of the Colorado national guard, 9Health Fair has directly impacted over one and a half million lives.

(2) In order to assist 9Health Fair in fulfilling its mission, the general assembly recognizes that the citizens of Colorado may be willing to provide moneys to assist in 9Health Fair's health promotion efforts. It is therefore the intent of the general assembly to provide Colorado citizens the opportunity to support the efforts of 9Health Fair by allowing citizens to make a voluntary contribution on their state income tax returns for such purpose.

**Source: L. 2008:** Entire part added, p. 591, § 1, effective August 5.

**39-22-3402. Voluntary contribution designation - procedure.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the 9Health Fair fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the 9Health Fair fund created in section 39-22-3403.

**Source: L. 2008:** Entire part added, p. 592, § 1, effective August 5. **L. 2011:** Entire section amended, (SB 11-081), ch. 108, p. 336, § 1, effective August 10. **L. 2012:** Entire section amended, (SB 12-055), ch. 119, p. 406, § 2, effective August 8.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2014, that the voluntary contribution for the 9Health Fair fund was added to the state income tax return form beginning January 1, 2015.

**39-22-3403. Contributions credited to the 9Health Fair fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3402 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the 9Health Fair fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the 9Health Fair fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to 9Health Fair, a Colorado nonprofit organization.

**Source: L. 2008:** Entire part added, p. 592, § 1, effective August 5.

**39-22-3404. Repeal of part.** This part 34 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the 9Health Fair fund voluntary contribution is next in the queue, unless the voluntary contribution to the 9Health Fair fund established by section 39-22-3403 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2008:** Entire part added, p. 592, § 1, effective August 5. **L. 2011:** Entire section amended, (SB 11-081), ch. 108, p. 336, § 2, effective August 10. **L. 2012:** Entire section amended, (SB 12-055), ch. 119, p. 406, § 3, effective August 8.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2014, that the voluntary contribution for the 9Health Fair fund was added to the state income tax return form beginning January 1, 2015.

PART 35

ADULT STEM CELLS CURE FUND
VOLUNTARY CONTRIBUTION

**39-22-3501 to 39-22-3503. (Repealed)**

**Editor's note:** (1) This part 35 was added in 2008. For amendments to this part 35 prior to its repeal in 2017, consult the 2016 Colorado Revised Statutes and the Colorado statutory research explanatory note on page vii in the front of this volume.

(2) Section 39-22-3503 provided for the repeal of this part 35, effective January 1, 2017. (See L. 2011, p. 1336.)

PART 36

MAKE-A-WISH FOUNDATION OF COLORADO
VOLUNTARY CONTRIBUTION

**39-22-3601. Legislative declaration.** (1) The general assembly hereby finds and declares that the Make-A-Wish Foundation of Colorado, a nonprofit entity, grants the wishes of children with life-threatening medical conditions to enrich the human experience with hope, strength, and joy. The general assembly further finds that the Make-A-Wish Foundation of Colorado will consider the wish of any child diagnosed with a life-threatening medical condition who is between the ages of two and a half and eighteen and lives anywhere in the state. The general assembly further finds that the Make-A-Wish Foundation of Colorado uses volunteers who meet with an eligible child and his or her family to determine the child's truest wish, and the entire family participates in the child's wish. The general assembly further finds that a child's

wish provides joy, respite, and family healing and provides relief from the child's illness. The general assembly further finds that the happiness the Make-A-Wish Foundation of Colorado provides by granting wishes gets whole families out of hospitals and offers them a time of fun and togetherness. The general assembly further finds that the average cost of granting a wish is six thousand dollars, although some wishes cost much less, and some cost much more, and the Make-A-Wish Foundation of Colorado relies on in-kind gifts and donations from individuals, groups, and corporations as well as the generous donation of time from many volunteers.

(2) In order to assist the Make-A-Wish Foundation of Colorado in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in the Make-A-Wish Foundation of Colorado's efforts. It is therefore the intent of the general assembly to provide Colorado citizens the opportunity to support the efforts of the Make-A-Wish Foundation of Colorado by allowing citizens to make a voluntary contribution on their state income tax returns for such purpose.

**Source: L. 2009:** Entire part added, (HB 09-1043), ch. 394, p. 2125, § 1, effective August 5.

**39-22-3602. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2016, but prior to January 1, 2021, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Make-A-Wish Foundation of Colorado fund created in section 39-22-3603 (1).

**Source: L. 2009:** Entire part added, (HB 09-1043), ch. 394, p. 2126, § 1, effective August 5. **L. 2012:** Entire section amended, (HB 12-1096), ch. 36, p. 132, § 1, effective March 19. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 260, § 10, effective April 14.

**39-22-3603. Contributions credited to the Make-A-Wish Foundation of Colorado fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3602 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Make-A-Wish Foundation of Colorado fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Make-A-Wish Foundation of Colorado fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the Make-A-Wish Foundation of Colorado, a Colorado nonprofit organization.

**Source: L. 2009:** Entire part added, (HB 09-1043), ch. 394, p. 2126, § 1, effective August 5.

**39-22-3604. Repeal of part.** This part 36 is repealed, effective January 1, 2022, unless the voluntary contribution to the Make-A-Wish Foundation of Colorado fund established by

section 39-22-3602 is continued or reestablished by the general assembly acting by bill prior to that date.

**Source: L. 2009:** Entire part added, (HB 09-1043), ch. 394, p. 2126, § 1, effective August 5. **L. 2012:** Entire section amended, (HB 12-1096), ch. 36, p. 132, § 2, effective March 19. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 260, § 11, effective April 14.

## PART 37

## COLORADO 2-1-1 FIRST CALL FOR HELP FUND VOLUNTARY CONTRIBUTION

**Editor's note:** Pursuant to § 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2013, that the Colorado 2-1-1 first call for help fund created in this part 37 did not meet the level of contributions required by § 39-22-1001 (5) to remain on the state income tax return form and was therefore excluded from the form beginning January 1, 2014.

**39-22-3701. Legislative declaration.** (1) The general assembly hereby finds and declares that 2-1-1 Colorado is a public service collaborative of several organizations and that Mile High United Way is the official fiscal manager for the collaborative. The general assembly further finds and declares that 2-1-1 Colorado:

(a) Especially in times of economic need, provides a valuable service to Colorado citizens searching for assistance;

(b) Provides streamlined access to existing health and human services information and eliminates confusing and frustrating searches;

(c) Provides emergency response to natural disasters so as not to overload other public systems;

(d) Provides elderly, disabled, non-English speaking, illiterate, and new Colorado citizens and those incapacitated by crisis the opportunity to help themselves;

(e) Expands civic involvement and provides a forum for matching volunteers and donors with community organizations that need their help; and

(f) Provides an effective social barometer for assessing where need is greatest in the community.

(2) In order to assist 2-1-1 Colorado in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in 2-1-1 Colorado's efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of 2-1-1 Colorado by allowing citizens to make a voluntary contribution on their state income tax returns to the Colorado 2-1-1 first call for help fund for such purpose.

**Source: L. 2010:** Entire part added, (HB 10-1073), ch. 347, p. 1603, § 1, effective August 11.

**39-22-3702. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2010, but prior to January 1, 2020, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado 2-1-1 first call for help fund created in section 39-22-3703 (1).

**Source: L. 2010:** Entire part added, (HB 10-1073), ch. 347, p. 1604, § 1, effective August 11.

**39-22-3703. Contributions credited to the Colorado 2-1-1 first call for help fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3702 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Colorado 2-1-1 first call for help fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado 2-1-1 first call for help fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to Mile High United Way, a nonprofit organization, solely for use in operating 2-1-1 Colorado.

**Source: L. 2010:** Entire part added, (HB 10-1073), ch. 347, p. 1604, § 1, effective August 11.

**39-22-3704. Repeal of part.** This part 37 is repealed, effective January 1, 2021, unless the voluntary contribution to the Colorado 2-1-1 first call for help fund established by this part 37 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2010:** Entire part added, (HB 10-1073), ch. 347, p. 1604, § 1, effective August 11.

## PART 38

## UNWANTED HORSE FUND VOLUNTARY CONTRIBUTION

**39-22-3801. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) Horses are a cherished part of our western heritage and an important aspect of Colorado's culture and economy;

(b) Colorado is facing a growing threat of an increasing number of unwanted horses;

(c) Approximately six thousand horses become unwanted in Colorado each year;

(d) Most of Colorado's horse rescue facilities are operating at capacity and, as such, their ability to care for additional unwanted horses is limited;

(e) Documented incidences of horse abuse and neglect are rising; and

(f) The Colorado unwanted horse alliance, a registered nonprofit organization pursuant to section 501 (c)(3) of the internal revenue code, exists to help find solutions to the problem.

(2) In order to assist the Colorado unwanted horse alliance in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of the Colorado unwanted horse alliance by allowing citizens to make a voluntary contribution on their state income tax returns to the unwanted horse fund for such purpose.

**Source: L. 2010:** Entire part added, (SB 10-139), ch. 305, p. 1440, § 1, effective August 11.

**39-22-3802. Voluntary contribution designation - procedure.** For income tax years commencing on or after January 1, 2016, but prior to January 1, 2021, the Colorado state individual income tax return form must contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the unwanted horse fund created in section 39-22-3803 (1).

**Source: L. 2010:** Entire part added, (SB 10-139), ch. 305, p. 1441, § 1, effective August 11. **L. 2013:** Entire section R&RE, (HB 13-1164), ch. 62, p. 207, § 1, effective August 7. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 260, § 12, effective April 14.

**39-22-3803. Contributions credited to the unwanted horse fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3802 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the unwanted horse fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the unwanted horse fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to the Colorado unwanted horse alliance, a registered nonprofit organization pursuant to section 501 (c)(3) of the internal revenue code.

**Source: L. 2010:** Entire part added, (SB 10-139), ch. 305, p. 1441, § 1, effective August 11.

**39-22-3804. Repeal of part.** This part 38 is repealed, effective January 1, 2022, unless the voluntary contribution to the unwanted horse fund established by this part 38 is continued or reestablished by the general assembly acting by bill prior to that date.

**Source: L. 2010:** Entire part added, (SB 10-139), ch. 305, p. 1441, § 1, effective August 11. **L. 2013:** Entire section amended, (HB 13-1164), ch. 62, p. 207, § 2, effective August 7. **L. 2016:** Entire section amended, (HB 16-1297), ch. 92, p. 260, § 13, effective April 14.

PART 39

GOODWILL INDUSTRIES
VOLUNTARY CONTRIBUTION

**Editor's note:** Pursuant to § 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2014, that the Goodwill Industries fund created in this part 39 did not meet the level of contributions required by § 39-22-1001 (5) to remain on the state income tax return form and was therefore excluded from the form beginning January 1, 2015.

**39-22-3901. Legislative declaration.** (1) The general assembly hereby finds and declares that Goodwill - Colorado is a public service collaborative of Goodwill Industries of Denver and Goodwill Industries of Colorado Springs and that Goodwill - Colorado:

(a) Especially in times of economic need, provides valuable opportunities for Colorado citizens to develop critical workforce skills, find employment, and advance their careers;

(b) Helps Colorado citizens with disabilities or disadvantaging work conditions to reach their highest level of personal and economic independence through job training and workforce development programs;

(c) Offers career development programs, mentoring, and internship opportunities to thousands of at-risk youth in Colorado;

(d) Makes available low-cost clothing and household items to Colorado citizens in thirty retail stores that also create new jobs and generate sales tax revenue for local communities and the state; and

(e) Annually recycles tens of millions of pounds of clothing and household items, keeping these items out of Colorado's landfills.

(2) In order to assist Goodwill - Colorado, a collaboration of Goodwill Industries of Colorado Springs and Goodwill Industries of Denver, which are both registered nonprofit organizations pursuant to section 501 (c)(3) of the internal revenue code, in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of Goodwill - Colorado by allowing citizens to make a voluntary contribution on their state income tax return form to the Goodwill Industries fund for such a purpose.

**Source: L. 2011:** Entire part added, (HB 11-1097), ch. 140, p. 486, § 2, effective August 10. **L. 2013:** (2) amended, (HB 13-1300), ch. 316, p. 1706, § 126, effective August 7.

**39-22-3902. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Goodwill Industries fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Goodwill Industries fund created in section 39-22-3903 (1).

**Source: L. 2011:** Entire part added, (HB 11-1097), ch. 140, p. 487, § 2, effective August 10. **L. 2013:** Entire section amended, (HB 13-1300), ch. 316, p. 1706, § 127, effective August 7.

**39-22-3903. Contributions credited to the Goodwill Industries fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3902 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Goodwill Industries fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Goodwill Industries fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to Goodwill - Colorado.

**Source: L. 2011:** Entire part added, (HB 11-1097), ch. 140, p. 487, § 2, effective August 10.

**39-22-3904. Repeal of part.** This part 39 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Goodwill Industries fund voluntary contribution is next in the queue, unless the voluntary contribution to the Goodwill Industries fund established by this part 39 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2011:** Entire part added, (HB 11-1097), ch. 140, p. 487, § 2, effective August 10. **L. 2013:** Entire section amended, (HB 13-1300), ch. 316, p. 1706, § 128, effective August 7.

PART 40

ROUNDUP RIVER RANCH
VOLUNTARY CONTRIBUTION

**39-22-4001. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) There are over thirty-four thousand children between the ages of seven and seventeen suffering from serious diseases and medical conditions in the Rocky Mountain region;

(b) Eighty-six percent of these children are unable to attend a camp because there is not a children's camp that can accommodate serious medical conditions in the Rocky Mountain region;

(c) Roundup River Ranch is a Colorado 501 (c)(3) nonprofit organization that has completed a twenty-million-dollar capital campaign and is constructing a state-of-the-art children's camp in Eagle county, Colorado, to accommodate children with serious medical conditions;

(d) Roundup River Ranch is a member of the Association of Hole in the Wall Camps, the world's largest family of children's medical specialty camps;

(e) Beginning in 2011, Roundup River Ranch will provide free, year-round programs to children between the ages of seven and seventeen years who suffer from a wide variety of life-threatening illnesses, including, but not limited to, asthma, blood disorders, cancer, diabetes, solid organ transplants, and other serious medical conditions;

(f) The camp will annually accommodate seven hundred fifty children suffering from serious medical conditions;

(g) Roundup River Ranch has the capacity and strategic plan to expand to annually accommodate one thousand five hundred campers; and

(h) Roundup River Ranch will provide positive recreational experiences for children with serious illnesses in an environment where the children are understood, accepted, and cared for. Juvenile-oriented health camps have proven to reduce anxiety and depression related to illness and lower annual medical costs.

(2) In order to assist the Roundup River Ranch in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of Roundup River Ranch by allowing citizens to make a voluntary contribution on their state income tax return form to the Roundup River Ranch fund for such a purpose.

**Source: L. 2011:** Entire part added, (HB 11-1071), ch. 294, p. 1396, § 2, effective August 10.

**39-22-4002. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Roundup River Ranch voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Roundup River Ranch fund created in section 39-22-4003 (1).

**Source: L. 2011:** Entire part added, (HB 11-1071), ch. 294, p. 1397, § 2, effective August 10.

**Editor's note:** Pursuant to § 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2014, that the voluntary contribution for the Roundup River Ranch fund was added to the state income tax return form beginning January 1, 2015.

**39-22-4003. Contributions credited to the Roundup River Ranch fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4002 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Roundup River Ranch fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Roundup River Ranch fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to Roundup River Ranch, a registered nonprofit organization pursuant to section 501 (c)(3) of the internal revenue code.

**Source: L. 2011:** Entire part added, (HB 11-1071), ch. 294, p. 1397, § 2, effective August 10.

**39-22-4004. Repeal of part.** This part 40 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Roundup River Ranch voluntary contribution is next in the queue, unless the voluntary contribution to the Roundup River Ranch fund established by this part 40 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2011:** Entire part added, (HB 11-1071), ch. 294, p. 1398, § 2, effective August 10.

**Editor's note:** Pursuant to § 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2014, that the voluntary contribution for the Roundup River Ranch fund was added to the state income tax return form beginning January 1, 2015.

## PART 41

## FAMILIES IN ACTION FOR MENTAL HEALTH VOLUNTARY CONTRIBUTION

**Editor's note:** Pursuant to § 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2014, that the Families in Action for Mental Health fund created in this part 41 did not meet the level of contributions required by § 39-22-1001 (5) to remain on the state income tax return form and was therefore excluded from the form beginning January 1, 2015.

**39-22-4101. Legislative declaration.** (1) The general assembly finds and declares that:

(a) Families in Action for Mental Health is a collaboration of mental health advocacy organizations including Mental Health America of Colorado, which serves as the fiscal manager for Families in Action for Mental Health;

(b) A lack of access to mental health services is often cited as one of the top five health threats within Colorado;

(c) Colorado has been ranked as the eighteenth most depressed state in the United States by Mental Health America;

(d) Colorado has the sixth highest suicide rate in the United States;

(e) Substance use, behavioral, and mental health disorders are Colorado's most prevalent chronic illnesses; and

(f) Children and adolescents make up nearly twenty-five percent of Colorado's population, yet they account for thirty-three percent of the severe mental health needs in the state.

(2) The general assembly further finds and declares that Families in Action for Mental Health:

(a) Offers statewide mental health education, advocacy, information and referrals, support groups, and family programs to all Coloradans in need;

(b) Promotes suicide prevention efforts and education;

(c) Increases access to appropriate mental health services, thus strengthening and enhancing Colorado's mental health safety net system;

(d) Ensures that families obtain community support and services so that children grow up healthy and are able to maximize their potential;

(e) Educates Coloradans about mental health to reduce stigmas; and

(f) Empowers those living with mental health conditions to achieve greater levels of wellness and recovery.

(3) In order to assist Families in Action for Mental Health in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of Families in Action for Mental Health by allowing citizens to make a voluntary contribution on their state income tax return form to the Families in Action for Mental Health fund for such a purpose.

**Source: L. 2011:** Entire part added, (SB 11-102), ch. 238, p. 1034, § 2, effective August 10. **L. 2017:** IP(1) and (1)(e) amended, (SB 17-242), ch. 263, p. 1380, § 304, effective May 25.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

**39-22-4102. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Families in Action for Mental Health fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Families in Action for Mental Health fund created in section 39-22-4103 (1).

**Source: L. 2011:** Entire part added, (SB 11-102), ch. 238, p. 1035, § 2, effective August 10.

**39-22-4103. Contributions credited to the Families in Action for Mental Health fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4102 and shall report that amount to the state

treasurer and to the general assembly. The state treasurer shall credit that amount to the Families in Action for Mental Health fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Families in Action for Mental Health fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to Mental Health America of Colorado, the nonprofit organization that acts as fiscal manager for Families in Action for Mental Health.

**Source: L. 2011:** Entire part added, (SB 11-102), ch. 238, p. 1036, § 2, effective August 10.

**39-22-4104. Repeal of part.** This part 41 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Families in Action for Mental Health fund voluntary contribution is next in the queue, unless the voluntary contribution to the Families in Action for Mental Health fund established by this part 41 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2011:** Entire part added, (SB 11-102), ch. 238, p. 1036, § 2, effective August 10.

## PART 42

## PUBLIC EDUCATION FUND VOLUNTARY CONTRIBUTION

**39-22-4201. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) Of all of the services provided by state and local governments, public education, beginning with preschool, exercises the most widespread, direct influence on the citizens of the state, ensuring them a wider range of opportunities and a greater likelihood of economic success;

(b) In providing a well-educated citizenry, a well-funded, effective preschool and public education system also increases the likelihood that the state will enjoy a strong economy that attracts investment by businesses and industries that further improve the standard of living for the people of the state; and

(c) During periods of budgetary reductions, it is crucial that the state maintains funding for preschool to the greatest extent possible.

(2) In order to assist in funding preschool, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to aid the preschool and public education system in its efforts. It is therefore the intent of the general assembly to provide Coloradans with the opportunity to support preschool and public education by allowing citizens to make a voluntary contribution on their state income tax return form to the public education fund for such a purpose.

**Source: L. 2011:** Entire part added, (SB 11-109), ch. 284, p. 1271, § 1, effective June 2.

**39-22-4202. Voluntary contribution designation - procedure.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the public education fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the public education fund created in section 39-22-4203 (1).

**Source: L. 2011:** Entire part added, (SB 11-109), ch. 284, p. 1272, § 1, effective June 2. **L. 2013:** Entire section amended, (HB 13-1300), ch. 316, p. 1706, § 129, effective August 7.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2013, that the voluntary contribution for the public education fund was added to the state income tax return form beginning January 1, 2014.

**39-22-4203. Contributions credited to the public education fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4202 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the public education fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the public education fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department of revenue, shall be appropriated to the department of education for use in the Colorado preschool program created in article 28 of title 22, C.R.S.

**Source: L. 2011:** Entire part added, (SB 11-109), ch. 284, p. 1272, § 1, effective June 2.

**39-22-4204. Repeal of part.** This part 42 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the public education fund voluntary contribution is next in the queue, unless the voluntary contribution to the public education fund established by this part 42 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2011:** Entire part added, (SB 11-109), ch. 284, p. 1272, § 1, effective June 2. **L. 2013:** Entire section amended, (HB 13-1300), ch. 316, p. 1707, § 130, effective August 7.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2013, that the

voluntary contribution for the public education fund was added to the state income tax return form beginning January 1, 2014.

## PART 43

## AMERICAN RED CROSS COLORADO DISASTER RESPONSE, READINESS, AND PREPAREDNESS FUND VOLUNTARY CONTRIBUTION

**39-22-4301. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) The American Red Cross is a humanitarian organization that brings together well-trained and dedicated volunteers and paid staff to help prevent, prepare for, and respond to emergencies;

(b) The American Red Cross:

(I) Helps military families deliver messages to their loved ones serving our nation in foreign countries; and

(II) Has been instrumental in assisting victims of disasters around the world, including fires, floods, earthquakes, wars, and hurricanes;

(c) Under the leadership of the American Red Cross, thousands of volunteers stand ready to assist those displaced by disaster, wherever and whenever it may strike;

(d) In Colorado, the American Red Cross has trained tens of thousands of citizens in first aid, cardiopulmonary resuscitation, water safety, and other life-saving techniques; and

(e) In the 2011 fiscal year alone, the American Red Cross Colorado Chapters:

(I) Responded to more than four hundred disasters;

(II) Assisted nearly eight hundred families affected by disaster;

(III) Assisted more than five thousand members of the United States armed forces via emergency communications and other services;

(IV) Trained more than ninety-eight thousand individuals in cardiopulmonary resuscitation, first aid, and other health and safety techniques;

(V) Gave preparedness presentations at events attended by more than thirty thousand individuals; and

(VI) Relied on more than three thousand volunteers to fulfill the American Red Cross mission.

(2) In order to assist the American Red Cross Colorado Chapters in fulfilling the mission of the American Red Cross, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of the American Red Cross Colorado Chapters by allowing citizens to make a voluntary contribution on their state income tax return form to the American Red Cross Colorado disaster response, readiness, and preparedness fund for such a purpose.

**Source: L. 2012:** Entire part added, (HB 12-1006), ch. 142, p. 513, § 1, effective August 8.

**39-22-4302. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the American Red Cross Colorado disaster response, readiness, and preparedness fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the American Red Cross Colorado disaster response, readiness, and preparedness fund created in section 39-22-4303 (1).

**Source: L. 2012:** Entire part added, (HB 12-1006), ch. 142, p. 514, § 1, effective August 8.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the American Red Cross Colorado disaster response, readiness, and preparedness fund was added to the state income tax return form beginning January 1, 2016.

**39-22-4303. Contributions credited to the American Red Cross Colorado disaster response, readiness, and preparedness fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4302 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the American Red Cross Colorado disaster response, readiness, and preparedness fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the American Red Cross Colorado disaster response, readiness, and preparedness fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to the American Red Cross Colorado Chapters.

**Source: L. 2012:** Entire part added, (HB 12-1006), ch. 142, p. 515, § 1, effective August 8.

**39-22-4304. Repeal of part.** This part 43 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the American Red Cross Colorado disaster response, readiness, and preparedness fund voluntary contribution is next in the queue, unless the voluntary contribution to the American Red Cross Colorado disaster response, readiness, and preparedness fund established by this part 43 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2012:** Entire part added, (HB 12-1006), ch. 142, p. 515, § 1, effective August 8.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the American Red Cross Colorado disaster response, readiness, and preparedness fund was added to the state income tax return form beginning January 1, 2016.

## PART 44

## COLORADO FOR HEALTHY LANDSCAPES FUND VOLUNTARY CONTRIBUTION

**39-22-4401. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) Colorado for Healthy Landscapes is a collaboration of noxious weed and invasive species control advocacy organizations including the Colorado Weed Management Association, the nonprofit organization that serves as the fiscal manager for Colorado for Healthy Landscapes;

(b) A lack of access to noxious weed and invasive species control services is often cited as one of the leading threats to Colorado's natural resources;

(c) The control efforts to counter the impacts of invasive species cost Americans approximately one hundred twenty billion dollars annually; and

(d) In Colorado:

(I) Stands of tamarisk have decreased bird populations along the Colorado river by ninety-seven percent;

(II) In the flat tops wilderness, yellow toadflax has caused declines in native plant populations, thereby degrading wildlife habitat;

(III) Cheatgrass increases the frequency and intensity of wildfires;

(IV) Leafy spurge has decreased elk habitat usage by over eighty percent and native bird nesting and species numbers by forty-two and thirty-seven percent, respectively;

(V) Diffuse knapweed replaces traditional wildlife forage and degrades wildlife habitat;

(VI) Canada thistle infestations threaten endangered species such as the Colorado butterfly plant; and

(VII) Russian knapweed produces chemicals that displace native plants and degrades wildlife habitat.

(2) The general assembly further finds and declares that Colorado for Healthy Landscapes:

(a) Promotes noxious weed and invasive species prevention efforts and education;

(b) Increases access to appropriate noxious weed and invasive species funding, thus strengthening and enhancing Colorado's noxious weed and invasive species control system;

(c) Ensures that controlling entities obtain community support and services so that landscapes evolve in a healthy manner and are able to maximize their potential; and

(d) Educates Coloradans about noxious weed and invasive species to reduce careless acts that encourage unwanted spread of such species.

(3) In order to assist Colorado for Healthy Landscapes in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the

opportunity to support the efforts of the Colorado Weed Management Association by allowing citizens to make a voluntary contribution on their state income tax return form to the Colorado for Healthy Landscapes fund for such a purpose. The Colorado Weed Management Association shall administer the moneys in furtherance of its mission to protect Colorado's natural resources from the degrading effects of invasive species of terrestrial and aquatic vegetation.

**Source: L. 2012:** Entire part added, (HB 12-1290), ch. 140, p. 507, § 1, effective August 8.

**39-22-4402. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line on the income tax return form has become available and the Colorado for Healthy Landscapes fund voluntary contribution is next in the queue established pursuant to said section 39-22-1001 (8), the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado for Healthy Landscapes fund created in section 39-22-4403 (1).

**Source: L. 2012:** Entire part added, (HB 12-1290), ch. 140, p. 509, § 1, effective August 8.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the Colorado for Healthy Landscapes fund was added to the state income tax return form beginning January 1, 2016.

**39-22-4403. Contributions credited to the Colorado for Healthy Landscapes fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4402 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Colorado for Healthy Landscapes fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado for Healthy Landscapes fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to the Colorado Weed Management Association, a Colorado nonprofit organization that acts as fiscal manager for Colorado for Healthy Landscapes.

**Source: L. 2012:** Entire part added, (HB 12-1290), ch. 140, p. 509, § 1, effective August 8.

**39-22-4404. Repeal of part.** This part 44 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with

the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Colorado for Healthy Landscapes fund voluntary contribution is next in the queue, unless the voluntary contribution to the Colorado for Healthy Landscapes fund established by this part 44 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2012:** Entire part added, (HB 12-1290), ch. 140, p. 509, § 1, effective August 8.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the Colorado for Healthy Landscapes fund was added to the state income tax return form beginning January 1, 2016.

PART 45

HABITAT FOR HUMANITY OF COLORADO
VOLUNTARY CONTRIBUTION

**39-22-4501. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) Habitat for Humanity is an organization that welcomes all people, regardless of race, religion, ethnicity, or any other difference, to build and repair simple, decent, affordable houses for those who lack adequate shelter; and

(b) Habitat for Humanity of Colorado supports organization affiliates across the state that provide home ownership to low-income families that commit to a partnership that includes sweat equity, financial training, and a no-interest mortgage.

(2) In order to assist Habitat for Humanity of Colorado in fulfilling the mission of Habitat for Humanity, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of Habitat for Humanity of Colorado by allowing citizens to make a voluntary contribution on their state income tax return form to the Habitat for Humanity of Colorado fund for that purpose.

**Source: L. 2013:** Entire part added, (SB 13-029), ch. 45, p. 122, § 1, effective August 7.

**39-22-4502. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line on the income tax return form has become available and the Habitat for Humanity of Colorado fund voluntary contribution is next in the queue established pursuant to said section 39-22-1001 (8), the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Habitat for Humanity of Colorado fund created in section 39-22-4503 (1).

**Source: L. 2013:** Entire part added, (SB 13-029), ch. 45, p. 123, § 1, effective August 7.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the Habitat for Humanity of Colorado fund was added to the state income tax return form beginning January 1, 2016.

**39-22-4503. Contributions credited to the Habitat for Humanity of Colorado fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4502 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Habitat for Humanity of Colorado fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Habitat for Humanity of Colorado fund to the department of revenue its costs of administering moneys designated as contributions to the fund. After subtracting the appropriation to the department, the state treasurer shall transfer all moneys remaining in the fund at the end of the fiscal year to Habitat for Humanity of Colorado, a Colorado nonprofit organization.

**Source: L. 2013:** Entire part added, (SB 13-029), ch. 45, p. 123, § 1, effective August 7.

**39-22-4504. Repeal of part.** This part 45 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Habitat for Humanity of Colorado fund voluntary contribution is next in the queue, unless the Habitat for Humanity of Colorado fund established by this part 45 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2013:** Entire part added, (SB 13-029), ch. 45, p. 123, § 1, effective August 7.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the Habitat for Humanity of Colorado fund was added to the state income tax return form beginning January 1, 2016.

## PART 46

## COLORADO YOUTH CORPS ASSOCIATION VOLUNTARY CONTRIBUTION

**39-22-4601. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that the Colorado Youth Corps Association promotes youth development through conservation and advances the youth conservation corps accredited by the Colorado Youth Corps Association in the state that engage youth and young adults to address land, water, and energy challenges while they chart their educational and employment futures.

(2) In order to assist Colorado in fulfilling the mission of the Colorado Youth Corps Association, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of the Colorado Youth Corps Association by allowing citizens to make a voluntary contribution on their state income tax return form to the Colorado Youth Conservation Corps fund for that purpose.

**Source: L. 2014:** Entire part added, (HB 14-1092), ch. 131, p. 457, § 1, effective August 6.

**39-22-4602. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line on the income tax return form has become available and the Colorado Youth Conservation Corps fund voluntary contribution is next in the queue established pursuant to said section 39-22-1001 (8), the executive director shall ensure that the Colorado state individual income tax return form contains a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado Youth Conservation Corps fund created in section 39-22-4603 (1).

**Source: L. 2014:** Entire part added, (HB 14-1092), ch. 131, p. 458, § 1, effective August 6.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the Colorado Youth Conservation Corps fund was added to the state income tax return form beginning January 1, 2016.

**39-22-4603. Contributions credited to the Colorado Youth Conservation Corps fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4602 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Colorado Youth Conservation Corps fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado Youth Conservation Corps fund to the department of revenue its costs of administering moneys designated as contributions to the fund. After subtracting the appropriation to the department, the state treasurer shall transfer all moneys remaining in the fund at the end of the fiscal year to the Colorado Youth Corps Association, a Colorado nonprofit organization.

**Source: L. 2014:** Entire part added, (HB 14-1092), ch. 131, p. 458, § 1, effective August 6.

**39-22-4604. Repeal of part.** This part 46 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with

the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Colorado Youth Conservation Corps fund voluntary contribution is next in the queue, unless the Colorado Youth Conservation Corps fund established by this part 46 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2014:** Entire part added, (HB 14-1092), ch. 131, p. 458, § 1, effective August 6.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2015, that the voluntary contribution for the Colorado Youth Conservation Corps fund was added to the state income tax return form beginning January 1, 2016.

PART 47

FIRST-TIME HOME BUYER
SAVINGS ACCOUNT

**39-22-4701. Short title.** The short title of this part 47 is the "First-time Home Buyer Savings Account Act".

**Source: L. 2016:** Entire part added, (HB 16-1467), ch. 321, p. 1302, § 2, effective August 10.

**39-22-4702. Legislative declaration.** The general assembly declares that the purpose for allowing taxable income to be reduced by earnings from a first-time home buyer savings account is to encourage first-time home ownership through incentivizing saving for a down payment and closing costs because of the significant financial and civic benefits home ownership provides for our state.

**Source: L. 2016:** Entire part added, (HB 16-1467), ch. 321, p. 1302, § 2, effective August 10.

**39-22-4703. Definitions.** As used in this part 47, unless the context otherwise requires:

(1) "Account holder" means an individual who establishes an account with a financial institution that is designated as a first-time home buyer savings account in accordance with section 39-22-4704.

(2) "Department" means the department of revenue.

(3) "Eligible expenses" means a down payment and any closing costs included on a real estate settlement statement, including, but not limited to, appraisal fees, mortgage origination fees, and inspection fees.

(4) "Financial institution" means any state bank, state trust company, savings and loan association, federally chartered credit union doing business in Colorado, credit union chartered by the state of Colorado, national bank, broker-dealer, mutual fund, insurance company, or other similar financial entity qualified to do business in the state of Colorado.

(5) "First-time home buyer" means an individual who:

(a) Has never owned or purchased under contract for deed, either individually or jointly, a single-family, owner-occupied primary residence, including, but not limited to, a condominium unit or a manufactured or mobile home that is assessed and taxed as real property; or

(b) As a result of the individual's dissolution of marriage, has not been listed on a property title for at least three consecutive years or more.

(6) "First-time home buyer savings account" or "account" means an account with a financial institution designated as such in accordance with section 39-22-4704 (1).

(7) "Qualified beneficiary" means a first-time home buyer designated by an account holder for whom the money in a first-time home buyer savings account is or will be used for eligible expenses for the purchase of his or her primary residence in the state.

**Source: L. 2016:** Entire part added, (HB 16-1467), ch. 321, p. 1302, § 2, effective August 10.

**39-22-4704. First-time home buyer savings account.** (1) Beginning January 1, 2017, any individual may open an account with a financial institution and designate the account, in its entirety, as a first-time home buyer savings account to be used to pay or reimburse a qualified beneficiary's eligible expenses for the purchase of a primary residence in Colorado. An individual may be the account holder of multiple accounts, and an individual may jointly own the account with another person if they file a joint income tax return. To be eligible for the subtraction under section 39-22-104 (4)(w)(I), an account holder must comply with the requirements of this section.

(2) An account holder must designate, no later than April 15 of the year following the taxable year during which the account is established, a first-time home buyer as the qualified beneficiary of the first-time home buyer savings account. The account holder may designate himself or herself as the qualified beneficiary. The account holder may change the designated qualified beneficiary at any time, but there may not be more than one qualified beneficiary at any time. An account holder cannot have multiple accounts with the same qualified beneficiary, but an individual may be designated as the qualified beneficiary of multiple accounts.

(3) (a) The following limits apply to a first-time home buyer savings account:

(I) The maximum contribution to a first-time home buyer savings account for a taxable year is fourteen thousand dollars for an individual and twenty-eight thousand dollars for account holders who file a joint return;

(II) The maximum amount of all contributions for all taxable years to a first-time home buyer savings account is fifty thousand dollars; and

(III) The maximum total amount in an account is one hundred fifty thousand dollars.

(b) If a limit in paragraph (a) of this subsection (3) is exceeded, then thereafter no interest or other income earned on the investment of money in a first-time home buyer savings account may be subtracted from taxable income under section 39-22-104 (4)(w)(I).

(c) Money may remain in a first-time home buyer savings account for unlimited duration without the interest or income being subject to recapture or penalty.

(4) The account holder shall not use money in an account to pay expenses of administering the account; except that a service fee may be deducted from the account by a financial institution. The account holder is responsible for maintaining documentation for the

first-time home buyer savings account and for eligible expenses related to the qualified beneficiary's purchase of his or her primary residence.

**Source: L. 2016:** Entire part added, (HB 16-1467), ch. 321, p. 1303, § 2, effective August 10.

**39-22-4705. Eligible expenses - penalties for other uses.** (1) (a) For purposes of the income tax benefit conferred under this part 47, the money in a first-time home buyer savings account may be:

(I) Used for eligible expenses related to a qualified beneficiary's purchase of his or her primary residence in the state;

(II) Used for eligible expenses related to a qualified beneficiary's purchase of his or her primary residence in or outside the state, if the qualified beneficiary is active-duty military and was stationed in Colorado for any time after the creation of the account;

(III) Used for expenses that would have qualified under subparagraph (I) or (II) of this paragraph (a), but the contract for purchase did not close;

(IV) Transferred to another newly created first-time home buyer savings account; or

(V) Used to pay a service fee that is deducted by the financial institution.

(b) Paragraph (a) of this subsection (1) applies regardless of whether the qualified beneficiary is the sole owner of the primary residence or joint owner with another person who does not qualify as qualified beneficiary. The money in a first-time home buyer account may not be used for the purposes in subparagraphs (I), (II), and (III) of paragraph (a) of this subsection (1) related to the purchase of a manufactured or mobile home that is not taxed as real property.

(2) Money withdrawn from a first-time home buyer savings account is subject to recapture in the taxable year in which it is withdrawn based on a proportion from the account subtracted under section 39-22-104 (4)(w)(I) to the total amount in the account, if:

(a) At the time of the withdrawal, it has been less than a year since the first deposit in the first-time home buyer savings account; or

(b) The money is used for any purpose other than those specified in subsection (1) of this section.

(3) If any money is subject to recapture under paragraph (b) of subsection (2) of this section, the account holder shall pay to the department a penalty in the same taxable year as the recapture. If the withdrawal was made ten or fewer years after the first deposit in the first-time home buyer savings account, then the penalty is equal to five percent of the amount subject to recapture, and if the withdrawal was made more than ten years after the first deposit in the account, then the penalty is equal to ten percent of the amount subject to recapture. But these penalties do not apply if:

(a) The money is used for eligible expenses related to a qualified beneficiary's purchase of his or her primary residence outside of the state; or

(b) The money is from a first-time home buyer savings account for which the qualified beneficiary dies and the account holder does not designate a new qualified beneficiary during the same taxable year.

(4) If the account holder or, if the first-time home buyer savings account is jointly owned, account holders die, then all of the money in the account that was subtracted from

taxable income is subject to recapture in the taxable year of the death or deaths, but no penalty is due to the department.

**Source: L. 2016:** Entire part added, (HB 16-1467), ch. 321, p. 1304, § 2, effective August 10.

**39-22-4706. Forms.** The department shall establish forms for an account holder to annually report information about a first-time home buyer savings account, including, but not limited to, how the money from the fund is used, and identify any supporting documentation that is required to be maintained. To be eligible for the subtraction in section 39-22-104 (4)(w), an account holder must annually file with his or her state income tax return the completed form, the form 1099 for the account issued by the financial institution, and any other supporting documentation the department requires.

**Source: L. 2016:** Entire part added, (HB 16-1467), ch. 321, p. 1305, § 2, effective August 10.

**39-22-4707. Financial institutions.** (1) A financial institution is not required to:

(a) Designate an account as a first-time home buyer savings account, or designate the beneficiaries of an account, in the financial institution's account contracts or systems or in any other way;

(b) Track the use of money withdrawn from a first-time home buyer savings account; or

(c) Report any information to the department or any other governmental agency that is not otherwise required by law.

(2) A financial institution is not responsible or liable for:

(a) Determining or ensuring that an account holder is eligible for a subtraction under section 39-22-104 (4)(w)(I);

(b) Determining or ensuring that money in the account is used for an eligible expense; or

(c) Reporting or remitting taxes or penalties related to use of money in a first-time home buyer savings account.

(3) In implementing this part 47 and section 39-22-104 (3)(k) and (4)(w), the department shall not establish any administrative, reporting, or other requirements on financial institutions that are outside the scope of normal account procedures.

**Source: L. 2016:** Entire part added, (HB 16-1467), ch. 321, p. 1305, § 2, effective August 10.

## PART 48

## URBAN PEAK HOUSING AND SUPPORT SERVICES FOR YOUTH EXPERIENCING HOMELESSNESS FUND VOLUNTARY CONTRIBUTION

**39-22-4801. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) Urban Peak is a humanitarian organization that provides supportive housing and comprehensive support services to youths age fifteen to twenty-four who are experiencing homelessness in Colorado;

(b) Urban Peak serves more than two thousand five hundred youths experiencing homelessness each year;

(c) Urban Peak provides street outreach six days a week and provides hygiene materials, clothing and food, referrals, assistance in obtaining personal documentation, and an adult lifeline to more than one thousand one hundred youths a year living on the streets;

(d) Urban Peak provides the following to one thousand five hundred youths per year in a low-barrier, drop-in center:

(I) Temporary respite from outdoor elements;

(II) Hot breakfasts;

(III) Lockers;

(IV) Laundry service;

(V) Showers;

(VI) Individualized case management;

(VII) Harm reduction; and

(VIII) Life skills classes;

(e) Urban Peak also provides sixty shelter beds three hundred sixty-five days per year to youths experiencing homelessness in Colorado, providing five hundred youths ages fifteen to twenty-one a safe place to sleep, three meals per day, medical and mental health care, family mediation, individualized case management, and access to numerous other support services;

(f) Urban Peak provides supportive housing, which places youths in their own apartments, to one hundred fifty-five youths per year, which supportive housing includes individualized, strength-based case management, education and employment services, and skill development to increase their ability to achieve self-sufficiency; and

(g) Urban Peak provides education and employment support services to nearly six hundred youths each year, including GED tutoring and testing, individualized case management, high school reengagement support, post-secondary educational opportunities, job readiness training, job retention support, and food safety and retail certifications.

(2) In order to assist Colorado in fulfilling the mission of Urban Peak Housing and Support Services for Youth Experiencing Homelessness, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of Urban Peak Housing and Support Services for Youth Experiencing Homelessness by allowing citizens to make a voluntary contribution on their state income tax return form to the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund for that purpose.

**Source: L. 2017:** Entire part added, (HB 17-1055), ch. 38, p. 113, § 1, effective August 9.

**39-22-4802. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001

(8) that a line on the income tax return form has become available and the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund voluntary contribution is next in the queue established pursuant to said section 39-22-1001 (8), the executive director shall ensure that the Colorado state individual income tax return form contains a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund created in section 39-22-4803 (1).

**Source: L. 2017:** Entire part added, (HB 17-1055), ch. 38, p. 115, § 1, effective August 9.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2017, that the voluntary contribution for the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund was added to the state income tax return form beginning January 1, 2018.

**39-22-4803. Contributions credited to the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4802 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund to the department of revenue its costs of administering moneys designated as contributions to the fund. After subtracting the appropriation to the department, the state treasurer shall transfer all moneys remaining in the fund at the end of the fiscal year to Urban Peak, a Colorado nonprofit organization.

**Source: L. 2017:** Entire part added, (HB 17-1055), ch. 38, p. 115, § 1, effective August 9.

**39-22-4804. Repeal of part.** This part 48 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund voluntary contribution is next in the queue, unless the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund established by this part 48 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2017:** Entire part added, (HB 17-1055), ch. 38, p. 115, § 1, effective August 9.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2017, that the voluntary contribution for the Urban Peak Housing and Support Services for Youth Experiencing Homelessness fund was added to the state income tax return form beginning January 1, 2018.

## PART 49

## FAMILY CAREGIVER SUPPORT FUND VOLUNTARY CONTRIBUTION

**39-22-4901. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) Approximately one million two hundred thousand Coloradans, or nearly one in four, live with a chronic disease or disability;

(b) One in six, or an estimated fifteen percent of, children ages three to seventeen years have at least one developmental disability;

(c) More than one and one-half million, or three in ten, Coloradans require mental health treatment each year;

(d) The older adult population is growing at a faster rate than the general population;

(e) By the year 2040, the number of residents aged sixty or older in Colorado is expected to double from one in eight persons to one in four, or an estimated one million three hundred thousand older adults, and the rapid expansion within that demographic may create a strain on the health care sector, long-term services and supports, and the state;

(f) Family caregivers, including family members and friends, are the main providers of long-term services and supports to older adults and to individuals living with chronic health care needs or disability;

(g) By using community programs, services, and supports that reduce or defer health care expenses or out-of-home placement, family caregivers, family care recipients, and Colorado taxpayers can all benefit;

(h) Helping Coloradans "age in place", safely and independently, is a priority for the state's long-term sustainability; and

(i) Easter Seals Colorado provides support to individuals and families with programs and services to:

(I) Enhance individuals' quality of life;

(II) Create opportunities for individuals living with chronic health care challenges to achieve greater independence; and

(III) Empower and support family caregivers as they work to assist family members living with challenges posed by chronic disease, disability, aging, or other special needs.

(2) Therefore, it is the intent of the general assembly to provide Colorado citizens the opportunity to support the efforts of Easter Seals Colorado, a registered nonprofit organization pursuant to section 501 (c)(3) of the internal revenue code, and support services for individuals living with chronic health care needs and family caregivers by allowing citizens to make voluntary contributions on their state income tax return forms for that purpose.

**Source: L. 2017:** Entire part added, (HB 17-1222), ch. 346, p. 1821, § 1, effective August 9.

**39-22-4902. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line on the income tax return form has become available and the family caregiver support fund voluntary contribution is next in the queue established pursuant to said section 39-22-1001 (8), the executive director shall ensure that the Colorado state individual income tax return form contains a line whereby each individual taxpayer may designate the amount of the contribution, if any, that the individual wishes to make to the family caregiver support fund created in section 39-22-4903 (1).

**Source: L. 2017:** Entire part added, (HB 17-1222), ch. 346, p. 1822, § 1, effective August 9.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2017, that the voluntary contribution for the family caregiver support fund was added to the state income tax return form beginning January 1, 2018.

**39-22-4903. Contributions credited to the family caregiver support fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4902 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the family caregiver support fund, which is hereby created in the state treasury. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the family caregiver support fund to the fund.

(2) The general assembly shall appropriate annually from the family caregiver support fund to the department of revenue its costs of administering moneys designated as contributions to the fund. After subtracting the appropriation to the department, the state treasurer shall transfer all money remaining in the fund at the end of the fiscal year to Easter Seals Colorado, a registered nonprofit organization pursuant to section 501 (c)(3) of the internal revenue code.

**Source: L. 2017:** Entire part added, (HB 17-1222), ch. 346, p. 1822, § 1, effective August 9.

**39-22-4904. Repeal of part.** This part 49 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the family caregiver support fund voluntary contribution is next in the queue, unless the family caregiver support fund established by this part 49 is continued or reestablished by the general assembly acting by bill before that date.

**Source: L. 2017:** Entire part added, (HB 17-1222), ch. 346, p. 1823, § 1, effective August 9.

**Editor's note:** Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on November 1, 2017, that the voluntary contribution for the family caregiver support fund was added to the state income tax return form beginning January 1, 2018.

PART 50

YOUNG AMERICANS CENTER FOR FINANCIAL EDUCATION FUND VOLUNTARY CONTRIBUTION

**39-22-5001. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) Young Americans Center for Financial Education is a Colorado nonprofit organization established to develop the financial literacy of young people through real-life experiences and hands-on programs purposefully designed to enable them to prosper in the free enterprise system;

(b) The center provides experiential programs about personal finance, economics, and business to students across Colorado through programs such as Young AmeriTowne, International Towne, YouthBiz, and summer camps;

(c) Established in 1990, Young AmeriTowne has reached nearly four hundred forty thousand youth;

(d) In 2017, Young AmeriTowne On the Road took the program to Pueblo, Grand Junction, Fort Collins, Durango, and the Denver metro area, and served more than five thousand students;

(e) International Towne has educated nearly one hundred thirty thousand students since its inception, including almost eleven thousand in 2017;

(f) One-third of participants in Young AmeriTowne and International Towne are low-income students;

(g) One out of five participants attend on scholarship; and

(h) The center's programs help build life skills, work skills, and financial self-sufficiency in Colorado youth.

(2) In light of the mission and programs of the center, the general assembly recognizes that many citizens of Colorado may be willing to provide money to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of Young Americans Center for Financial Education by allowing citizens to make a voluntary contribution on their state income tax return form to the Young Americans Center for Financial Education fund for that purpose.

**Source: L. 2018:** Entire part added, (HB 18-1305), ch. 210, p. 1343, § 1, effective August 8.

**39-22-5002. Voluntary contribution designation - procedure - effective date.** For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line on the income tax return form has become available and the Young Americans Center for Financial Education fund voluntary contribution is next in the queue established pursuant to said section 39-22-1001 (8), the executive director shall ensure that the Colorado state individual income tax return form contains a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Young Americans Center for Financial Education fund created in section 39-22-5003 (1).

**Source: L. 2018:** Entire part added, (HB 18-1305), ch. 210, p. 1344, § 1, effective August 8.

**39-22-5003. Contributions credited to the Young Americans Center for Financial Education fund - creation - appropriation.** (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-5002 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Young Americans Center for Financial Education fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of money in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Young Americans Center for Financial Education fund to the department of revenue its costs of administering money designated as contributions to the fund. After subtracting the appropriation to the department, the state treasurer shall transfer all money remaining in the fund at the end of the fiscal year to the Young Americans Center for Financial Education, a Colorado nonprofit organization.

**Source: L. 2018:** Entire part added, (HB 18-1305), ch. 210, p. 1344, § 1, effective August 8.

**39-22-5004. Repeal of part.** This part 50 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Young Americans Center for Financial Education fund voluntary contribution is next in the queue, unless the Young Americans Center for Financial Education fund established by this part 50 is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2018:** Entire part added, (HB 18-1305), ch. 210, p. 1345, § 1, effective August 8.

## PART 51

## DONATE TO A COLORADO NONPROFIT FUND VOLUNTARY CONTRIBUTION

**39-22-5101. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) The program allowing taxpayers to make donations to charitable organizations through their Colorado state individual income tax return forms, commonly known as the "tax check-off program", has been a groundbreaking and profoundly important effort that has touched countless lives in myriad ways;

(b) Colorado's tax check-off program, which was the first of its kind in the country, was established in 1977 and has resulted in over thirty million dollars contributed to benefit the public through the work of Colorado nonprofit entities, inspiring similar programs in almost every state in the country;

(c) In fiscal year 2017, Colorado taxpayers received over one billion dollars in income tax refunds. The average refund was approximately five hundred sixty dollars.

(d) Between January 1, 2017, and November 1, 2017, Coloradans gave over one million seven hundred thousand dollars to support programs through the voluntary contribution options on their individual income tax return forms;

(e) Increasing the number of charitable organizations that taxpayers may designate on their tax forms can expand charitable giving throughout the state;

(f) Charitable organizations help contribute to vibrant communities across the state;

(g) Allowing Colorado taxpayers to designate a registered charitable organization of their choosing through a write-in line on the individual income tax return form will allow charities to raise additional funds earlier in the year, and will increase choices for taxpayers who wish to donate all or part of their tax refunds; and

(h) A program allowing the designation of a registered charitable organization of a taxpayer's choosing through a write-in line on the individual income tax return form would also be the first of its kind in the country.

(2) It is the intent of the general assembly to provide Coloradans the opportunity to designate contributions to registered charitable organizations of their choosing by establishing the donate to a Colorado nonprofit fund, allowing taxpayers to make voluntary contributions from their tax refunds on their income tax return forms. The general assembly further intends that this process be efficient and convenient for taxpayers, nonprofits, and the department of revenue and therefore encourages the department and the secretary of state to use digital resources and formats that increase efficiency and reduce the risk of errors in implementing the fund.

**Source: L. 2018:** Entire part added, (SB 18-141), ch. 290, p. 1787, § 1, effective August 8.

**39-22-5102. Voluntary contribution designation - procedure - effective date.** (1) (a) The executive director shall ensure that the Colorado state individual income tax return form contains a line for the donate to a Colorado nonprofit fund in the first income tax year:

(I) In which the department has received, on or before August 15, sufficient funds to implement this part 51 from gifts, grants, and donations, pursuant to section 39-22-5105;

(II) That begins on or after January 1, 2019; and

(III) That begins after the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line on the income tax

return form has become available and the donate to a Colorado nonprofit fund, created in section 39-22-5104, is next in the queue established pursuant to section 39-22-1001 (8).

(b) The executive director shall ensure that the line for the donate to a Colorado nonprofit fund appears on the form in each tax year after the year it is added pursuant to subsection (1)(a) of this section. The line must allow each individual taxpayer to designate the amount of the contribution, if any, and the name and such identifying information as the department of revenue may require of a single charitable organization from the list of eligible charitable organizations provided under section 39-22-5103 to receive the contribution.

(2) If a line on the individual income tax return form becomes available before the requirements of subsection (1)(a) of this section are met and the donate to a Colorado nonprofit fund is next in the queue established pursuant to section 39-22-1001 (8), the executive director shall file the written certification as specified in section 39-22-1001 (8) and shall ensure that the line on the form is reserved for the donate to a Colorado nonprofit fund until the requirements of subsection (1)(a) of this section are met. Notwithstanding any other provision of law, the executive director shall not use the line for another fund from the queue.

(3) The executive director shall notify the secretary of state when he or she files the written certification that a line has become available for the donate to a Colorado nonprofit fund under this section.

**Source: L. 2018:** Entire part added, (SB 18-141), ch. 290, p. 1788, § 1, effective August 8.

**39-22-5103. List of eligible charitable organizations.** (1) (a) On or before September 1, 2019, and on or before September 1 of each year thereafter, the secretary of state shall provide to the department of revenue a list of all eligible charitable organizations. To be eligible, a charitable organization must:

(I) Have been registered with the secretary of state under the "Colorado Charitable Solicitations Act", article 16 of title 6, for at least five years as of the date the list is generated;

(II) Be in good standing with the secretary of state under the "Colorado Charitable Solicitations Act", article 16 of title 6, as of the date the list is generated; and

(III) Be a nonprofit organization that is exempt from taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended.

(b) A registered charitable organization may file a written request with the secretary of state, on a form prescribed by the secretary of state, to exclude itself from the list provided to the department of revenue under subsection (1)(a) of this section. The secretary of state shall not include in the list the name or information of any charitable organization that files such a request.

(c) The secretary of state shall provide the list of eligible charitable organizations to the department of revenue in a digital format.

(2) The department of revenue shall make the list of eligible charitable organizations available to the public for each income tax year. The department may make the list available in a digital format or a paper format or both. The list must include, for each charitable organization, all identifying information that the department requires for a taxpayer to designate the organization to receive a donation through the donate to a Colorado nonprofit fund voluntary contribution line established in section 39-22-5102.

(3) A taxpayer may designate one charity from the list made available by the department of revenue for the tax year for which the taxpayer is filing a return using the donate to a Colorado nonprofit fund voluntary contribution line created in section 39-22-5102. If a taxpayer designates an organization that is not eligible under this section, or if the department of revenue cannot determine which charitable organization a taxpayer has designated, the contribution is void.

**Source: L. 2018:** Entire part added, (SB 18-141), ch. 290, p. 1789, § 1, effective August 8.

**39-22-5104. Contributions credited to the donate to a Colorado nonprofit fund - creation - appropriation - distribution.** (1) There is hereby created in the state treasury the donate to a Colorado nonprofit fund, referred to in this section as the "fund". The fund consists of money credited to the fund pursuant to this part 51 and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(2) The department of revenue shall determine annually the total amount designated to the fund and the total amounts designated to each individual eligible charitable organization pursuant to section 39-22-5102, and shall report those amounts to the state treasurer and to the general assembly. The state treasurer shall credit to the fund the total amount designated to the fund.

(3) The general assembly shall appropriate annually from the fund to the department of revenue, the secretary of state, and the state treasurer its actual, reasonable costs of implementing this part 51. After the appropriations to the department of revenue, the secretary of state, and the state treasurer are deducted, the state treasurer shall distribute the remaining funds to the eligible charitable organizations as designated by taxpayers after a reduction proportionate to the amount deducted from the fund for the administration of the fund.

(4) The department is not liable to a taxpayer or to an eligible charitable organization for any error in distributing a contribution under this part 51.

**Source: L. 2018:** Entire part added, (SB 18-141), ch. 290, p. 1790, § 1, effective August 8.

**39-22-5105. Initial funding - repeal.** (1) The department of revenue may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of implementing the donate to a Colorado nonprofit fund, including but not limited to creating information systems and procedures necessary to collect and distribute designated contributions. The department shall transmit all money received through gifts, grants, or donations to the state treasurer, who shall credit the money to the donate to a Colorado nonprofit fund created in section 39-22-5104 (1).

(2) This part 51 is repealed if the department of revenue does not receive sufficient funding to implement the donate to a Colorado nonprofit fund from gifts, grants, and donations as described in subsection (1) of this section on or before September 30, 2020. The executive director of the department shall notify the revisor of statutes in writing if the department has not received the amounts required by this subsection (2) on or before September 30, 2020, by e-

mailing the notice to revisorofstatutes.ga@state.co.us. This part 51 is repealed, effective upon the date of the notice to the revisor of statutes.

**Source: L. 2018:** Entire part added, (SB 18-141), ch. 290, p. 1791, § 1, effective August 8.

## Estate and Inheritance and Succession Tax

## ARTICLE 23

Inheritance and Succession Tax

**39-23-101 to 39-23-170. (Repealed)**

**Source: L. 2002:** Entire article repealed, p. 1358, § 2, effective July 1.

**Editor's note:** (1) This article was numbered as article 3 of chapter 138, C.R.S. 1963. For amendments to this article prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-23-150 was amended in House Bill 02-1046, effective October 1, 2002. However, those amendments did not take effect due to the repeal of this article by Senate Bill 02-168, effective July 1, 2002.

## ARTICLE 23.5

Colorado Estate Tax

**Cross references:** For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

**39-23.5-101. Short title.** This article shall be known and may be cited as the "Colorado Estate Tax Law".

**Source: L. 79:** Entire article added, p. 1431, § 16, effective July 3.

**39-23.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Alien" means a decedent who, at the time of the decedent's death, was not domiciled in Colorado or any other state of the United States and was not a citizen of the United States.

(2) "Colorado return" means the Colorado estate tax return with respect to the credit allowable under section 2011 of the internal revenue code and the Colorado generation-skipping transfer tax return with respect to the credit allowable under section 2604 of the internal revenue code.

(3) "Decedent" means a deceased natural person.

(4) "Department" means the department of revenue.

(4.5) Repealed.

(5) "Domiciliary" means a decedent who was domiciled in Colorado at the time of such decedent's death.

(5.5) "Federal additional estate tax return" means any federal estate tax return designated for reporting the recapture of estate tax under section 2032A of the internal revenue code, the additional estate tax imposed for failure to materially participate in a business, dispositions of interests, or other noncompliance under section 2057 of the internal revenue code, and the additional estate tax imposed for failure to implement the agreement under section 2031 of the internal revenue code.

(6) "Federal credit" means the maximum amount of the credit for state death taxes allowable under section 2011 of the internal revenue code or, in the case of an alien, under section 2102 of the internal revenue code.

(7) "Federal return" means the federal estate tax return with respect to the credit allowable under section 2011 of the internal revenue code and the federal generation-skipping transfer tax return with respect to the credit allowable under section 2604 of the internal revenue code.

(8) "Generation-skipping transfer" means every transfer for which a credit for state taxes is allowable under section 2604 of the internal revenue code.

(9) "Gross estate" means gross estate as defined in section 2031 of the internal revenue code or, in the case of an alien, in section 2103 of the internal revenue code.

(9.5) "Internal revenue code" means the "Internal Revenue Code of 1986", as amended, and any regulations thereunder. The change of references in this article from the "Internal Revenue Code of 1954" to the "Internal Revenue Code of 1986" shall not affect any act done or any right accrued or accruing before or after such change, but all rights and liabilities shall continue and may be enforced in the same manner as if such references had not been changed.

(10) "Nondomiciliary" means a decedent, other than an alien decedent, who was not domiciled in Colorado at the time of such decedent's death.

(11) "Other state" means any of the fifty states in the United States (other than Colorado), the District of Columbia, or any possession or territory of the United States.

(12) "Person" includes any natural person, corporation, association, limited liability company, partnership, joint venture, syndicate, estate, trust, or other entity under which business or other activities may be conducted.

(13) "Personal representative" means the personal representative of a decedent's estate, as defined by the "Colorado Probate Code", articles 10 to 17 of title 15, C.R.S., or, if there is no personal representative appointed, qualified, and acting within this state, any person in actual or constructive possession of any property of the decedent within the meaning of section 2203 of the internal revenue code.

(13.3) "Person required to file" means any person, including a personal representative, qualified heir, distributee, or trustee required or permitted to file a federal return or a Colorado return pursuant to the provisions of the internal revenue code or this article.

(13.6) "Qualified heir" means a qualified heir as defined in section 2032A (e)(1) of the internal revenue code or as defined in section 2057 (i)(1) of the internal revenue code if the family-owned business deduction provisions of the internal revenue code are applicable.

(14) to (16) Repealed.

(17) "Transfer" means a transfer within the meaning of section 2001 of the internal revenue code.

(17.5) Repealed.

(17.7) "Unified credit" means the credit against federal estate tax under sections 2010 and 2102 (c)(1) of the internal revenue code.

(18) Except as provided in section 39-23.5-108 (5)(c)(I), "value" means gross value as finally determined for purposes of the federal estate tax or generation-skipping transfer tax.

**Source: L. 79:** Entire article added, p. 1431, § 16, effective July 3. **L. 83:** (1), (2), (6) to (9), (13), (17), and (18) amended, (4.5), (9.5), (13.3), (13.6), and (17.5) added, and (14) to (16) repealed, pp. 1532, 1538, §§ 1, 15, effective July 1. **L. 88:** (2), (7), (8), (9.5), and (17) amended and (4.5) and (17.5) repealed, pp. 1325, 1327, §§ 1, 7, effective April 6. **L. 90:** (12) amended, p. 457, § 39, effective April 18. **L. 92:** (5.5) and (17.7) added and (18) amended, p. 2247, § 2, effective July 1. **L. 98:** (5.5) and (13.6) amended, p. 314, § 1, effective July 1. **L. 99:** (5.5) and (13.6) amended, p. 630, § 43, effective August 4.

**39-23.5-103. Tax on transfer of gross estate of domiciliaries - amount - credit - property of a domiciliary defined.** (1) A tax in the amount of the federal credit is imposed on the transfer of the gross estate of every domiciliary. For Colorado estate tax purposes, no credit for taxes is allowable in determining such federal credit other than the unified credit.

(2) If any property of a domiciliary is subject to a death tax imposed by another state or states for which a credit is allowable under section 2011 of the internal revenue code, the amount of the tax due under this article shall be reduced by the lesser of:

(a) The amount of the death tax paid the other state which is allowed as a credit against the federal estate tax; or

(b) An amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the domiciliary's gross estate less the value of the property of a domiciliary, as defined in subsection (3) of this section, that is included in the domiciliary's gross estate and the denominator of which is the value of the domiciliary's gross estate.

(3) Property of a domiciliary includes real property held in trust or otherwise that is not situated in some other state; tangible personal property except that which has an actual situs in some other state; and all intangible personal property, wherever the notes, bonds, stock certificates, or other evidence, if any, thereof may be physically located or wherever the banks or other debtors thereof may be located or domiciled; except that real property in a personal trust shall not be taxed if such real property has an actual situs in some other state.

**Source: L. 79:** Entire article added, p. 1432, § 16, effective July 3. **L. 83:** (1) and (2) amended, p. 1533, § 2, effective July 1. **L. 92:** (1) and (3) amended, p. 2248, § 3, effective July 1.

**39-23.5-104. Tax on transfer of gross estate of nondomiciliaries - amount - property of a nondomiciliary defined.** (1) A tax in an amount determined as provided in this section is imposed on the transfer of the gross estate located in Colorado of every nondomiciliary.

(2) The tax shall be an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Colorado which is

included in the gross estate and the denominator of which is the value of the nondomiciliary's gross estate. For Colorado estate tax purposes, no credit for taxes is allowable in determining such federal credit under this subsection (2) other than the unified credit.

(3) Property located in Colorado of a nondomiciliary includes real property situated in this state held in trust or otherwise and tangible personal property which has an actual situs in this state, but intangibles that have acquired an actual or business situs in this state shall not be taxable.

**Source: L. 79:** Entire article added, p. 1433, § 16, effective July 3. **L. 83:** (1) and (2) amended, p. 1534, § 3, effective July 1. **L. 92:** (2) amended, p. 2248, § 4, effective July 1.

**39-23.5-105. Tax upon transfer of gross estate of aliens - amount - property of alien defined.** (1) A tax in an amount determined as provided in this section is imposed on the transfer of the gross estate located in Colorado of every alien.

(2) The tax shall be an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Colorado which is included in the gross estate and the denominator of which is the value of the alien's gross estate. For Colorado estate tax purposes, no credit for taxes is allowable in determining such federal credit under this subsection (2) other than the unified credit.

(3) Property located in Colorado of an alien includes real property situated in this state held in trust or otherwise; tangible personal property which has an actual situs in this state; and intangible personal property if the physical evidence of such property is located within this state or if such property is directly or indirectly subject to protection, preservation, or regulation under the laws of this state, to the extent such property is included in the decedent's gross estate.

**Source: L. 79:** Entire article added, p. 1433, § 16, effective July 3. **L. 83:** (1) amended, p. 1534, § 4, effective July 1. **L. 92:** (2) amended, p. 2248, § 5, effective July 1.

**39-23.5-106. Tax on generation-skipping transfer - amount - property included in generation-skipping transfer.** (1) A tax in an amount determined as provided in this section is imposed on every generation-skipping transfer.

(2) The tax shall be an amount determined by multiplying the maximum amount allowable under section 2604 of the internal revenue code by a fraction, the numerator of which is the value of the property located in Colorado included in the generation-skipping transfer and the denominator of which is the value of all property included in the generation-skipping transfer.

(3) Property located in Colorado includes real property situated in this state held in trust or otherwise; tangible personal property which has an actual situs in this state; and intangible personal property owned by a trust having its principal place of administration in this state at the time of the generation-skipping transfer.

**Source: L. 79:** Entire article added, p. 1433, § 16, effective July 3. **L. 83:** (2) amended, p. 1534, § 5, effective July 1. **L. 88:** (2) amended, p. 1326, § 2, effective April 6.

**39-23.5-107. Tax returns - date to be filed - extension.** (1) With respect to every gross estate or generation-skipping transfer, the person required to file a federal return shall file with the department on or before the date the federal return is required to be filed:

(a) A Colorado return for the tax due under this article; and

(b) A true copy of the federal return.

(2) If the person required to file has obtained an extension of time for filing the federal return, the filing required by subsection (1) of this section shall be similarly extended until the end of the time period granted in the extension of time for filing the federal return. A true copy of said extension shall be filed with the department within thirty days of issuance.

(3) No Colorado return need be filed if the gross estate or generation-skipping transfer does not require the filing of a federal return.

(4) If the gross estate or generation-skipping transfer does not require the filing of a Colorado return, the person who would otherwise be required to file a Colorado return may apply to the department for the issuance of a certificate of tax determination. If the department is satisfied that the gross estate or generation-skipping transfer is not subject to the tax imposed by this article or that the tax liability has been fully discharged, it shall issue a certificate of tax determination. Such certificate, when issued, shall indicate it has been determined, based upon the Colorado return as filed, that the person who filed the Colorado return is free of any claim by the state for taxes owed under this article.

(5) No tax waiver, consent to transfer, certificate of tax determination, or similar document shall be required for the transfer of any real or personal property located in Colorado included in a gross estate or generation-skipping transfer in the case of decedents dying and generation-skipping transfers occurring on or after July 1, 1980.

(6) If any person fails or refuses to make any return required by this article, the executive director may make such return for such person from such information as may be available, and any assessment based on such return made by the executive director shall be as good and sufficient as if such return had been made and filed by the person liable therefor.

(7) Any person who makes a special use valuation election in a federal return and who is required to file a federal additional estate tax return as a result of a premature disposition of property or premature cessation of the qualified use shall file with the department on or before the date the federal additional estate tax return is required to be filed:

(a) A Colorado return for the estate tax due under this article; and

(b) A true copy of the federal additional estate tax return.

(8) Any person who makes a family-owned business deduction election in a federal return and who is required to file a federal additional estate tax return as a result of failure to materially participate in the business, disposition of interest, or other noncompliance with the requirements of section 2057 of the internal revenue code shall file with the department on or before the date the federal additional estate tax return is required to be filed:

(a) A Colorado return for the estate tax due under this article; and

(b) A true and correct copy of the federal additional estate tax return.

(9) Any person who elects a qualified conservation easement exclusion in a federal return as allowed under section 2031 of the internal revenue code and who is required to file a federal additional estate tax return as a result of failure to implement the agreement described in section 2031 of the internal revenue code shall file with the department on or before the date the federal additional estate tax return is required to be filed:

(a) A Colorado return for the estate tax due under this article; and

(b) A true and correct copy of the federal additional estate tax return.

**Source: L. 79:** Entire article added, p. 1433, § 16, effective July 3. **L. 80:** (4) amended, p. 797, § 63, effective June 5; (3) and (4) added, p. 523, § 2, effective July 1. **L. 83:** IP(1) and (2) to (4) amended and (5) added, p. 1534, § 6, effective July 1. **L. 85:** (6) added, p. 1255, § 6, effective January 1, 1986. **L. 87:** IP(1), (3), and (4) amended, p. 1470, § 1, effective April 22. **L. 92:** (7) added, p. 2249, § 6, effective July 1. **L. 98:** (8) and (9) added, p. 314, § 2, effective July 1. **L. 99:** IP(8) amended, p. 630, § 44, effective August 4.

**39-23.5-108. Payment date - extension - installment.** (1) The tax due under this section shall be paid to the department by the person required to file not later than the date the Colorado return is required to be filed under section 39-23.5-107.

(2) If the person required to file has obtained an extension of time for payment of the federal tax or has elected to pay such tax in installments, such person may elect to extend the time for payment of the tax due under this article in accordance with such extension, or to pay such tax in installments, in the same manner as provided for payment of the federal tax. Such election shall be made by:

(a) Filing with the department at the time such tax is due a true copy of the application for extension of time for payment or the election to pay the federal tax in installments with the returns required under section 39-23.5-107; and

(b) In the case of installment payments, an agreement consenting to the creation of a special lien under subsection (5) of this section filed with the department on or before the due date for filing the Colorado return, including extensions of time for filing such return. The department may also grant extensions for the filing of such an agreement.

(3) Any person making an estimated federal estate tax payment with the federal application for extension of time for payment shall make an estimated Colorado estate tax payment to the department not later than the date the application for extension of time for payment is filed under subsection (2) of this section. A true copy of the federal extension of time for payment indicating the action taken by the internal revenue service shall be filed with the department within thirty days of issuance.

(4) Any person making the election to pay the Colorado estate tax in installments under subsection (2) of this section may not defer a percentage of such tax exceeding the percentage of federal tax actually deferred and may not defer an amount of tax greater than the tax attributable to the interest in the closely held business subject to such tax. Proof of the federal estate tax installment payment shall be submitted annually with the Colorado estate tax installment payment.

(5) (a) As used in this subsection (5):

(I) "Deferral period" means the period for which the payment of tax under this article is deferred pursuant to the election to pay such tax in installments under subsection (2) of this section.

(II) "Deferred amount" means the amount of tax under this article that is deferred pursuant to subsection (2) of this section.

(III) "Required interest amount" means the interest payable to the department over the first four years that taxes are deferred pursuant to subsection (2) of this section.

(IV) "Section 6166 lien property" means interests in real and other property to the extent that such interests can be expected to survive the deferral period and are designated in the agreement required by paragraph (b) of subsection (2) of this section consenting to the creation of a special lien under this subsection (5).

(b) In the case of installment payments, the deferred amount, plus any interest, penalties, and costs attributable to such deferred amount, shall be a special lien in favor of the state on the section 6166 lien property. Except as otherwise provided in this subsection (5) and subsection (2) of this section, such special lien shall be subject to the same conditions, limitations, definitions, terms, and other provisions of the internal revenue code as the special lien in favor of the United States under section 6324A of such code for federal estate tax deferred under section 6166 of such code. For the purpose of applying the provisions of such code to the special lien under this subsection (5), the terms defined in paragraph (a) of this subsection (5) shall have the meanings given them in such paragraph, and the term "secretary" shall refer to the department.

(c) (I) As used in this paragraph (c), "value" shall have the same meaning as it has when it is used in section 6324A(b) of the internal revenue code.

(II) The value required as section 6166 lien property shall be the deferred amount and the required interest amount. For this purpose, the deferred amount and the required interest amount shall be determined as of the date prescribed for the payment of the tax imposed by this article, and the value required as section 6166 lien property shall be determined by taking into account any encumbrances including any federal tax liens. Only property subject to the jurisdiction of the courts of this state shall be recognized in determining the value of section 6166 lien property required by this subsection (5).

(d) Except as otherwise provided in this subsection (5), the agreement referred to in this subsection (5) shall meet the requirements of the agreement referred to in section 6324A of the internal revenue code. The personal representative shall be named as agent in the agreement consenting to the special lien unless another person is named as the agent in a similar agreement filed with and accepted by the federal tax authorities. In the case that such other person is named in both such agreements, the department shall deal with such other person in matters relating to the installment payments and the special lien.

(e) The special lien shall arise when the department files notice thereof in accordance with the applicable provisions of the internal revenue code and shall continue until the deferred amount, plus any interest, penalties, and costs attributable to the deferred amount, is satisfied or such lien is released. The department may release such lien in whole or in part.

(f) (I) In the event of any default in the payment of the tax due under this article or any other act or failure to act permitting the acceleration of the payment of installments, the executive director of the department, through the attorney general, may bring and prosecute an action in the name of the state as plaintiff for the purpose of enforcing such lien against all or any of the property subject thereto in all cases where any tax has become a lien upon any property under the provisions of this article. In any such action the owner of any property, or of any interest in the property, against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was deraigned through any such decedent by will or succession or by decree of distribution of the estate of such decedent or any lien or encumbrance subsequent to the lien of such tax may be made a party defendant.

(II) Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any taxes under this article or

for the purpose of having it determined that any property is not subject to any lien for taxes, nor chargeable with any tax under this article. An action shall not be maintained where any proceedings are pending in any court of this state wherein the taxability of such transfer and the liability therefor, and the amount thereof, may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto, and any interested person who refuses to join as plaintiff therein may be a defendant. Summons for the state in such action shall be served upon the attorney general. Should the court determine that the property described in the complaint is subject to the lien of said tax and that such property has been transferred within the meaning of this article, the court shall award affirmative relief to the state, and judgment shall be rendered therein in favor of the state ascertaining and determining the amount of such tax, the person liable, and the property chargeable or subject to the lien.

(6) The personal representative shall file notice with the department of any default in the payment of amounts or other act or failure to act with respect to the payment of the corresponding amounts of federal tax or with respect to any bonds or special liens thereon which could or do result in the termination of the extension or deferral of the payment of the federal tax under the internal revenue code. Such notice shall specify the name and account number of the estate and the nature and circumstances of such default, act, or failure to act and shall be filed within ten days of such default, act, or failure to act. The department may accelerate the payment of tax, and interest and penalties thereon, extended or deferred under subsection (2) of this section when:

(a) Any default, other act, or failure to act with respect to the payment of the corresponding amounts of federal tax results in the termination of the extension or of the deferral of the payment of such federal tax; or

(b) Any similar default, act, or failure to act occurs with respect to the payment of the tax due under this article, including any failure to timely file the notice required by this subsection (6) or, in the case of installment payments, with respect to the special lien under subsection (5) of this section, including any failure to add property as required and within the time allowed under the applicable internal revenue code provisions.

**Source: L. 79:** Entire article added, p. 1434, § 16, effective July 3. **L. 83:** Entire section amended, p. 1535, § 7, effective July 1. **L. 92:** (2) amended and (3) to (6) added, p. 2249, § 7, effective July 1. **L. 2002:** (5)(f) amended, p. 1362, § 20, effective July 1.

**39-23.5-109. Interest.** (1) Any tax due under this article which is not paid within nine months after the date of the decedent's death or the generation-skipping transfer shall bear interest on the unpaid balance due at the rate prescribed by section 39-21-110.5 from nine months after such death or transfer until such tax is paid. The interest imposed by this section shall apply regardless of any extension of time to pay the tax or of any election to use an installment method of payment of the tax.

(2) If a special use valuation election was made in a federal return and thereafter additional Colorado estate tax is due as a result of a premature disposition of property or premature cessation of the qualified use, interest shall accrue from the due date of the federal additional estate tax return regardless of any federal extension of time for payment.

(3) If a qualified family-owned business deduction election was made in a federal return and thereafter additional Colorado estate tax is due as a result of failure to materially participate

in the business, disposition of interests, or other noncompliance with the requirements of section 2057 of the internal revenue code, interest shall accrue from the due date of the federal additional estate tax return regardless of any federal extension of time for payment.

(4) If a qualified conservation easement election was made on a federal return and thereafter additional Colorado estate tax is due as a result of any failure to implement the agreement described in section 2031 of the internal revenue code, interest shall accrue from the due date of the federal additional estate tax return regardless of any federal extension of time for payment.

**Source: L. 79:** Entire article added, p. 1434, § 16, effective July 3. **L. 83:** Entire section amended, p. 1535, § 8, effective July 1. **L. 92:** Entire section amended, p. 2252, § 8, effective July 1. **L. 98:** (2) amended and (3) and (4) added, p. 315, § 3, effective July 1. **L. 99:** (3) amended, p. 630, § 45, effective August 4.

**39-23.5-110. Penalty.** (1) If any person fails to pay any tax by the date due under the provisions of this article, there shall be collected as a penalty for such failure the greater of the sum of fifteen dollars or five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty percent in the aggregate. The executive director may reduce or waive the penalty imposed by this subsection (1) for reasonable cause.

(2) If any person fraudulently or willfully fails to file any return under the provision of this article, there shall be collected as a penalty for such failure the sum of seventy-five dollars or one hundred percent of the amount of the tax, if any, whichever is greater.

(3) If any person files a fraudulent or willfully false return under the provisions of this article, there shall be collected as a penalty the sum of one hundred dollars or one hundred fifty percent of the amount of the tax, if any, whichever is greater.

(4) If, after determination and assessment of any tax imposed by this article, any person fails to pay the same within the time specified by any notice and demand sent to him by the executive director, there shall be collected as a penalty for such failure a sum equal to fifteen percent of the amount of the tax demanded.

(5) If any person fraudulently fails to pay any tax when due under the provisions of this article or willfully seeks to evade the payment thereof, there shall be collected as a penalty for such failure a sum equal to one hundred fifty percent of the amount of the tax.

(6) In the case of failure to file the Colorado return on the date prescribed by section 39-23.5-107, determined with regard to any extension of time for filing, there shall be collected as a penalty for such failure an amount equal to five percent of the amount of the tax due under this article, with an additional five percent per month or portion thereof, during which such failure continues, not exceeding twenty percent in the aggregate. If a similar penalty for failure to file timely the federal return for estate taxes is waived, such waiver shall be deemed to constitute reasonable cause for purposes of this section. The executive director may reduce or waive the penalty imposed by this subsection (6) for reasonable cause.

(7) All of the penalties provided in subsections (1) to (6) of this section shall be cumulative and shall be collected at the same time and in the same manner as the tax, with the exception that, if the penalties provided for in subsections (1) and (6) of this section both apply,

then only the larger of the two penalties shall be assessed, or, if equal, only one penalty shall apply.

**Source: L. 79:** Entire article added, p. 1434, § 16, effective July 3. **L. 85:** Entire section R&RE, p. 1256, § 7, effective January 1, 1986. **L. 87:** (1), (6), and (7) amended, p. 1461, § 2, effective April 22.

**39-23.5-111. Amended returns - final determination.** (1) If the person required to file files an amended federal return, he shall immediately file with the department an amended Colorado return and a true copy of the amended federal return. If the person required to file is required to pay an additional tax under this article pursuant to such amended return, he shall pay such additional tax, together with interest as provided in section 39-23.5-109, at the same time he files the amended return, subject, however, to any extension or installment election under section 39-23.5-108.

(2) Upon final determination or redetermination of the federal tax due in respect of any gross estate or generation-skipping transfer, the person required to file shall, within sixty days after such determination or redetermination, give written notice of it to the department, in such form as may be prescribed by regulation. If any additional tax is due under this article by reason of such determination or redetermination, the person required to file shall pay the same, together with interest as provided in section 39-23.5-109, at the same time he files such notice, subject, however, to any extension or installment election under section 39-23.5-108.

**Source: L. 79:** Entire article added, p. 1434, § 16, effective July 3. **L. 83:** Entire section amended, p. 1536, § 9, effective July 1.

**39-23.5-112. Refund for overpayment.** (1) Whenever the department determines that the tax due under this article has been overpaid, the department is authorized to refund the amount of the overpayment, together with interest at the rate prescribed by section 39-21-110.5 from the date of the overpayment or from nine months after the date of the decedent's death or the generation-skipping transfer, whichever is later, pursuant to a claim for refund for the same filed by the person required to file the return or the person who paid the tax. No claim for refund may be filed after the later of either:

(a) The last day provided under the internal revenue code for filing a claim for refund for the corresponding federal tax, taking into account any extensions and suspensions of the period for making such a filing; or

(b) The last date that an assessment could be made by the department with respect to such tax under section 39-23.5-115 (4).

**Source: L. 79:** Entire article added, p. 1435, § 16, effective July 3. **L. 83:** Entire section amended, p. 1536, § 10, effective July 1. **L. 89:** Entire section amended, p. 1497, § 3, effective June 7. **L. 92:** Entire section amended, p. 2252, § 9, effective July 1.

**39-23.5-113. Criminal acts relating to returns.** Any person who willfully fails to file a Colorado return when required by this article, or who willfully files a false return, or who

willfully fails to pay any tax required by this article shall be punished as provided by section 39-21-118.

**Source: L. 79:** Entire article added, p. 1435, § 16, effective July 3. **L. 80:** Entire section R&RE, p. 523, § 3, effective July 1. **L. 83:** Entire section amended, p. 1536, § 11, effective July 1. **L. 85:** Entire section amended, p. 1256, § 8, effective January 1, 1986.

**39-23.5-114. Liability for payment.** (1) The tax imposed by this article shall be paid by the person required to file. No person required to file shall be liable for a sum greater than the value of the property actually received by him.

(2) If the tax imposed by this article is not paid when due, the spouse, qualified heir, distributee, transferee, trustee (except the trustee of an employees' trust which meets the requirement of section 401 (a) of the internal revenue code), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary who receives, or has on the date of the decedent's death, property included in the gross estate or the generation-skipping transfer shall, to the extent of the value of such property for Colorado tax purposes, be personally liable for such tax. The personal liability imposed by this subsection (2) shall, with respect to estates of decedents dying or generation-skipping transfers occurring on or after July 1, 1980, not be valid as against any purchaser, mortgagee, pledgee, or transferee of, or a holder of a security interest in, such property if acquired by him for a full and adequate consideration in money or money's worth. A recorded instrument on which a state documentary fee is noted pursuant to section 39-13-103 shall be prima facie evidence that the transfer described in such instrument was for full and adequate consideration in money or money's worth.

**Source: L. 79:** Entire article added, p. 1435, § 16, effective July 3. **L. 83:** Entire section amended, p. 1536, § 12, effective July 1.

**39-23.5-115. Administration by department - action for collection of tax - appeals - limitations.** (1) The department is charged with the administration and enforcement of this article and may promulgate such rules and regulations under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., as may be required to effectuate the purposes of this article.

(2) The department is authorized to collect the tax provided for in this article, including applicable interest and penalties, and shall represent this state in all matters pertaining to the same, either before courts or in any other manner. The department may institute proceedings for the collection of this tax and any interest and penalties on the tax under the provisions of sections 24-4-106 and 24-35-109, C.R.S., or any other applicable law, in the probate court of Denver or in any other court of competent jurisdiction. The mailing of a notice of final agency action shall be considered a final agency action or a final order of such an agency for the purposes of judicial review under section 24-4-106, C.R.S., and such action or order shall become effective sixty days after the mailing of said notice. No distraint and sale proceedings under the provisions of section 24-35-109, C.R.S., shall be commenced until such final agency action or final order of such agency is no longer subject to judicial review under the provisions of section 24-4-106, C.R.S.

(3) Nothing in this article shall be construed to deny the right of appellate review as provided by law and the Colorado appellate rules.

(4) (a) As used in this subsection (4) and subsections (5) and (6) of this section, the term "tax" includes penalty.

(b) Except as otherwise provided in paragraphs (c) to (e) of this subsection (4) and subsection (6) of this section, the assessment of any tax imposed by this article shall be made within the later of either:

(I) Three years after the filing of the applicable Colorado return; or

(II) One year after the expiration of the period of time provided under the internal revenue code, together with any extensions and suspensions of such period under such code, for assessing a deficiency in the corresponding federal tax or changing the reported federal gross estate or generation-skipping transfer.

(c) Where, before the expiration of the period of limitations on assessment, both the department and the person required to file have consented in writing to an assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) A written proposed adjustment by the department of any tax liability under this article sent to the person required to pay the tax or the representative of such person before the expiration of the period of limitation on assessment under this subsection (4) shall extend such period with respect to such proposed adjustment for one year after a final determination, with respect to such proposed adjustment, or assessment is made.

(e) In the event that a federal amended return is filed, the running of the period of limitations on assessment under this subsection (4) shall be suspended with respect to any additional tax due under this article by reason of such amended return until the date that an amended Colorado return with a true copy of such amended federal return is filed with the department of revenue as required by section 39-23.5-111 (1). In the event that a final determination of federal tax due is made, the running of the period of limitations on assessment under this subsection (4) shall be suspended with respect to any additional tax due under this article by reason of such determination until written notice of such determination, in the form required by regulation, is given to the department as required by subsection (2) of this section.

(f) For the purposes of this subsection (4) and section 39-23.5-112, a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.

(5) (a) Except as provided in paragraph (b) of this subsection (5) and subsection (6) of this section, an assessment of any tax imposed under this article having been made according to law shall be good and valid, and collection thereof and interest thereon may be enforced at any time within six years from the date of said assessment.

(b) The running of the period of limitations for collection of any such tax shall be suspended for the period of any extension of time for payment thereof under the provisions of section 39-23.5-108 (2).

(6) In the case of failure to file a return or the filing of a false or fraudulent return with the intent to evade tax, the tax may be assessed and collected at any time.

(7) In the event that the federal tax authorities collect or otherwise receive payment of the gross federal tax with respect to which the federal credit would be allowable but for the

failure to pay the amount of such federal credit to the department as tax under this article by the person required to file the return or to provide such authorities with acceptable proof of such payment, the Denver probate court or other court of competent jurisdiction shall, on motion of the department:

(a) Order such person to secure the refund of the amount of tax from the federal tax authorities attributable to such federal credit on the behalf of the department in payment of the tax under this article; or

(b) Appoint any qualified person or the department as special administrator for the purpose of securing such refund on behalf of the department in payment of the tax under this article.

**Source: L. 79:** Entire article added, p. 1435, § 16, effective July 3. **L. 83:** (2) amended, p. 1536, § 13, effective July 1. **L. 92:** (4) to (7) added, p. 2253, § 10, effective July 1.

**39-23.5-116. Deposit of moneys collected - legislative finding.** (1) In order to provide revenue for the old age pension fund created and established by article XXIV of the state constitution in an amount at least equal to that presently provided by the inheritance tax laws of this state, which laws shall not apply to estates of decedents dying on or after January 1, 1980, all moneys collected by the department under this article are hereby allocated to and shall be deposited in the old age pension fund created and established by article XXIV of the state constitution.

(2) The general assembly finds that subsection (1) of this section repeals no law which provides revenue for the old age pension fund and amends no law so as to reduce the revenue provided for the old age pension fund, except as is allowed by article XXIV of the state constitution.

**Source: L. 79:** Entire article added, p. 1436, § 16, effective July 3.

**39-23.5-117. Estate tax - effective date - applicability.** This article shall take effect January 1, 1980, and shall apply to the estates of decedents dying on or after said date.

**Source: L. 79:** Entire article added, p. 1436, § 16, effective July 3. **L. 2002:** Entire section amended, p. 1359, § 3, effective July 1.

## ARTICLE 24

Interstate Compromise, Arbitration
- Inheritance Tax

**39-24-101. Short title.** This article shall be known and may be cited as the "Uniform Act on Interstate Compromise and Arbitration of Inheritance Taxes".

**Source: L. 53:** p. 355, § 1. **CRS 53:** § 138-8-1. **C.R.S. 1963:** § 138-7-1.

**39-24-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "State" means any state, territory, or possession of the United States and the District of Columbia.

**Source: L. 53:** p. 355, § 2. **CRS 53:** § 138-8-2. **C.R.S. 1963:** § 138-7-2.

**39-24-103. Interpretation.** This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**Source: L. 53:** p. 355, § 3. **CRS 53:** § 138-8-3. **C.R.S. 1963:** § 138-7-3.

**39-24-104. Compromise agreement - filing - penalty.** (1) When the executive director of the department of revenue claims that a decedent was domiciled in this state at the time of his death and the taxing authorities of another state make a like claim on behalf of their state, the said executive director may make a written agreement of compromise with the other taxing authorities and the executor or administrator of such decedent that a certain sum shall be accepted in full satisfaction of all inheritance taxes imposed by this state, including any interest or penalties to the date of signing the agreement. The agreement shall also fix the amount to be accepted by the other states in full satisfaction of inheritance taxes. The executor or administrator of such decedent is authorized to make such agreement. Such agreement shall finally and conclusively fix and determine the amount of tax payable to this state without regard to any other provision of the laws of this state.

(2) Unless the tax so agreed upon is paid within sixty days after the signing of such agreement, interest or penalties shall thereafter accrue upon the amount fixed in the agreement, but the time between the decedent's death and the signing of such agreement shall not be included in computing the interest or penalties. In the event the aggregate amount payable under such agreement to the states involved is less than the maximum credit allowable to the estate against the United States estate tax imposed with respect thereto, the personal representatives forthwith shall also pay to the department of revenue so much of the difference between such aggregate amount and the amount of such credit as the amount payable to the department under the agreement bears to such aggregate amount. A copy of any such agreement shall be filed in the court having jurisdiction of the administration of the estate and any existing appraisement shall be deemed modified according to said agreement.

(3) In the event no appraisement has been made and filed prior to said agreement, the executive director of the department of revenue shall direct an appraisement to be made and filed in the court having jurisdiction of the administration of the estate in accordance with said agreement.

**Source: L. 53:** p. 355, § 4. **CRS 53:** § 138-8-4. **C.R.S. 1963:** § 138-7-4. **L. 73:** p. 1474, § 34.

**39-24-105. Arbitration agreement - board of arbitrators.** When the executive director of the department of revenue claims that a decedent was domiciled in this state at the time of his death and the taxing authorities of another state make a like claim on behalf of their state, the said executive director may make a written agreement with the other taxing authorities and with the executor or administrator of such decedent to submit the controversy to the decision of a

board consisting of one or any uneven number of arbitrators, referred to in this article as the "board". The executor or administrator of such decedent is authorized to make the agreement. The parties to the agreement shall select the arbitrator or arbitrators.

**Source: L. 53:** p. 356, § 5. **CRS 53:** § 138-8-5. **C.R.S. 1963:** § 138-7-5. **L. 73:** p. 1475, § 35.

**39-24-106. Hearings.** The board shall hold hearings at such times and places as it may determine upon reasonable notice to the parties to the agreement, all of whom shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses.

**Source: L. 53:** p. 356, § 6. **CRS 53:** § 138-8-6. **C.R.S. 1963:** § 138-7-6.

**39-24-107. Powers of board.** The board has power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers, and documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, any judge of a court of record of this state, upon application by the board, may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt.

**Source: L. 53:** p. 357, § 7. **CRS 53:** § 138-8-7. **C.R.S. 1963:** § 138-7-7.

**39-24-108. Determination of domicile.** The board, by majority vote, shall determine the domicile of the decedent at the time of his death. This determination shall be final for purposes of imposing and collecting inheritance taxes but for no other purpose.

**Source: L. 53:** p. 357, § 8. **CRS 53:** § 138-8-8. **C.R.S. 1963:** § 138-7-8.

**39-24-109. Majority vote.** Except as provided in section 39-24-107 in respect to the issuance of subpoenas, all questions arising in the course of the proceedings shall be determined by a majority vote of the board.

**Source: L. 53:** p. 357, § 9. **CRS 53:** § 138-8-9. **C.R.S. 1963:** § 138-7-9.

**39-24-110. Filing of determination.** The executive director of the department of revenue, the board, or the executor or administrator of such decedent shall file the determination of the board as to domicile, the record of the board's proceedings, and the agreement or a duplicate made pursuant to section 39-24-105, with the authority having jurisdiction to assess or determine the inheritance taxes in the state determined by the board to be the domicile of the decedent, and shall file copies of such documents with the authorities that would have been empowered to assess or determine the inheritance taxes in each of the other states involved.

**Source: L. 53:** p. 357, § 10. **CRS 53:** § 138-8-10. **C.R.S. 1963:** § 138-7-10. **L. 73:** p. 1475, § 36.

**39-24-111. Penalties for nonpayment.** If it is determined by the board that the decedent died domiciled in this state, interest or penalties, if otherwise imposed by law for nonpayment of inheritance taxes between the date of the agreement and of filing of the determination of the board as to domicile, shall not exceed ten percent per annum.

**Source: L. 53:** p. 357, § 11. **CRS 53:** § 138-8-11. **C.R.S. 1963:** § 138-7-11.

**39-24-112. Compromise by parties.** Nothing in this article shall prevent at any time a written compromise, if otherwise lawful, by all parties to the agreement made pursuant to section 39-24-104, fixing the amounts to be accepted by this and any other state involved in full satisfaction of inheritance taxes.

**Source: L. 53:** p. 357, § 12. **CRS 53:** § 138-8-12. **C.R.S. 1963:** § 138-7-12.

**39-24-113. Compensation and expenses.** The compensation and expenses of the members of the board and its employees may be agreed upon among such members and the executor or administrator and, if they cannot agree, shall be fixed by any court having jurisdiction over probate matters of the state determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed an administration expense and shall be paid by the executor or administrator.

**Source: L. 53:** p. 357, § 13. **CRS 53:** § 138-8-13. **C.R.S. 1963:** § 138-7-13.

**39-24-114. Reciprocal application.** The provisions of this article relative to arbitration shall apply only to cases in which and so far as each of the states involved has a law identical or substantially similar to this article.

**Source: L. 53:** p. 358, § 14. **CRS 53:** § 138-8-14. **C.R.S. 1963:** § 138-7-14.

## Gift Tax

## ARTICLE 25

Gift Tax

**39-25-101 to 39-25-120. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 2003, § 69, effective May 22.

**Editor's note:** This article was numbered as article 4 of chapter 138, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## Sales and Use Tax

## ARTICLE 26

Sales and Use Tax

**Cross references:** For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution; for the county and municipal sales or use tax law, see article 2 of title 29.

**Law reviews:** For article, "Three Sources of Municipal Revenue in Colorado", see 19 Colo. Law. 2065 (1990); for article, "Colorado Sales and Use Taxes In the Multistate Context", see 20 Colo. Law. 501 (1991); for article, "Colorado Business Asset Acquisitions: A Tax Trap for the Unwary", see 26 Colo. Law. 65 (Sept. 1997); for article, "A Survey of the Law of Colorado Nonprofit Entities", see 27 Colo. Law. 5 (April 1998); for article, "Sales and Use Tax Consequences of Reorganizations, Separations, and Acquisitions", see 32 Colo. Law. 81 (May 2003); for article, "Colorado and the 'Amazon Tax'--Recent History", see 41 Colo. Law. 43 (June 2012).

### PART 1

### SALES TAX

**Cross references:** For the use of a method in lieu of any required oath or affirmation by a person making any return or any application for refund or protest pursuant to this part 1, see § 24-12-108.

**Law reviews:** For article, "Colorado and the 'Amazon Tax'--Recent History", see 41 Colo. Law. 43 (June 2012).

**39-26-101. Short title.** This article shall be known and may be cited as the "Emergency Retail Sales Tax Act of 1935".

**Source: L. 35:** p. 1000, § 1. **CSA:** C. 144, § 1. **L. 37:** p. 1075, § 1. **CRS 53:** § 138-6-1. **C.R.S. 1963:** § 138-5-1.

**39-26-102. Definitions.** As used in this article 26, unless the context otherwise requires:

(1) "Agricultural commodity" means any agricultural commodity as defined in section 35-28-104 (1), C.R.S.; except that, for purposes of this article, "agricultural commodity" shall also include sugar beets, timber and timber products, oats, malting barley, barley, hops, rice, milo, and any other feed grain.

(1.3) "Auction sale" means any sale conducted or transacted at a permanent place of business operated by an auctioneer or a sale conducted and transacted at any location where tangible personal property is sold by an auctioneer when such auctioneer is acting either as agent for the owner of such personal property or is in fact the owner thereof. The auctioneer at any sale defined in subsection (11) of this section, except when acting as an agent for a duly licensed

retailer or vendor or when selling only tangible personal property that is exempt under the provisions of section 39-26-716 (4)(a) and (4)(b), is a retailer or vendor as defined in subsection (8) of this section and the sale made by the auctioneer is a retail sale as defined in subsection (9) of this section, and the business conducted by said auctioneer in accomplishing such sale is the transaction of a business as defined by subsection (2) of this section.

(2) "Business" includes all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

(2.5) "Charitable organization" means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, or any veterans' organization registered under section 501 (c)(19) of the federal "Internal Revenue Code of 1986", as amended.

(2.6) "Coins" means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium, or other such metals now, in the future, or heretofore designated as a medium of exchange under the laws of this state, the United States, or any foreign nation.

(2.7) "Cooperative direct mail advertising" means advertising for one or more businesses which is in the form of discount coupons, advertising leaflets, or other printed advertising which are delivered by mail in a single package or bundle to potential customers of such businesses participating in such advertising.

(2.8) "Direct mail advertising materials" means discount coupons, advertising leaflets, and other printed advertising, including, but not limited to, accompanying envelopes and labels.

(3) "Doing business in this state" means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property or taxable services by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This subsection (3) affects the imposition, application, or collection of sales and use taxes only. "Doing business in this state" includes, but shall not be limited to, the following acts or methods of transacting business:

(a) The maintaining within this state, directly or indirectly or by a subsidiary, of an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business, including the employment of a resident of this state who works from a home office in this state.

(b) The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.

(c) A remote seller doing business in this state with respect to any remote sale subject to tax in accordance with section 39-26-104 (2).

(d) **Presumptive physical presence - component member with physical presence.** (I) A person is presumed to be doing business in this state if such person is part of a controlled group of corporations, and that controlled group has a component member, other than a common carrier acting in its capacity as such, that has physical presence in this state and such component member with physical presence:

(A) Sells under the same or a similar business name tangible personal property or taxable services similar to that sold by the person against whom the presumption is asserted;

(B) Maintains an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business in this state to facilitate the delivery of tangible personal property or taxable services sold by the person against whom the presumption is asserted to such person's in-state customers;

(C) Uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the person against whom the presumption is asserted;

(D) Delivers, installs, or assembles tangible personal property in this state, or performs maintenance or repair services on tangible personal property in this state, which tangible personal property is sold to in-state customers by the person against whom the presumption is asserted; or

(E) Facilitates the delivery of tangible personal property to in-state customers of the person against whom the presumption is asserted by allowing such customers to pick up tangible personal property sold by such person at an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business maintained in this state.

(II) For purposes of this paragraph (d), "controlled group of corporations" has the same meaning as set forth in section 1563 (a) of the federal "Internal Revenue Code of 1986", as amended, and "component member" has the same meaning as set forth in section 1563 (b) of the federal "Internal Revenue Code of 1986", as amended. "Controlled group of corporations" and "component member" also include any entity that, notwithstanding its form of organization, bears the same ownership relationship to the person against whom the presumption is asserted as a corporation that would qualify as a component member of the same controlled group of corporations as the person against whom the presumption is asserted.

(III) The presumption set forth in subparagraph (I) of this paragraph (d) may be rebutted by proof that, during the calendar year in question, the component member with physical presence did not engage in any activities in this state that are sufficient under United States constitutional standards to establish nexus in this state on behalf of the person against whom the presumption is asserted.

(e) **Presumptive physical presence - agreement or arrangement with a person with physical presence.** (I) Except as provided in subparagraph (III) of this paragraph (e), a person is presumed to be doing business in this state if such person against whom the presumption is asserted enters into an agreement or arrangement with a person who has physical presence in this state, other than a common carrier acting in its capacity as such, for that person who has physical presence to:

(A) Sell under the same or a similar business name tangible personal property or taxable services similar to that sold by the person against whom the presumption is asserted;

(B) Maintain an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business in this state to facilitate the delivery of tangible personal property or taxable services sold by the person against whom the presumption is asserted to such person's in-state customers;

(C) Deliver, install, or assemble tangible personal property in this state, or perform maintenance or repair services on tangible personal property in this state, which tangible personal property is sold to in-state customers by the person against whom the presumption is asserted; or

(D) Facilitate the delivery of tangible personal property to in-state customers of the person against whom the presumption is asserted by allowing such customers to pick up tangible personal property sold by such person at an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business maintained in this state.

(II) The presumption set forth in subparagraph (I) of this paragraph (e) may be rebutted by proof that, during the calendar year in question, the person who has physical presence in this state did not engage in any activities in this state that are sufficient under United States constitutional standards to establish nexus in this state on behalf of the person against whom the presumption is asserted.

(III) **Activity to which presumption does not apply.** The presumption established in subparagraph (I) of this paragraph (e) does not apply to the following agreements or arrangements:

(A) **Advertising.** An agreement or arrangement under which a person without direct in-state physical presence purchases advertisements from a person to be delivered in this state on television, radio, newspapers, magazines, the internet, or any other mass-market medium;

(B) **Affiliate marketing agreements.** An agreement or arrangement between an in-state independent contractor or other representative and a person without direct in-state physical presence under which such independent contractor or other representative, for a cost per action, including but not limited to a commission or other consideration based on completed sales, directly or indirectly refers potential customers through internet promotional methods to the person without direct in-state physical presence; or

(C) **Small businesses.** An agreement or arrangement between an in-state person and a person without direct in-state physical presence if the cumulative gross receipts from sales by the person without direct in-state physical presence to in-state customers in the prior calendar year is less than fifty thousand dollars.

(4) "Farm close-out sale" means a sale by auction or private treaty of all tangible personal property of a farmer or rancher previously used by him in carrying on his farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his farming or ranching operations and is abandoning the said operations on the premises whereon they were previously conducted, such sale shall not be deemed a "farm close-out sale" within the meaning of this article.

(4.5) (a) "Food" means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k), as amended, for purposes of the federal food stamp program, or any successor program, as defined in 7 U.S.C. sec. 2012 (l), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or

cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

(b) In determining whether a food product is for domestic home consumption, unless the vendor is described in section 39-26-104 (1)(e), no inference shall be drawn from the type of vendor selling the product, the location of the product within a store, or the manner in which the product is marketed.

(5) "Gross taxable sales" means the total amount received in money, credits, or property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within this state, and embraced within the provisions of this article. The taxpayer may take credit in this report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross sales. On all sales at retail, valued in money, when such sales are made under conditional sales contract, or under other forms of sale where the payment of the principal sum thereunder is extended over a period longer than sixty days from the date of sale thereof, only such portion of the sale amount thereof may be counted for the purpose of imposition of the tax imposed by this article as has actually been received in cash by the taxpayer during the period for which the tax imposed by this article is due and payable. Taxes paid on gross sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this article, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

(5.5) "Livestock" means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca, and goats, regardless of use, and any other animal which is raised primarily for food, fiber, or hide production. "Livestock" shall also mean "alternative livestock" as defined under section 35-41.5-102, C.R.S. "Livestock" shall not mean a pet animal as defined under section 35-80-102 (10), C.R.S.

(5.6) "Livestock production facility" means any structure used predominately for the housing, containing, sheltering, or feeding of livestock, including, without limitation, barns, corrals, feedlots, and swine houses.

(5.7) (a) "Local taxing jurisdiction" means a city, town, municipality, county, special district, or authority authorized to levy a sales tax pursuant to title 24, 25, 29, 30, 31, 32, 37, 42, or 43, C.R.S., and any municipality governed by a home rule charter that passes an ordinance, resolution, or charter provision accepting the state's administration and distribution of its local sales tax on remote sales that is collected and remitted by remote sellers in conformance with the provisions of House Bill 13-1295.

(b) Any municipality governed by a home rule charter that passes an ordinance, resolution, or charter provision accepting the state's administration and distribution of its local sales tax on remote sales that is collected and remitted by remote sellers in conformance with the provisions of House Bill 13-1295 must provide a copy of such ordinance, resolution, or charter provision to the department of revenue no later than thirty days after its adoption.

(5.8) "Medical marijuana" shall have the same meaning as set forth in section 44-11-104 (11).

(6) "Person" includes any individual, firm, limited liability company, partnership, joint venture, corporation, estate, or trust or any group or combination acting as a unit, and the plural as well as the singular number.

(6.5) "Precious metal bullion" means any precious metal, including, but not limited to, gold, silver, platinum, and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

(6.7) "Pre-press preparation printing materials" means those tangible products converted to use for a specific print job that are subsequently saved but can only be reused for that same print client on rerun. Title to such pre-press preparation printing materials must pass to an independent customer with the sale of the printed materials, and they must be reusable for their original purpose or a similar purpose after the press run. Examples of "pre-press preparation printing materials" include, but are not limited to, photos, color keys, dies, engravings, light sensitive film or paper, masking sheets of any material, plates, rotogravure cylinders, and proofing samples of any material. No disposable materials or materials consumed to a significant degree are pre-press preparation printing materials for the purposes of this article. Examples of disposable or consumable materials include, but are not limited to, tape, alcohol, glues, adhesives, washes, silicon solutions, pens, markers, and cleaners.

(6.8) "Public school" means a public school of a school district in this state or an institute charter school.

(7) (a) "Purchase price" means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, if:

(I) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(II) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(b) In the case of the sale or transfer of wireless telecommunication equipment as an inducement to a consumer to enter into or continue a contract for telecommunication services that are taxable pursuant to this part 1, "purchase price" means and shall be limited to the monetary amount paid by the consumer and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer entering into or continuing a contract for such telecommunication services. Nothing in this paragraph (b) shall be construed to define "purchase price" as it applies to the amount a retailer collects from a consumer who defaults or terminates a contract for telecommunication services.

(c) With respect to the purchase price of a heavy truck, trailer, or tractor, the price to the consumer shall also be exclusive of the federal excise tax on the first retail sale of the heavy truck, trailer, or tractor for which the retailer is liable.

(7.5) "Qualified purchaser" means a person domiciled in Colorado who has been issued a direct payment permit number pursuant to section 39-26-103.5.

(7.6) "Remote sale" means a sale into this state as specified in subsection (9) of this section in which the retailer would not legally be required to pay, collect, or remit state or local sales taxes unless provided by an act of congress.

(7.7) "Remote seller" means a person who makes a remote sale; except that a remote seller does not include a small seller as defined in an act of congress that authorizes states to require certain retailers to pay, collect, or remit state or local sales taxes.

(8) "Retailer" or "vendor" means a person doing business in this state, including a remote seller, known to the trade and public as such, and selling to the user or consumer, and not for resale.

(9) **[*Editor's note: This version of subsection (9) is effective until (see (7) of the editor's note following this section).*]** "Retail sale" includes all sales made within the state except wholesale sales.

(9) **[*Editor's note: This version of subsection (9) is effective (see (7) of the editor's note following this section).*]** "Retail sale" includes all sales made within the state except wholesale sales. For items delivered by the retailer, a retail sale is made at the location where the item sold is received by the purchaser, based on the location indicated by instructions for delivery that the purchaser furnishes to the retailer. When no delivery location is specified, the retail sale is sourced to the customer's address that is either known to the retailer or, if not known, obtained by the retailer during the consummation of the transaction, including the address of the customer's payment instrument if no other address is available. If an address is unknown and a billing address cannot be obtained, the retail sale is sourced to the address of the retailer from which the retail sale was made.

(10) "Sale" or "sale and purchase" includes installment and credit sales and the exchange of property as well as the sale thereof for money; every such transaction, conditional or otherwise, for a consideration, constituting a sale; and the sale or furnishing of electrical energy, gas, steam, telephone, or telegraph services taxable under the terms of this article. Neither term includes:

(a) A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;

(b) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;

(c) The transfer of assets of shareholders in the formation or dissolution of professional corporations;

(d) The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

(e) The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(f) The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

(g) A transfer of a limited liability company or partnership interest;

(h) The transfer in a reorganization qualifying under section 368 (a)(1) of the "Internal Revenue Code of 1986", as amended;

(i) The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership in exchange for proportionate interests in the limited liability company or partnership;

(j) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(k) The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor corporation at the time it acquired such assets, except to the extent provided by subsection (12) of this section. For the purposes of this paragraph (k), a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

(11) "Sale" or "sale and purchase", in addition to the items included in subsection (10) of this section, includes the transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

(12) Except as otherwise provided in this subsection (12), the sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this article. In connection with the transactions referred to in paragraph (k) of subsection (10) of this section, the sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. Except as otherwise provided in this subsection (12), the sales price is the gross value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer.

(13) "School" means an educational institution having a curriculum comparable to grade, grammar, junior high, high school, or college, or any combination thereof, requiring daily attendance, having an enrollment of at least forty students, and charging a tuition fee.

(13.5) (Deleted by amendment, L. 2011, (HB 11-1293), ch. 299, p. 1437, § 4, effective July 1, 2012.)

(14) "State treasurer" or "treasurer" means the state treasurer of the state of Colorado.

(15) (a) (I) "Tangible personal property" means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S., preprinted newspaper supplements that become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials that are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising; except that, commencing March 1, 2010, for purposes of the state sales or use tax,

"tangible personal property" shall include direct mail advertising materials that are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

(II) No funding received from revenues received as a result of the passage of House Bill 10-1189, enacted in 2010, shall be used to fund additional full-time equivalent state employees.

(b) (Deleted by amendment, L. 2011, (HB 11-1293), ch. 299, p. 1437, § 4, effective July 1, 2012.)

(c) (I) "Tangible personal property", commencing July 1, 2012, shall include computer software if the computer software meets all of the following criteria:

(A) The computer software is prepackaged for repeated sale or license;

(B) The use of the computer software is governed by a tear-open nonnegotiable license agreement; and

(C) The computer software is delivered to the customer in a tangible medium. Computer software is not delivered to the customer in a tangible medium if it is provided through an application service provider, delivered by electronic computer software delivery, or transferred by load and leave computer software delivery.

(II) As used in this paragraph (c), unless the context otherwise requires:

(A) "Application service provider" or "ASP" means an entity that retains custody over or hosts computer software for use by third parties. Users of the computer software hosted by an ASP typically will access the computer software via the internet. The ASP may or may not own or license the computer software, but generally will own and maintain hardware and networking equipment required for the user to access the computer software. Where the ASP owns the computer software, the ASP may charge the user a license fee for the computer software or a fee for maintaining the computer software or hardware used by its customer.

(B) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(C) "Electronic computer software delivery" means computer software transferred by remote telecommunications to the purchaser's computer, where the purchaser does not obtain possession of any tangible medium in the transaction.

(D) "Load and leave computer software delivery" means delivery of computer software to the purchaser by use of a tangible medium where the title to or possession of the tangible medium is not transferred to the purchaser, and where the computer software is manually loaded by the vendor, or the vendor's representative, at the purchaser's location.

(E) "Prepackaged for repeated sale or license" means computer software that is prepackaged for repeated sale or license in the same form to multiple users without modification, and is typically sold in a shrink-wrapped box.

(F) "Tangible medium" means a tape, disk, compact disc, card, or comparable physical medium.

(G) "Tear-open nonnegotiable license agreement" means a license agreement contained on or in the package, which by its terms becomes effective upon opening of the package and accepting the licensing agreement. "Tear-open nonnegotiable license agreement" does not include a written license agreement or contract signed by the licensor and the licensee.

(III) The internalized instruction code that controls the basic operations, such as arithmetic and logic, of the computer causing it to execute instructions contained in system programs is an integral part of the computer and is not normally accessible or modifiable by the

user. Such internalized instruction code is considered part of the hardware and considered tangible personal property that is taxable pursuant to section 39-26-104 (1)(a). The fact that the vendor does or does not charge separately for such code is immaterial.

(IV) If a retailer sells computer software to a Colorado purchaser that is considered tangible personal property taxable pursuant to section 39-26-104 (1)(a) and the Colorado purchaser pays the retailer for a quantity of computer software licenses with the intent to distribute the computer software to any of the purchaser's locations outside of Colorado, the measure of Colorado sales tax due is the total of the license fees associated only with the licenses that are actually used in Colorado. The Colorado purchaser shall provide a written statement to the retailer, attesting to the amount of the license fees associated with Colorado and with points outside of Colorado. The written statement shall relieve the retailer of any liability associated with the proration.

(16) "Tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.

(17) "Taxpayer" means any person obligated to account to the executive director of the department of revenue for taxes collected or to be collected under the terms of this article.

(18) "Wholesaler" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers, or other wholesalers, for the purpose of resale.

(19) (a) "Wholesale sale" means a sale by wholesalers to retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale, and the latter sales shall be deemed retail sales and subject to the provisions of this article.

(b) "Wholesale sale" includes sales of all pre-press preparation printing materials, as defined in subsection (6.7) of this section, that are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within this state.

(c) (I) "Wholesale sale" includes sales of agricultural compounds and spray adjuvants to be consumed by, administered to, or otherwise used in caring for livestock and all sales of semen for agricultural or ranching purposes.

(II) For purposes of this paragraph (c), "agricultural compounds" means:

(A) Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;

(B) Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock;

(C) Animal pharmaceuticals that have been approved by the food and drug administration.

(III) For purposes of this paragraph (c), "spray adjuvants" means products that are used to increase the effectiveness of a pesticide.

(d) "Wholesale sale" includes sales of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S.

(20) (a) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit, or use, any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished, and the container, label, or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this part 1.

(b) As used in paragraph (a) of this subsection (20) with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

(I) It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

(II) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

(21) (a) Sales and purchases of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel, for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses, and newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this part 1.

(b) Repealed.

(22) Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation, nevertheless the seller shall collect and the purchaser shall pay such 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 purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the said executive director for a refund of such taxes, and it is his duty to determine the question of exemption, subject to review by the courts, as provided in section 39-21-105. It is a misdemeanor, punishable as provided in this article, for any seller to fail to collect or purchaser to fail to pay the tax levied by this article and on sales on which exemption is disputed.

(23) Except as provided in section 39-26-713 (1)(a), when right to continuous possession or use for more than three years of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made, such lease or contract shall be considered the sale of such article, and the tax shall be computed and paid by the vendor upon the rentals paid.

**Source: L. 35:** p. 1000, § 2. **CSA:** C. 144, § 2. **L. 37:** p. 1075, § 1. **L. 41:** p. 660, §§ 2, 3. **L. 43:** p. 538, §§ 1, 2. **L. 45:** p. 575, § 1. **CRS 53:** § 138-6-2. **L. 59:** p. 800, § 1. **C.R.S. 1963:** § 138-5-2. **L. 64:** p. 816, § 1. **L. 67:** p. 333, § 1. **L. 69:** p. 221, § 2. **L. 71:** p. 1262, § 1. **L. 73:** p. 241, § 23. **L. 75:** (11) amended, p. 1468, § 14, effective July 18. **L. 76:** (10) amended, p. 318, §

75, effective May 2. **L. 77:** (10) amended, p. 1821, § 1, effective June 3; (23) amended, p. 1823, § 1, effective July 15. **L. 78:** (2.5) added, p. 506, § 1, effective March 8; (10)(k) added and (12) amended, p. 510, §§ 1, 2, effective April 18; (7) amended, p. 508, § 1, effective July 1. **L. 79:** (4.5) added, p. 1427, § 6, effective July 3. **L. 82:** (20) and (21) amended, p. 568, § 1, effective July 1. **L. 85:** (15) amended, p. 1280, § 1, effective June 6. **L. 87:** (4.5) R&RE, p. 1463, § 2, effective October 1. **L. 88:** (4.5) amended, p. 1328, § 1, effective April 4; (10)(h) amended, p. 1326, § 3, effective April 6. **L. 90:** (2.6) and (2.7) added and (15) amended, p. 1742, § 1, effective April 3; (2.8) and (6.5) added, p. 1740, § 1, effective April 17; (6), (10)(a), (10)(g), (10)(i), and (11) amended, p. 457, § 40, effective April 18. **L. 92:** (6.7) added and (19) amended, p. 2256, § 1, effective May 27. **L. 95:** (21) amended, p. 1214, § 3, effective May 31. **L. 96:** (7) amended, p. 757, § 2, effective May 22. **L. 97:** (5.5) added, p. 370, § 1, effective July 1. **L. 99:** (2.5) amended, p. 1271, § 1, effective June 3; (2.6) and (6.5) RC&RE, p. 1297, § 1, effective June 3; (4.5) amended, p. 1355, § 2, effective January 1, 2000; (7.5) added, p. 10, § 1, effective January 1, 2000. **L. 2000:** (1) amended and (1.3) and (5.7) added, p. 548, § 2, effective July 1. **L. 2004:** (1.3) and (23) amended, p. 1044, § 15, effective July 1. **L. 2008:** (6.8) added, p. 972, § 2, effective September 1; (7)(c) added, p. 810, § 1, effective September 1. **L. 2010:** (3)(b) and (8) amended, (HB 10-1193), ch. 9, p. 54, § 1, effective February 24; (15) amended, (HB 10-1189), ch. 5, p. 38, § 1, effective February 24; (21) amended, (HB 10-1190), ch. 6, p. 41, § 1, effective February 24; (13.5) added and (15) amended, (HB 10-1192), ch. 8, p. 51, § 3, effective March 1; (5.8) added, (HB 10-1284), ch. 355, p. 1685, § 7, effective July 1. **L. 2011:** (4.5) amended, (HB 11-1303), ch. 264, p. 1175, § 93, effective August 10; (13.5) and (15) amended, (HB 11-1293), ch. 299, p. 1437, § 4, effective July 1, 2012. **L. 2012:** (4.5) amended, (SB 12-094), ch. 8, p. 22, § 1, effective July 1; (19) amended, (HB 12-1037), ch. 251, p. 1248, § 2, effective July 1. **L. 2013:** (5.6), (7.6), and (7.7) added and (5.7), (8), and (9) amended, (HB 13-1295), ch. 314, p. 1645, § 2, effective July 1, 2014. **L. 2014:** (9) amended, (HB 14-1348), ch. 300, p. 1254, § 1, effective May 31; (3) amended, (HB 14-1269), ch. 364, p. 1740, § 2, effective July 1. **L. 2018:** IP and (2.5) amended, (HB 18-1218), ch. 380, p. 2295, § 1, effective July 1; IP and (5.8) amended, (HB 18-1023), ch. 55, p. 591, § 25, effective October 1.

**Editor's note:** (1) Subsections (2.6), (2.7), and (2.8) were enacted as (2.8), (2.6), and (2.7) in 1990 but were renumbered on revision in 1991 to put the definitions in alphabetical order.

(2) Subsections (2.6)(b) and (6.5)(b) provided for the repeal of subsections (2.6) and (6.5), respectively, effective April 17, 1995. (See L. 90, p. 1740.) Subsections (2.6) and (6.5) have subsequently been reenacted.

(3) Section 2 of chapter 288, Session Laws of Colorado 1990, provides that section 1 of the act amending subsection (15) shall be deemed to have remedied a defect in the prior law and shall not be construed to interfere with any vested right or contract. In view of the foregoing, the amendment to subsection (15) shall apply to any legal or administrative proceeding, whether commenced prior to, on, or after April 3, 1990.

(4) In 2008, the federal food stamp program was renamed the supplemental nutrition assistance program by Pub.L. 110-234 and Pub.L. 110-246. The term "food stamp program" has been retained in subsection (4.5) to maintain conformity with existing state law and programs.

(5) Amendments to subsection (15) by House Bill 10-1189 and House Bill 10-1192 were harmonized.

(6) Subsection (21)(b)(II) provided for the repeal of subsection (21)(b), effective July 1, 2012. (See L. 2010, p. 41.)

(7) Section 16 (3) of chapter 314, Session Laws of Colorado 2013, as amended by section 2 of chapter 300, Session Laws of Colorado 2014, provides that the 2013 act amending subsection (9) takes effect only if congress enacts an act that authorizes states to require certain retailers to pay, collect, or remit state or local sales taxes and takes effect either upon the effective date of this act or the effective date of such act of congress, whichever is later. The department of revenue shall send the revisor of statutes written notice that this requirement has been met within thirty days of enactment of such an act by congress. As of the publication date, the revisor of statutes had not received such notice.

(8) Section 4 of chapter 380 (HB 18-1218), Session Laws of Colorado 2018, provides that the act changing this section applies to any charitable organization sales and use tax exemptions claimed on or after July 1, 2018.

**Cross references:** (1) For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 160, Session Laws of Colorado 1996.

(2) For the legislative declaration in the 2013 act adding subsections (5.6), (7.6), and (7.7) and amending subsections (5.7), (8), and (9), see section 1 of chapter 314, Session Laws of Colorado 2013.

(3) For the short title ("Marketplace Fairness and Small Business Protection Act") in HB 14-1269, see section 1 of chapter 364, Session Laws of Colorado 2014.

**39-26-102.5. Change of references from "Internal Revenue Code of 1954" to "Internal Revenue Code of 1986".** The change of references in this article from the "Internal Revenue Code of 1954" to the "Internal Revenue Code of 1986" shall not affect any act done or any right accrued or accruing before or after such change, but all rights and liabilities shall continue and may be enforced in the same manner as if such references had not been changed.

**Source: L. 88:** Entire section added, p. 1327, § 5, effective April 6.

**39-26-103. Licenses - fee - revocation - definition.** (1) (a) Except as otherwise provided in sub-subparagraph (A) of subparagraph (IV) of paragraph (b.5) of subsection (9) of this section, it is unlawful for any person to engage in the business of selling at retail without first having obtained a license therefor, which license shall be granted and issued by the executive director of the department of revenue and shall be in force and effect until December 31 of the year following the year in which it is issued, unless sooner revoked. Such license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the executive director may require.

(b) It is the duty of each such licensee on or before January 1 of the second year following the year in which his license is issued or renewed to obtain a renewal thereof if the licensee remains in retail business or liable to account for the tax provided in this part 1. Unless evidence is submitted to the contrary, any account for which a license has been issued which shows no retail sales activity for any period of twelve consecutive months shall not be renewed.

Such inactivity shall be considered prima facie evidence that the licensee is not in the business of selling at retail.

(c) For each license issued, a fee of sixteen dollars shall be paid, which fee shall accompany the application together with an additional fifty-dollar deposit; except that the additional deposit may not be required of a remote seller. A further fee of sixteen dollars shall be paid for each two-year period or fraction thereof for which said license is renewed. Payment of a fee for such a license issued after June 30 shall be prorated in increments of six months. The fifty-dollar deposit shall be allowed as a credit against the Colorado sales tax to be remitted. Except for licenses issued pursuant to paragraph (b) of subsection (9) of this section, all licenses issued pursuant to this section shall be renewed on a biennial basis, effective January 1, 1986.

(2) (a) If a retailer makes retail sales at two or more separate places of business in the state, a separate license for each place of business shall be required.

(b) A remote seller is only required to have a single license.

(2.5) (a) If a retailer obtains a license as required in this section in good faith, the retailer provides an address that correctly indicates the location of the business, the department of revenue assigns an incorrect location code to the retailer, and the retailer in good faith collects and remits sales taxes for the local jurisdictions represented by the assigned location code, then notwithstanding this section, section 39-26-105, or section 39-26-118, the retailer is held harmless for any tax, charge, penalty, interest, or fee payable as a result of failing to collect and remit sales taxes for a local jurisdiction due to the incorrect location code.

(b) For purposes of this subsection (2.5), "location code" means the code assigned by the department of revenue to a retailer, based on the business address, when the retailer obtains a sales tax license as required in this section and represents the geographic region of the state and the local sales taxes that the retailer is required to collect and remit for such region, or means any successor system used by the department to identify the local sales taxes that a retailer is required to collect and remit based on the business location.

(3) Each license shall be numbered and shall show the name, residence, and place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.

(4) The executive director of the department of revenue, after reasonable notice and a full hearing, may revoke the license of any person found by him or her to have violated any provision of this article. Any retailer who makes retail sales without securing a license therefor commits a class 3 misdemeanor and shall be punished according to section 18-1.3-501, C.R.S. Any retailer who makes retail sales without a license may also be subject to a civil penalty of fifty dollars per day to a maximum penalty of one thousand dollars. Such penalty shall be assessed by the executive director or his or her authorized agent and shall be waived or reduced if such failure to obtain such license is due to reasonable cause and not willful neglect or intent to defraud.

(5) Any finding and order of the executive director revoking the license of any person shall be subject to review by the district court of the district where the business of the licensee is conducted, upon application of the aggrieved party. The procedure for review shall be, as nearly as possible, the same as provided for the review of findings as provided by proceedings in the nature of certiorari.

(6) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this part 1.

(7) It is the duty of the executive director of the department of revenue, at the time of issuance of any new license for a retailer who makes retail sales, except for a remote seller, to notify the county treasurer of the county where the new licensee is located, of the name and address of the licensee.

(8) (a) Any person operating exclusively as a wholesaler may apply to the department of revenue for a license to engage in the business of selling at wholesale. The application shall state the name and address of the person applying for such license, the name and location of the person's business, including the street number of such business, and such other information as the executive director of the department of revenue may require.

(b) A person shall pay a fee of sixteen dollars for each license issued under this subsection (8). If the licensee remains in the wholesale business, the licensee shall renew such license on or before January 1 of the second year following the year of issuance or renewal, but nothing in this section shall be construed to empower the executive director to refuse such renewal except revocation for cause of the licensee's prior license. Payment of a fee for a license issued after June 30 of any year shall be prorated in increments of six months. All licenses issued shall be renewed on a biennial basis, effective January 1, 1986.

(9) (a) A person operating as a charitable organization, as defined in section 39-26-102 (2.5), may apply to the department of revenue for a license to engage in the business of selling at retail. The application shall state the name and address of the person applying for such license, the name and location of the person's organization, including the street number of such organization, and such other information as the executive director of the department of revenue may require.

(b) A person conducting a singular sales event may apply to the department of revenue for a license to engage in the business of selling at retail for a temporary period of time. The application shall state the name and address of the person applying for such license, the name and location of the person's organization, including the street number of such organization, and such other information as the executive director of the department of revenue may require.

(b.5) (I) A person engaged in retail sales at more than one special sales event in any two-year period may apply to the department of revenue for a license to engage in selling at retail at such special sales event over a two-year period. Such special sales event license shall only apply to retail sales made by the person to whom the license is issued at such special sales events and shall not apply to sales at such person's business location or to any other sales. The application for such license shall state the name and address of the person desiring such a license and such other information as the executive director of the department of revenue may require. Except as otherwise provided in sub-subparagraph (A) of subparagraph (IV) of this paragraph (b.5), a person to whom a special sales event license has been issued shall file a separate return and payment of sales taxes for each special sales event at which retail sales are made by such person, which return shall be filed on the twentieth day of the month following the month in which such special sales event began.

(II) Any person who organizes a special sales event shall inform each person making any retail sales at such special sales event of the various taxes and tax rates that apply to retail sales at the special sales event and shall mail to the department within ten days of the last day of such special sales event a list of the name, address, and special sales event license number, if any, of each person making any retail sales at the special sales event.

(III) For purposes of this paragraph (b.5), "special sales event" means an event where retail sales are made by more than three persons at a location other than their normal business location, which event occurs no more than three times in any calendar year.

(IV) (A) Any person engaged in retail sales at a special sales event shall obtain a special sales event license pursuant to the provisions of subparagraph (I) of this paragraph (b.5) unless the person who organizes such special sales event elects to obtain a special sales event license pursuant to sub-subparagraph (B) of this subparagraph (IV) and such person who engages in retail sales at such special sales event elects to remit such sales tax collected to the person who organized such special sales event. Any person engaged in retail sales at a special sales event who has obtained a special sales event license pursuant to the provisions of subparagraph (I) of this paragraph (b.5) may elect to remit sales tax collected at such special sales event to the person who organized such special sales event and to whom a special sales event license has been issued pursuant to sub-subparagraph (B) of this subparagraph (IV).

(B) Any person who organizes a special sales event may apply to the department of revenue for a license for retail sales made at such special sales event. Such special sales event license shall only apply to retail sales made at such special sales event organized by the person to whom the license is issued and shall not apply to any other special sales events or sales. The application for such license shall state the name and address of the person desiring such a license and such other information as the executive director of the department of revenue may require. A person to whom a special sales event license has been issued pursuant to this sub-subparagraph (B) shall file a separate return and shall make payment of sales tax collected by persons making retail sales at such special sales event who have elected to remit such sales tax collections to the person licensed pursuant to the provisions of this sub-subparagraph (B). Such return shall be filed on the twentieth day of the month following the month in which such special sales event began. In addition to the information specified in subparagraph (II) of this paragraph (b.5), any person issued a special sales event license pursuant to this sub-subparagraph (B) shall maintain, at his place of business, a list showing the name and address of each person making any retail sales at such special sales event, the amount of gross retail sales made by such person at such special sales event, and the amount of sales tax collected by such person on such retail sales which are remitted by such licensee.

(c) A person who sells only products which are subject to city or county, but no state, sales tax may petition the department to waive the deposit established in paragraph (c) of subsection (1) of this section.

(d) An individual having an occasional or isolated sale of tangible personal property is not required to have a Colorado retail sales tax license. Such sales must be made from the private residences of such individuals, and the aggregate dollar amount of such sales may not exceed one thousand dollars for any one calendar year. In addition the following conditions must be met:

(I) Neither the seller nor any member of his household may be engaged in a trade or business where similar items are sold;

(II) An annual report of casual sales must be filed with the department by every individual making such sales, and the sales tax due must be remitted at the time the Colorado income tax return of such person is due as provided in article 22 of this title, on forms provided by the director, showing in detail all such sales made during the year; and

(III) All such returns shall be subscribed by the taxpayer or his agent and shall contain a written declaration that they are being made under the penalties of perjury in the second degree.

(e) In addition, when in the opinion of the executive director it is necessary for the efficient administration of this section to treat any salesman, representative, peddler, or canvasser as the agent of the vendor, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property sold by him or for whom he solicits business, the director may, in his discretion, treat such agent as the vendor jointly responsible with his principal, distributor, supervisor, or employer for the collection and payment over of the tax.

(f) Except as otherwise provided in this paragraph (f), a person shall pay a fee of eight dollars for each license issued under this subsection (9); except that a person shall pay a fee of sixteen dollars for a license issued or renewed under subparagraph (I) of paragraph (b.5) of this subsection (9). Any person to whom a sales tax license has been issued pursuant to paragraph (a) of subsection (1) of this section and to whom a special sales events license has been issued or renewed pursuant to paragraph (b.5) of this subsection (9) shall pay no fee for such new or renewed special sales events license. Payment of a fee for a license issued under paragraph (b.5) of this subsection (9) after June 30 of any year shall be prorated in increments of six months.

(10) Notwithstanding the amount specified for any fee in this section, the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department of revenue by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

**Source: L. 35:** p. 1004, § 3. **CSA:** C. 144, § 3. **L. 37:** p. 1079, § 1. **CRS 53:** § 138-6-3. **C.R.S. 1963:** § 138-5-3. **L. 70:** p. 391, § 6. **L. 85:** (1) and (4) amended and (8) and (9) added, p. 1281, § 1, effective January 1, 1986. **L. 89:** (9)(b.5) added and (9)(f) amended, p. 1514, § 1, effective May 21. **L. 90:** (1)(a), (9)(b.5)(I), and (9)(f) amended and (9)(b.5)(IV) added, p. 1726, § 15, effective May 1. **L. 98:** (10) added, p. 1347, § 83, effective June 1. **L. 2002:** (4) amended, p. 1558, § 353, effective October 1. **L. 2013:** (1)(c), (2), (4), and (7) amended, (HB 13-1295), ch. 314, p. 1646, § 3, effective July 1, 2014. **L. 2016:** (2.5) added, (SB 16-050), ch. 21, p. 48, § 1, effective March 18.

**Cross references:** (1) For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

(2) For the legislative declaration in the 2013 act amending subsections (1)(c), (2), (4), and (7), see section 1 of chapter 314, Session Laws of Colorado 2013.

**39-26-103.5. Qualified purchaser - direct payment permit number - qualifications.** (1) The executive director of the department of revenue may issue a direct payment permit number to any person that submits an application to the executive director demonstrating that:

(a) For the preceding twelve-month period, such person has purchased in Colorado in the aggregate at least seven million dollars of commodities, services, or tangible personal property that are subject to the tax imposed by this article. Purchases of commodities or tangible personal

property to be erected upon or affixed to real property, including, but not limited to, building and construction materials and fixtures, shall be excluded from the aggregate total of purchases of commodities, services, or tangible personal property described in this paragraph (a).

(b) (I) Except as provided in subsection (2) of this section, if such person has been subject to the collection, remittance, or reporting requirements imposed by this article or any other article in this title administered by the department of revenue for the preceding three years, such person timely filed the required returns and timely remitted the tax shown due on such returns during said three-year period; or

(II) If such person has been subject to the collection, remittance, or reporting requirements imposed by this article or any other article in this title administered by the department of revenue for less than the three preceding years, for the period beginning on the date when such person became subject to such requirements, such person timely filed the required returns and timely remitted the tax shown due on such returns; and

(c) Such person has in place an accounting system, acceptable to the executive director of the department of revenue, that will enable the department to fully and accurately collect and allocate to municipalities, counties, and other local taxing entities all sales taxes that the department collects for such municipalities, counties, and other local taxing entities.

(2) The executive director may waive the requirements of paragraph (b) of subsection (1) of this section if the person submitting the application can show that any failure to comply with such collection, remittance, or reporting requirements was due to reasonable cause.

(3) Nothing in subsection (1) of this section shall be construed to require that a person must be subject to the collection, remittance, or reporting requirements imposed by this article in order to obtain a direct payment permit number.

(4) A person shall become a qualified purchaser upon receipt of a direct payment permit number.

(5) A direct payment permit number shall be in force and effect until December 31 of the third year following the year in which it is issued, unless sooner revoked. Such permit number shall be granted or renewed only upon the filing of an application stating the information described in subsection (1) of this section.

(6) The executive director of the department of revenue may revoke the direct payment permit number of a qualified purchaser that has violated any provision of this article. The executive director shall give a notice of revocation to such qualified purchaser by first-class mail pursuant to section 39-21-105.5. Any such revocation may be appealed by the qualified purchaser within thirty days of receipt of the notice of revocation together with a request for a hearing on such revocation before the executive director or the executive director's designee. The executive director shall promulgate rules specifying the procedures for a revocation appeal hearing. A revocation appeal hearing shall take place within a reasonable time after receipt of the request for hearing by the executive director. The executive director shall issue a finding upholding the revocation or reinstating the direct payment permit number within a reasonable time after the revocation appeal hearing.

**Source: L. 99:** Entire section added, p. 10, § 2, effective January 1, 2000.

**39-26-104. Property and services taxed.** (1) Except as provided in subsection (2), there is levied and there shall be collected and paid a tax in the amount stated in section 39-26-106 as follows:

(a) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail;

(b) (I) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if:

(A) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(B) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(II) The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this article shall be prima facie evidence that such person is engaged in the business of selling vehicles of the type involved in such transactions and that he is thereby subject to any licensing requirements necessary to engage in such activity.

(c) (I) Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service. On or after August 1, 2002, mobile telecommunications service shall be subject to the tax imposed by this section only if the service is provided to a customer whose place of primary use is within Colorado and the service originates and terminates within the same state. In accordance with the "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended, on or after August 1, 2002, mobile telecommunications service provided to a customer whose place of primary use is outside the borders of the state of Colorado is exempt from the tax imposed by this section.

(II) (A) If a customer believes that a tax, charge, or fee assessed by the state in the customer's bill for a mobile telecommunications service is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, the customer shall notify the home service provider in writing within two years after the date the bill was issued. The notification from the customer shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the home service provider may require.

(B) No later than sixty days after receipt of notice from a customer pursuant to sub-subparagraph (A) of this subparagraph (II), the home service provider shall review the information submitted by the customer and any other relevant information and documentation to determine whether an error was made. If the home service provider determines that an error was made, the home service provider shall refund or credit to the customer any tax, fee, or charge erroneously collected from the customer for a period not to exceed two years. If the home service provider determines that no error was made, the home service provider shall provide a written explanation of its determination to the customer.

(C) Any customer that believes a tax, charge, or fee assessed by the state in the customer's bill for mobile telecommunications services is erroneous, or that an assignment of

place of primary use or taxing jurisdiction on said bill is incorrect, may file a claim in the appropriate district court only after complying with the provisions of this subparagraph (II).

(III) As used in this paragraph (c), unless the context otherwise requires:

(A) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.

(B) "Customer" means customer as defined in section 124 (2) of the act.

(C) "Home service provider" means home service provider as defined in section 124 (5) of the act.

(D) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the act.

(E) "Place of primary use" means the place of primary use as defined in section 124 (8) of the act.

(F) "Taxing jurisdiction" means taxing jurisdiction as defined in section 124 (12) of the act.

(IV) For telephone and telegraph services provided on or after July 1, 2003, when nontaxable services are aggregated with and not separately stated from taxable services, the provider of such services shall collect the tax imposed by this article only on intrastate telephone and telegraph services. The provider of such services shall maintain for three years documentation of the services provided that are taxable and nontaxable. Such documentation is subject to audit, and the service provider shall be liable for any uncollected tax. A service provider shall notify the executive director of the department of revenue of the percentages of taxable and nontaxable services in a package of aggregated services within thirty days of use on any invoice.

(d) Repealed.

(d.1) Effective July 1, 1980, for gas and electric service, whether furnished by municipal, public, or private corporations or enterprises, for gas and electricity furnished and sold for commercial consumption and not for resale, upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by municipal, public, or private corporations or enterprises;

(d.2) Repealed.

(e) Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. Cover charges shall be included as part of the amount paid for such food or drink. However, meals provided to employees of the places mentioned in this paragraph (e) at no charge or at a reduced charge shall be exempt from taxation under the provisions of this part 1.

(f) On the entire amount charged to any person for rooms or accommodations as designated in section 39-26-102 (11).

(2) Upon the effective date of an act of congress that authorizes states to require certain retailers to pay, collect, or remit state or local sales taxes:

(a) (I) With respect to remote sales there is levied and there shall be collected and paid by remote sellers on every incident subject to tax as set forth in subsection (1) of this section, but not including the incidents set forth in paragraph (e) of this subsection (2), a tax at the rate

specified in section 39-26-106. Any exemptions with respect to part 1 of this article as set forth in this title are applicable.

(II) In addition to subparagraph (I) of this paragraph (a), every remote seller shall collect and remit, as provided in section 39-26-122.7, the sales tax at the general sales tax rate levied by a local taxing jurisdiction; except that such sales tax shall only be collected on every incident subject to tax as set forth in subsection (1) of this section. Any exemptions with respect to part 1 of this article as set forth in this title are applicable.

(b) Notwithstanding any provision of law, a local taxing jurisdiction may not collect a sales or use tax on remote sales except as provided in this subsection (2).

(c) Notwithstanding any provision of law, with respect to a local taxing jurisdiction, the effective date of any change in the general sales tax rate of the local taxing jurisdiction shall be either January 1 or July 1 following the date of the election in which such a sales tax proposal is approved; and notice of the adoption of any sales tax proposal shall be submitted by the local taxing jurisdiction to the executive director of the department of revenue at least one hundred days prior to the effective date of such tax. If such a sales tax proposal is approved at an election held less than one hundred five days prior to the January 1 or July 1 following the date of election, such sales tax proposal shall not be effective until the next succeeding January 1 or July 1.

(d) For the purpose of the administration by the state of the provisions of this subsection (2), each local taxing jurisdiction shall file, pursuant to section 29-2-109, C.R.S., with the executive director of the department of revenue a copy of each sales tax ordinance or resolution, or any amendment thereto, that changes the general sales tax rate described in paragraph (a) of this subsection (2), and a copy of any ordinance or resolution that changes the local taxing jurisdiction's boundaries, no later than one hundred days before the effective date thereof.

(e) Notwithstanding any provisions of law, the following incidents are not subject to the collection and payment of sales tax by remote sellers as set forth in paragraph (a) of this subsection (2):

(I) Direct mail advertising materials as defined in section 39-26-102 (2.8);

(II) Candy as defined in section 39-26-707 (1.5)(b)(I);

(III) Soft drinks as defined in section 39-26-707 (1.5)(b)(II);

(IV) Nonessential articles as described in section 39-26-707 (1)(c); and

(V) Nonessential containers or bags as described in section 39-26-707 (1)(d).

**Source: L. 35:** p. 1005, § 4. **CSA:** C. 144, § 4. **L. 37:** p. 1081, § 1. **L. 41:** p. 661, § 4. **L. 45:** pp. 573, 578, §§ 1, 1. **CRS 53:** § 138-6-4. **L. 59:** p. 800, § 2. **C.R.S. 1963:** § 138-5-4. **L. 64:** p. 817, § 2. **L. 78:** (1)(e) amended, p. 512, § 1, effective May 5; (1)(b) amended, p. 508, § 2, effective July 1. **L. 79:** (1)(d) amended, (1)(d.1) and (1)(d.2) added, and (1)(e) R&RE, pp. 1428, 1440, §§ 7, 25, effective July 3. **L. 80:** (1)(d.1) and (1)(d.2) amended, p. 733, § 3, effective May 2. **L. 82:** (1)(d.1) amended and (1)(d.2) repealed, pp. 571, 572, §§ 1, 4, effective April 27. **L. 2002:** (1)(c) amended, p. 253, § 4, effective April 12. **L. 2003:** (1)(c)(IV) added, p. 2580, § 1, effective June 5. **L. 2009:** (1)(e) amended, (SB 09-121), ch. 421, p. 2338, § 1, effective June 4. **L. 2012:** (1)(e) amended, (SB 12-094), ch. 8, p. 23, § 2, effective July 1. **L. 2013:** IP(1) amended and (2) added, (HB 13-1295), ch. 314, p. 1647, § 4, effective July 1, 2014.

**Editor's note:** Subsection (1)(d) provided for the repeal of subsection (1)(d), effective July 1, 1980. (See L. 79, p. 1440.)

**Cross references:** (1) For the legislative declaration contained in the 2002 act amending subsection (1)(c), see section 1 of chapter 92, Session Laws of Colorado 2002.

(2) For the legislative declaration in the 2013 act amending the introductory portion to subsection (1) and adding subsection (2), see section 1 of chapter 314, Session Laws of Colorado 2013.

**39-26-105. Vendor liable for tax - repeal.** (1) (a) (I) (A) Except as provided in sub-subparagraph (B) of this subparagraph (I) and in subparagraph (II) of this paragraph (a), every retailer shall, irrespective of the provisions of section 39-26-106, be liable and responsible for the payment of an amount equivalent to two and ninety one-hundredths percent of all sales made on or after January 1, 2001, by the retailer of commodities or services as specified in section 39-26-104.

(B) A retailer who has received in good faith from a qualified purchaser a direct payment permit number issued pursuant to section 39-26-103.5 shall not be liable or responsible for the collection and remittance of the tax imposed by this article on any sale made to the qualified purchaser that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(II) A remote seller shall be liable and responsible for the payment of the amounts specified in section 39-26-104 (2)(a).

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), every retailer 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. The executive director shall determine what information the returns must contain, how the returns must be made, and the type of forms that must be used.

(II) Every remote seller shall make a return to the executive director of the department of revenue as specified in section 39-26-122.7.

(c) (I) (A) Except as provided in sub-subparagraph (B) of this subparagraph (I), every retailer shall remit, along with the return required in paragraph (b) of this subsection (1), an amount equivalent to the percentage on sales as specified in subparagraph (I) of paragraph (a) of this subsection (1) to the executive director of the department of revenue, less an amount as set forth in subparagraph (II) of this paragraph (c) to cover the retailer's expense in the collection and remittance of said tax.

(B) Every remote seller shall remit, along with the return required in paragraph (b) of this subsection (1), the amounts specified in section 39-26-104 (2)(a), less an amount as set forth in subparagraph (II) of this paragraph (c) to cover the retailer's expense in the collection and remittance of said tax.

(II) Except as provided in section 39-26-105.3 (8)(b)(III):

(A) Except as provided in sub-subparagraph (B), the amount retained by a retailer to cover the retailer's expense in collecting and remitting tax pursuant to this section shall be three and one-third percent of all sales tax reported.

(B) For a twelve-month period commencing upon the first day of the third month following the effective date of any act of congress authorizing states to require certain retailers to

pay, collect, or remit state or local sales tax, the percentage of all sales tax reported as specified in sub-subparagraph (A) of this subparagraph (II) shall be reduced by one hundred five one-thousandths percentage points.

(III) If any retailer is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the executive director of the department of revenue, the retailer shall not be allowed to retain any amounts to cover such retailer'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. Any local vendor expense remitted to the executive director shall be deposited to the state general fund.

(2) The executive director of the department of revenue may extend the time for making a return and paying the taxes due under such reasonable rules as the executive director may prescribe, but no such extension shall be for a greater period than is provided for in section 39-26-109.

(3) The burden of proving that any retailer is exempt from collecting the tax on any goods sold and paying the same to the executive director of the department of revenue, or from making such returns, shall be on the retailer under such reasonable requirements of proof as the executive director may prescribe.

(4) Every retailer conducting a business in which the transaction between the retailer and the consumer consists of the supplying of tangible personal property and services in connection with the maintenance or servicing of the same shall be required to pay the taxes levied under this article upon the full contract price, unless application is made to the executive director of the department of revenue for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The executive director is authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale that is subject to the sales tax levied under the provisions of this part 1. This section shall not be construed to include items upon which the sales tax is imposed on the full purchase price as designated in section 39-26-102 (12).

(5) (a) A qualified purchaser may provide a direct payment permit number to a retailer that is liable and responsible for collecting and remitting the tax imposed by this article on any sale made to the qualified purchaser. A qualified purchaser holding a direct payment permit number shall, before the twentieth day of each month subsequent to the month in which any sale to the qualified purchaser was made for which the qualified purchaser's direct payment permit number was used, make a return and remit directly to the executive director of the department of revenue the amount of such tax owing on all such sales to the qualified purchaser made in the preceding month. Such returns of the qualified purchaser or duly authorized agent shall contain such information and be made in such manner and upon such forms as the executive director shall prescribe.

(b) Notwithstanding the provisions of section 39-21-113 (4), the department of revenue shall make available to all qualified purchasers an electronic list of all remote sellers and their Colorado account numbers in order to facilitate the qualified purchaser's appropriate remittance of tax pursuant to paragraph (a) of this subsection (5). Such list must remain confidential in the hands of the qualified purchaser, and the qualified purchaser is subject to the same limitations

specified in section 39-21-113 (4) that apply to the department of revenue, including the requirement that such list be used only for the purpose of proper administration of the tax.

(c) From the amount of the tax required to be remitted pursuant to paragraph (a) of this subsection (5), a qualified purchaser shall be entitled to retain the amount specified in subparagraph (II) of paragraph (c) of subsection (1) of this section that a retailer would otherwise be entitled to retain to cover the retailer's expense in collecting and remitting the tax imposed by this article if the qualified purchaser had not provided a direct payment permit number to the retailer.

**Source: L. 35:** p. 1006, § 5. **CSA:** C. 144, § 5. **L. 37:** p. 1082, § 1. **L. 45:** p. 578, § 2. **CRS 53:** § 138-6-5. **C.R.S. 1963:** § 138-5-5. **L. 64:** p. 817, § 3. **L. 65:** p. 1122, § 1. **L. 67:** p. 523, § 1. **L. 70:** p. 395, § 1. **L. 76:** (1)(a) amended, p. 785, § 1, effective April 6. **L. 89:** (1)(a) amended, p. 1502, § 8, effective July 1, 1990. **L. 99:** (1) amended and (3) added, p. 12, § 3, effective January 1, 2000. **L. 2000:** (1)(a) amended and (1)(e) added, p.1431, § 2, effective May 31. **L. 2001:** (1)(a) amended, p. 1280, § 56, effective June 5. **L. 2003:** (1)(a) and (1)(e) amended, p. 2635, § 1, effective June 5. **L. 2009:** (1)(f) added, (SB 09-212), ch. 3, p. 6, § 1, effective February 26; (1)(f)(I) amended, (SB 09-275), ch. 273, p. 1234, § 1, effective May 18. **L. 2010:** (1)(a) amended and (1)(e) repealed, (SB 10-212), ch. 412, pp. 2035, 2032, §§ 10, 1, effective July 1. **L. 2011:** (1)(g) added, (SB 11-223), ch. 154, p. 534, § 1, effective May 5. **L. 2013:** (1)(g)(I) amended, (HB 13-1295), ch. 314, p. 1651, § 6, effective May 28; entire section R&RE, (HB 13-1295), ch. 314, p. 1649, § 5, effective July 1, 2014.

**Editor's note:** Subsection (1)(g)(I) was amended in House Bill 13-1295. Those amendments are superseded by the repeal and reenactment of this section in the same House Bill 13-1295, effective July 1, 2014.

**Cross references:** For the legislative declaration in the 2013 act amending this section, see section 1 of chapter 314, Session Laws of Colorado 2013.

**39-26-105.3. Remittance of tax - electronic database - vendor held harmless.** (1) Any vendor that collects and remits sales tax to the department of revenue as provided by law may use an electronic database of state addresses that is certified by the department pursuant to subsection (3) of this section to determine the jurisdictions to which tax is owed.

(2) Any vendor that uses the data contained in an electronic database certified by the department of revenue pursuant to subsection (3) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that otherwise would be due solely as a result of an error or omission in the database.

(3) Any electronic database provider may apply to the department of revenue to be certified for use by Colorado vendors pursuant to this section. Such certification shall be valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:

(a) The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.

(b) The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database provider shall provide a convenient method for taxing jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

(c) The database shall be at least ninety-five percent accurate based on a statistically valid sample of addresses from the database tested for accuracy by the department of revenue.

(d) The database shall satisfy any additional criteria that the executive director of the department of revenue establishes pursuant to subsection (7) of this section.

(4) The department of revenue shall have the authority to designate an entity to examine electronic databases and report to the department as to the accuracy and suitability of the databases for use by vendors. The entity may impose a fee on each electronic database provider applying for certification in an amount necessary to cover the reasonable and documented costs of examining the database.

(5) The department of revenue shall have the authority to waive the certification process specified in subsection (4) of this section and certify an electronic database as suitable for use by vendors if the database has been previously certified by a public or private entity and the certification criteria of the certifying entity are the same or more stringent than the criteria specified in subsection (3) of this section. The department shall have the discretion to accept or reject a previously certified database, and under no circumstance shall the department be required to waive the certification process pursuant to this subsection (5).

(6) The department of revenue shall have the right to deny or revoke the certification of any electronic database for just cause.

(7) The executive director of the department of revenue shall promulgate rules for the administration of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

**Source: L. 2004:** Entire section added, p. 767, § 2, effective May 17.

**Cross references:** For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 231, Session Laws of Colorado 2004.

**39-26-105.4. Remittance of tax - determination of address - dealer held harmless.** (1) Any licensed motor vehicle dealer that collects and remits tax to the department of revenue as specified in this part 1 for any sale of a motor vehicle shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that the dealer proves was not collected solely because an address that does not meet the requirements of section 42-6-139, C.R.S., was provided by the purchaser for purposes of calculating the amounts of tax either due on the sale and purchase of such vehicle pursuant to this part 1 or section 29-2-106, C.R.S., if the dealer:

(a) Informs the purchaser of a motor vehicle of the key requirements of motor vehicle titling and registration as specified in sections 42-3-103 (4)(a), 42-6-134, 42-6-139, and 42-6-140, C.R.S.; and

(b) Obtains an affidavit signed by the purchaser stating that the purchaser's address is true and correct.

**Source: L. 2009:** Entire section added, (HB 09-1230), ch. 232, p. 1066, § 1, effective August 5.

**39-26-105.5. Remittance of sales taxes - electronic funds transfers.** For any calendar year, the executive director may require any vendor whose liability for state sales tax only for the previous calendar year was more than seventy-five thousand dollars to use electronic funds transfers to remit all state and local sales taxes required to be remitted to the executive director of the department of revenue. The executive director may promulgate rules to implement this section, but shall first consult with the state treasurer to ensure that any rules promulgated do not adversely affect the ability of the state treasurer to optimize sales tax investment earnings. Such rules shall be promulgated in accordance with article 4 of title 24. The executive director shall not require any taxpayer required to remit sales taxes by electronic funds transfers to remit sales tax prior to the deadline specified in section 39-26-105 for taxpayers who remit sales taxes by other means.

**Source: L. 2001:** Entire section added, p. 510, § 1, effective August 8. **L. 2017:** Entire section amended, (HB 17-1136), ch. 76, p. 237, § 2, effective March 23.

**39-26-106. Schedule of sales tax.** (1) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), 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.

(II) On and after January 1, 2001, there is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of two and ninety one-hundredths 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.

(b) Notwithstanding the three percent rate provisions of paragraph (a) of this subsection (1), for the period May 1, 1983, through July 31, 1984, the rate of the tax imposed pursuant to this subsection (1) shall be three and one-half percent.

(2) (a) Except as provided in paragraph (b) of this subsection (2), retailers shall add the tax imposed, or the average equivalent thereof, to the sale price or charge, showing such tax as a separate and distinct item, and when added such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts. The retailer shall be entitled, as collecting agent of the state, to apply and credit the amount of the retailer's collections against the rate to be paid by the retailer under the provisions of section 39-26-105, remitting any excess of collections over said rate, less the fee retained by the retailer for the collection and remittance of the tax pursuant to said section, to the executive director of the department of revenue in the retailer's next monthly sales tax return.

(b) Any retailer selling malt, vinous, or spirituous liquors by the drink or any vendor selling individual items of personal property through coin-operated vending machines may include in his sales price the tax levied under this part 1; except that no such retailer shall

advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer. The schedule set forth in subsection (1) of this section shall be used by such retailer in determining amounts to be included in such sales price. No such retailer shall gain any benefit from the collection or payment of such tax, except as permitted in section 39-26-105 (1), nor shall the use of the schedule set forth in subsection (1) of this section relieve such retailer from liability for payment of the full amount of the tax levied by this part 1.

(3) Repealed.

**Source: L. 35:** p. 1007, § 5. **CSA:** C. 144, § 6. **L. 37:** p. 1083, § 1. **L. 45:** p. 579, § 3. **CRS 53:** § 138-6-6. **C.R.S. 1963:** § 138-5-6. **L. 65:** p. 1123, § 2. **L. 65, 1st Ex. Sess.:** p. 16, § 1. **L. 77:** (1) R&RE, p. 1825, § 1, effective July 1. **L. 83:** (1) amended, p. 1518, § 3, effective March 22; (1)(b) amended, p. 2097, § 6, effective October 13. **L. 84:** (1)(b) amended, p. 1142, § 3, effective June 7. **L. 88:** (2)(b) amended, p. 1328, § 2, effective April 4. **L. 2000:** (1)(a) amended and (3) added, p. 1431, § 3, effective May 31. **L. 2001:** (2)(a) amended, p. 1280, § 57, effective June 5. **L. 2002:** (3)(a) and (3)(b)(V) amended, p. 328, § 1, effective April 19. **L. 2003:** (2)(a) amended, p. 2636, § 2, effective June 5. **L. 2009:** (2)(a) amended, (SB 09-212), ch. 3, p. 6, § 2, effective February 26. **L. 2010:** (1)(a)(I) amended and (3) repealed, (SB 10-212), ch. 412, pp. 2036, 2032, §§ 11, 1, effective July 1.

**39-26-107. Rules and regulations.** To provide uniform methods of adding the tax, or the average equivalent thereof, to the selling price, it is the duty of the executive director of the department of revenue to formulate and promulgate after hearing appropriate rules and regulations to effectuate the purpose of sections 39-26-105 to 39-26-113.

**Source: L. 35:** p. 1007, § 5. **CSA:** C. 144, § 7. **L. 37:** p. 1083, § 1. **CRS 53:** § 138-6-7. **C.R.S. 1963:** § 138-5-7.

**39-26-108. Tax cannot be absorbed.** It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this part 1 will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or if added that it or any part thereof will be refunded. Any person violating any of the provisions of sections 39-26-105 to 39-26-113 is guilty of a misdemeanor.

**Source: L. 35:** p. 1007, § 5. **CSA:** C. 144, § 8. **L. 37:** p. 1083, § 1. **CRS 53:** § 138-6-8. **C.R.S. 1963:** § 138-5-8.

**39-26-109. Reports of vendor.** If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions, are such that reports of sales made on a calendar-month basis will impose unnecessary hardship, the executive director of the department of revenue, upon written request of the vendor, may accept reports at such intervals as will in his opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax. The executive director may by rule permit taxpayers whose monthly tax

collected is less than three hundred dollars to make returns and pay taxes at intervals not greater than every three months.

**Source: L. 35:** p. 1008, § 5. **CSA:** C. 144, § 9. **L. 37:** p. 1084, § 1. **CRS 53:** § 138-6-9. **C.R.S. 1963:** § 138-5-9. **L. 64:** p. 818, § 4. **L. 65:** p. 1124, § 3. **L. 80:** Entire section amended, p. 732, § 1, effective July 1.

**Cross references:** For rule-making procedures, see article 4 of title 24.

**39-26-110. Retailer - multiple locations.** A retailer doing business in two or more places or locations, taxable under this part 1, may file each return covering all such business activities engaged within this state.

**Source: L. 35:** p. 1008, § 5. **CSA:** C. 144, § 11. **L. 37:** p. 1084, § 1. **CRS 53:** § 138-6-10. **C.R.S. 1963:** § 138-5-10.

**39-26-111. Credit sales.** (1) In case of a sale upon credit, or a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, or a chattel mortgage or a conditional sale, there shall be paid upon each payment, upon the account of purchase price, that portion of the total tax which the amount paid bears in the total purchase price. Notwithstanding any other provision of this subsection (1), a retailer doing business wholly or partly on a credit basis may, at his election, make a return, and remit sales tax on credit sales, on the basis of the aggregate amount of cash received during the month from taxable credit sales. The retailer may determine the tax to be remitted on the basis of his reasonable estimate of the aggregate amount of tax which he has collected from his credit customers during the month. A retailer's estimate of the taxes collected on credit sales made in any month (referred to in this section as "base month") shall be deemed reasonable if the cumulative sum of the monthly amounts of taxes on such credit sales remitted by the retailer on or before the close of the third, sixth, ninth, twelfth, and fifteenth calendar months following the base month is not less than twenty-five percent, forty-three and seventy-five one-hundredths percent, sixty-two and five-tenths percent, eighty-one and twenty-five one-hundredths percent, and one hundred percent, respectively, of the total taxes due on the aggregate credit sales made by the retailer in the base month. In no event, however, shall the amount of taxes remitted by the retailer in any month be less than the amount which the retailer actually estimates to have been collected in that month.

(2) If a retailer transfers, sells, assigns, or otherwise disposes of an account receivable, he shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported; except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a closely held subsidiary, as defined in section 39-26-102 (10)(k), shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on said account.

**Source: L. 35:** p. 1008, § 5. **CSA:** C. 144, § 12. **L. 37:** p. 1084, § 1. **CRS 53:** § 138-6-11. **C.R.S. 1963:** § 138-5-11. **L. 79:** Entire section amended, p. 1446, § 37, effective July 3.

**39-26-112. Excess tax - remittance.** If any vendor, during any reporting period, collects as a tax an amount in excess of three percent of all taxable sales made prior to January 1, 2001, and two and ninety one-hundredths percent of all taxable sales made on or after January 1, 2001, such vendor shall remit to the executive director of the department of revenue the full net amount of the tax imposed in this part 1 and also such excess. The retention by the retailer or vendor of any excess of tax collections over the said percentage of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the executive director the full amount required to be remitted by the provisions of this part 1 is declared to be unlawful and constitutes a misdemeanor.

**Source: L. 35:** p. 1009, § 5. **CSA:** C. 144, § 13. **L. 37:** p. 1085, § 1. **L. 45:** p. 580, § 4. **CRS 53:** § 138-6-12. **C.R.S. 1963:** § 138-5-12. **L. 65:** p. 1124, § 4. **L. 2001:** Entire section amended, p. 1281, § 58, effective June 5.

**39-26-113. Collection of sales tax - motor vehicles - off-highway vehicles - exemption - process for motor vehicles sold at auction - exception - definition.** (1) The department of revenue or its authorized agent shall not register a motor or other vehicle for which registration is required or issue a certificate of title for a motor vehicle, off-highway vehicle as defined in section 42-6-102, C.R.S., or manufactured home as defined in section 38-29-106, C.R.S., until any tax due on the sale and purchase of the vehicle under section 29-2-106, C.R.S., or section 39-26-106 or imposed by ordinance of any home rule city has been paid.

(2) If an applicant for registration and certificate of title for any motor or other vehicle or for a certificate of title for a mobile home fails to show payment of the sales taxes applicable to the sale and purchase thereof by means of proper receipts therefor, the department of revenue or its authorized agent shall collect all such applicable taxes at the time such application is made.

(3) Revenues due the state and collected pursuant to this section shall be distributed as are other revenues under this part 1, and revenues due any county, city, or town so collected shall be distributed in accordance with the provisions of section 29-2-106, C.R.S., or as specified by contract entered into with the department of revenue pursuant to section 24-35-110, C.R.S.

(4) To facilitate collection of sales taxes as provided in this section, the governing body of each city or town which has imposed a sales tax shall certify to the department of revenue and to the county clerk of the county in which such city or town is located a true copy of its current sales tax ordinances, and shall likewise certify any subsequent changes therein.

(5) (a) The sale of a new or used automobile to a purchaser who is a nonresident of Colorado and who purchases such automobile for use outside this state is exempt from all sales taxes, the collection of which is provided for by this section.

(b) The executive director of the department of revenue shall attempt to negotiate agreements of reciprocity concerning the collection of sales taxes on motor vehicles with adjacent states.

(c) Repealed.

(6) (a) In a seller-financed sale in which the seller has added the sales tax due on the sale to the financed sales price of the motor or off-highway vehicle and the purchaser has failed to

make payments due to the seller, the seller may deduct all portions of the unreceived payments that are attributable to the sales tax due on the sale from the next sales tax return made by the seller under this article. If the amount to be so deducted exceeds the amount of sales tax to be remitted by the seller for the next reporting period, the seller may carry forward the remaining amount of the deduction to future sales tax returns. This subsection (6) does not create a right to a refund or any other payment by the department of revenue to the seller.

(b) For purposes of this subsection (6), "seller-financed sale" means a retail sale of a motor or off-highway vehicle by a seller licensed under article 20 of title 44 in which the seller, or a wholly-owned affiliate or subsidiary of the seller, collects all or part of the total consideration paid for the vehicle in periodic payments and retains a lien on the vehicle until all payments have been received. Except as otherwise provided in this subsection (6)(b), "seller-financed sale" does not include a retail sale of a vehicle in which a person other than the seller provides the consideration for the sale and retains a lien on the vehicle until all payments have been made.

(c) The department of revenue may promulgate rules and regulations for the implementation of this subsection (6).

(7) (a) Notwithstanding any provision of law to the contrary, for any motor vehicle sold through an auction sale, unless paragraph (b) of this subsection (7) applies, all sales tax due for the purchase of the motor vehicle shall not be collected by the auctioneer, but shall be collected by the county clerk or other authorized agent of the county or city and county in which the motor vehicle is to be registered.

(b) The method of sales tax collection specified by subsection (7)(a) of this section does not apply to the sale of a motor vehicle at auction sale if the auctioneer is also an automobile dealer licensed under part 1 of article 20 of title 44.

(8) Subsections (1) and (2) of this section do not apply to the sale or transfer of off-highway vehicles before July 1, 2014. For an off-highway vehicle that was first purchased or transferred before July 1, 2014, and is being issued its first certificate of title for the first time after this date, the department shall not verify that the person paid any tax due on the vehicle.

**Source: L. 35:** p. 1009, § 5. **CSA:** C. 144, § 14. **L. 37:** p. 1085, § 1. **L. 41:** p. 661, § 5. **CRS 53:** § 138-6-13. **C.R.S. 1963:** § 138-5-13. **L. 71:** p. 1263, § 1. **L. 77:** (5) added, p. 1827, § 1, effective July 23; (1) and (2) amended, p. 1743, § 6, effective January 1, 1978. **L. 79:** (5)(c) repealed, p. 1463, § 1, effective June 29. **L. 84:** (5)(b) amended, p. 1123, § 37, effective June 7. **L. 95:** (6) added, p. 889, § 1, effective May 25. **L. 2013:** (1), (6)(a), and (6)(b) amended and (8) added, (SB 13-280), ch. 407, p. 2377, § 2, effective June 5; (7) added, (SB 13-134), ch. 80, p. 254, § 1, effective August 7. **L. 2018:** (6)(b) and (7)(b) amended, (SB 18-030), ch. 7, p. 140, § 13, effective October 1.

**Cross references:** For vehicles required to be registered, see § 42-3-102.

**39-26-113.5. Refund of state sales taxes for vehicles used in interstate commerce - fund.** (1) (a) Except as provided in subsection (3) of this section, for the calendar year commencing on January 1, 2011, and for each calendar year thereafter, a taxpayer may claim a refund of a percentage of all state sales and use taxes paid by the taxpayer pursuant to this part 1 and part 2 of this article on the sale, storage, or use of a model year 2010 or newer truck tractor

or semitrailer with a gross vehicle weight rating of fifty-four thousand pounds or greater that is purchased on or after July 1, 2011.

(b) The total refund shall be calculated by the division of motor vehicles in the department of revenue in the same manner as the division calculates the proration of the annual specific ownership tax payable on Class A personal property as specified in section 42-3-107 (4), C.R.S.

(c) The total refund shall be claimed as follows:

(I) For the calendar year in which the truck tractor or semitrailer was purchased, stored, or used, thirty-three percent of the total amount of the refund if the model year of the truck tractor or semitrailer was sold as new during such calendar year;

(II) For the first calendar year after the calendar year in which the truck tractor or semitrailer was purchased, stored, or used, thirty-three percent of the total amount of the refund if the model year of the truck tractor or semitrailer was sold as new during such calendar year; and

(III) For the second calendar year after the calendar year in which the truck tractor or semitrailer was purchased, stored, or used, thirty-three percent of the total amount of the refund if the model year of the truck tractor or semitrailer was sold as new during such calendar year.

(IV) and (V) (Deleted by amendment, L. 2010, (HB 10-1285), ch. 423, p. 2190, § 4, effective July 1, 2010.)

(2) To claim a refund allowed by subsection (1) of this section, a taxpayer shall submit a refund application to the department of revenue on a form provided by the department. The application shall be accompanied by proof of payment of state sales and use taxes paid by the taxpayer. The application shall also include any additional information that the department of revenue may require by rule.

(3) (a) The department of revenue shall deny a claimant the sales tax refund or a portion of such refund granted in this section if the claim results in more than the amount allocated for the credit pursuant to section 42-1-225, C.R.S.

(b) To implement this section, the department of revenue shall track the amount of the refunds granted under this section.

**Source: L. 2009:** Entire section added, (HB 09-1298), ch. 417, p. 2312, § 1, effective July 1, 2010. **L. 2010:** (1)(a) and (1)(c) amended and (3) added, (HB 10-1285), ch. 423, p. 2190, § 4, effective July 1.

**Editor's note:** Section 7 of chapter 417, Session Laws of Colorado 2009, provides that this section shall not take effect unless the revisor of statutes receives written notice from the executive director of the department of revenue that a sustainable source of revenue has been identified to implement this section; however, section 8 of chapter 423, Session Laws of Colorado 2010, amended section 7 of chapter 417, Session Laws of Colorado 2009, by eliminating the notification requirement. Chapter 417, Session Laws of Colorado 2009, became effective July 1, 2010.

**39-26-114. Exemptions - disputes - credits or refunds - definitions - creation of fund. (Repealed)**

**Source: L. 35:** p. 1009, § 6. **CSA:** C. 144, § 15. **L. 37:** p. 1086, § 15. **L. 43:** p. 540, § 1. **L. 45:** p. 576, §§ 3, 4. **CRS 53:** § 138-6-14. **L. 57:** p. 823, § 1. **L. 59:** pp. 801, 803, 804, §§ 1, 2, 3. **L. 61:** p. 823, § 1. **L. 63:** p. 952, § 1. **C.R.S. 1963:** § 138-5-14. **L. 64:** p. 818, § 5. **L. 65:** pp. 1124, 1126, 1148, §§ 5, 7, 3. **L. 67:** pp. 512, 532, §§ 2, 1. **L. 69:** p. 221, § 3. **L. 70:** pp. 396, 397, §§ 1, 1. **L. 73:** p. 241, § 24. **L. 75:** (1)(f) and (10) amended, p. 1468, § 15, effective July 18. **L. 76:** (1) R&RE, p. 318, § 76, effective May 20; (1)(a)(IX) and (1)(a)(X) added, p. 787, § 1, effective July 1. **L. 77:** (2)(d) amended, p. 1836, § 1, effective May 26; (1)(a)(VII) (1)(a)(IX), and (1)(a)(X) amended and (1)(a)(XI) added, pp. 1829, 1831, 1833, § 1, effective July 1; (1)(a)(XII) added, p. 1823, § 2, effective July 15; (1)(a)(XIII), (1)(a)(XIV), and (1)(a)(XV) added, p. 1834, § 1, effective July 20; (1)(a)(V) amended, p. 1828, § 1, effective January 1, 1978. **L. 78:** (1)(a)(II) amended, p. 506, § 2, effective March 8; (1)(a)(XVI) and (1)(a)(XVII) added, p. 514, § 1, effective April 4; (1)(a)(XVIII) added, § 3, effective July 1. **L. 79:** (1)(a)(XIX) and (1)(d) added and (2)(c) and (10) amended, pp. 1465, 1466, §§ 1, 2, 3, 4, effective June 7; (7)(a) and (8) amended, pp. 1428, 1468, §§ 9, 1, effective July 1; (1)(a)(XX) and (11) added, pp. 1428, 1447, §§ 8, 39, effective July 3; (1)(a)(VII) amended, p. 1641, § 55, effective July 19; (1)(a)(V) and (1)(a)(XV) amended, (1)(a)(XXI) added and (9) repealed, pp. 1431, 1440, 1464, 1501, §§ 15, 26, 27, 1, effective January 1, 1980. **L. 80:** (12) added, p. 752, § 5, effective April 10; (1)(a)(XXI) and (6) amended pp. 733, 736, §§ 1, 1, effective July 1; (1)(a)(V) amended, p. 727, § 24, effective January 1, 1981; (12) repealed, p. 752, § 5, effective July 1, 1987. **L. 81:** (13) added, p. 1889, § 1, effective May 18; (5) amended, p. 1888, § 1, effective May 26. **L. 82:** (1)(a)(XXI) amended, p. 571, § 2, effective April 27; (14) added, p. 569, § 2, effective July 1. **L. 84:** (1)(a)(XXII) added, p. 1021, § 1, effective March 5. **L. 85:** (2)(b) and (7)(b)(I) amended, pp. 1257, 1284, §§ 9, 3, effective January 1, 1986. **L. 86:** (7)(a) and (11)(a) amended, pp. 1118, 1142, §§ 16, 4, effective July 1. **L. 87:** (11)(a) amended, p. 1451, § 25, effective June 22; (15) and (16) added, p. 1463, § 3, effective October 1. **L. 88:** (7)(a) R&RE, p. 1329, § 3, effective April 4; (11)(d) and (13) amended, p. 1326, § 4, effective April 6; (11)(a)(II) amended, p. 1317, § 14, effective May 29; (1)(a)(VII) amended, p. 1090, § 4, effective January 1, 1989. **L. 89:** (1)(c) amended, p. 1502, § 9, effective July 1, 1990. **L. 90:** (17) added, p. 1740, § 2, effective April 17. **L. 91:** (1)(a)(VII) amended, p. 2397, § 20, effective July 1; (1)(a)(XXIII) added, p. 1968, § 1, effective July 1, 1992. **L. 91, 1st Ex. Sess.:** (1)(a)(VII) amended, p. 6, § 9, effective July 1. **L. 92:** (1)(a)(XXIV) and (1)(a)(XXV) added, p. 2258, § 1, effective July 1. **L. 94:** (10) amended, p. 2568, § 88, effective January 1, 1995. **L. 95:** (11)(a)(II) amended, p. 137, § 1, effective April 7; (18) added, p. 329, § 1, effective April 27. **L. 96:** (11)(a)(II) and (11)(c) amended and (11)(c.5) added, p. 1857, § 1, effective June 5; (7)(c) and (7)(e) amended, p. 166, § 8, effective July 1; (1)(a)(XXIV) and (1)(a)(XXV) amended, p. 1241, § 100, effective August 7. **L. 97:** (5) and (6) amended, p. 370, § 2, effective July 1. **L. 98:** (19) added, p. 494, § 2, effective April 22; (1)(a)(XXVI) added, p. 736, § 3, effective May 18; (7)(b)(V) amended, p. 1348, § 84, effective June 1. **L. 99:** (22) added, p. 979, § 1, effective May 28; (1)(a)(II) amended, p. 1272, § 2, effective June 2; (17) RC&RE, p. 1297, § 2, effective June 3; (20) added, p. 1273, § 1, effective July 1; (21) added, p. 1303, § 1, effective July 1; (23) added, p. 1324, § 2, effective July 1; (7.5) added, p. 1355, § 1, effective January 1, 2000. **L. 2000:** (20)(a)(II)(B) and (20)(b)(II) amended, p. 549, § 3, effective July 1; (1)(a)(XXVI) amended, p. 736, § 3, effective August 2; (1)(a)(XV) amended, p. 1937, § 18, effective October 1. **L. 2001:** IP(20)(b)(II) amended, p. 162, § 1, effective July 1; IP(20)(b)(II) amended, p. 381, § 1, effective July 1; (24) added, p. 1545, § 1, effective July 1. **L. 2003:** (10) amended, p. 551, § 7,

effective March 5; (1)(a)(XV) amended, p. 1818, § 6, effective August 6. **L. 2004:** Entire section repealed, p. 1016, § 1, effective July 1.

**Editor's note:** The provisions of this section were relocated to part 7 of this article. For the location of specific provisions, see the editor's note following each section in said part 7 and the comparative tables located in the back of the index.

**39-26-115. Deficiency due to negligence.** If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten percent of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under section 39-21-110.5, in addition to the interest provided by section 39-21-109, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten days after written notice and demand to him by the executive director of the department of revenue. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent of the total amount of the deficiency, and, in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten days after written notice and demand by the executive director, and an additional three percent per month on said amount shall be added from the date the return was due until paid.

**Source: L. 35:** p. 1012, § 8. **CSA:** C. 144, § 18. **L. 37:** p. 1090, § 1. **CRS 53:** § 138-6-17. **C.R.S. 1963:** § 138-5-17. **L. 65:** p. 1149, § 3. **L. 81:** Entire section amended, p. 1866, § 11, effective June 8. **L. 85:** Entire section amended, p. 1257, § 10, effective January 1, 1986.

**39-26-116. Record of sales.** It is the duty of every person engaging or continuing in business in this state, for the transaction of which a license is required under this part 1 to keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable under this part 1. It is the duty of every such person to keep and preserve for a period of three years all invoices of goods and merchandise purchased for resale and all such books, invoices, and other records shall be open for examination at any time by the executive director of the department of revenue or his duly authorized agent.

**Source: L. 35:** p. 1014, § 9. **CSA:** C. 144, § 23. **L. 37:** p. 1092, § 1. **L. 39:** p. 503, § 1. **CRS 53:** § 138-6-22. **C.R.S. 1963:** § 138-5-22.

**39-26-117. Tax lien - exemption from lien.** (1) (a) Except as provided in paragraphs (b) and (f) of this subsection (1), the tax imposed by this part 1 shall be a first and prior lien upon the goods and business fixtures of or used by any retailer or qualified purchaser under lease, title retaining contract, or other contract arrangement, excepting stock of goods sold or for sale in the ordinary course of business, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature.

(b) Any retailer or person in possession shall provide a copy of any lease pertaining to the assets and property described in paragraph (a) of this subsection (1) to the department of

revenue within ten days after seizure by the department of such assets and property. The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in paragraph (a) of this subsection (1). The real or personal property of an owner who has made a bona fide lease to a retailer shall be exempt from the lien created in paragraph (a) of this subsection (1) if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in paragraph (a) of this subsection (1); except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(b.5) Any coin-operated vending machine or video or other game machine shall be exempt from the lien created in paragraph (a) of this subsection (1) if:

(I) The machine is placed on the retailer's premises under the terms of a lease or other agreement under which the retailer is given no right to become the owner of the machine;

(II) The machine is plainly marked in a location accessible to agents of the department of revenue with information sufficient to permit identification of the owner of said property; and

(III) The owner of the machine has filed with the department of revenue a schedule listing the machine by serial number and including thereon the owner's full name and the address of his business and such other information as the executive director of the department of revenue may require. To protect the anonymity of owners of property, the executive director of the department of revenue may permit property covered by this paragraph (b.5) to be marked using numbers or other coded identification.

(c) Any retailer who is in possession of property under the terms of a lease, which property is exempt from lien as provided in this section, may be required by the executive director of the department of revenue to remit taxes collected at more frequent intervals than monthly, but no more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

(d) Any retailer who sells out his business or stock of goods, or quits business, shall be required to make out the return as provided in this part 1, within ten days after the date he sold his business or stock of goods or quit business, and his successor in business shall be required to withhold sufficient purchase money to cover the amount of said taxes due and unpaid until such time as the former owner produces a receipt from the executive director of the department of revenue showing that the taxes have been paid or a certificate that no taxes are due.

(e) If the purchaser of a business or stock of goods fails to withhold the purchase money as provided in paragraph (d) of this subsection (1), and the taxes are due and unpaid after the ten-

day period allowed, he, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any retailer under lease, title retaining contract, or other contract arrangement, by purchase, foreclosure sale, or otherwise, takes same subject to the lien for any delinquent sales taxes owed by such retailer and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of property so taken or acquired.

(f) Any qualified purchaser that provides a direct payment permit number issued pursuant to section 39-26-103.5 to a vendor or retailer shall be subject to the lien created in paragraph (a) of this subsection (1) to the extent of any tax owed as a result of purchases made by the qualified purchaser plus any penalty and interest assessed pursuant to this article or article 21 of this title.

(2) Whenever the business or property of any taxpayer subject to this part 1 shall be placed in receivership, bankruptcy, or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties, and interest imposed by this part 1, and for which said retailer is in any way liable under the terms of this part 1, shall be a prior and preferred claim against all the property of said taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the filing of the notice as provided in section 39-26-118 on the property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer. No sheriff, receiver, assignee, or other officer shall sell the property of any person subject to this part 1 under process or order of any court without first ascertaining from the executive director the amount of any taxes due and payable under this part 1, and, if there are any such taxes due, owing, or unpaid, it is the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as provided in this section. For the purposes of this part 1, "taxpayer" includes "retailer".

**Source: L. 35:** p. 1014, § 10. **CSA:** C. 144, § 24. **L. 37:** p. 1093, § 1. **L. 39:** p. 503, § 2. **CRS 53:** § 138-6-23. **C.R.S. 1963:** § 138-5-23. **L. 69:** p. 1137, § 2. **L. 77:** (1)(b) amended, p. 1803, § 2, effective June 19. **L. 89:** (1)(b.5) added, p. 1509, § 2, effective April 6. **L. 92:** (1)(a) and (1)(b) amended, p. 2201, § 4, effective April 16. **L. 99:** (1)(a) amended and (1)(f) added, p. 13, § 4, effective January 1, 2000.

**39-26-118. Recovery of taxes, penalty, and interest.** (1) All sums of money paid by the purchaser to the retailer as taxes imposed by this article shall be and remain public money, the property of the state of Colorado, in the hands of such retailer, and he shall hold the same in trust for the sole use and benefit of the state of Colorado until paid to the executive director of the department of revenue, and, for failure to so pay to the executive director, such retailer shall be punished as provided by law.

(2) (a) If a person neglects or refuses to make a timely return in payment of the tax or to pay or correctly account for any tax as required by this article, the executive director of the department of revenue shall make an estimate, based upon the information that may be available, of the amount of taxes due or not accounted for or incorrectly accounted for on a return for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of

fifteen dollars for the failure or ten percent of such unpaid, unaccounted, or incorrectly accounted amount plus one-half percent per month from the date when due, not exceeding eighteen percent in the aggregate, and interest if applicable on the delinquent taxes at the rate imposed under section 39-21-110.5. Promptly thereafter, the executive director shall give to the delinquent taxpayer written notice of the estimated taxes, penalty, and interest, which notice shall be sent by first-class mail as set forth in section 39-21-105.5.

(b) Such estimate shall thereupon become a notice of deficiency as provided in section 39-21-103. A hearing may be held and the executive director shall make a final determination pursuant to that section. The taxpayer may appeal the said final determination in the manner provided in section 39-21-105.

(3) (a) If any taxes, penalty, or interest imposed by this article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this section are not paid within five days after the same are due, the executive director shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties, and interest, the date of the accrual thereof, and that the state of Colorado claims a first and prior lien therefor on the real and tangible personal property of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice as provided in this section on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.

(b) Said notice shall be on forms prepared by the executive director, and shall be verified by him or his duly qualified deputy, or any duly qualified agent of the executive director, whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder of any county in the state in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create such lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice is filed or not, the executive director may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of any county of the state, commanding him to levy upon, seize, and sell sufficient of the real and personal property of the tax debtor found within his county for the payment of the amount due, together with interest, penalties, and costs, as may be provided by law, subject to valid preexisting claims or liens.

(4) Such revenue collector or the sheriff shall forthwith levy upon sufficient of the property of the taxpayer, or any property used by such taxpayer in conducting his retail business, except property made exempt from lien pursuant to the provisions of section 39-26-117 (1)(b), and said property so levied upon shall be sold in all respects with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishments shall apply. The sheriff shall be entitled to such fees in executing such warrant as are allowed by law for similar services.

(5) Any lien for taxes as shown on the records of the county clerk and recorders as provided in this section, upon payment of all taxes, penalties, and interest covered thereby, shall be released by the executive director in the same manner as mortgages and judgments are released.

(6) It is the duty of any county clerk and recorder to whom such notices are sent to file and record the same without cost or charge.

(7) (a) The executive director may also treat any such taxes, penalties, or interest due and unpaid as a debt due the state from the vendor. In case of failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the executive director may receive at law the amount of such taxes, penalties, and interest in such county or district court of the county wherein the taxpayer resides or has his principal place of business having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the executive director, as provided in this article, shall be prima facie proof of the amount due.

(b) Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff, and in any such proceeding no bond shall be required of the executive director, nor shall any sheriff require of the executive director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings; and the executive director may prosecute appeals in such cases without the necessity of providing bond therefor. It is the duty of the attorney general or any district attorney, when requested by the executive director, to commence action for the recovery of taxes due under this article, and this remedy shall be in addition to all other existing remedies or remedies provided in this article and article 21 of this title.

(8) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the state of Colorado may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. In any such action, service of summons upon the executive director or any person in charge of the office of the executive director shall be sufficient service and binding upon the state of Colorado.

(9) The executive director is authorized to waive, for good cause shown, any penalty or interest assessed as provided in this article and article 21 of this title, and interest imposed in excess of the rate imposed under section 39-21-110.5 shall be deemed a penalty.

**Source: L. 35:** p. 1015, § 11. **CSA:** C. 144, § 25. **L. 37:** p. 1094, § 1. **L. 39:** p. 505, § 3. **CRS 53:** § 138-6-24. **C.R.S. 1963:** § 138-5-24. **L. 64:** pp. 184, 326, §§ 3, 314. **L. 65:** p. 1150, § 3. **L. 69:** p. 1138, § 3. **L. 77:** (2)(a) amended, p. 743, § 3, effective July 1. **L. 81:** (2)(a) and (9) amended, p. 1867, § 12, effective June 8. **L. 85:** (2)(a) amended, p. 1257, § 11, effective January 1, 1986. **L. 86:** (2)(a) amended, p. 1222, § 36, effective May 30. **L. 89:** (9) amended, p. 1497, § 2, effective June 7. **L. 96:** (2)(a) amended, p. 167, § 9, effective July 1. **L. 2009:** (2)(a) amended, (HB 09-1101), ch. 68, p. 236, § 1, effective March 25.

**39-26-119. License and tax additional.** The license and tax imposed by this part 1 shall be in addition to all other licenses and taxes imposed by law, except as otherwise provided in this part 1.

**Source: L. 35:** p. 1017, § 15. **CSA:** C. 144, § 29. **L. 37:** p. 1096, § 1. **CRS 53:** § 138-6-28. **C.R.S. 1963:** § 138-5-28.

**39-26-120. False or fraudulent return, statement - penalty.** (1) It is unlawful for any retailer or vendor to refuse to make any return required to be made in this part 1 or to make any false or fraudulent return or false statement on any return, or fail and refuse to make payment to the executive director of the department of revenue of any taxes collected or due the state, or in any manner evade the collection and payment of the tax, or any part thereof, or for any person or

purchaser to fail or refuse to pay such tax, or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax.

(2) Any person willfully violating any of the provisions of this section is guilty of a felony. Any corporation willfully making a false return or a return willfully containing a false statement, is guilty of a felony. Any court of competent jurisdiction of the county in which the offender resides, or, if a corporation, then the county of its principal place of business, shall have jurisdiction to enforce this section.

(3) In addition to the foregoing penalties, any person who knowingly and willfully swears to or verifies any false statement is guilty of perjury in the second degree and, upon conviction thereof, shall be punished in the manner provided by law.

**Source: L. 35:** p. 1017, § 16. **CSA:** C. 144, § 30. **L. 37:** p. 1097, § 1. **CRS 53:** § 138-6-29. **C.R.S. 1963:** § 138-5-29. **L. 64:** p. 326, § 315. **L. 72:** p. 573, § 63. **L. 85:** (2) amended, p. 1258, § 12, effective January 1, 1986.

**Cross references:** For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

**39-26-121. Penalty.** Unless otherwise provided in this part 1, any person guilty of a felony, as defined and declared in this part 1, upon conviction thereof, shall be punished as provided by section 39-21-118.

**Source: L. 35:** p. 1018, § 17. **CSA:** C. 144, § 31. **L. 37:** p. 1097, § 1. **CRS 53:** § 138-6-30. **C.R.S. 1963:** § 138-5-30. **L. 85:** Entire section amended, p. 1258, § 13, effective January 1, 1986.

**39-26-122. Administration.** The administration of this part 1 is vested in and shall be exercised by the executive director of the department of revenue who shall prescribe forms and reasonable rules and regulations in conformity with this part 1 for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed under this part 1, and for the proper administration and enforcement of this part 1.

**Source: L. 35:** p. 1018, § 18. **CSA:** C. 144, § 32. **L. 37:** p. 1097, § 1. **CRS 53:** § 138-6-31. **C.R.S. 1963:** § 138-5-31.

**39-26-122.5. Collection of sales tax - enhanced efficiencies - intergovernmental agreements with local governments - legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) It is in the best interest of the state, local governments, and taxpayers to have sales tax collected in the most efficient and effective manner feasible;

(b) Sales taxes can be administered and collected most efficiently when the governmental entities that collect the taxes cooperate and share responsibilities to collect and distribute revenues from the taxes;

(c) The administrative burden on taxpayers is lessened when governmental entities cooperate and agree on the processes used to administer and collect sales taxes;

(d) Broad authority and precedent exist for governmental entities to operate more efficiently and effectively by contracting with each other to cooperate in carrying out their respective responsibilities;

(e) The purpose of this section is to encourage the state to work cooperatively with counties and other local governments in the administration and collection of sales taxes in the state to enhance efficiencies and procedures for the benefit of both the department of revenue and local governments.

(2) The executive director of the department of revenue may enter into an intergovernmental agreement with any county for the purpose of enhancing the systemic efficiencies and procedures used in the collection of state and local sales taxes. Such agreement shall be entered into on behalf of and for the benefit of both the county and the department. In addition, a municipality may be included as a party to the agreement to further the same efficiencies and procedures to be enhanced by the agreement between the executive director and a county. The agreement may allow the parties to share in providing any function or service lawfully authorized to each of the parties, including the sharing of costs, information, or duties related to the collection of sales taxes within the boundaries of the county.

(3) The executive director of the department of revenue shall annually provide information to the finance committees of the house of representatives and the senate, or any successor committees, on any agreements entered into in accordance with the provisions of this section and any enhanced effectiveness or procedures that have been achieved as result of the agreements. Such information shall be incorporated into an existing report provided on annual basis by the executive director to the committees.

**Source: L. 2009:** Entire section added, (HB 09-1130), ch. 229, p. 1042, § 2, effective August 5.

**39-26-122.7. Filing and remittance of remote sales - standard sales tax reporting form for remote sales - delayed distributions - central audit bureau - creation.** (1) Every remote seller shall, on or before the twentieth day of each month, make an electronic return to the executive director of the department of revenue for the preceding calendar month and electronically make such remittance as specified in section 39-26-105 (1)(c)(I)(B). A remote seller's returns, or the returns of a remote seller's duly authorized agent, must contain such information and be made in such manner and upon such forms as specified in this section.

(2) (a) The collection, administration, and enforcement of the local taxing jurisdiction sales tax under section 39-26-104 (2) shall be performed by the executive director of the department of revenue in the same manner as the collection, administration, and enforcement of the Colorado state sales tax.

(b) (I) The central audit bureau created in subparagraph (II) of this paragraph (b) shall be the sole entity within the state that is responsible for auditing remote sellers. Notwithstanding any other provision of law, no local taxing authority shall have the authority to audit any remote seller.

(II) The department of revenue and local taxing jurisdictions shall coordinate in the development of the central audit bureau and shall share in the costs and staffing of the bureau. The funding and staffing of the central audit bureau shall be sufficient to audit remote sellers.

(3) The executive director of the department of revenue shall at no charge administer, collect, and distribute any sales tax imposed by any local taxing jurisdiction on a remote sale authorized by section 39-26-104 (2). The executive director shall make monthly distributions of sales tax collections to the appropriate official in each local taxing jurisdiction.

(4) (a) Notwithstanding the provisions of section 39-21-113, the executive director of the department of revenue shall report monthly to each local taxing jurisdiction for which the department of revenue collects a sales tax, information identifying remote sellers making sales within the local taxing jurisdiction and, where the chief administrative officer or his designee has executed a memorandum of understanding with the department of revenue providing for control of confidential data, the status of each remote seller's account including the amount of such local taxing jurisdiction's sales tax collected and paid by each such remote seller. The executive director of the department of revenue may, in his or her discretion, provide additional information to a local taxing jurisdiction concerning collection and administration of such local taxing jurisdiction's sales tax if such a memorandum has been executed.

(b) Except in accordance with judicial order or as otherwise provided by law, no official or employee of a local taxing jurisdiction receiving sales tax information from the department of revenue pursuant to this subsection (4) shall divulge or make known to any person not an official or employee of such local taxing jurisdiction any information that identifies or permits the identification of the amount of sales taxes collected or paid by any individual remote seller. The officials or employees of any local taxing jurisdiction charged with the custody of such sales tax information shall not be required to produce any such information in any action or proceeding in any court except in an action or proceeding under the provisions of this article to which the local taxing jurisdiction having custody of the information is a party, in which event the court may require the production of, and may admit in evidence, so much of said sales tax information as is pertinent to the action or proceeding. Any official or employee of the local taxing jurisdiction who willfully violates any of the provisions of this subsection (4) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars and shall be dismissed from office.

(5) The executive director of the department of revenue shall prescribe a standard electronic sales tax reporting form for remote sales. Such form shall be separate from the state form and shall be the only sales tax reporting form required to be used by any remote seller. Such form shall allow a remote seller to report all sales and use taxes collected for a local government on such form.

(6) If any sales tax to be distributed pursuant to this section is not distributed within sixty days after the processing date, interest shall be added to the undistributed amount from the sixtieth day after the processing date until the date such sales tax is distributed. The rate of said interest shall be equal to the average rate, rounded to one one-thousandth of a percent, being earned by the investment of moneys in the state treasury for the same period.

**Source: L. 2013:** Entire section added, (HB 13-1295), ch. 314, p. 1653, § 8, effective July 1, 2014.

**Cross references:** For the legislative declaration in the 2013 act adding this section, see section 1 of chapter 314, Session Laws of Colorado 2013.

**39-26-123. Receipts - disposition - transfers of general fund surplus - sales tax holding fund - creation - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Net revenue" means the gross amount of sales and use tax receipts collected under the provisions of this article, less a fee retained by vendors for the collection and remittance of the tax pursuant to section 39-26-105 (1) and less refunds and adjustments made by the department of revenue in conjunction with its collection and enforcement duties under this article.

(a.5) (Deleted by amendment, L. 2011, (HB 11-1043), ch. 266, p. 1213, § 24, effective July 1, 2011.)

(b) (I) "Sales and use taxes attributable to sales or use of vehicles and related items" means the net revenue raised from the state sales and use taxes imposed pursuant to this article on the sales or use of new or used motor vehicles, including motor homes, motor vehicle batteries, tires, parts, or accessories, utility trailers, camper coaches, or camper trailers.

(II) With respect to sales tax, "related items" includes only items sold by persons whose primary business activity is the sale or service of motor vehicles or related items.

(2) The sales and use tax holding fund is hereby created in the state treasury and shall be administered by the state treasurer. The fund shall consist of moneys transferred to the fund pursuant to subsection (3.5) of this section. Interest and income earned on the deposit and investment of moneys in the fund shall be credited to the fund and shall not revert to the general fund of the state or to any other fund. Moneys in the fund shall be transferred from the fund only to the highway users tax fund created in section 43-4-201, C.R.S., and the general fund and only in the manner specified in subsection (4) of this section.

(3) For any state fiscal year commencing on or after July 1, 2013, the state treasurer shall credit eighty-five percent of all net revenue collected under the provisions of this article to the old age pension fund created in section 1 of article XXIV of the state constitution. The state treasurer shall credit to the general fund the remaining fifteen percent of the net revenue, less ten million dollars, which the state treasurer shall credit to the older Coloradans cash fund created in section 26-11-205.5 (5), C.R.S.

(3.5) For each state fiscal year commencing on or after the first state fiscal year in which an appropriation or transfer is permitted pursuant to section 24-75-219 (2)(d), C.R.S., the general assembly may appropriate or transfer, in its sole discretion, moneys from the general fund to the sales and use tax holding fund.

(4) (a) Except as otherwise provided in sub-subparagraph (B) of subparagraph (VI) of this paragraph (a), all moneys in the sales and use tax holding fund shall be transferred to the highway users tax fund, as follows:

(I) to (III) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(IV) If the revenue estimate prepared by the staff of the legislative council in December of state fiscal year 2017-18 or in December of any succeeding state fiscal year indicates that the amount of total general fund revenues for the state fiscal year will be sufficient to maintain the four percent or higher reserve required by section 24-75-201.1 (1), C.R.S., on February 1 of the fiscal year the state treasurer shall transfer from the sales and use tax holding fund to the highway users tax fund an amount equal to the lesser of:

(A) Fifty percent of the amount estimated in the December revenue estimate to be accrued and transferred to the highway users tax fund pursuant to this section for the entire fiscal year; or

(B) The balance of the sales and use tax holding fund.

(V) If the revenue estimate prepared by the staff of the legislative council in March of state fiscal year 2017-18 or in March of any succeeding state fiscal year indicates that the amount of total general fund revenues for the state fiscal year will be sufficient to maintain the four percent or higher reserve required by section 24-75-201.1 (1), C.R.S., on April 15 of the fiscal year the state treasurer shall transfer from the sales and use tax holding fund to the highway users tax fund the lesser of:

(A) The amount needed to ensure that the cumulative amount transferred from the sales and use tax holding fund to the highway users tax fund through April 15 equals seventy-five percent of the amount estimated in the March revenue estimate to be accrued and transferred to the highway users tax fund pursuant to this section for the entire fiscal year; or

(B) The balance of the sales and use tax holding fund.

(VI) (A) Effective June 30 of state fiscal year 2006-07, and effective June 30 of each state fiscal year thereafter, the state controller shall accrue all moneys in the sales and use tax holding fund as of that date to the highway users tax fund.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (VI), the state controller shall reduce the amount accrued to the highway users tax fund pursuant to said sub-subparagraph and accrue moneys in the sales and use tax holding fund to the general fund to the extent necessary to ensure that the amount of general fund revenues for the state fiscal year is sufficient to maintain the four percent reserve required by section 24-75-201.1 (1), C.R.S.

(C) The state treasurer shall transfer, out of the amounts accrued by the state controller pursuant to sub-subparagraphs (A) and (B) of this subparagraph (VI), on September 20, 2007, and on September 20 of each succeeding fiscal year, the amounts needed to ensure that the cumulative amounts required to be accrued and transferred from the sales and use tax holding fund to the highway users tax fund and, if applicable to the general fund, equal ninety percent of the aggregate amounts required to be accrued and transferred to the funds pursuant to this section for the entire preceding fiscal year. The state treasurer shall transfer the remainder of the amounts accrued pursuant to said sub-subparagraphs on the date on which the state controller distributes the comprehensive annual financial report of the state.

(b) If a change in tax policy resulting in a significant reduction of general fund revenues is implemented, the general assembly shall:

(I) Examine the exception set forth in sub-subparagraph (B) of subparagraph (VI) of paragraph (a) of this subsection (4) to the general requirement set forth in paragraph (a) of this subsection (4) that all moneys in the sales and use tax holding fund be accrued and transferred to the highway users tax fund and determine whether the exception should be modified in light of the change.

(II) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(4.5) Repealed.

(5) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(6) Repealed.

**Source: L. 37:** p. 1098, § 1. **CSA:** C. 144, § 33. **CRS 53:** § 138-6-32. **C.R.S. 1963:** § 138-5-32. **L. 64:** p. 658, § 18. **L. 79:** Entire section R&RE, p. 1469 § 1, effective July 1. **L. 81:** (2)(c) amended, p. 1890, § 1, effective June 12. **L. 83:** (2)(c)(I)(D) amended, p. 1522, § 8, effective March 22; (2)(c)(I)(E) amended and (2)(c)(I)(E.5) added, p. 2098, § 10, effective October 13. **L. 84:** (2)(c)(I)(E.5) amended, p. 1142, § 4, effective June 7. **L. 85:** (2)(c)(I)(G) amended and (2)(c)(V) repealed, pp. 1268, 1271, §§ 6, 12, effective May 30. **L. 86:** (2)(c)(I)(G) amended, p. 1120, § 20, effective July 1. **L. 87:** Entire section R&RE, p. 1553, § 1, effective July 1. **L. 97:** Entire section amended, p. 1531, § 1, effective July 1. **L. 98:** (1), (2)(a)(I)(A), (2)(d), and (2)(e) amended, p. 905, § 3, effective May 26. **L. 99:** (1), (2)(a)(I)(A), (2)(a)(III), (2)(d), and (2)(e) amended, p. 561, § 1, effective May 7. **L. 2000:** (2)(a)(I)(A) amended and (2)(a)(I)(A.6) added, p. 901, § 2, effective May 24; (2)(a)(I)(A) amended and (2)(a)(I)(A.8) added, p. 1436, § 5, effective May 31; (2)(a)(I)(A.7) added, p. 552, § 7, effective July 1; (2)(a)(I)(A) amended, p. 1360, § 46, effective July 1, 2001; (2)(a)(I)(A.5) added, p. 1425, § 2, effective July 1, 2001. **L. 2001:** (2)(a)(I)(A.6) amended, p. 1463, § 2, effective June 6. **L. 2001, 2nd Ex. Sess.:** (2)(a)(I)(A) and (2)(a)(II) amended and (2)(a)(I)(A.9) added, p. 35, § 1, effective November 9. **L. 2002:** (2)(a)(I)(A) and (2)(a)(I)(A.9) amended and (2)(a)(I.5) added, p. 145, § 2, effective March 27; (2)(a)(I)(A.6) amended, p. 149, § 2, effective March 27; (2)(a)(I)(A) amended and (2)(a.5) added, p. 389, § 3, effective April 30; (2)(a.5)(III) amended, p. 682, § 4, effective May 28; (2)(a)(I)(A), (2)(a)(I)(B), and IP(2)(b) amended and (4) added, p. 914, § 2, effective May 31; (2)(a)(I)(B) and IP(2)(b) amended and (4) added, p. 902, § 3, effective May 31. **L. 2003:** (4) amended, p. 1538, § 1, effective May 1; (2)(a)(I)(B) amended, p. 2636, § 3, effective June 5; (3) amended, p. 1552, § 1, effective July 1. **L. 2006:** (2)(a)(I)(A) and (4)(a) amended and (5) added, p. 938, § 2, effective July 1; (3) amended, p. 2022, § 118, effective July 1; entire section R&RE, p. 1598, § 1, effective July 2. **L. 2007:** IP(3)(a) amended, p. 2049, § 97, effective June 1; IP(3)(a), (3)(a)(II), and (3)(a)(III) amended, p. 1386, § 1, effective July 1. **L. 2008:** (3)(a)(II) and (3)(a)(III) amended, p. 869, § 1, effective July 1; (3)(a)(II)(D) and (3)(a)(IV) amended and (3)(a)(II)(E) added, p. 872, § 2, effective August 5. **L. 2009:** IP(4)(a) amended and (4.5) added, (SB 09-278), ch. 212, p. 965, § 2, effective May 1; (2), IP(3)(a), (3)(a)(I), (3)(a)(II)(C), (3)(a)(II)(D), (3)(a)(II)(E), (3)(a)(III)(C), (3)(a)(IV)(A), (3)(b), IP(4)(a), (4)(a)(I), (4)(a)(II), (4)(a)(III), IP(4)(a)(IV), IP(4)(a)(V), (4)(a)(VI)(B), (4)(b)(I), (4)(b)(II), and (5) amended and (3.5) added, (SB 09- 228), ch. 410, p. 2266, § 21, effective July 1. **L. 2010:** (1)(a.5) added, (HB 10-1284), ch. 355, p. 1686, § 8, effective July 1; (6) added, (HB 10-1284), ch. 355, p. 1686, § 9, effective August 11. **L. 2011:** (1)(a.5), (6)(a), and (6)(b)(I) amended, (HB 11-1043), ch. 266, p. 1213, § 24, effective July 1; IP(3)(a), (3)(a)(II)(E), and (3)(a)(IV)(B) amended, (SB 11-210), ch. 187, p. 720, § 3, effective July 1, 2012. **L. 2013:** (3) R&RE, (SB 13-127), ch. 349, p. 2027, § 1, effective July 1. **L. 2014:** (6)(c) added by revision, (SB 14-215), ch. 352, pp. 1616, 1619, §§ 10, 14. **L. 2015:** IP(4)(a) amended and (4.5) repealed, (SB 15-264), ch. 259, p. 967, § 91, effective August 5.

**Editor's note:** (1) Amendments to this section by House Bill 00-1259, House Bill 00-1072, and Senate Bill 00-011 were harmonized.

(2) Amendments to subsection (2)(a)(I)(A) by House Bill 02-1276, House Bill 02-1389, and House Bill 02-1445 were harmonized.

(3) Subsection (4) was originally numbered as (3) in House Bill 02-1209 but has been renumbered on revision for ease of location.

(4) Subsections (2)(a)(I)(A) and (4)(a) were amended and (5) was enacted in House Bill 06-1018. Those amendments and enactment were superseded by the repeal and reenactment of the section in House Bill 06-1398.

(5) Subsection (3) was amended in Senate Bill 06-219. Those amendments were superseded by the repeal and reenactment of the section in House Bill 06-1398.

(6) Amendments to the introductory portion to subsection (4)(a) by Senate Bill 09-228 and Senate Bill 09-278 were harmonized.

(7) Subsection (6)(c) provided for the repeal of subsection (6), effective July 1, 2015. (See L. 2014, pp. 1616 and 1619.)

**Cross references:** For the old age pension fund, see article XXIV of the state constitution and § 26-2-115.

**39-26-123.1. Credit of sales and use tax receipts to Colorado water conservation board construction fund - terminates July 1, 1982 - repeal. (Repealed)**

**Source: L. 79:** Entire section added, p. 1362, § 3, effective July 1.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective July 1, 1982. (See L. 79, p. 1362.)

**39-26-124. Applicability to banks.** The provisions of this part 1 shall apply to national banking associations and to banks organized and chartered under the laws of this state.

**Source: L. 70:** p. 399, § 1. **C.R.S. 1963:** § 138-5-44.

**39-26-125. Limitations.** The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this part 1 shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable, except as set forth in section 29-2-106.1 (5)(b); nor shall any lien continue after such period, 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, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes, may be begun, at any time. Before the expiration of such period of limitation, the taxpayer and the executive director of the department of revenue may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

**Source: L. 43:** p. 541, § 1. **CSA:** C. 144, § 47. **CRS 53:** § 138-6-42. **C.R.S. 1963:** § 138-5-42. **L. 2017:** Entire section amended, (SB 17-112), ch. 144, p. 484, § 4, effective April 18.

**39-26-126. Legislative finding as to revenues for old age pension fund.** The general assembly finds that sections 39-26-105 (1), 39-26-106 (2)(a), 39-26-109, 39-26-112, 39-26-717 (1), and 39-26-714 (1) repeal no law that provides revenue for the old age pension fund and amend no law so as to reduce the revenue provided for the old age pension fund, except as is allowed by article XXIV of the state constitution.

**Source: L. 65:** p. 1127, § 9. **C.R.S. 1963:** § 138-5-43. **L. 76:** Entire section amended, p. 319, § 77, effective May 20. **L. 77:** Entire section amended, p. 1810, § 2, effective May 14. **L. 79:** Entire section amended, p. 1429, § 12, effective July 3. **L. 2002:** Entire section amended, p. 1363, § 21, effective July 1. **L. 2004:** Entire section amended, p. 1045, § 16, effective July 1.

**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, and except as set forth in subsection (3) of this section, 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 10-1189, enacted in 2010;

(b) House Bill 10-1190, enacted in 2010;

(c) House Bill 10-1191, enacted in 2010;

(d) House Bill 10-1194, enacted in 2010;

(e) House Bill 10-1195, enacted in 2010.

(2) Except as set forth in subsection (3) of this section, 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.

(3) Beginning January 1, 2014, subsection (1) of this section does not apply to the regional transportation district established by article 9 of title 32, C.R.S., and the scientific and cultural facilities district established by article 13 of title 32, C.R.S., which levy sales and use tax upon every transaction or other incident with respect to which a sales and use tax is levied by the state.

**Source: L. 2010:** Entire section added, (HB 10-1189), ch. 5, p. 39, § 3, effective February 24; entire section added, (HB 10-1190), ch. 6, p. 42, § 4, effective February 24; entire section added, (HB 10-1191), ch. 7, p. 47, § 5, effective February 24; entire section added, (HB 10-1194), ch. 10, p. 60, § 3, effective February 24; entire section added, (HB 10-1195), ch. 11, p. 63, § 4, effective February 24. **L. 2013:** Entire section amended, (HB 13-1272), ch. 337, p. 1965, § 4, effective January 1, 2014.

**Editor's note:** The provisions of this section, as added by House Bill 10-1189, House Bill 10-1190, House Bill 10-1191, House Bill 10-1194, and House Bill 10-1195, were harmonized.

**Cross references:** For the legislative declaration in the 2013 act amending this section, see section 1 of chapter 337, Session Laws of Colorado 2013.

**39-26-128. Uniform sales and use tax base - definition.** (1) (a) The department of revenue shall make recommendations to the general assembly regarding the establishment of a revenue neutral uniform sales and use tax base throughout the state. In developing the recommendations, the department shall consult with representatives of the Colorado municipal league, or its successor entity, and Colorado counties, incorporated, or its successor entity. Such representatives must have experience in writing sales and use tax policy and must represent constituents of local taxing jurisdictions. The recommendations shall include:

(I) A uniform definition of tangible personal property;

(II) A uniform list of items that are exempt from taxation by the state and local taxing jurisdictions;

(III) Uniform definitions of the tax-exempt items;

(IV) Rate changes, including consideration of rates of zero percent that would be necessary to achieve revenue neutrality for the state and any local taxing jurisdiction; and

(V) Any other recommendations deemed appropriate by the department of revenue regarding the establishment of a revenue neutral uniform sales and use tax base.

(b) (I) For purposes of this subsection (1), a uniform sales and use tax base is revenue neutral if, when substituted for a jurisdiction's prior sales and use tax base, the result is no more than a de minimis change in tax revenue for the substituting jurisdiction.

(II) In estimating revenue neutrality, the department of revenue shall use the best information it has available.

(c) For purposes of this subsection (1), a "local taxing jurisdiction" means a city, town, municipality, county, special district, or authority authorized to levy a sales tax pursuant to title 24, 25, 29, 30, 31, 32, 37, or 42, C.R.S., and cities, cities and counties, or towns governed by a home rule charter that impose a sales or use tax in the state.

(2) The department of revenue shall include the recommendations made pursuant to subsection (1) of this section in a report to the general assembly pursuant to section 24-1-136 (9), C.R.S. The report must be submitted to the general assembly no later than December 31, 2013, and made available to the public on a website maintained by the department of revenue.

(3) Members of the general assembly are encouraged to consider the recommendations of the department of revenue pursuant to this section and, if viewed favorably, to introduce legislation and, if appropriate, a house or senate concurrent resolution, during the second regular session of the sixty-ninth general assembly to establish a revenue neutral uniform statewide sales and use tax base.

**Source: L. 2013:** Entire section added, (HB 13-1288), ch. 340, p. 1979, § 1, effective May 28.

**39-26-129. Refund for property used in rural broadband service - legislative declaration - definitions.** (1) The general assembly declares that the intended purpose of the tax refund created in this section is to encourage broadband providers to deploy broadband infrastructure in rural areas of the state.

(2) As used in this section, unless the context otherwise requires:

(a) "Broadband provider" means a person that provides broadband service.

(b) "Broadband service" means any communications service having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, data, graphics, and video at speeds of at least four megabits per second for download and one megabit per second for upload or the federal communications commission's definition of broadband service, whichever is faster.

(c) "Target area" means the unincorporated part of a county or a municipality with a population of less than thirty thousand people, according to the most recently available population statistics of the United States bureau of the census.

(3) Except as provided in subsection (5) of this section, for the calendar year commencing January 1, 2014, and for each calendar year thereafter, a broadband provider is allowed to claim a refund of all the state sales and use tax the provider pays pursuant to parts 1 and 2 of this article for tangible personal property that is installed in a target area for the provision of broadband service.

(4) To claim the refund allowed by subsection (3) of this section, a taxpayer must submit a refund application to the department of revenue, on a form provided by the department, no earlier than January 1 and no later than April 1 of the calendar year following the calendar year in which the tax is paid. Along with the application, the taxpayer must provide proof of the state sales and use taxes paid by the broadband provider in the immediately preceding calendar year and proof that the tangible personal property was deployed in a target area for the provision of broadband service. A taxpayer must also provide any additional information with the application that the department of revenue requires 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 taxpayer agrees to furnish records of all such expenditures to the department of revenue upon request. The department shall not refund any moneys to a taxpayer unless the taxpayer has complied with this subsection (4).

(5) The total amount of the refunds made under this section may not exceed one million dollars for a calendar year. The department of revenue shall not pay a refund for a calendar year until after the application deadline set forth in subsection (4) of this section has passed. If the total amount of approved refunds exceeds one million dollars, the department shall prorate the refunds made to all taxpayers.

**Source: L. 2014:** Entire section added, (HB 14-1327), ch. 149, p. 510, § 7, effective August 6.

**Cross references:** For the short title ("Broadband Deployment Act") in HB 14-1327, see section 1 of chapter 149, Session Laws of Colorado 2014.

PART 2

**Cross references:** For the use of a method in lieu of any required oath or affirmation by a person making any return or any application for refund or protest pursuant to this part 2, see § 24-12-108.

**Law reviews:** For article, "Colorado and the 'Amazon Tax'--Recent History", see 41 Colo. Law. 43 (June 2012).

**39-26-201. Definitions.** In addition to the definitions in section 39-26-102, as used in this part 2, unless the context otherwise requires:

(1) "Acquisition charges or costs" includes "purchase price", as defined in section 39-26-102 (7).

(2) "Person" means an individual, corporation, limited liability company, partnership, firm, joint venture, association, estate, trust, receiver, or group acting as a unit and includes the plural as well as the singular number.

(3) "Storage" or "storing" means any keeping or retention of, or exercise of dominion or control over, tangible personal property in this state.

**Source: L. 37:** p. 1101, § 1. **CSA:** C. 144, § 40. **CRS 53:** § 138-6-39. **C.R.S. 1963:** § 138-5-39. **L. 77:** Entire section R&RE, p. 290, § 73, effective June 29. **L. 90:** (2) amended, p. 458, § 41, effective April 18.

**39-26-202. Authorization of tax.** (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1) and in subsection (3) of this section, there is imposed and shall be collected from every person in this state a tax or excise at the rate of three percent of storage or acquisition charges or costs for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail.

(b) On and after January 1, 2001, there is imposed and shall be collected from every person in this state a tax or excise at the rate of two and ninety one-hundredths percent of storage or acquisition charges or costs for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail.

(c) Such tax shall be payable to and shall be collected by the executive director of the department of revenue and shall be computed in accordance with schedules or systems approved by said executive director. The transfer of wireless telecommunication equipment as an inducement to enter into or continue a contract for telecommunication services that are taxable pursuant to part 1 of this article shall not be construed to be storage, use, or consumption of such equipment by the transferor.

(2) Notwithstanding the three percent rate provisions of subsection (1) of this section, for the period May 1, 1983, through July 31, 1984, the rate of the tax imposed pursuant to this section shall be three and one-half percent.

(3) (a) Notwithstanding the rate provisions of paragraphs (a) and (b) of subsection (1) of this section, for any fiscal year commencing on or after July 1, 2000, if the revenue estimate prepared by the staff of the legislative council in June of the calendar year in which that fiscal year ends indicates that the aggregate amount of state revenues will exceed the limitation on

state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution for that fiscal year by three hundred fifty million dollars or more, as adjusted pursuant to paragraph (b) of this subsection (3), and voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year, the tax imposed pursuant to subsection (1) of this section shall be imposed upon any sale of a new or used commercial truck, truck tractor, tractor, semitrailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of twenty-six thousand pounds for the period commencing on July 1 of the calendar year in which that fiscal year ends through June 30 of the immediately subsequent calendar year, at a rate of one one-hundredth of one percent.

(b) (I) No later than October 1 of any given calendar year commencing on or after January 1, 2001, the executive director shall annually adjust the dollar amount specified in paragraph (a) of this subsection (3) to reflect the rate of growth of Colorado personal income for the calendar year immediately preceding the calendar year in which such adjustment is made. For purposes of this subparagraph (I), "the rate of growth of Colorado personal income" means the percentage change between the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year immediately preceding the calendar year in which the adjustment is made and the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year prior to the calendar year immediately preceding the calendar year in which the adjustment is made.

(II) Upon calculating the adjustment of said dollar amount in accordance with subparagraph (I) of this paragraph (b), the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of the adjusted dollar amount and the basis for the adjustment. Such written notification shall be given within five working days after such calculation is completed, but such written notification shall be given no later than October 1 of the calendar year.

(III) It is the function of the executive committee of the legislative council to review and approve or disapprove such adjustment of said dollar amount within twenty days after receipt of such written notification from the executive director. Any adjustment that is not approved or disapproved by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such adjustment, such automatic approval shall not occur unless the executive committee does not approve or disapprove such adjustment after the conclusion of such hearing. Any hearing conducted by the executive committee pursuant to this subparagraph (III) shall be concluded no later than twenty-five days after receipt of such written notification from the executive director.

(IV) (A) If the executive committee of the legislative council disapproves any adjustment of said dollar amount calculated by the executive director pursuant to this paragraph (b), the executive committee shall specify such adjusted dollar amount to be utilized by the executive director. Any adjusted dollar amount specified by the executive committee pursuant to this sub-subparagraph (A) shall be calculated in accordance with the provisions of this paragraph (b).

(B) For the purpose of determining whether the use tax rate reduction authorized by paragraph (a) of this subsection (3) is to be allowed for any given income tax year, the executive

director shall not utilize any adjusted dollar amount that has not been approved pursuant to subparagraph (III) of this paragraph (b) or otherwise specified pursuant to sub-subparagraph (A) of this subparagraph (IV).

(V) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any calendar year commencing on or after January 1, 2001, that seek authorization for the state to retain and spend all or any portion of the amount of excess state revenues for the state fiscal year ending during said calendar year, the executive director shall not determine whether the use tax rate reduction authorized by paragraph (a) of this subsection (3) shall be allowed and shall not promulgate rules containing said use tax rate reduction until the impact of the results of said election on the amount of the excess state revenues to be refunded is ascertained.

(c) The general assembly finds and declares that reducing the rate of the use tax imposed on the storage, use, or consumption of a new or used commercial truck, truck tractor, tractor, semitrailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of twenty-six thousand pounds is a reasonable method of refunding excess state revenues required to be refunded in accordance with section 20 (7)(d) of article X of the state constitution.

(d) Any state use tax rate reduction allowed pursuant to this section shall be published in rules promulgated by the executive director of the department of revenue in accordance with article 4 of title 24, C.R.S., and shall be included in such notices and publications as are customarily issued by the department of revenue on at least a quarterly basis concerning exemptions from the state sales and use tax.

**Source: L. 37:** p. 1098, § 1. **CSA:** C. 144, § 34. **L. 45:** p. 580, § 5. **CRS 53:** § 138-6-33. **C.R.S. 1963:** § 138-5-33. **L. 65:** p. 1125, § 6. **L. 65, 1st Ex. Sess.:** p. 17, § 2. **L. 77:** Entire section R&RE, p. 1825, § 2, effective July 1. **L. 83:** Entire section amended, p. 1518, § 4, effective March 22; (2) amended, p. 2098, § 7, effective October 13. **L. 84:** (2) amended, p. 1142, § 5, effective June 7. **L. 96:** (1) amended, p. 758, § 3, effective May 22. **L. 2000:** (1) amended and (3) added, p. 1434, § 4, effective May 31.

**Cross references:** For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 160, Session Laws of Colorado 1996.

**39-26-203. Exemptions - definitions. (Repealed)**

**Source: L. 37:** p. 1098, § 1. **CSA:** C. 144, § 35. **L. 43:** p. 540, § 2. **L. 45:** p. 577, § 1. **CRS 53:** § 138-6-34. **L. 59:** p. 802, §§ 4, 5. **C.R.S. 1963:** § 138-5-34. **L. 67:** p. 349, § 1. **L. 73:** p. 242, § 25. **L. 75:** (1)(o) amended, p. 1468, § 16, effective July 18. **L. 76:** (1)(p) and (1)(q) added, p. 788, § 2, effective July 1. **L. 77:** (1)(c) R&RE and (1)(p) and (1)(q) amended, pp. 1829, 1831, § 2, effective July 1; (1)(r) and (1)(s) added, p. 1834, § 2, effective July 20; (1)(c) R&RE and (1)(j) amended, p. 1837, § 2, effective January 1, 1978. **L. 78:** (1)(e) amended, p. 507, § 3, effective March 8; (1)(t) and (1)(u) added, p. 515, § 2, effective April 4; (1)(v) added, p. 512, effective May 5; (1)(a) amended, p. 509, § 4, effective July 1. **L. 79:** (1)(w) added, p. 1466, § 5, effective June 7; (1)(y) added, p. 1428, § 11, effective July 1; (1)(v) amended, p. 1428, § 11, effective July 3; (1)(c) amended, (1)(v) repealed, and (1)(v.1), (1)(x), and (1)(z) added, pp. 1428, 1440, 1501, §§ 11, 27, 28, effective January 1, 1980. **L. 80:** (1)(z) amended, p.

733, § 2, effective May 20. **L. 82:** (1)(z) amended, p. 571, § 3, effective April 27; (1)(f) and (1)(g) amended, p. 569, § 3, effective July 1. **L. 84:** (1)(aa) added, p. 1021, § 2, effective March 5. **L. 88:** (1)(c) amended, p. 1090, § 5, effective January 1, 1989. **L. 90:** (1)(bb) added, p. 1741, § 3, effective April 17. **L. 91:** (1)(c) amended, p. 2397, § 21, effective July 1; (1)(cc) added, p. 1968, § 2, effective July 1, 1992. **L. 91, 1st Ex. Sess.:** (1)(c) amended, p. 7, § 10, effective July 1. **L. 92:** (1)(dd) and (1)(ee) added, p. 2259, § 2, effective July 1. **L. 94:** (1)(o) amended, p. 2568, § 89, effective January 1, 1995. **L. 95:** (1)(g) amended, p. 1214, § 4, effective May 31. **L. 96:** (1)(dd) and (1)(ee) amended, p.1242, § 101, effective August 7. **L. 98:** (1)(ff) added, p. 494, § 1, effective April 22; (1)(gg) added, p. 736, § 4, effective May 18. **L. 99:** (1)(ll) added, p. 980, § 2, effective May 28; (1)(e) amended, p. 1272, § 3, effective June 3; (1)(bb) RC&RE, p. 1298, § 3, effective June 3; (1)(hh) and (1)(ii) added, p. 1274, § 2, effective July 1; (1)(kk) added, p. 1304, § 2, effective July 1; (1)(mm) added, p. 1324, § 3, effective July 1; (1)(jj) added, p. 1355, § 3, effective January 1, 2000. **L. 2000:** IP (1)(hh)(II) amended, p. 550, § 4, effective July 1; (1)(gg) amended, p. 736, § 4, effective August 2; (1)(c)(I) amended, p. 1938, § 19, effective October 1. **L. 2001:** IP(1)(hh)(II) amended, p. 162, § 2, effective July 1; IP(1)(hh)(II) amended, p. 382, § 2, effective July 1; (1)(nn) added, p. 1545, § 2, effective July 1. **L. 2003:** (1)(c)(I) amended, p. 1818, § 7, effective August 6. **L. 2004:** (1)(b) amended, p. 653, § 2, effective April 26; entire section repealed, p. 1016, § 1, effective July 1.

**Editor's note:** (1) The provisions of this section were relocated to part 7 of this article. For the location of specific provisions, see the editor's note following each section in said part 7 and the comparative tables located in the back of the index.

(2) House Bill 04-1241 amended subsection (1)(b), effective April 26, 2004, but that amendment did not take effect since this section was repealed by Senate Bill 04-087, effective July 1, 2004. The amendment to subsection (1)(b) by House Bill 04-1241 was relocated to § 39-26-713 (2)(b) and harmonized with Senate Bill 04-087.

**39-26-204. Periodic return - collection.** (1) (a) Every person subject to the provisions of this part 2 who uses, stores, or consumes tangible personal property in the conduct of a business in this state, which property is purchased either inside or outside this state, and who has not paid the sales or use tax imposed by this article to a retailer shall make a return and remit the tax imposed by this part 2 to the executive director of the department of revenue for the preceding period covered by the remittance on forms prescribed by him, showing in detail the tangible personal property stored, used, or consumed by said person in the conduct of his business within the state in the preceding period covered by the remittance and on which property the said sales or use tax has not been paid. Every person subject to the provisions of this part 2 shall maintain monthly records of the amount of tax due. At such time as the cumulative tax due at the end of any month is in excess of three hundred dollars, such person shall make a return and remit the tax due before the twentieth day of the following month. If the total tax due in a calendar year is less than three hundred dollars, such person shall make a single return and remittance for such calendar year before January 20 of the following calendar year.

(b) Every person who is subject to the provisions of this part 2 who uses, stores, or consumes tangible personal property not in the conduct of a business, which is purchased either inside or outside this state, who has not paid the sales or use tax imposed by this article to a retailer, shall make a return and remit the tax annually, at the time the Colorado income tax of

such person is due and payable as provided in article 22 of this title, on forms prescribed by the executive director, showing in detail the tangible personal property stored, used, or consumed by said persons within this state for the preceding taxable year.

(c) All such returns shall be subscribed by the taxpayer or his agent and shall contain a written declaration that it is made under the penalties of perjury in the second degree.

(2) Every retailer doing business in this state and making sales of tangible personal property for storage, use, or consumption in the state, and not exempted as provided in part 7 of this article, at the time of making such sales or taking the orders therefor, or, if the storage, use, or consumption of such tangible personal property is not then taxable under this part 2, then at the time such storage, use, or consumption becomes taxable under this part 2, shall collect the tax imposed by section 39-26-202, from the purchaser and give to the purchaser a receipt therefor, which receipt shall identify the property, the date sold or the date ordered, and the tax collected and paid. The tax required to be collected by such retailer from such purchaser shall be displayed separately from the advertised price listed on the forms or advertising matter on all sales checks, orders, sales slips, or other proof of sales.

(3) It is unlawful for such retailer or agent to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by such retailer or agent, or that it will not be added to the selling price of the property sold, or, if added, that it or any part thereof will be refunded. The tax required to be collected by such retailer or agent shall be remitted to the state in like manner as otherwise provided in this article for the remittance of sales taxes collected by retailers, and all such retailers or agents collecting the tax imposed by section 39-26-202 shall make returns on forms provided by the executive director at such times and in such manner as is provided for the making of returns in the payment of the sales taxes. The procedure for assessing and collecting said taxes from such retailers or agents, or from the user when not paid to a retailer or agent, shall be the same as provided in this article and article 21 of this title for the collection of sales taxes, including collection by distraint warrant, and said taxes due and owing from any retailer or agent for the storage, use, or consumption of tangible personal property shall bear interest and be subject to the same penalties as is provided in this article and article 21 of this title for nonpayment or delinquencies of sales taxes.

(4) All sums of money paid by the purchaser to the retailer as taxes imposed by this article shall be and remain public money, the property of the state in the hands of such retailer, and he shall hold the same in trust for the sole use and benefit of the state until paid to the executive director of the department of revenue. For failure to so pay to the executive director, such retailer shall be punished as provided by law.

(5) (a) If a person neglects or refuses to make a return in payment of the tax or to pay any tax as required by this article, the executive director of the department of revenue shall make an estimate, based upon the information that may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent thereof and interest on the delinquent taxes at the rate imposed under section 39-21-110.5, plus one-half of one percent per month from the date when due. Promptly thereafter, the executive director shall give to the delinquent taxpayer written notice of the estimated taxes, penalty, and interest, which notice shall be sent by first-class mail as set forth in section 39-21-105.5.

(b) Such estimate shall thereupon become a notice of deficiency as provided in section 39-21-103. At the delinquent taxpayer's request, a hearing shall be held and the executive

director shall make a final determination pursuant to said section. The taxpayer may appeal said final determination in the manner provided in section 39-21-105.

**Source: L. 37:** p. 1100, § 1. **CSA:** C. 144, § 36. **L. 39:** p. 507, § 4. **CRS 53:** § 138-6-35. **C.R.S. 1963:** § 138-5-35. **L. 67:** pp. 333, 523, §§ 2, 2. **L. 72:** p. 573, § 64. **L. 84:** (1)(a) amended, p. 1022, § 1, effective January 1, 1985. **L. 85:** (4) and (5) added, p. 1258, § 14, effective January 1, 1986. **L. 96:** (5)(a) amended, p. 167, § 10, effective July 1. **L. 2004:** (2) amended, p. 1045, § 17, effective July 1.

**39-26-204.5. Remittance of tax - electronic database - retailer held harmless.** The provisions of section 39-26-105.3 allowing vendors to be held harmless for collecting the incorrect amount of tax due on a purchase when relying on a certified database to determine the jurisdictions to which tax is owed shall apply to any retailer doing business in this state and making sales of tangible personal property for storage, use, or consumption in the state that collects and remits use tax to the department of revenue as provided by law.

**Source: L. 2004:** Entire section added, p. 768, § 3, effective May 17.

**Cross references:** For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 231, Session Laws of Colorado 2004.

**39-26-204.6. Remittance of tax - determination of address - motor vehicle dealer held harmless.** The hold harmless provisions of section 39-26-105.4 shall apply to any licensed motor vehicle dealer doing business in this state and making sales of motor vehicles for storage, use, or consumption in the state that collects and remits use tax to the department of revenue as provided by law.

**Source: L. 2009:** Entire section added, (HB 09-1230), ch. 232, p. 1066, § 2, effective August 5.

**39-26-205. Tax constitutes lien - exemption from lien.** (1) The tax imposed by section 39-26-202 shall be a first and prior lien on the tangible personal property stored, used, or consumed, subject only to any valid mortgage or other liens of record on and prior to the recording of notice as required by section 39-26-118 (3), and, when such tax is collected by retailers or agents, shall be a first and prior lien on all the stock of goods or business fixtures of or used by such retailer, excepting goods sold in the ordinary course of business, which lien shall have precedence over all other liens of whatsoever kind or nature, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.

(2) Upon default of payment thereof, the executive director of the department of revenue, after demand upon the person owing such tax, may bring an action in his name as executive director in attachment and seize property as authorized by this section to secure the payment of said tax, interest, and penalties. In any such proceeding, no bond shall be required of the executive director, nor shall any sheriff require from the executive director an indemnifying

bond for executing the writ of attachment or levy, and no sheriff shall be liable in damages when acting in accordance with such writs. The remedies provided in this section shall be in addition to all other remedies.

(3) Any taxpayer or person in possession shall provide a copy of any lease pertaining to the assets and property described in subsection (1) of this section to the department of revenue within ten days after seizure by the department of such assets and property. The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in subsection (1) of this section. The real or personal property of an owner who has made a bona fide lease to any taxpayer described in subsection (1) of this section shall be exempt from the lien created therein if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in subsection (1) of this section; except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(3.5) Any coin-operated vending machine or video or other game machine shall be exempt from the lien created in subsection (1) of this section if:

(a) The machine is placed on the retailer's premises under the terms of a lease or other agreement under which the retailer is given no right to become the owner of the machine;

(b) The machine is plainly marked in a location accessible to agents of the department of revenue with information sufficient to permit identification of the owner of said property; and

(c) The owner of the machine has filed with the department of revenue a schedule listing the machine by serial number and including thereon the owner's full name and the address of his business and such other information as the executive director of the department of revenue may require. To protect the anonymity of owners of property, the executive director of the department of revenue may permit the marking of property covered by this subsection (3.5) to be marked using numbers or other coded identification.

(4) Any retailer who is in possession of property under the terms of a lease, which property is exempt from the lien as provided in this section, may be required by the executive director to remit tax funds due at more frequent intervals than monthly, but no more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

**Source: L. 37:** p. 1100, § 1. **CSA:** C. 144, § 37. **L. 39:** p. 508, § 5. **CRS 53:** § 138-6-36. **C.R.S. 1963:** § 138-5-36. **L. 64:** p. 327, § 316. **L. 69:** p. 1138, § 4. **L. 77:** (3) amended, p. 1803,

§ 3, effective June 19. **L. 89:** (3.5) added, p. 1510, § 3, effective April 6. **L. 92:** (3) amended, p. 2202, § 5, effective April 16.

**39-26-206. Failure to make return.** Any person who willfully fails or refuses to make the return required in section 39-26-204, or who makes a false or fraudulent return, or who willfully fails to pay any tax owing by him, and any person who aids or abets another in an attempt to evade such tax, shall be punished as provided by section 39-21-118.

**Source: L. 37:** p. 1101, § 1. **CSA:** C. 144, § 38. **CRS 53:** § 138-6-37. **C.R.S. 1963:** § 138-5-37. **L. 85:** Entire section amended, p. 1259, § 15, effective January 1, 1986.

**39-26-207. Penalty interest on unpaid tax.** Any tax due and unpaid under this part 2 shall be a debt to the state, and shall draw interest at the rate imposed under section 39-21-110.5, in addition to the interest provided by section 39-21-109, from the time when due until paid. The executive director of the department of revenue may recover at law the amount of such tax and interest in a suit instituted by the attorney general in the name of the executive director of the department of revenue, and this remedy shall be in addition to all other remedies.

**Source: L. 37:** p. 1101, § 1. **CSA:** C. 144, § 39. **L. 39:** p. 509, § 6. **CRS 53:** § 138-6-38. **C.R.S. 1963:** § 138-5-38. **L. 64:** p. 820, § 6. **L. 65:** p. 1150, § 3. **L. 81:** Entire section amended, p. 1867, § 13, effective June 8.

**39-26-208. Collection of use tax - motor vehicles.** (1) No registration shall be made of a motor or other vehicle for which registration is required and no certificate of title shall be issued for such vehicle or for a mobile home by the department of revenue or its authorized agent until any tax due upon the storage, use, or consumption thereof pursuant to section 39-26-202 or imposed by ordinance of any municipality or resolution of any county has been paid.

(2) If an applicant for registration and certificate of title for any motor or other vehicle or for a certificate of title for a mobile home fails to show payment of the taxes applicable under this section by means of proper receipts therefor, the department of revenue or its authorized agent shall collect all such applicable taxes at the time such application is made.

(3) Revenues due the state and collected pursuant to this section shall be distributed as are other revenues under this part 2, and revenues due any municipality so collected shall be distributed as specified by contract entered into with the department of revenue pursuant to section 24-35-110, C.R.S.

(4) To facilitate collection of taxes as provided in this section, the governing body of each municipality which has imposed a tax upon storage, use, or consumption shall certify to the department of revenue and to the county clerk and recorder of the county in which such municipality is located a true copy of its current applicable tax ordinances and shall likewise certify any subsequent changes therein.

**Source: L. 37:** p. 1101, § 1. **CSA:** C. 144, § 41. **CRS 53:** § 138-6-40. **C.R.S. 1963:** § 138-5-40. **L. 71:** p. 1264, § 2. **L. 73:** p. 1480, § 6. **L. 75:** (1) amended, p. 964, § 7, effective July 14. **L. 77:** (1) and (2) amended, p. 1743, § 7, effective January 1, 1978.

**39-26-209. Rules and regulations.** The administration of this part 2 is vested in the executive director of the department of revenue, and he shall prescribe forms, rules, and regulations for the administration and enforcement of this part 2.

**Source: L. 37:** p. 1102, § 1. **CSA:** C. 144, § 42. **CRS 53:** § 138-6-41. **C.R.S. 1963:** § 138-5-41.

**39-26-210. Limitations.** The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this part 2 shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable, except as set forth in section 29-2-106.1 (5)(b); nor shall any lien continue after such period, 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, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the executive director of the department of revenue may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

**Source: L. 43:** p. 541, § 1. **CSA:** C. 144, § 47. **CRS 53:** § 138-6-42. **C.R.S. 1963:** § 138-5-42. **L. 2017:** Entire section amended, (SB 17-112), ch. 144, p. 483, § 2, effective April 18.

**39-26-211. Applicability to banks.** The provisions of this part 2 shall apply to national banking associations and to banks organized and chartered under the laws of this state.

**Source: L. 70:** p. 399, § 1. **C.R.S. 1963:** § 138-5-44.

**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, and except as set forth in subsection (3) of this section, 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 10-1189, enacted in 2010;
(b) House Bill 10-1190, enacted in 2010;
(c) House Bill 10-1191, enacted in 2010;
(d) House Bill 10-1194, enacted in 2010;
(e) House Bill 10-1195, enacted in 2010.

(2) Except as set forth in subsection (3) of this section, 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.

(3) Beginning January 1, 2014, subsection (1) of this section does not apply to the regional transportation district established by article 9 of title 32, C.R.S., and the scientific and cultural facilities district established by article 13 of title 32, C.R.S., which levy sales and use tax upon every transaction or other incident with respect to which a sales and use tax is levied by the state.

**Source: L. 2010:** Entire section added, (HB 10-1189), ch. 5, p. 39, § 4, effective February 24; entire section added, (HB 10-1190), ch. 6, p. 43, § 5, effective February 24; entire section added, (HB 10-1191), ch. 7, p. 48, § 6, effective February 24; entire section added, (HB 10-1194), ch. 10, p. 60, § 4, effective February 24; entire section added, (HB 10-1195), ch. 11, p. 64, § 5, effective February 24. **L. 2013:** Entire section amended, (HB 13-1272), ch. 337, p. 1966, § 5, effective January 1, 2014.

**Editor's note:** The provisions of this section, as added by House Bill 10-1189, House Bill 10-1190, House Bill 10-1191, House Bill 10-1194, and House Bill 10-1195, were harmonized.

**Cross references:** For the legislative declaration in the 2013 act amending this section, see section 1 of chapter 337, Session Laws of Colorado 2013.

## PART 3

## SALES AND USE TAX - COLLECTION OF TAX BY OUT-OF-STATE RETAILERS

**39-26-301 to 39-26-307. (Repealed)**

**Editor's note:** (1) This part 3 was added in 1990 and was not amended prior to its repeal in 1994. For the text of this part 3 prior to 1994, consult the 1993 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-26-306 provided for the repeal of this part 3, effective December 31, 1994. (See L. 90, p. 1745.)

## PART 4

## SALES AND USE TAX REFUND FOR BIOTECHNOLOGY, CLEAN TECHNOLOGY, AND MEDICAL DEVICES

**Cross references:** For the legislative declaration contained in the 1999 act enacting this part 4, see section 2 of chapter 184, Session Laws of Colorado 1999.

**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 technologies;

(b) Products and technologies used in renewable energy development and generation on a commercial scale; or

(c) Products and technologies that enhance the efficient extraction, collection, storage, distribution, production, or consumption of energy from any type of source.

(d) Repealed.

(3) "Medical technology" means a therapeutic or diagnostic machine or tool used to improve human or animal health.

(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 medical technology or clean technology taxpayer" means a taxpayer that:

(a) Is 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;

(b) Employs thirty-five or fewer full-time employees in Colorado;

(c) Is headquartered in Colorado or has more than fifty percent of its employees in Colorado; and

(d) Conducts research and development of medical technology or clean technology.

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

(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.

**Source: L. 99:** Entire part added, p. 609, § 2, effective May 17. **L. 2009:** Entire part amended, (HB 09-1035), ch. 371, p. 2011, § 1, effective August 5. **L. 2015:** (2)(b), (2)(c), (3), and (5) amended and (2)(d) repealed, (HB 15-1180), ch. 227, p. 845, § 1, effective August 5.

**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).

**Source: L. 99:** Entire part added, p. 610, § 2, effective May 17. **L. 2000:** (2) amended, p. 1869, § 99, effective August 2. **L. 2009:** Entire part amended, (HB 09-1035), ch. 371, p. 2012, § 1, effective August 5.

**39-26-403. Refund of state sales and use tax for medical technology and clean technology - application requirements and procedures - legislative declaration - repeal.** (1) (a) The general assembly finds and declares that:

(I) Colorado's medical technology and clean technology industries directly employ over thirty-three thousand highly skilled workers and contribute billions of dollars to the state's economy;

(II) These industries are capital intensive with the need for steady investments in research and development in order to produce the products that compete in a global economy;

(III) While the medical technology and clean technology industries are currently thriving here, there is strong competition from other states, which are creating tax breaks to attract and grow these innovative companies; and

(IV) A sales and use tax refund for items used in research and development for medical technology and clean technology would help the state retain, grow, and attract companies to Colorado and potentially allow these companies to reinvest these funds to purchase additional needed equipment and hire more employees.

(b) Now, therefore, the general assembly declares that the intended purpose of the tax refund created in this section is to create an incentive to retain, grow, and attract businesses in the medical technology and clean technology industries.

(2) (a) For the 2015 calendar year and each calendar year thereafter prior to January 1, 2018, a qualified medical technology or clean technology taxpayer is allowed to claim a refund in an amount up to the limit established in paragraph (b) of this subsection (2) for state sales and use tax paid by the taxpayer under parts 1 and 2 of this article for tangible personal property used in Colorado directly and predominately in research and development of medical technology or clean technology.

(b) The maximum sales and use tax refund that a qualified medical technology or clean technology taxpayer is eligible to receive in a calendar year under this section is fifty thousand dollars.

(3) To claim the refund allowed by subsection (2) of this section, a qualified medical technology or clean technology taxpayer must submit a refund application to the department of revenue on a form provided by the department no earlier than January 1 and no later than April 1 of the calendar year following the calendar year in which the tax is paid. Along with the application, the taxpayer must provide proof of the state sales and use taxes the taxpayer paid in the immediately preceding calendar year. A taxpayer must also provide any additional information with the application that the department of revenue requires 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 the expenditures, a statement that the taxpayer agrees to furnish records of all the expenditures to the department of revenue upon request, and the number of persons who are employed on a full-time basis by the taxpayer. The department shall not refund any moneys to a taxpayer unless the taxpayer has complied with this subsection (3).

(4) This section is repealed, effective January 1, 2019.

**Source: L. 2009:** Entire part and (3)(b) amended, (HB 09-1035), ch. 371, pp. 2013, 2014, §§ 1, 2, effective August 5. **L. 2015:** Entire section RC&RE, (HB 15-1180), ch. 227, p. 846, § 2, effective August 5.

**Editor's note:** Prior to the recreation of this section in 2015, subsection (4) provided for the repeal of this section, effective July 1, 2014. (See L. 2009, p. 2013.)

PART 5

SALES AND USE TAX REFUND FOR
POLLUTION CONTROL EQUIPMENT

**39-26-501. Definitions. (Repealed)**

**Source: L. 2000:** Entire part added, p. 1462, § 1, effective August 2. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

**39-26-502. Fiscal years commencing on or after July 1, 1999 - temporary refund of state sales and use tax paid for pollution control equipment to refund state revenues exceeding TABOR limit - application requirements and procedures - legislative declaration. (Repealed)**

**Source: L. 2000:** Entire part added, p. 1464, § 1, effective August 2. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

PART 6

SALES AND USE TAX REFUND FOR
TANGIBLE PERSONAL PROPERTY
USED FOR RESEARCH AND DEVELOPMENT

**39-26-601. Definitions. (Repealed)**

**Source: L. 2001:** Entire part added, p. 1464, § 1, effective August 8. **L. 2004:** (1) amended, p. 1045, § 18, effective July 1. **L. 2007:** (1) amended, p. 1176, § 4, effective May 23. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

**39-26-602. Fiscal years commencing on or after July 1, 2002 - temporary refund of state sales and use tax paid for tangible personal property used for research and development to refund state revenues exceeding TABOR limit - application requirements and procedures - legislative declaration. (Repealed)**

**Source: L. 2001:** Entire part added, p. 1465, § 1, effective August 8. **L. 2004:** (1), (2), and (3) amended, p. 1045, § 19, effective July 1. **L. 2007:** (1), (2), and (3) amended, p. 1176, § 5, effective May 23. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

PART 7

SALES AND USE TAX EXEMPTIONS

**Editor's note:** This entire part 7 was added in 2004 and includes the relocation of provisions formerly contained in §§ 39-26-114 and 39-26-203. A comparative table showing the relocations is contained in the back of the index.

**39-26-701. Definitions.** In addition to the definitions in section 39-26-102, as used in this part 7, unless the context otherwise requires:

(1) "Storage" or "storing" means any keeping or retention of, or exercise of dominion or control over, tangible personal property in this state.

**Source: L. 2004:** Entire part added with relocations, p. 1016, § 2, effective July 1.

**39-26-702. Department of revenue - rules.** The department of revenue shall adopt rules for the administration and enforcement of this part 7.

**Source: L. 2004:** Entire part added with relocations, p. 1016, § 2, effective July 1.

**Editor's note:** This section is similar to former § 39-26-114 (1)(c) as it existed prior to 2004.

**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 showing the tax paid.

(2) (a) (Deleted by amendment, L. 2011, (HB 11-1265), ch. 228, p. 978, § 3, effective May 27, 2011.)

(b) The right of any person to a refund under this article shall not be assignable, and, except as provided in 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.

(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).

(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 subsection (2)(c) or (2)(c.5) of this section shall be made within the applicable deadline 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. Except as set forth in section 29-2-106.1 (5)(b), the deadline for a sales tax refund or a refund of any use tax collected by a vendor is three years after the twentieth day of the month following the date of purchase and the deadline for any other use tax refund is three years after the twentieth day of the month following the initial date of the storage, use, or consumption in the state by the person applying for the refund.

(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.

(e) 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; 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) Except as set forth in section 29-2-106.1 (5)(b), 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 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.

(4) The burden of proving that sales, services, and commodities on which tax refunds are claimed are exempt from taxation under this part 7, or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the executive director of the department of revenue prescribes. Should the applicant for refund be aggrieved at the final decision of the executive director, the applicant may proceed to have the same reviewed by the district courts in the manner provided for review of other decisions of the executive director as provided in section 39-21-105.

**Source: L. 2004:** Entire part added with relocations, p. 1016, § 2, effective July 1. **L. 2011:** (1), (2), and (3) amended and (2.5) added, (HB 11-1265), ch. 228, p. 978, § 3, effective May 27. **L. 2013:** (2)(d) amended, (HB 13-1009), ch. 73, p. 233, § 1, effective August 7. **L. 2017:** (2)(d) and (2.5)(a) amended, (SB 17-112), ch. 144, p. 484, § 5, effective April 18.

**Editor's note:** (1) The provisions of this section are similar to several former provisions of § 39-26-114 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Section 5 of chapter 228, Session Laws of Colorado 2011, provides that the act amending subsections (1), (2), and (3) and adding subsection (2.5) applies to all claims for

refunds of sales or use tax filed with the department of revenue before, on, or after May 27, 2011.

**Cross references:** For the legislative declaration in the 2011 act amending subsections (1), (2), and (3) and adding subsection (2.5), see section 1 of chapter 228, Session Laws of Colorado 2011.

**39-26-704. Miscellaneous sales tax exemptions - governmental entities - hotel residents - schools - exchange of property.** (1) All sales to the United States government and to the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only shall be exempt from taxation under the provisions of part 1 of this article.

(1.5) All transactions specified in section 29-4-227 (1), C.R.S., are exempt from taxation under the provisions of parts 1 and 2 of this article.

(2) There shall be exempt from taxation under the provisions of part 1 of this article all sales that the state of Colorado is prohibited from taxing under the constitution or laws of the United States or the state of Colorado and all retail sales within a distance of twenty miles within the boundaries of this state to persons resident, excluding corporations, of adjoining states, which adjoining states do not impose or levy a retail sales tax on such sales, if the residents of the adjoining states are in this state for the express purpose of making purchases and not as tourists.

(3) There shall be exempt from taxation under the provisions of part 1 of this article all sales and purchases of commodities and services under the provisions of section 39-26-102 (11) to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty consecutive days during the calendar year or preceding year.

(4) All sales made to schools, other than schools held or conducted for private or corporate profit, shall be exempt from taxation under the provisions of part 1 of this article.

(5) There shall be exempt from taxation under the provisions of part 1 of this article all transactions specified in section 39-26-104 (1)(b)(I) in which the fair market value of the exchanged property is excluded from the consideration or purchase price because the exchanged property is covered by section 39-26-104 (1)(b)(I)(A) or (1)(b)(I)(B), and in which, because there is no additional consideration involved in the transaction, there is no purchase price within the meaning of section 39-26-102 (7).

**Source: L. 2004:** Entire part added with relocations, p. 1018, § 2, effective July 1. **L. 2016:** (1.5) added, (HB 16-1006), ch. 177, p. 610, § 3, effective August 10.

**Editor's note:** The provisions of this section are similar to several former provisions of § 39-26-114 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

**Cross references:** For the legislative declaration in HB 16-1006, see section 1 of chapter 177, Session Laws of Colorado 2016.

**39-26-705. Miscellaneous use tax exemptions - printers ink and newsprint - manufactured goods.** (1) The storage, use, or consumption of printers ink and newsprint shall be exempt from taxation under the provisions of part 2 of this article.

(2) There shall be exempt from taxation under the provisions of part 2 of this article the storage, use, or consumption of manufactured goods, including, but not limited to, high technology goods, donated by the manufacturer of such goods to the United States government; the state of Colorado or any department, institution, or political subdivision thereof; or any organization exempt from federal income taxes pursuant to section 501 (c)(3) of the "Internal Revenue Code of 1986", as amended, to the extent that the aggregate value of all such goods included in a single donation exceeds one thousand dollars.

**Source: L. 2004:** Entire part added with relocations, p. 1019, § 2, effective July 1.

**Editor's note:** Subsection (1) is similar to former § 39-26-203 (1)(i), and subsection (2) is similar to former § 39-26-203 (1)(ff), as they existed prior to 2004.

**39-26-706. Miscellaneous sales and use tax exemptions - internet access - refractory materials - precious metal bullion and coins.**

(1) (a) and (b) (Deleted by amendment, L. 2013.)

(c) (I) Notwithstanding any provision of law to the contrary, but except as set forth in subparagraph (II) of this paragraph (c), for any local government or political subdivision of the state that levies a sales or use tax based on the sales or use tax levied by the state pursuant to this article, the sale or storage, use, or consumption of cigarettes is exempt from the sales or use tax of such local government or political subdivision.

(II) Subparagraph (I) of this paragraph (c) does not apply to the regional transportation district established by article 9 of title 32, C.R.S., and the scientific and cultural facilities district established by article 13 of title 32, C.R.S., which, beginning January 1, 2014, levy sales and use tax upon every transaction or other incident with respect to which a sales and use tax is levied by the state.

(2) (a) On and after May 1, 1998, internet access services, as defined in section 24-79-102 (2)(b), C.R.S., shall be exempt from taxation under the provisions of part 1 of this article.

(b) From May 1, 1998, internet access services, as defined in section 24-79-102 (2)(b), C.R.S., shall be exempt from taxation under the provisions of part 2 of this article.

(3) All sales and purchases of and the storage, use, or consumption of refractory materials and carbon electrodes used by a person manufacturing iron and steel for sale or profit and all sales and purchases of and the storage, use, or consumption of inorganic chemicals used in the processing of vanadium-uranium ores shall be exempt from taxation under parts 1 and 2 of this article.

(4) (a) All sales of precious metal bullion and coins, as defined in section 39-26-102 (2.6) and (6.5), shall be exempt from taxation under the provisions of part 1 of this article.

(b) The storage, use, or consumption of precious metal bullion and coins, as defined in section 39-26-102 (2.6) and (6.5), shall be exempt from taxation under the provisions of part 2 of this article.

(5) On and after July 1, 2010, the collection of the waste tire fee pursuant to section 30-20-1403, C.R.S., is exempt from taxation under part 1 of this article.

**Source: L. 2004:** Entire part added with relocations, p. 1019, § 2, effective July 1. **L. 2009:** (1) amended, (HB 09-1342), ch. 354, p. 1846, § 1, effective July 1. **L. 2010:** (5) added, (HB 10-1018), ch. 421, p. 2181, § 14, effective June 10. **L. 2011:** (1) amended, (HB 11-1296), ch. 181, p. 691, § 1, effective May 19. **L. 2013:** (1) amended, (HB 13-1144), ch. 304, p. 1615, § 1, effective July 1; (1)(c) amended, (HB 13-1272), ch. 337, p. 1967, § 6, effective January 1, 2014. **L. 2014:** (5) amended, (HB 14-1352), ch. 351, p. 1595, § 9, effective July 1.

**Editor's note:** The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

**Cross references:** For the legislative declaration in the 2013 act amending subsection (1)(c), see section 1 of chapter 337, Session Laws of Colorado 2013.

**39-26-707. Food, meals, beverages, and packaging - definitions.** (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) All sales of food purchased with food stamps. For the purposes of this paragraph (a), "food" shall have the same meaning as provided in 7 U.S.C. sec. 2012 (g), as such section exists on October 1, 1987, or is thereafter amended.

(b) All sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786. For the purposes of this paragraph (b), "food" shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such section exists on October 1, 1987, or is thereafter amended.

(c) Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on or after March 1, 2010, any such article that is nonessential to the consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation;

(d) Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such container or bag that is nonessential to the consumer or user, as

determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation;

(e) Commencing January 1, 1980, all sales of food; and

(f) (I) (A) On and after July 1, 2016, all sales of food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community;

(B) On and after July 1, 2016, all sales to a retirement community of food, food products, snacks, beverages, and meals for purposes of a sale described in sub-subparagraph (A) of this subparagraph (I);

(C) On and after July 1, 2016, all sales of any container, bag, or article used by or furnished to a consumer for the purpose of packaging, bagging, or use with food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community; and

(D) On and after July 1, 2016, all sales to a retirement community of any container, bag, or article used by or furnished to a consumer for purposes of a sale described in sub-subparagraph (A) of this subparagraph (I).

(II) For purposes of this paragraph (f), "food" includes prepared salads, salad bars, and packaged and unpackaged cold sandwiches.

(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.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) Effective January 1, 1980, the storage, use, or consumption of food or meals that are provided to employees of the places described in section 39-26-104 (1)(e), if such are provided to such employees at no charge or at a reduced charge;

(b) The storage, use, or consumption of any article by a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if the article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such article stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation;

(c) The storage, use, or consumption of any container or bag by a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a

separate charge is not made for the container or bag to the consumer or user, if the container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such container or bag stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation;

(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.

(e) (I) (A) On and after July 1, 2016, the storage, use, or consumption of food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community;

(B) On and after July 1, 2016, the storage, use, or consumption by a retirement community of food, food products, snacks, beverages, and meals for purposes of a sale described in sub-subparagraph (A) of subparagraph (I) of paragraph (f) of subsection (1) of this section;

(C) On and after July 1, 2016, the storage, use, or consumption of any container, bag, or article used by or furnished to a consumer for the purpose of packaging, bagging, or use with food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community; and

(D) On and after July 1, 2016, the storage, use, or consumption by a retirement community of any container, bag, or article used by or furnished to a consumer for purposes of a sale described in sub-subparagraph (A) of subparagraph (I) of paragraph (f) of subsection (1) of this section.

(II) For purposes of this paragraph (e), "food" includes prepared salads, salad bars, and packaged and unpackaged cold sandwiches.

(2.5) For purposes of this section, "retirement community" means:

(a) An assisted living residence as defined in section 25-27-102 (1.3), C.R.S.;

(b) An independent living facility designed and operated specifically to serve as the primary residence for persons aged fifty-five or older that provides meals and other services to residents as part of a comprehensive fee, including a facility that qualifies as housing for older persons as defined in section 24-34-502 (7)(b) and a life care institution subject to article 49 of title 11; or

(c) A nursing care facility licensed under the authority of section 25-1.5-103 (1)(a)(I)(A), C.R.S., that provides services to persons who, due to physical condition, mental condition, or disability, require continuous or regular inpatient nursing care.

(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.

(4) For any return made prior to June 1, 2010, a person who sells or stores, uses, or consumes items described in paragraphs (c) and (d) of subsection (1) and paragraphs (b) and (c) of subsection (2) of this section that are nonessential to the end consumer or user 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 for such nonessential items from state sales and use tax by House Bill 10-1194, enacted in 2010.

**Source: L. 2004:** Entire part added with relocations, p. 1020, § 2, effective July 1. **L. 2009:** (2)(a) amended, (SB 09-121), ch. 421, p. 2338, § 2, effective June 4. **L. 2010:** (1)(c), (1)(d), (2)(b), and (2)(c) amended and (4) added, (HB 10-1194), ch. 10, p. 58, § 1, effective February 24; (1.5) and (3) added and (2)(d) amended, (HB 10-1191), ch. 7, p. 45, §§ 1, 2, effective February 24; (2)(a) amended, (HB 10-1422), ch. 419, p. 2121, § 175, effective August 11. **L. 2016:** (1)(f), (2)(e), and (2.5) added, (HB 16-1187), ch. 205, p. 733, § 2, effective June 1. **L. 2017:** (2.5)(b) amended, (SB 17-226), ch. 159, p. 591, § 11, effective August 9.

**Editor's note:** (1) The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (4) was originally enacted as subsection (3) in House Bill 10-1194 but has been renumbered on revision for ease of location.

**Cross references:** For the legislative declaration in HB 16-1187, see section 1 of chapter 205, Session Laws of Colorado 2016.

**39-26-708. Construction and building materials.** (1) There shall be exempt from taxation under the provisions of part 1 of this article all sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

(a) The United States government, the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(b) Charitable organizations in the conduct of their regular charitable functions and activities; or

(c) Schools, other than schools held or conducted for private or corporate profit.

(2) There shall be exempt from taxation under the provisions of part 2 of this article the storage, use, or consumption by a contractor or subcontractor of construction and building materials for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

(a) The United States government, the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(b) Charitable organizations in the conduct of their regular charitable functions and activities; or

(c) Schools, other than schools held or conducted for private or corporate profit.

(3) On application by a purchaser or seller, the department of revenue shall issue to a contractor or subcontractor a certificate of exemption indicating that the contractor's or subcontractor's purchase of construction or building materials is for a purpose stated in subsection (1) of this section and is, therefore, free from sales tax. The department shall provide forms for the application and certificate and shall have the authority to verify that the contractor or subcontractor is, in fact, entitled to the issuance of the certificate prior to such issuance.

**Source: L. 2004:** Entire part added with relocations, p. 1021, § 2, effective July 1.

**Editor's note:** The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

**39-26-709. Machinery and machine tools - definitions.** (1) (a) The following shall be exempt from taxation under the provisions of part 1 of this article:

(I) (Deleted by amendment, L. 2004, p. 1022, § 2, effective July 1, 2004.)

(II) Except as allowed in section 39-30-106, on or after July 1, 1996, purchases of machinery or machine tools, or parts thereof, in excess of five hundred dollars to be used in Colorado directly and predominantly in manufacturing tangible personal property, for sale or profit, including any machinery or machine tools purchased by a business listed in the inventory prepared by the department of public health and environment pursuant to section 30-20-122 (1)(a)(V), C.R.S.; and

(III) (Deleted by amendment, L. 2008, p. 1323, § 8, effective May 27, 2008.)

(IV) Purchases of machinery and machine tools, or parts thereof, used in the production of electricity in a facility for which a long-term power purchase agreement was fully executed between February 5, 2001, and November 7, 2006, whether or not such purchases are capitalized or expensed.

(b) A parent corporation and all closely held subsidiary corporations, as defined in section 39-26-102 (10)(k), shall be considered one person for the purposes of this section and, as a group, shall be subject to the provisions of paragraph (a) of this subsection (1).

(c) As used in this subsection (1):

(I) "Long-term power purchase agreement" means an agreement executed between one or more independent power producers and a provider of retail electric service for a term of no less than ten years, pursuant to which the independent power producer or producers agree to sell all of the production offered for sale from a particular power generation facility for a specified price over a specified term.

(II) "Machinery" means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

(III) "Manufacturing" means the operation of producing a new product, article, substance, or commodity different from and having a distinctive name, character, or use from raw or prepared materials, including the processing of recovered materials.

(III.5) (A) "Recovered materials" means those materials that have been separated, diverted, or removed from the waste stream for the purpose of remanufacturing, reuse, or recycling or, as allowed by subsection (1)(c)(III.6) of this section, those materials that have been derived from scrap metal or end-of-life-cycle metals for remanufacturing, reuse, or recycling into new metal stock that meets applicable standards for metal commodities sales.

(B) As used in this subsection (1)(c)(III.5), "applicable standards" means standards for recycled commodities recognized by the institute of scrap recycling industries.

(III.6) "Scrap metal processor" means any person who is engaged in the business of processing scrap metals who, from a fixed location, utilizes machinery and equipment for manufacturing ferrous and nonferrous metallic scrap into prepared grades and whose principal product is metallic scrap. The following items are exempt when purchased by a scrap metal processor and used in manufacturing prepared grade recycled metals: Mobile metal shears, stationary metal shears, metal shredders, conveyors used to move metal scrap or stock, loaders utilized to load metal scrap or stock, bailers to bundle metal stock, material handlers utilized for metal scrap or metal stock, excavators, magnets, grapples and torches utilized to break down metal scrap, and all other equipment directly used predominantly in the manufacturing of commodity grade recycled metals.

(IV) "Specified price" means a price set by a long-term power purchase agreement that is not dependent on either the cost of production or the market price of electricity; except that a specified price may provide for a percentage increase over time so long as the percentage increase is specified in the original long-term power purchase agreement and is also not dependent on either the cost of production or the market price of electricity.

(d) For purposes of this subsection (1), direct use in manufacturing is deemed to begin for items normally manufactured from inventoried raw material at the point at which raw material is moved from plant inventory on a contiguous plant site and to end at a point at which manufacturing has altered the raw material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process is deemed to be directly used in manufacturing.

(e) In order to qualify for the exemption provided in this subsection (1), a purchase shall be of such nature that it would have qualified for the investment tax credit against federal income tax as was provided by section 38 of the federal "Internal Revenue Code of 1954", as amended.

(f) An exemption may not be claimed under this section for sales tax paid in another state that is credited against Colorado sales tax or use tax or both.

(g) To receive an exemption under this subsection (1), a declaration of entitlement shall be filed by the purchaser with the vendor of the machinery or machine tools, or parts thereof, and with the executive director of the department of revenue.

(2) Effective July 1, 1979, the storage, use, or consumption of machinery or machine tools, or parts thereof, exempt from sales tax by subsection (1) of this section shall be exempt from taxation under the provisions of part 2 of this article.

**Source: L. 2004:** Entire part added with relocations, p. 1022, § 2, effective July 1. **L. 2007:** (1)(a)(III) and (1)(a)(IV) added and (1)(c) amended, p. 1175, §§ 2, 3, effective May 23. **L. 2008:** (1)(a) amended, p. 1323, § 8, effective May 27. **L. 2010:** (1)(c)(III) amended, (HB 10-

1192), ch. 8, p. 52, § 4, effective March 1. **L. 2011:** (1)(c)(III) amended, (HB 11-1293), ch. 299, p. 1440, § 5, effective July 1, 2012. **L. 2016:** (1)(a)(II) and (1)(c)(III) amended and (1)(c)(III.5) added, (SB 16-124), ch. 258, p. 1057, § 1, effective June 8. **L. 2018:** (1)(c)(III.5) amended and (1)(c)(III.6) added, (HB 18-1350), ch. 388, p. 2319, § 1, effective August 8.

**Editor's note:** (1) Subsection (1) is similar to former § 39-26-114 (11), and subsection (2) is similar to former § 39-26-203 (1)(y), as they existed prior to 2004.

(2) Section 3(2) of chapter 388 (HB 18-1350), Session Laws of Colorado 2018, provides that the act changing this section applies to sales of machinery and machine tools that occur on or after January 1, 2019.

**Cross references:** (1) For the legislative declaration contained in the 2007 act enacting subsections (1)(a)(III) and (1)(a)(IV) and amending subsection (1)(c), see section 1 of chapter 281, Session Laws of Colorado 2007.

(2) For the legislative intent contained in the 2008 act amending subsection (1)(a), see section 9 of chapter 302, Session Laws of Colorado 2008.

**39-26-710. Railroads - construction and building materials - tangible personal property - work equipment - rolling stock.** (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) The sale of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by the common carrier in construction and maintenance of its railroad tracks; however, any actual use of such construction and building materials shall, at the time of the actual use, be subject to the tax imposed by part 2 of this article and any use tax imposed pursuant to article 2 of title 29, C.R.S.;

(b) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock; and

(c) The sale of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage, use, or consumption of any tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock; and

(b) The storage, use, or consumption of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.

**Source: L. 2004:** Entire part added with relocations, p. 1023, § 2, effective July 1.

**Editor's note:** The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

**39-26-711. Aircraft - tangible personal property.** (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) Effective July 1, 1984, the sale of aircraft used or purchased for use in interstate commerce by a commercial airline; and

(b) The sale of tangible personal property that is to be permanently affixed or attached as a component part of an aircraft.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) Effective July 1, 1984, the storage, use, or consumption of aircraft used or purchased for use in interstate commerce by a commercial airline; and

(b) The storage, use, or consumption of any tangible personal property that is to be permanently affixed or attached as a component part of an aircraft.

**Source: L. 2004:** Entire part added with relocations, p. 1024, § 2, effective July 1.

**Editor's note:** The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

**39-26-711.5. Aircraft - use outside state.** (1) The sale of a new or used aircraft shall be exempt from taxation under the provisions of part 1 of this article if:

(a) The aircraft is sold to a person who is not a resident of the state;

(b) The aircraft will be removed from the state within the longer of the following periods:

(I) One hundred twenty days after the date of the sale; or

(II) Thirty days after the completion of maintenance, interior refurbishment, paint, or engine work associated with the sale of the aircraft; and

(c) The aircraft will not be in the state more than seventy-three days in any of the three calendar years following the calendar year in which the aircraft is removed from the state pursuant to paragraph (b) of this subsection (1).

(2) A purchaser of an aircraft who claims the exemption allowed by this section shall, at the time of purchase, provide to the seller an affidavit that the purchaser is not a resident of the state and that the purchaser agrees to pay the tax imposed by part 1 of this article if the purchaser fails to comply with the requirements of paragraphs (b) and (c) of subsection (1) of this section.

(3) An aircraft that is hangared or parked overnight shall be considered to be in the state for purposes of this section.

**Source: L. 2008:** Entire section added, p. 951, § 1, effective August 5. **L. 2016:** (1)(b) amended, (HB 16-1119), ch. 50, p. 117, § 1, effective March 23.

**39-26-711.8. Aircraft - use outside state - on-demand air carriers.** (1) Notwithstanding section 39-26-711.5, on and after July 1, 2014, but prior to July 1, 2019, the sale of a new or used aircraft shall be exempt from taxation under the provisions of part 1 and part 2 of this article if:

(a) The aircraft is purchased for use by an on-demand air carrier, regardless of whether the purchaser is a resident of the state;

(b) The aircraft will remain in the state only for the purpose of final assembly, maintenance, modification, or completion;

(c) The aircraft will be removed from the state within the longer of the following periods:

(I) One hundred twenty days after the date of the sale; or

(II) Thirty days after the completion of maintenance, interior refurbishment, paint, or engine work associated with the sale of the aircraft; and

(d) The aircraft will not be in the state more than seventy-three days in any of the three calendar years following the calendar year in which the aircraft is removed from the state pursuant to paragraph (c) of this subsection (1).

(2) A purchaser of an aircraft who claims the exemption allowed by this section shall, at the time of purchase, provide to the seller an affidavit that the aircraft will be used by an on-demand air carrier and that the purchaser agrees to pay the tax imposed by part 1 or part 2 of this article, as applicable, if the purchaser fails to comply with the requirements of paragraphs (b), (c) and (d) of subsection (1) of this section.

(3) An aircraft that is hangared or parked overnight shall be considered to be in the state for purposes of this section.

**Source: L. 2014:** Entire section added, (HB 14-1374), ch. 375, p. 1791, § 1, effective July 1. **L. 2016:** (1)(c) amended, (HB 16-1119), ch. 50, p. 117, § 2 effective March 23.

**39-26-711.9. Historic aircraft on loan for public display - definition.** (1) On and after August 9, 2017, a historic aircraft that is on loan for public display, demonstration, educational, or museum promotional purposes is exempt from taxation under the provisions of parts 1 and 2 of this article 26 if:

(a) The historic aircraft is on loan for public display, demonstration, educational, or museum promotional purposes to a publicly owned museum in the state or to a nonprofit museum in the state that operates under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended;

(b) The historic aircraft will be used only for public display, demonstration, educational, or museum promotional purposes while within the state but away from the museum to which the historic aircraft is on loan; and

(c) The museum to which the historic aircraft is on loan for public display, demonstration, educational, or museum promotional purposes is open to the public for at least twenty hours every week.

(2) For purposes of this section, "historic aircraft" means any original, restored, or replica of a heavier-than-air aircraft that is at least thirty-five years old.

**Source: L. 2017:** Entire section added, (HB 17-1103), ch. 106, p. 387, § 2, effective August 9.

**Cross references:** For the legislative declaration in HB 17-1103, see section 1 of chapter 106, Session Laws of Colorado 2017.

**39-26-712. Trailers and trucks.** (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) The sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this state if such vehicle is purchased from the manufacturer for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery; and

(b) The sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this state if such vehicle is purchased from the manufacturer for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery;

(b) The storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery; and

(c) The storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body if the vehicle has been relocated within this state, was used in interstate commerce, and the owner can provide evidence of the vehicle being previously registered in another state for at least six months.

**Source: L. 2004:** Entire part added with relocations, p. 1024, § 2, effective July 1. **L. 2010:** (2)(c) added, (HB 10-1285), ch. 423, p. 2191, § 5, effective July 1.

**Editor's note:** The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

**39-26-713. Tangible personal property.** (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) Any right to the continuous possession or use for three years or less of any article of tangible personal property under a lease or contract, if the lessor has paid to the state of Colorado a sales or use tax on such tangible personal property upon its acquisition. The department of revenue may permit a lessor of tangible personal property leased for a period of three years or less to acquire the property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on the property.

(b) The transfer of tangible personal property without consideration, other than the purchase, sale, or promotion of the transferor's product, to an out-of-state vendee for use outside of this state in selling products normally sold at wholesale by the transferor;

(c) The sale of tangible personal property for testing, modification, inspection, or similar type of activities in this state if the ultimate use of the property in manufacturing or similar type of activities occurs outside of this state and if the test, modification, or inspection period does not exceed ninety days; and

(d) All sales and purchases of tangible personal property by a manufacturer that uses the property as a component part of goods that it manufactures, including, but not limited to, high technology goods, and that donates such goods to the United States government; the state of Colorado or any department, institution, or political subdivision thereof; or any organization exempt from federal income taxes pursuant to section 501 (c)(3) of the "Internal Revenue Code of 1986", as amended, to the extent that the aggregate value of the goods included in a single donation exceeds one thousand dollars.

(2) The following are exempt from taxation under part 2 of this article 26:

(a) The storage, use, or consumption of any tangible personal property the sale of which is subject to the retail sales tax imposed by part 1 of this article, including transactions that are exempt from taxation under section 39-26-704 (5);

(b) (I) The storage, use, or consumption of any tangible personal property purchased for resale in this state, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.

(II) For purposes of this subsection (2)(b), any motor vehicle purchased and held for resale in this state by a licensed motor vehicle dealer, as defined in section 44-20-102, who meets the eligibility requirements to receive a full-use dealer plate set forth in section 42-3-116 (6)(a)(I) shall be considered to be in the regular course of business and shall not be subject to taxation under part 2 of this article 26. A motor vehicle shall be considered to be purchased and held for resale if:

(A) The manufacturer's certificate of origin or certificate of title for the motor vehicle is assigned to the motor vehicle dealer;

(B) The motor vehicle is included in a current list of vehicles for retail sale that is prepared by the motor vehicle dealer in the ordinary course of business; and

(C) At any given time, the motor vehicle is available to be purchased and delivered to a retail customer within three business days.

(c) The storage, use, or consumption of tangible personal property brought into this state by a nonresident for his or her own storage, use, or consumption while temporarily within this state;

(d) The storage, use, consumption, or loan of tangible personal property by or to the United States government, the state of Colorado or its institutions or political subdivisions in their governmental capacities only, or any charitable organization in the conduct of its regular charitable functions and activities;

(e) (I) The storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service that is manufactured, compounded, or furnished, and the container, label, or the furnished shipping case.

(II) As used in subparagraph (I) of this paragraph (e) with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

(A) It is intended that such property become an integral or constituent part of a food product that is intended to be sold ultimately at retail for human consumption; or

(B) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product that is intended to be sold ultimately at retail for human consumption.

(f) The storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by part 2 of this article. A credit shall be granted against the use tax imposed by part 2 of this article with respect to a person's storage, use, or consumption in this state of tangible personal property purchased by the person in another state. The amount of the credit shall be equal to the tax paid by the person to another state by reason of the imposition of a similar tax on the purchase or use of the property. The amount of the credit shall not exceed the tax imposed by part 2 of this article.

(g) The storage, use, or consumption of tangible personal property and household effects acquired outside of this state and brought into it by a nonresident acquiring residency;

(h) The storage, use, or consumption of tangible personal property purchased by a resident of Colorado while outside the state in amounts of one hundred dollars or less;

(i) The storage, use, or consumption of tangible personal property that is thereafter transferred to an out-of-state vendee without consideration, other than the purchase, sale, or promotion of the transferor's product, for use outside of this state in selling products normally sold at wholesale by the corporation or person storing, using, or consuming said property; and

(j) The testing, modification, inspection, or similar type activities of tangible personal property acquired for ultimate use outside of this state in manufacturing or similar type of activities if the test, modification, or inspection period does not exceed ninety days.

**Source: L. 2004:** Entire part added with relocations, p. 1025, § 2, effective July 1. **L. 2006:** IP(2)(b)(II) amended, p. 1508, § 59, effective June 1. **L. 2017:** IP(2) and IP(2)(b)(II) amended, (SB 17-240), ch. 395, p. 2065, § 48, effective July 1. **L. 2018:** (2)(d) amended, (HB

18-1218), ch. 380, p. 2296, § 2, effective July 1; IP(2)(b)(II) amended, (SB 18-030), ch. 7, p. 140, § 14, effective October 1.

**Editor's note:** (1) The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) House Bill 04-1241 amended § 39-26-203 (1)(b), effective April 26, 2004, but that amendment did not take effect in that section since the entire section was repealed by Senate Bill 04-087, effective July 1, 2004. The amendment to § 39-26-203 (1)(b) by House Bill 04-1241 was harmonized with Senate Bill 04-087 and relocated to subsection (2)(b).

(3) Section 4 of chapter 380 (HB 18-1218), Session Laws of Colorado 2018, provides that the act changing this section applies to any charitable organization sales and use tax exemptions claimed on or after July 1, 2018.

**Cross references:** For the legislative declaration contained in the 2004 act amending subsection (2)(b), as said amendment was relocated from § 39-26-203 (1)(b) as amended in House Bill 04-1241, see section 1 of chapter 203, Session Laws of Colorado 2004.

**39-26-714. Vending machines - definitions.** (1) (a) Every vendor selling individual items of personal property through vending machines shall pay a sales tax pursuant to section 39-26-106 (2)(b) on the personal property sold in excess of fifteen cents through the vending machines unless the sale is otherwise exempt under the provisions of this part 7.

(b) To be eligible for the exemption provided for in this subsection (1), each vendor shall:

(I) Be licensed under section 39-26-103;

(II) Maintain a record of the identification number, ownership, location, and disposition of every vending machine used by the vendor in his or her operation as a vendor;

(III) Within sixty days after commencing business as such vendor, submit to the department of revenue an accurate list containing the information required under subparagraph (II) of this paragraph (b) and submit such list annually thereafter on January 1, commencing in 1971;

(IV) Make application to the department of revenue for identification numbers to be affixed to every such vending machine, in accordance with rules promulgated by the executive director of the department of revenue;

(V) Remit a fee of ten cents per machine with the application submitted under subparagraph (IV) of this paragraph (b), to defray the expenses of the department of revenue in furnishing the identification numbers; except that the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(c) Any unregistered vending machine found being used for retail sales at any place in this state without the prescribed identification number affixed thereto may be seized without warrant by the department of revenue, its agents, or employees or by any peace officer when

directed or requested by the department. At the time of seizure, written notice of seizure shall be given to the proprietor or person in charge of the business, or to the agents or employees of the proprietor or person in charge of the business, where the vending machine is seized. The department shall also give notice by first-class mail as set forth in section 39-21-105.5 to the person whose name and mailing address appear on the machine. The department shall not be required to seize and confiscate any unregistered vending machine or assess a penalty when there is reason to believe that the owner is not intentionally evading the tax imposed by this article.

(d) In addition to any other penalty provided by law, the department of revenue is authorized to assess and collect a penalty of twenty-five dollars for each unregistered vending machine being operated in this state.

(e) Upon proof of ownership, the department of revenue shall deliver to the owner any vending machine seized under paragraph (c) of this subsection (1) after payment of the twenty-five-dollar penalty and seizure costs, if the owner is liable therefor, and upon registration of the machine. At the expiration of sixty days after the date of notice, any unregistered vending machine and the contents therein still in the possession of the department may be sold at public sale to the highest bidder, but, prior to any such sale, ten days' notice of the sale shall be given by first-class mail as set forth in section 39-21-105.5 to those entitled to notice under paragraph (c) of this subsection (1).

(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.

**Source: L. 2004:** Entire part added with relocations, p. 1027, § 2, effective July 1. **L. 2010:** (2) and (3) amended and (4) and (5) added, (HB 10-1191), ch. 7, p. 46, § 3, effective February 24.

**Editor's note:** The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

**39-26-715. Fuel and oil - definitions.** (1) (a) The following are exempt from taxation under the provisions of part 1 of this article:

(I) All commodities that are taxed under the provisions of article 27 of this title; and all commodities that are taxed under said provisions and the tax is refunded; and all sales and purchases of aviation fuel upon which no Colorado sales tax was in fact collected and retained prior to July 1, 1963; except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a sales tax was collected prior to January 1, 1989, shall not be exempt.

(II) On and after June 10, 2016, all sales and purchases of electricity, coal, wood, gas, fuel oil, or coke sold for residential use. Residential use is presumed when a utility company charges a residential utility rate and such utility company may conclusively rely on such presumption. For purposes of this subparagraph (II):

(A) "Gas" includes natural, manufactured, and liquefied petroleum gas.

(B) "Residence" means a separate dwelling in a multi-unit apartment, condominium, townhouse, or mobile trailer home park, or a separate single-unit dwelling, that is either billed under a single utility meter or a master utility meter and either charged at a residential, commercial, or other nonresidential utility rate. "Residence" includes minor buildings associated with the residence that are billed under the residential utility meter, such as a shed, garage, or barn.

(C) "Residential use" means the use of electricity, coal, wood, gas, fuel oil, or coke for domestic purposes, including powering lights, refrigerators, stoves, water heaters, space heaters, air conditioners, or other domestic items that require power or fuel in a residence.

(III) All sales of dyed diesel.

(b) Based upon reports submitted by retailers pursuant to the provisions of part 1 of this article, the department of revenue shall compile a monthly report showing the amount of sales taxes collected on aviation fuel used in turbo-propeller or jet engine aircraft during the previous month by each retailer. The monthly report shall be transmitted to the aeronautics division created in section 43-10-103, C.R.S., for use by the division in distributing moneys in the aviation fund in accordance with section 43-10-110, C.R.S.

(2) The following are exempt from taxation under the provisions of part 2 of this article:

(a) (I) The storage, use, or consumption of gasoline that is taxed under the provisions of part 1 of article 27 of this title and all gasoline that is taxed under said provisions and the tax on which is refunded and special fuel, as defined in section 39-27-101 (29), used for the operation of farm vehicles when the same are being used on farms or ranches; except that aviation fuel

used in turbo-propeller or jet engine aircraft and upon which a tax was collected pursuant to the provisions of part 2 of this article prior to January 1, 1989, shall not be exempt.

(II) Based upon reports submitted by users or consumers pursuant to the provisions of part 2 of this article, the department of revenue shall compile a monthly report showing the amount of use taxes collected on aviation fuel used in turbo-propeller or jet engine aircraft during the previous month by each user or consumer. The monthly report shall be transmitted to the aeronautics division created in section 43-10-103, C.R.S., for use by the division in distributing moneys in the aviation fund in accordance with section 43-10-110, C.R.S.

(b) (I) The storage, use, or consumption of electricity, coal, coke, fuel oil, steam, nuclear fuel, or gas for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses.

(II) and (III) Repealed.

(c) On and after June 10, 2016, the storage, use, or consumption of electricity, coal, wood, gas, fuel oil, or coke sold for residential use. Residential use is presumed when a utility company charges a residential utility rate and such utility company may conclusively rely on such presumption. For purposes of this paragraph (c):

(I) "Gas" includes natural, manufactured, and liquefied petroleum gas.

(II) "Residence" means a separate dwelling in a multi-unit apartment, condominium, townhouse, or mobile trailer home park, or a separate single-unit dwelling, that is either billed under a single utility meter or a master utility meter and either charged at a residential, commercial, or other nonresidential utility rate. "Residence" includes minor buildings associated with the residence that are billed under the residential utility meter, such as a shed, garage, or barn.

(III) "Residential use" means the use of electricity, coal, wood, gas, fuel oil, or coke for domestic purposes, including powering lights, refrigerators, stoves, water heaters, space heaters, air conditioners, or other domestic items that require power or fuel in a residence.

(d) The storage, use, or consumption of dyed diesel.

(3) In any case in which a sales tax has been imposed under part 1 of this article on lubricating oil used other than in motor vehicles, the purchaser shall be entitled to a refund equal to the amount of the state sales tax paid on that portion of the sale price that is attributable to the federal excise tax imposed on the sale of such lubricating oil. In any case in which a use tax has been imposed under part 2 of this article on lubricating oil used other than in motor vehicles, the payer of such tax is entitled to a refund equal to the amount of such use tax paid on that portion of the amount upon which the use tax was imposed that is attributable to the federal excise tax paid on such lubricating oil. The refund allowed under this subsection (3) shall be paid by the executive director of the department of revenue upon receiving evidence that the purchaser has received under section 6424 of the federal "Internal Revenue Code of 1986", as amended, a refund of the federal excise tax paid on the sale of such lubricating oil. The claim for a refund 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 may prescribe.

(4) As used in this section, "dyed diesel" has the same meaning as set forth in section 39-27-101 (8).

**Source: L. 2004:** Entire part added with relocations, p. 1029, § 2, effective July 1. **L. 2010:** (2)(b) amended, (HB 10-1190), ch. 6, p. 42, § 2, effective February 24. **L. 2015:** IP(1)(a) and IP(2) amended and (1)(a)(III), (2)(d), and (4) added, (HB 15-1012), ch. 55, p. 133, § 2, effective March 26. **L. 2016:** (1)(a)(II) and (2)(c) amended, (HB 16-1457), ch. 315, p. 1274, § 2, effective June 10.

**Editor's note:** (1) The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (2)(b)(III) provided for the repeal of subsections (2)(b)(II) and (2)(b)(III), effective July 1, 2012. (See L. 2010, p. 42.)

**Cross references:** (1) For the legislative declaration in HB 15-1012, see section 1 of chapter 55, Session Laws of Colorado 2015.

(2) For the legislative declaration in HB 16-1457, see section 1 of chapter 315, Session Laws of Colorado 2016.

**39-26-716. Agriculture and livestock - special fuels - definitions.** (1) For purposes of this section, unless the context otherwise requires:

(a) "Agricultural compounds" means:

(I) Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;

(II) Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock; and

(III) Animal pharmaceuticals that have been approved by the food and drug administration.

(b) "Attachments" means any equipment or machinery added to an exempt farm tractor or implement of husbandry that aids or enhances the performance of such tractor or implement.

(c) "Dairy equipment" means any item that is used at a farm dairy in connection with the production of raw milk and not at a commercial dairy in connection with the production of pasturized, separated milk products for retail sale, including, without limitation, milking claws, shells, inflators, pulsators, meters, cow identification systems, transponders, automatic takeoffs, piping, receiver jars, pumps, filter assemblies, milk containment tanks, cooling compressors, wash vats, clean in place assemblies, wash lines, wash control units, pulsator controls, milking system controls, programmable logical control systems, vacuum pumps, vacuum distribution tanks, backflush and related valves, rubber and similar hoses, rubber and similar gaskets, and any other similar or related item used in any farm dairy facility or farm dairy operation or in the production of raw milk, regardless of whether or not the item has become a fixture. To the extent the farm dairy is also involved in the production of pasturized, separated milk products for retail sale, only the equipment used exclusively in the production of raw milk constitutes dairy equipment for purposes of this section.

(d) "Farm equipment" means any farm tractor, as defined in section 42-1-102 (33), C.R.S., any implement of husbandry, as defined in section 42-1-102 (44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars. "Farm equipment" also includes, regardless of purchase price, attachments and bailing wire, binders twine, and

surface wrap used primarily and directly in any farm operation. On and after July 1, 2000, "farm equipment" also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this paragraph (d), all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. On and after July 1, 2001, "farm equipment" also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates, or aids used in the transfer or shipping of agricultural products, "farm equipment" does not include:

(I) Vehicles subject to the registration requirements of section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used;

(II) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;

(III) Maintenance and janitorial equipment and supplies; and

(IV) Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

(e) "Farm operation" means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products:

(I) Agricultural, viticultural, fruit, and vegetable products;

(II) Livestock, as defined in section 39-26-102 (5.5);

(III) Milk;

(IV) Honey; and

(V) Poultry and eggs.

(2) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) The sale of special fuel, as defined in section 39-27-101 (29), used for the operation of farm vehicles when such vehicles are being used on farms and ranches;

(b) All sales and purchases of farm equipment;

(c) (I) Any farm equipment under lease or contract, if the fair market value of the equipment is at least one thousand dollars and the equipment is rented or leased for use primarily and directly in any farm operation.

(II) The lessor or seller of such farm equipment shall obtain a signed affidavit from the lessee, renter, or purchaser affirming that the farm equipment will be used primarily and directly in a farm operation.

(d) and (e) Repealed.

(3) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage and use of neat cattle, sheep, lambs, swine, and goats within this state, or the storage and use within this state of mares and stallions kept, held, and used for breeding purposes only;

(b) The storage, use, or consumption of farm equipment;

(c) (I) Any farm equipment under lease or contract if the fair market value of such equipment is at least one thousand dollars and the equipment is rented or leased for storage, use, or consumption primarily and directly in any farm operation.

(II) The lessor shall obtain a signed affidavit from the lessee or renter affirming that the farm equipment will be stored, used, or consumed primarily and directly in a farm operation.

(d) and (e) Repealed.

(4) The following shall be exempt from taxation under the provisions of parts 1 and 2 of this article:

(a) All sales and purchases of livestock, all sales and purchases of live fish for stocking purposes, and all farm close-out sales and the storage, use, or consumption of such property;

(b) All sales and purchases of feed for livestock, all sales and purchases of seeds, and all sales and purchases of orchard trees and the storage, use, or consumption of such property; and

(c) All sales and purchases of straw and other bedding for use in the care of livestock or poultry and the storage, use, or consumption of straw and other bedding for use in the care of livestock or poultry.

(5) (Deleted by amendment, L. 2011, (HB 11-1005), ch. 194, p. 755, § 3, effective July 1, 2011.)

**Source: L. 2004:** Entire part added with relocations, p. 1030, § 2, effective July 1. **L. 2010:** (2)(d), (2)(e), (3)(d), and (3)(e) amended and (5) added, (HB 10-1195), ch. 11, p. 62, § 1, effective February 24. **L. 2011:** (2)(d), (2)(e), (3)(d), (3)(e), and (5) amended, (HB 11-1005), ch. 194, p. 755, § 3, effective July 1. **L. 2012:** (2)(d), (2)(e), (3)(d), and (3)(e) amended, (HB 12-1037), ch. 251, p. 1248, § 3, effective June 4.

**Editor's note:** (1) The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsections (2)(d)(II), (2)(e)(II), (3)(d)(II), and (3)(e)(II) provided for the repeal of subsections (2)(d), (2)(e), (3)(d), and (3)(e), respectively, effective June 30, 2013. (See L. 2012, p. 1249.)

**39-26-717. Drugs and medical and therapeutic devices - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) (I) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription order, that:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Is generally not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(II) "Durable medical equipment" includes hospital beds, intravenous poles and pumps, trapeze bars, toileting aids, bath and shower aids, standing aids, adaptive car seats, communication devices, and any related accessories for such items.

(b) (I) "Mobility enhancing equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription order, that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another;

(B) Is appropriate for use in a home, in a person's community, or in a motor vehicle;

(C) Is not generally used by persons with normal mobility; and

(D) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(II) "Mobility enhancing equipment" includes wheelchairs and wheelchair components or accessories, walking aids such as crutches, canes, or walkers, grab bars, trapeze bars, lift chairs, patient lifts, motorized carts, scooters, controls that are installed on motor vehicles, and any related accessories for such items.

(c) "Practitioner" has the same meaning as set forth in section 12-42.5-102.

(d) "Prescription" has the same meaning as set forth in section 12-42.5-102.

(e) For purposes of subsections (1)(a)(I), (1)(b)(I), (2)(g), (2)(h), and (2)(i) of this section, "prescription order" means any order for a prescription that:

(I) (A) Is in writing, dated, and signed by a practitioner; or

(B) Is given orally by a practitioner and immediately reduced to writing by the pharmacist or pharmacy intern, or by a representative of a business licensed to sell items described in subsection (2)(g), (2)(h), (2)(i), or (2)(j) of this section so long as such prescription order is also followed by an electronic submission of the prescription order to the business; and

(II) Specifying the name and address of the person for whom an item described in subsection (2)(g), (2)(h), (2)(i), or (2)(j) of this section is prescribed and directions, if any, to be included with such item.

(2) The following are exempt from taxation under part 1 of this article 26:

(a) All sales of prescription drugs dispensed in accordance with a prescription by a practitioner or furnished by a practitioner as part of professional services provided to a patient or client;

(b) All sales of insulin in all its forms dispensed pursuant to the direction of a practitioner;

(c) All sales of glucose useable for treatment of insulin reactions;

(d) All sales of urine- and blood-testing kits and materials;

(e) All sales of insulin measuring and injecting devices, including hypodermic syringes and needles;

(f) All sales of prosthetic devices;

(g) All sales of oxygen delivery equipment and disposable medical supplies related to oxygen delivery dispensed pursuant to a prescription order;

(h) All sales of medical, feeding, and disposable supplies, including any related accessories, for incontinence, infusion, enteral nutrition, ostomy, urology, diabetic care, and wound care dispensed pursuant to a prescription order;

(i) All sales of equipment and related accessories for sleep therapy, inhalation therapy, and electrotherapy dispensed pursuant to a prescription order;

(j) All sales of durable medical equipment and mobility enhancing equipment;

(k) All sales of nonprescription drugs or materials when furnished by a practitioner as part of professional services provided to a patient; and

(l) All sales of corrective eyeglasses, contact lenses, or hearing aids.

**Source: L. 2004:** Entire part added with relocations, p. 1034, § 2, effective July 1. **L. 2011:** (1)(a) and (1)(b) amended and (3) added, (SB 11-263), ch. 278, p. 1247, § 1, effective July 1; entire section amended, (HB 11-1091), ch. 235, p. 1011, § 1, effective August 10. **L. 2016:** (1)(g)(II), (1)(h)(II), (1)(i)(II), (2)(a)(III), and (2)(b)(III) amended, (SB 16-158), ch. 204, p. 730, § 24, effective August 10. **L. 2018:** Entire section R&RE, (SB 18-129), ch. 128, p. 847, § 2, effective August 8.

**Editor's note:** (1) The provisions of this section are similar to several former provisions of § 39-26-114 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Amendments to provisions of subsection (1) by House Bill 11-1091 and Senate Bill 11-263 were harmonized.

**Cross references:** (1) For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016.

(2) For the legislative declaration in SB 18-129, see section 1 of chapter 128, Session Laws of Colorado 2018.

**39-26-718. Charitable organizations - association or organization of parents and teachers of public school students.** (1) The following shall be exempt from taxation under the provisions of part 1 of this article 26:

(a) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities;

(b) (I) Effective July 1, 1995, all occasional sales by a charitable organization.

(II) For purposes of this paragraph (b), "occasional sales" means retail sales of tangible personal property, including concessions, for fund-raising purposes if:

(A) The sale of tangible personal property or concessions by the charitable organization takes place no more than twelve days, whether consecutive or not, during any one calendar year;

(B) The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service; and

(C) The funds raised by the charitable organization through these sales do not exceed twenty-five thousand dollars during any one calendar year.

(c) On or after September 1, 2008, a sale by an association or organization of parents and teachers of public school students that is a charitable organization, if the association or organization uses the funds raised through the sale for the benefit of a public school or an organized public school activity or to pay the reasonable expenses of the association or organization.

**Source: L. 2004:** Entire part added with relocations, p. 1034, § 2, effective July 1. **L. 2008:** Entire section amended, p. 973, § 3, effective September 1. **L. 2018:** IP(1) and (1)(a) amended, (HB 18-1218), ch. 380, p. 2296, § 3, effective July 1.

**Editor's note:** (1) Subsection (1)(a) is similar to former § 39-26-114 (1)(a)(II), and subsection (1)(b) is similar to former § 39-26-114 (18), as they existed prior to 2004.

(2) Section 4 of chapter 380 (HB 18-1218), Session Laws of Colorado 2018, provides that the act changing this section applies to any charitable organization sales and use tax exemptions claimed on or after July 1, 2018.

**39-26-719. Motor vehicles.** (1) (a) There shall be exempt from taxation under the provisions of part 1 of this article the sale of any motor vehicle, power source for any motor vehicle, or parts used for converting the power source for any motor vehicle, if:

(I) Repealed.

(II) For sales occurring on or after July 1, 2014:

(A) The gross vehicle weight rating of the motor vehicle is greater than twenty-six thousand pounds and if the power source or parts used for converting the power source are certified by the United States environmental protection agency as provided in the federal heavy-duty national program that includes new greenhouse gas emissions standards as established by the United States environmental protection agency; or

(B) The gross vehicle weight rating of the motor vehicle is greater than ten thousand pounds and if the motor vehicle, power source, or parts used for converting the power source meets the definition of a category 4, 4 A, 4 B, 4 C, 7, or 7 A truck as defined in section 39-22-516.8.

(b) For purposes of this subsection (1), unless the context otherwise requires:

(I) "Motor vehicle" means any self-propelled vehicle required to be licensed or subject to licensing for operation upon the highways of this state, including a vehicle that uses a hybrid propulsion system.

(II) "Parts used for converting" shall mean the wiring, fuel lines, engine coolant system, fuel storage containers, fuel control system, and other components associated with reducing the emissions characteristics of an engine or motor.

(III) "Power source" means the engine or motor and associated wiring, fuel lines, engine coolant system, fuel storage containers, and miscellaneous components.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage, use, or consumption of a motor vehicle, if the owner is or was, at the time of purchase, a nonresident of Colorado and the owner purchased the vehicle outside of this state for use outside this state and actually so used it for a substantial and primary purpose for which it was acquired and the owner registered, titled, and licensed said motor vehicle outside of Colorado.

(b) (I) The storage, use, or consumption of a motor vehicle, power source for a motor vehicle, and parts used for converting the power source of a motor vehicle, if:

(A) For sales occurring on or before June 30, 2014, the gross vehicle weight rating of the motor vehicle is greater than ten thousand pounds and if the motor vehicle, power source, or parts used for converting the power source are certified by the United States environmental protection agency or any state as provided in the federal "Clean Air Act" as meeting an emission standard equal to or more stringent than the low-emitting vehicle emission standard;

(B) For sales occurring on or after July 1, 2014, the gross vehicle weight rating of the motor vehicle is greater than twenty-six thousand pounds and if the power source or parts used for converting the power source are certified by the United States environmental protection agency as provided in the federal heavy-duty national program that includes new greenhouse gas emissions standards as established by the United States environmental protection agency; or

(C) For sales occurring on or after July 1, 2014, the gross vehicle weight rating of the motor vehicle is greater than ten thousand pounds and if the motor vehicle, power source, or parts used for converting the power source meets the definition of a category 4, 4 A, 4 B, 4 C, 7, or 7 A truck as defined in section 39-22-516.8.

(II) For purposes of this paragraph (b), unless the context otherwise requires:

(A) "Motor vehicle" means any self-propelled vehicle required to be licensed or subject to licensing for operation upon the highways of this state, including a vehicle that uses a hybrid propulsion system.

(B) "Parts used for converting" shall mean the wiring, fuel lines, engine coolant system, fuel storage containers, fuel control system, and other components associated with reducing the emissions characteristics of an engine or motor.

(C) "Power source" means the engine or motor and associated wiring, fuel lines, engine coolant system, fuel storage containers, and miscellaneous components.

**Source: L. 2004:** Entire part added with relocations, p. 1035, § 2, effective July 1. **L. 2009:** (1)(b)(I), (1)(b)(III), (2)(b)(II)(A), and (2)(b)(II)(C) amended, (HB 09-1331), ch. 416, p. 2310, § 11, effective June 4. **L. 2014:** (1)(a) and (2)(b)(I) amended, (HB 14-1326), ch. 357, p. 1677, § 5, effective June 6.

**Editor's note:** (1) The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I), effective December 31, 2015. (See L. 2014, p. 1677.)

**Cross references:** (1) In 2009, subsections (1)(b)(I), (1)(b)(III), (2)(b)(II)(A), and (2)(b)(II)(C) were amended by the "Motor Vehicle Innovation Act". For the short title, see section 1 of chapter 416, Session Laws of Colorado 2009.

(2) For the legislative declaration in HB 14-1326, see section 1 of chapter 357, Session Laws of Colorado 2014.

(3) For the federal "Clean Air Act", see 42 U.S.C. sec 7401 et seq.

**39-26-720. Bingo equipment.** (1) All sales of equipment, as defined in section 12-9-102 (5), C.R.S., to a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S., shall be exempt from taxation under part 1 of this article.

(2) The storage, use, or consumption of equipment, as defined in section 12-9-102 (5), C.R.S., by a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S., shall be exempt from taxation under part 2 of this article.

**Source: L. 2004:** Entire part added with relocations, p. 1036, § 2, effective July 1.

**Editor's note:** Subsection (1) is similar to former § 39-26-114 (24), and subsection (2) is similar to former § 39-26-203 (1)(nn), as they existed prior to 2004.

**39-26-721. Manufactured homes.** (1) Forty-eight percent of the purchase price of factory-built housing, as such housing is defined in section 24-32-3302 (10), C.R.S., shall be exempt from taxation under part 1 of this article; except that the entire purchase price in any subsequent sale of a manufactured home, as such vehicle is defined in section 42-1-102 (106)(b), C.R.S., after such manufactured home has been once subject to the payment of sales tax by virtue of section 39-26-113, shall be exempt from taxation under part 1 of this article.

(2) The storage, use, or consumption of a manufactured home, as such vehicle is defined in section 42-1-102 (106)(b), C.R.S., after such manufactured home has been once subject to the payment of use tax by virtue of section 39-26-208, shall be exempt from taxation under the provisions of part 2 of this article.

(3) Beginning July 1, 2019, the sale, storage, usage, or consumption of a manufactured home, as defined in section 39-1-102 (7.8), is exempt from taxation under parts 1 and 2 of this article 26.

**Source: L. 2004:** Entire part added with relocations, p. 1036, § 2, effective July 1. **L. 2018:** (3) added, (HB 18-1315), ch. 240, p. 1496, § 1, effective August 8.

**Editor's note:** Subsection (1) is similar to former § 39-26-114 (10), and subsection (2) is similar to former § 39-26-203 (1)(o), as they existed prior to 2004.

**39-26-722. Cleanrooms - definitions - repeal. (Repealed)**

**Source: L. 2007:** Entire section added, p. 1607, § 1, effective July 1. **L. 2009:** (3) amended, (SB 09-228), ch. 410, p. 2269, § 22, effective July 1.

**Editor's note:** Subsection (4) provided for the repeal this section, effective July 1, 2018. (See L. 2007, p. 1607.)

**39-26-723. Colorado wood products - repeal.** (1) For fiscal years commencing on or after July 1, 2008, but prior to the fiscal year commencing on July 1, 2020, all sales, storage, and use of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles, including but not limited to products such as lumber, furniture built from the salvaged trees, and wood chips or wood pellets generated from the salvaged trees, are exempt from taxation under the provisions of parts 1 and 2 of this article.

(2) For purposes of the exemption specified in subsection (1) of this section, a wholesaler shall certify on a form prescribed by the department of revenue that a product is from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles.

(3) This section is repealed, effective July 1, 2021.

**Source: L. 2008:** Entire section added, p. 1545, § 2, effective May 28. **L. 2012:** Entire section amended, (HB 12-1045), ch. 191, p. 765, § 1, effective May 21.

**Cross references:** For the legislative declaration contained in the 2008 act enacting this section, see section 1 of chapter 332, Session Laws of Colorado 2008.

**39-26-724. Components used to produce energy from a renewable energy source - definitions - repeal.** (1) (a) For fiscal years commencing on or after July 1, 2006, all sales, storage, and use of components used in the production of alternating current electricity from a renewable energy source, including but not limited to wind, shall be exempt from taxation under parts 1 and 2 of this article.

(b) For state fiscal years 2009-10 through 2016-17, all sales, storage, and use of components used in solar thermal systems shall be exempt from taxation under parts 1 and 2 of this article.

(c) (I) On and after May 17, 2014, all sales, storage, and use of components used in biogas production systems for the production of biogas for sale to a power generator, as a transportation fuel, or as renewable natural gas are exempt from taxation under parts 1 and 2 of this article.

(II) This paragraph (c) is repealed, effective July 1, 2019.

(2) As used in this section:

(a) (I) "Components used in biogas production systems" includes all tangible personal property used in connection with the production of biogas and related solid by-products and liquid by-products, including but not limited to:

(A) Anaerobic digestion systems, including but not limited to truck weighing equipment, truck unloading equipment, manure receiving pits, substrate storage tanks, substrate receiving pits, dosing tanks, anaerobic digester tanks, natural gas-fired boilers, blowers, pumps, electrical equipment, control systems, piping, valves, and related tangible personal property;

(B) Biogas upgrade systems, including but not limited to pressurized gas processing technology systems, oxygen removal gas systems, booster compressors, ground flares, dryers, pumps, electrical equipment, control systems, gas pipeline interconnection equipment, piping, valves, hydrogen sulfide gas clean up systems, and related tangible personal property; and

(C) Digested solids systems, including but not limited to holding pits, centrifuges, other dewatering equipment, pumps, electrical equipment, control systems, conveyors, water storage ponds and related equipment, piping, valves, and related tangible personal property.

(II) This paragraph (a) is repealed, effective July 1, 2019.

(a.5) "Components used in solar thermal systems" include, but are not limited to:

(I) Solar collectors, including flat-plate collectors, evacuated tube collectors, solar air collectors, and concentrating solar thermal collectors;

(II) Tanks for the storage of gases or liquids that have been heated or cooled by solar-generated energy;

(III) Pumps, impellers, and fans for the circulation of gases or liquids that have been heated or cooled by solar-generated energy;

(IV) Heat exchangers used to transfer solar-generated energy;

(V) Support structures, racks, and foundations for any components listed in subparagraphs (I) to (IV) of this paragraph (a.5); and

(VI) Any other system components such as piping, valves, gauges, fittings, insulation, and controls for any components listed in subparagraphs (I) to (IV) of this paragraph (a.5).

(b) (I) "Components used in the production of alternating current electricity from a renewable energy source" shall include, but shall not be limited to, wind turbines, rotors and blades, solar modules, trackers, generating equipment, supporting structures or racks, inverters, towers and foundations, balance of system components such as wiring, control systems, switchgears, and generator step-up transformers, and concentrating solar power components that include, but are not limited to, mirrors, plumbing, and heat exchangers.

(II) "Components used in the production of alternating current electricity from a renewable energy source" shall not include any components beyond the point of generator step-

up transformers located at the production site, labor, energy storage devices, or remote monitoring systems.

(c) "Solar thermal system" means a system whose primary purpose is to use energy from the sun to produce heat or cold for:

(I) Heating or cooling a residential or commercial building;

(II) Heating or cooling water; or

(III) Any industrial, commercial, or manufacturing process.

**Source: L. 2008:** Entire section added, p. 1320, § 4, effective May 27. **L. 2009:** Entire section amended, (HB 09-1126), ch. 254, p. 1148, § 3, effective May 15. **L. 2014:** (1)(c) and (2)(a.5) added and (2)(a) amended, (HB 14-1159), ch. 229, p. 850, § 1, effective May 17.

**Cross references:** (1) For the legislative intent contained in the 2008 act enacting this section, see section 9 of chapter 302, Session Laws of Colorado 2008.

(2) For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 254, Session Laws of Colorado 2009.

**39-26-725. Sales related to a school - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Parent" means a parent of a student as defined in paragraph (d) of this subsection (1).

(b) "Sale that benefits a Colorado school" means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to the person or entity described in subsection (2) of this section, are donated to a school or a school-approved student organization.

(c) "School" means a public or nonpublic school for students in kindergarten through twelfth grade or any portion thereof.

(d) "Student" means any person enrolled in a school as defined in paragraph (c) of this subsection (1).

(2) On or after September 1, 2008, a sale that benefits a Colorado school shall be exempt from taxation under the provisions of part 1 of this article, if the sale is made by any of the following:

(a) A school;

(b) An association or organization of parents and school teachers;

(c) A booster club or other club, group, or organization whose primary purpose is to support a school activity; or

(d) A school class or student club, group, or organization.

(3) Nothing in this section shall be construed as creating an exemption, or otherwise affecting an existing exemption, for a sale to a person or entity described in subsection (2) of this section.

**Source: L. 2008:** Entire section added, p. 969, § 3, effective August 5. **L. 2009:** (1)(d) amended, (SB 09-292), ch. 369, p. 1980, § 115, effective August 5. **L. 2010:** (1)(a) amended, (HB 10-1422), ch. 419, p. 2122, § 176, effective August 11.

**39-26-726. Medical marijuana - debilitating conditions and ability to purchase.** All sales of medical marijuana to a patient who is determined to be indigent for purposes of waiving the fee required by section 25-1.5-106, C.R.S., shall be exempt from taxation under part 1 of this article. If the patient is determined to be indigent the state health agency shall mark his or her registry identification card as such and the patient shall present the card to the licensed medical marijuana center to receive the tax exemption.

**Source: L. 2010:** Entire section added, (HB 10-1284), ch. 355, p. 1688, § 14, effective July 1.

**39-26-727. Tribal exemption - motor vehicles - partial interest - definition - legislative declaration.** (1) The general assembly hereby declares that on-reservation sales to the Ute Indian Tribes and tribal members are exempt from state and local sales and use tax under federal law and that the purpose of the tax exemption created in this section is to:

(a) Codify this exemption so that it generally reflects the department of revenue's interpretation of current law;

(b) Ensure consistent application of the state tax and applicable Indian taxation rules;

(c) Provide guidance for tribes, tribal members, vendors, and the department of revenue; and

(d) Continue the department of revenue's practice of not requiring the delivery of a motor vehicle for the exemption to apply.

(2) As used in this section, with respect to a particular sale to a tribe or tribal member, "reservation" means either the Southern Ute Indian Reservation or the Reservation of the Ute Mountain Ute Tribe.

(3) (a) All sales of tangible personal property or services to the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, or an enrolled member of either tribe, are exempt from taxation under part 1 of this article if the vendor is located:

(I) On a reservation; or

(II) Outside of a reservation but the property or service is delivered by the vendor and received by the tribe or the tribal member on a reservation.

(b) All sales of motor vehicles to the Southern Ute Indian Tribe or Ute Mountain Ute Tribe, or to an enrolled member of either tribe who resides on a reservation, are exempt from taxation under part 1 of this article if the motor vehicle is to be registered to an address on a reservation. A vendor may reasonably rely on a tribal member's certification of his or her enrolled membership status and residence.

(4) The storage, use, or consumption of tangible personal property or a service on a reservation that is exempt from sales tax pursuant to subsection (3) of this section is exempt from the use tax levied pursuant to part 2 of this article; except that this use tax exemption only applies to a motor vehicle that is registered to an address on a reservation.

(5) If the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, or an enrolled member of either tribe has a partial or undivided interest in any type of legal entity, the exemptions created in this section apply to a sale of goods or services to such entity in proportion to the interest. To be eligible for the exemption, the tribe or tribal member must file a declaration with the department of revenue that identifies the entity, each tribe and tribal member that has an interest in the entity, and the amount of each interest.

**Source: L. 2014:** Entire section added, (HB 14-1080), ch. 285, p. 1170, § 1, effective May 30.

**39-26-728. Property for use in space flight - definitions.** (1) For the state fiscal years commencing on or after July 1, 2014, all sales, storage, and use of qualified property for use in space flight is exempt from taxation under parts 1 and 2 of this article.

(2) As used in this section:

(a) "Qualified property for use in space flight" means any of the following:

(I) A space vehicle and any component thereof;

(II) Tangible personal property to be placed or used aboard a space vehicle, regardless of whether such personal property is to be ultimately returned to the state for subsequent use, storage, or other consumption; and

(III) Fuel of a quality that is not adaptable for use in an ordinary motor vehicle and that is produced, sold, and used exclusively for space flight.

(b) "Space flight" means any flight designed for suborbital, orbital, or interplanetary travel by a space vehicle.

(c) "Space vehicle" means any tangible personal property that has space flight capability and is intended for space flight and includes, but is not limited to, an orbital space facility, space propulsion system, satellite, or space station of any kind.

(3) The tax exemption established by this section may not be denied to a taxpayer because of a failure, postponement, destruction, or cancellation of a launch of a space vehicle.

(4) The executive director of the department of revenue shall annually provide information to the finance committees of the house of representatives and the senate, or any successor committees, on the number of exemptions claimed pursuant to this section. Such information may be incorporated into an existing report provided on an annual basis by the executive director to the committees.

**Source: L. 2014:** Entire section added, (HB 14-1178), ch. 234, p. 866, § 2, effective May 20.

**Cross references:** For the legislative declaration in HB 14-1178, see section 1 of chapter 234, Session Laws of Colorado 2014.

**39-26-729. Retail sales of marijuana.** (1) (a) Except as otherwise provided in subsection (1)(b) of this section, on and after July 1, 2017, all retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 are exempt from taxation under part 1 of this article 26 by the state or by any special district or other limited purpose governmental entity that was not levying sales tax on retail sales of marijuana under part 1 of this article 26 before July 1, 2017. Notwithstanding any other law to the contrary, any special district or other limited purpose governmental entity that was levying sales tax on retail sales of marijuana under part 1 of this article 26 before July 1, 2017, retains its authority to continue levying sales tax upon retail sales of marijuana under this article 26.

(b) **[*Editor's note: This version of paragraph (b) is effective until January 1, 2019.*]** Any metropolitan district that levies sales tax as authorized by section 32-1-1106 (1), health assurance district that levies sales tax as authorized by section 32-19-112 (1), or health service

district that levies sales tax as authorized by section 32-19-112 (1) may levy sales tax on retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 regardless of whether or not the district was levying sales tax on such sales before July 1, 2017.

(b) **[*Editor's note: This version of paragraph (b) is effective January 1, 2019.*]** Any metropolitan district that levies a general uniform sales tax as authorized by section 32-1-1106 (1), health assurance district that levies a general uniform sales tax as authorized by section 32-19-112 (1), or health service district that levies a general uniform sales tax as authorized by section 32-19-112 (1) may levy its general uniform sales tax on retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 regardless of whether or not the district was levying any sales tax on such sales before July 1, 2017.

(2) **[*Editor's note: This version of subsection (2) is effective until January 1, 2019.*]** The governing body of any special district or limited purpose governmental entity that was levying sales tax upon retail marijuana sales before July 1, 2017, and the governing body of any metropolitan district, health assurance district, or health service district that is authorized by subsection (1)(b) of this section to levy sales tax on retail marijuana sales shall determine whether the levying of such sales tax complies with the Colorado constitution and applicable decisions of the Colorado supreme court and Colorado court of appeals and, if the governing body of any such special district or limited purpose governmental entity determines that additional voter approval is required to levy sales tax upon retail sales of marijuana, the special district or limited purpose governmental entity shall not resume levying sales tax upon such sales until voter approval is obtained.

(2) **[*Editor's note: This version of subsection (2) is effective January 1, 2019.*]** The governing body of any special district or limited purpose governmental entity that was levying sales tax upon retail marijuana sales before July 1, 2017, and the governing body of any metropolitan district, health assurance district, or health service district that is authorized by subsection (1)(b) of this section to levy a general uniform sales tax on retail marijuana sales shall determine whether the levying of such sales tax complies with the Colorado constitution and applicable decisions of the Colorado supreme court and Colorado court of appeals and, if the governing body of any such special district or limited purpose governmental entity determines that additional voter approval is required to levy sales tax upon retail sales of marijuana, the special district or limited purpose governmental entity shall not resume levying sales tax upon such sales until voter approval is obtained.

**Source: L. 2017:** Entire section added, (SB 17-267), ch. 267, p. 1471, § 28, effective May 30. **L. 2018:** Entire section amended, (SB 18-088), ch. 3, p. 27, § 2, effective February 22; (1)(b) and (2) amended, (SB 18-259), ch. 406, p. 2390, § 2, effective January 1, 2019.

**Editor's note:** Section 3 of chapter 3 (SB 18-088), Session Laws of Colorado 2018, provides that the provisions of this act that authorize the continued levying of sales tax on retail sales of marijuana apply retroactively, but not retrospectively, curatively, and remedially to retail marijuana sales occurring on and after July 1, 2017, but, notwithstanding that authorization, authorized sales taxes that were not actually collected on retail sales of marijuana occurring on and after July 1, 2017, but before February 22, 2018, shall not be collected.

**Cross references:** (1) For the legislative declaration in SB 17-267, see section 1 of chapter 267, Session Laws of Colorado 2017.

(2) For the legislative declaration in SB 18-088, see section 1 of chapter 3, Session Laws of Colorado 2018.

PART 8

SALES AND USE TAX SIMPLIFICATION TASK FORCE

**39-26-801. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) Colorado has a unique and complex state and local sales tax system;

(b) Home rule jurisdictions have exercised their constitutional authority to establish their own sales and use tax systems, including their own licensing requirements, rates, taxable and nontaxable items, and definitions;

(c) The resulting lack of uniformity can be especially cumbersome for businesses operating in multiple jurisdictions in Colorado; and

(d) It is time that a group of knowledgeable citizens come together to study options of further simplifying our tax system.

**Source: L. 2017:** Entire part added, (HB 17-1216), ch. 336, p. 1793, § 1, effective June 5.

**39-26-802. Sales and use tax simplification task force - creation.** (1) (a) Notwithstanding section 2-3-303.3, there is created the sales and use tax simplification task force, referred to in this part 8 as the "task force", which shall meet as necessary during any legislative session or any interim between legislative sessions to study the necessary components of a simplified sales and use tax system for both the state and local governments, including home rule municipalities and counties.

(b) The task force shall study sales and use tax simplification between the state and local governments, including home rule municipalities, to identify opportunities and challenges within existing fiscal frameworks to adopt innovative revenue-neutral solutions that do not require constitutional amendments or voter approval. The task force shall consider the feasibility of:

(I) Having a third-party entity responsible for state or local sales and use tax administration, return processing, and audits;

(II) Making audits of retailers more uniform for all state and local taxing jurisdictions in the state;

(III) Utilization of certified software for sales and use tax administration and collection of state and local sales and use tax; and

(IV) Utilization of a single sales and use tax return for state and local taxing jurisdictions.

(2) The task force consists of:

(a) Two members from the house of representatives, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives;

(b) Two members from the senate, one appointed by the president of the senate and one appointed by the minority leader of the senate;

(c) A representative of the department of revenue who is well versed in sales and use tax collection and distribution issues and who is knowledgeable of the policy statements and resolutions regarding sales and use tax collection and uniformity of the multistate tax commission, of which Colorado is a member;

(d) A representative of the Colorado municipal league;

(e) A representative of Colorado counties, incorporated;

(f) A member of a statewide association of small businesses that is addressing the simplification of sales and use tax collection, appointed by the governor;

(g) A member of the statewide chamber of commerce, appointed by the governor;

(h) A state and local sales and use tax law practitioner who is not employed by a home rule or statutory city or city and county, appointed by the governor;

(i) A member with state and local sales and use tax accounting experience who is not employed by a home rule or statutory city or city and county, appointed by the governor; and

(j) One manager, mayor, council-person, finance officer, or tax administrator of a home rule or statutory city or city and county, appointed by the Colorado municipal league from each of its four population membership categories, according to its bylaws.

(3) The task force shall meet at least eight times, with the first meeting occurring no later than July 12, 2017. Task force meetings shall be open to the public and the task force shall solicit the testimony of the members of the public.

(4) (a) The members of the task force appointed pursuant to subsections (2)(a) and (2)(b) of this section are entitled to receive compensation and reimbursement of expenses as provided in section 2-2-326.

(b) The legislative council staff and the office of legislative legal services shall be available to assist the task force in carrying out its duties.

(5) No later than November 1, 2017, and no later than each November 1 thereafter, the task force shall make a report to the legislative council created in section 2-3-301 that may or may not include recommendations for legislation.

**Source: L. 2017:** Entire part added, (HB 17-1216), ch. 336, p. 1794, § 1, effective June 5.

**39-26-802.5. Sales and use tax simplification - request for information.** (1) (a) No later than June 30, 2018, the department of revenue shall issue a request for information, in accordance with the procurement code, articles 101 to 112 of title 24, and within the department's existing resources, for an electronic sales and use tax simplification system that the state or any local government that levies a sales or use tax, including home rule municipalities and counties, could choose to use that would provide:

(I) Accurate address location information to be used by a retailer to determine the correct taxing jurisdiction for which the retailer should collect and remit sales or use tax;

(II) A single application process for state and local sales tax licenses;

(III) A uniform sales and use tax remittance form;

(IV) A single point of remittance for state and local sales and use tax; and

(V) A taxability or exemption matrix.

(b) The electronic sales and use tax simplification system must provide access to the data that the state or any local government may need for purposes of auditing taxpayers or for reconciling sales and use tax revenue projections.

(c) The request for information process must:

(I) Identify initial costs for the electronic sales and use tax simplification system and any possible ongoing annual costs;

(II) Explain how, to the maximum extent practicable, the system could be able to interface with all existing accounting systems used by the retailers, the state, or local governments;

(III) Allow for various payment options to pay for the cost of the development or implementation of the electronic sales and use tax simplification system, including contributions by the state, local governments, or retailers, or any combination thereof;

(IV) Anticipate that the sales and use tax base or rates of the state or any local government that levies a sales or use tax may change over time and maintain a history of those changes, including the effective date of such changes; and

(V) Anticipate that the jurisdictional boundaries of a local government that levies a sales or use tax may change over time, and maintain a history of those changes, including the effective date of such changes.

(d) A responder to the request for information shall not expect or anticipate that the state or any local government that levies a sales or use tax and that might use the electronic sales and use tax simplification system will, for simplification purposes:

(I) Adjust their sales and use tax base or rate;

(II) Adopt uniform definitions; or

(III) Unify their audit authority and process in any fashion.

(2) When the request for information issuance is complete, the department of revenue shall notify the sales and use tax simplification task force created in section 39-26-802. The task force shall hold a meeting within ninety days of the notification to review the information received pursuant to the request for information and determine next steps. The task force shall invite a representative of the department of revenue's purchasing department to help ensure that all procurement issues are considered when the task force determines its next steps.

**Source: L. 2018:** Entire section added, (HB 18-1022), ch. 10, p. 159, § 2, effective March 1.

**Cross references:** For the legislative declaration in HB 18-1022, see section 1 of chapter 10, Session Laws of Colorado 2018.

**39-26-803. Gifts, grants, or donations.** The task force may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this part 8.

**Source: L. 2017:** Entire part added, (HB 17-1216), ch. 336, p. 1795, § 1, effective June 5.

**39-26-804. Sunset of task force.** This part 8 is repealed, effective July 1, 2020. Before its repeal, this part 8 is scheduled for review in accordance with section 2-3-1201.

**Source: L. 2017:** Entire part added, (HB 17-1216), ch. 336, p. 1795, § 1, effective June 5.

## ARTICLE 26.1

Colorado Tourism Promotion Fund Tax

**39-26.1-101 to 39-26.1-113. (Repealed)**

**Editor's note:** (1) This article was added in 1983. For amendments to this article prior to its repeal in 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-26.1-113 provided for the repeal of this article, effective July 1, 1993. (See L. 87, p. 987.)

# Gasoline and Special Fuel Tax

## ARTICLE 27

Gasoline and Special Fuel Tax

**Cross references:** For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution; for the use of a method in lieu of any required oath or affirmation by a person making any return or any application for refund or protest pursuant to this article, see § 24-12-108.

### PART 1

### GASOLINE TAX

**39-27-101. Definitions - construction.** As used in this part 1, unless the context otherwise requires:

(1) "Air carrier" means any domestic or foreign aircraft carrying passengers or cargo for hire.

(1.5) "Biodiesel fuel" means a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources.

(2) "Blended gasoline" means any mixture of taxable or tax-exempt gasoline with any other liquid on which the excise tax has not been imposed pursuant to this section.

(3) "Blended special fuel" means any mixture of taxable or tax-exempt special fuel with any other liquid on which the excise tax has not been imposed pursuant to this section, other than special fuel that has been dyed in accordance with federal regulations.

(4) "Blender" means a person who produces blended gasoline or blended special fuel outside of the gasoline or special fuel distribution system consisting of refineries, pipelines,

vessels, and terminals. For purposes of this subsection (4), gasoline in a refinery, pipeline, vessel, or terminal is in the gasoline distribution system, and special fuel in a refinery, pipeline, vessel, or terminal is in the special fuel distribution system. Gasoline or special fuel in the tank of any vehicle or in any railcar, trailer, truck, or other equipment suitable for ground transportation is not in the gasoline or special fuel distribution system, respectively.

(4.3) "Cargo tank" means a bulk packaging that:

(a) Is a tank intended primarily for the carriage of liquids, gases, solids, or semi-solids and includes appurtenances, reinforcements, fittings, and closures;

(b) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but that, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle;

(c) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars; and

(d) Is not primarily intended to provide fuel for the propulsion of the motor vehicle.

(4.7) "Cargo tank motor vehicle" means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

(5) "Common carrier" or "carrier" means a person, including a railroad operator, who transports gasoline or special fuel from a terminal located in this state or transports gasoline or special fuel imported into this state and who does not own the gasoline or special fuel.

(6) "Direct air carrier" means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation. A direct air carrier that provides air transportation services to a public charter operator as defined in subsection (24) of this section has a binding commitment to furnish air transportation to the public charter operator via a charter contract pursuant to 14 CFR 380.29 and shall actively provide such air transportation services to the public charter operator.

(7) (a) "Distributor" means:

(I) A gasoline or special fuel broker, any person who sells special fuel to another distributor, broker, or vendor, and any vendor of liquefied petroleum gas or natural gas;

(II) Any person who acquires gasoline or special fuel from a supplier, importer, blender, or another distributor for the subsequent sale and distribution by tank cars, tank trucks, or both;

(III) Any person who refines, manufactures, produces, compounds, blends, or imports special fuel or gasoline;

(IV) A private commercial fleet operator that uses natural gas from a public utility, as defined in section 40-1-103 (1), C.R.S., if:

(A) The public utility is not a distributor with respect to the sale of the natural gas; and

(B) The commercial fleet operator has not contracted with another person to be a distributor under subparagraph (V) of this paragraph (a);

(V) Any person who contracts with a private commercial fleet operator to be a distributor on behalf of the operator; or

(VI) A private commercial fleet operator that uses liquefied petroleum gas, if the operator has not contracted with a person to be a distributor on behalf of the operator.

(b) "Distributor" includes every person importing gasoline or special fuel by means of a pipeline or in any other manner but does not include persons importing gasoline or special fuel contained only in the fuel tank of a motor vehicle.

(c) Notwithstanding any provision of this subsection (7) to the contrary, a public utility as defined in section 40-1-103 (1), C.R.S., is only a distributor if it sells special fuel as a vendor through an alternative fuel vehicle charging or fueling facility that is unregulated under section 40-1-103.3, C.R.S., but only with respect to those sales.

(d) Notwithstanding any provision of this subsection (7) to the contrary, a person who meets the requirements of section 39-27-104 (5)(a) is not a distributor.

(8) "Dyed diesel" means diesel fuel that is dyed under the rules of the United States environmental protection agency or the internal revenue service for high sulphur diesel fuel or low sulphur diesel fuel or under any other requirements subsequently set by such agencies for special fuel sold for nontaxable uses.

(9) "Exporter" means a person who acquires gasoline or special fuel in this state exclusively for delivery to another state in which he or she is licensed.

(10) "Fuel tank" means any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle, exclusive of a cargo tank, and includes any separate compartment of a cargo tank used as a fuel tank and any auxiliary tank or receptacle of any kind from which fuel is supplied for the propulsion of the vehicle, whether or not such tank or receptacle is directly connected to the fuel supply line of the vehicle.

(11) "Gallons" means gallons as measured on a gross gallons basis, as defined in section 8-20-201 (3), C.R.S.; except that:

(a) (I) For a vendor who sells compressed natural gas at retail, "gallons" means gallons as measured in accordance with the mass labeling requirements for gasoline equivalents that are included in section 3-3 of the rules promulgated by the division of oil and public safety in the department of labor and employment, or any successor rule;

(II) For all distributors of compressed natural gas other than those specified in subparagraph (I) of this paragraph (a), "gallons" means gallons as measured in accordance with whichever of the following was the basis for the sale of the gas to the distributor:

(A) The volumetric reporting requirements that are included in the federal excise tax return, form 720, established by the federal internal revenue service, or any successor form that is used for paying the federal fuel tax;

(B) The mass labeling requirements for gasoline equivalents that are included in section 3-3 of the rules promulgated by the division of oil and public safety in the department of labor and employment, or any successor rule; or

(C) The energy measure included in the definition for gasoline gallon equivalent in section 1-6 of the rules promulgated by the division of oil and public safety in the department of labor and employment, or any successor rule; and

(b) For purposes of liquefied petroleum gas, "gallons" means gallons as measured on a net gallon basis as defined in section 8-20-201 (5), C.R.S.

(12) "Gasoline" means any flammable liquid used primarily as a fuel for the propulsion of motor vehicles, motor boats, or aircraft. "Gasoline" does not include diesel engine fuel, kerosene, liquefied petroleum gas, natural gas, and products, including kerosene, specially prepared, sold, and used in aircraft operated by scheduled air carriers or commuter airline operators exempt from the federal aviation fuels tax; except that "gasoline" does include products, including kerosene, specially prepared, sold, and used in any other aircraft. Except as otherwise provided in this subsection (12), any product blended with gasoline shall be considered gasoline for purposes of the excise tax imposed pursuant to this part 1.

(13) "Highway" means any way or place in this state of whatever nature, open to the use of the public, for purposes of traffic, including highways under construction.

(14) "Importer" means a person who imports gasoline or special fuel in bulk or by transport load into this state from another state by truck, rail, or pipeline.

(15) "In this state" means within the exterior limits of the state of Colorado and includes all territories within these limits owned by or ceded to the United States of America.

(16) "Indirect air carrier" means any person who engages directly in air transportation operations and who uses the services of a direct air carrier for such transportation services.

(17) "Licensee" means any person holding a valid license issued by the department of revenue pursuant to section 39-27-104, to act as a supplier, importer, exporter, distributor, carrier, or blender.

(18) "Motor vehicle" means any self-propelled vehicle required to be licensed or subject to licensing for operation upon the highways of this state.

(19) "Part 121 air carrier" means an aircraft operator that conducts operations pursuant to 14 CFR 121 between any two points within the forty-eight contiguous states of the United States or within the United States and a specifically authorized point located outside the United States, operating any of the following:

(a) A turbojet-powered airplane;

(b) An airplane having a passenger-seat configuration of more than nine passenger seats, excluding each crewmember seat; or

(c) An airplane having a payload capacity of more than seven thousand five hundred pounds.

(20) "Part 135 commuter air carrier" means an aircraft operator that conducts operations pursuant to 14 CFR 135, operating a minimum of five round trips per week on at least one route between two or more points according to the published flight schedules, operating either of the following:

(a) Any airplane, other than a turbojet-powered airplane, that has a maximum passenger-seat configuration of nine seats or fewer and a payload capacity of seven thousand five hundred pounds or fewer; or

(b) A rotorcraft.

(21) "Part 135 on-demand operator" means an aircraft operator that conducts operations for hire or compensation pursuant to 14 CFR 135 in an aircraft with nine or fewer passenger seats and a payload capacity of seven thousand five hundred pounds or fewer. A part 135 on-demand operator operates on an on-demand basis and does not meet the flight scheduled qualifications of a part 135 commuter air carrier.

(22) (a) "Person" means every individual, firm, association, joint stock company, syndicate, limited liability company, partnership, joint venture, corporation, estate, trust, or any group or combination thereof acting as a unit, this state, any county, city and county, municipality, special district, or other political subdivision of this state, or any group or combination of such governmental entities acting as a unit.

(b) Whenever used in any clause in this part 1 prescribing or imposing a fine, imprisonment, or both, "person":

(I) As applied to a firm, association, limited liability company, partnership, joint venture, joint stock company, receiver, or syndicate, means the partners or members thereof;

(II) As applied to a corporation, means the officers or resident managing agent thereof; and

(III) As applied to an estate, trust, or business trust, means the administrator or trustee thereof.

(23) "Public charter" means a one way or round trip charter flight performed by one or more direct air carriers as defined pursuant to subsection (6) of this section and that is arranged and sponsored by a public charter operator pursuant to 14 CFR 380.

(24) "Public charter operator" means a United States or foreign indirect air carrier as defined in subsection (16) of this section that is authorized to engage in the formation of groups for transportation on public charters in accordance with 14 CFR 380.

(25) "Refiner" means a person who processes crude oil or who produces, refines, prepares, distills, or manufactures gasoline or special fuel in this state.

(26) "Refinery" means any place where gasoline, special fuel, or crude oil is produced, refined, compounded, blended, or manufactured.

(27) "Retailer" means every person selling gasoline in this state at the retail level of trade.

(28) "Sell" means to transfer title or possession, exchange, or barter in any manner or by any means whatsoever.

(29) "Special fuel" means diesel engine fuel, kerosene, liquefied petroleum gas, and natural gas used for the generation of power to propel a motor vehicle on the highways of this state. "Special fuel" does not include gasoline as defined in subsection (12) of this section.

(30) "Supplier" means a person who owns and stores gasoline or special fuel in a pipeline terminal, terminal, or refinery in or outside of this state for sale or use within or outside the boundaries of this state.

(31) "Tank farm" means any collection of tanks for storage of gasoline or special fuel located at or appurtenant to any refinery or pipeline terminal for storage of gasoline or special fuel before the sale thereof in this state.

(32) "Terminal" means a gasoline or special fuel storage and distribution facility that is supplied by a pipeline, vessel, or refinery or a tank farm from which gasoline or special fuel may be removed for distribution.

(33) "Terminal operator" means the person who by ownership or contractual agreement controls the operation of a terminal.

(34) "Use" or "uses" means the placing of special fuel into any fuel tank, unless it is established to the satisfaction of the executive director of the department of revenue that the fuel was consumed for a purpose other than to propel a motor vehicle on the highways of this state. With respect to fuel brought into this state in a fuel tank, "use" means the consumption of the fuel in this state. A vendor placing special fuel other than liquefied petroleum gas into a fuel tank of a motor vehicle not owned by the vendor is not deemed to have used the fuel.

(35) "User" means any person who uses special fuel.

(36) "Vendor" means any person who sells special fuel in this state and places the fuel, or causes the fuel to be placed, into any fuel tank or receptacle from which a fuel tank is supplied; including service station dealers, brokers, and users who sell special fuel to others and distributors who sell special fuel to users. For the purposes of this part 1, a vendor of liquefied petroleum gases shall be deemed a distributor and shall comply with all of the requirements imposed upon distributors in this part 1.

**Source: L. 33:** p. 716, § 1. **L. 35:** p. 904, § 1. **CSA:** C. 16, § 381. **L. 47:** p. 267, § 1. **L. 51:** p. 182, § 1. **CRS 53:** § 138-3-1. **L. 63:** p. 942, § 1. **C.R.S. 1963:** § 138-2-1. **L. 65:** p. 1114, § 1. **L. 67:** p. 235, § 1. **L. 79:** IP(1), (2), (3)(b), (4), (5), (6), and (8) amended and (7) repealed, pp. 1473, 1501, §§ 1, 29, effective January 1, 1980. **L. 81:** (1.5) added, p. 1892, § 2, effective May 18. **L. 88:** (2) amended, p. 1091, § 6, effective January 1, 1989. **L. 95:** (1), (4), and (5) amended, p. 981, § 1, effective July 1. **L. 98:** Entire section amended, p. 1021, § 1, effective July 1. **L. 2000:** (1.1), (1.8), (1.9), (2.1), (2.3), (2.5), (6.1), (6.3), (11), (12), and (13) added with relocations and (1.2), (1.4), (1.5), (1.6), (1.7), (2.2), (5), (6), (6.6), (8), and (9) amended with relocations, p. 1913, § 1, effective October 1. **L. 2003:** Entire section amended, p. 1812, § 2, effective August 6. **L. 2009:** (1.5) added, (SB 09-098), ch. 195, p. 877, § 1, effective August 5. **L. 2013:** (7) and (11) amended, (HB 13-1110), ch. 225, p. 1058, § 5, effective January 1, 2014. **L. 2015:** (4.3), (4.7), (7)(a)(VI), and (7)(d) added and (7)(a)(IV), (7)(a)(V), (11), and (34) amended, (HB 15-1228), ch. 315, p. 1284, § 2, effective January 1, 2016. **L. 2016:** (6), IP(19), IP(20), (21), (23), and (24) amended, (SB 16-189), ch. 210, p. 795, § 113, effective June 6.

**Editor's note:** (1) Subsection (2)(a) provided for the repeal of subsection (2)(a), effective January 1, 1989. (See L. 88, p. 1091.)

(2) The provisions of this section are similar to several former provisions of § 39-27-201 as they existed prior to 2000. For a detailed comparison of this section, see House Bill 00-1479, L. 2000, p. 1913.

**Cross references:** (1) For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 278, Session Laws of Colorado 2003.

(2) For the legislative declaration in the 2013 act amending subsections (7) and (11), see section 1 of chapter 225, Session Laws of Colorado 2013.

(3) For the legislative declaration in HB 15-1228, see section 1 of chapter 315, Session Laws of Colorado 2015.

**39-27-102. Tax imposed on gasoline and special fuel - deposits - penalties.** (1) (a) (I) (A) An excise tax is imposed and shall be collected on all gasoline or special fuel acquired, sold, offered for sale, or used in this state for any purpose whatsoever, but only one tax shall be paid upon the same gasoline or special fuel in this state. Except as otherwise provided in this subparagraph (I), no more than three tax-deferred transactions shall take place after the gasoline or special fuel has left the terminal of its origin, either within or outside of this state; except that, for purposes of counting the applicable transactions in order to collect the tax imposed by this subparagraph (I), counting shall begin when the gasoline or special fuel first enters this state, whether by truck or by rail. If more than three distributors acquire the gasoline or special fuel, the third distributor shall be liable for payment of the tax imposed. Nothing in this paragraph (a) shall preclude previous distributors from paying the tax. A distributor shall not be required to pay tax on gasoline or special fuel that is exempt pursuant to section 39-27-103 (2). The tax imposed shall be computed upon the total amount of gasoline or special fuel, measured in gallons, acquired by each distributor in this state and shall be paid in the manner provided in this section. For purposes of this sub-subparagraph (A), "special fuel" does not include liquefied petroleum gas.

(B) An excise tax is imposed on liquefied petroleum gas when it is placed in a fuel tank, unless the use of the special fuel is exempt. The tax imposed is computed upon the total amount of liquefied petroleum gas, measured in gallons, that is placed in the fuel tank. If the liquefied petroleum gas is placed in the fuel tank by a distributor, the distributor shall pay the tax to the department of revenue in accordance with this section.

(C) If a distributor uses liquefied petroleum gas from a cargo tank to propel a cargo tank motor vehicle on the highways in this state, an excise tax is imposed on the liquefied petroleum gas that is used as special fuel. The liquefied petroleum gas that is carried in the cargo tank but not used as special fuel is not subject to the excise tax. The tax imposed is computed upon an estimate of the total amount of liquefied petroleum gas, measured in gallons, used to propel the cargo tank motor vehicle based on the number of miles that the vehicle traveled. A distributor shall report to the department of revenue the number of miles that the vehicle traveled based on odometer readings. The department shall establish the form to be used to report this information.

(II) (A) The excise tax imposed on gasoline by subparagraph (I) of this paragraph (a) shall be twenty cents per gallon or fraction thereof from August 1, 1989, through December 31, 1990, and twenty-two cents per gallon or fraction thereof for calendar years beginning on and after January 1, 1991.

(B) The excise tax imposed on special fuel by subparagraph (I) of this paragraph (a) is twenty and one-half cents per gallon or a fraction thereof for calendar years beginning on and after January 1, 1992. This sub-subparagraph (B) does not apply to any special fuel specified in subparagraphs (VI), (VII), and (VIII) of this paragraph (a).

(III) (Deleted by amendment, L. 2005, p. 863, § 1, effective July 1, 2005.)

(IV) (A) The excise tax imposed by subparagraph (I) of this paragraph (a) shall be six cents per gallon or fraction thereof on gasoline used as fuel for the propulsion of nonturbo-propeller or nonjet engine aircraft and shall be four cents per gallon or fraction thereof on gasoline used as fuel for the propulsion of turbo-propeller or jet engine aircraft.

(B) The provisions of this subparagraph (IV) shall not apply to domestic or foreign part 121 air carriers as defined in section 39-27-101 (19) or part 135 commuter air carriers as defined in section 39-27-101 (20) authorized to provide passenger and cargo air transportation services pursuant to the regulations of the office of the secretary of transportation and federal aviation administration of the United States department of transportation. The provisions of this subparagraph (IV) also shall not apply to direct air carriers as defined in section 39-27-101 (6), providing air transportation to authorized public charter operators pursuant to 14 CFR 380. For those air carriers that are certificated by the United States department of transportation for both part 121 air carrier operations and part 135 on-demand operations, the provisions of this sub-subparagraph (B) shall not apply to the air carrier's part 135 on-demand operations.

(C) Based upon reports submitted by wholesalers or distributors pursuant to the provisions of this article, the department of revenue shall compile a monthly report showing the amount of excise taxes collected on gasoline pursuant to the provisions of this subparagraph (IV). Such monthly report shall be transmitted to the division of aeronautics created in section 43-10-103, C.R.S., for use by the division in distributing moneys in the aviation fund in accordance with section 43-10-110, C.R.S.

(V) In the case of a user, the tax imposed by this section shall be measured by the gallons of special fuel imported into this state or acquired without payment of the tax imposed by this section and used in the propulsion of a motor vehicle on the highways of this state.

(VI) The excise tax imposed on compressed natural gas by subparagraph (I) of this paragraph (a) is:

(A) Three cents per gallon or a fraction thereof for the 2014 calendar year;

(B) Six cents per gallon or a fraction thereof for the 2015 calendar year;

(C) Nine cents per gallon or a fraction thereof for the 2016 calendar year;

(D) Twelve cents per gallon or a fraction thereof for the 2017 calendar year;

(E) Fifteen cents per gallon or a fraction thereof for the 2018 calendar year; and

(F) Eighteen and three-tenths cents per gallon or a fraction thereof for calendar years beginning on and after January 1, 2019.

(VII) The excise tax imposed on liquefied natural gas by subparagraph (I) of this paragraph (a) is:

(A) Three cents per gallon or a fraction thereof for the 2014 calendar year;

(B) Five cents per gallon or a fraction thereof for the 2015 calendar year;

(C) Seven cents per gallon or a fraction thereof for the 2016 calendar year;

(D) Eight cents per gallon or a fraction thereof for the 2017 calendar year;

(E) Ten cents per gallon or a fraction thereof for the 2018 calendar year; and

(F) Twelve cents per gallon or a fraction thereof for calendar years beginning on and after January 1, 2019.

(VIII) The excise tax imposed on liquefied petroleum gas by subparagraph (I) of this paragraph (a) is:

(A) Three cents per gallon or a fraction thereof for the 2014 calendar year;

(B) Five cents per gallon or a fraction thereof for the 2015 calendar year;

(C) Seven cents per gallon or a fraction thereof for the 2016 calendar year;

(D) Nine cents per gallon or a fraction thereof for the 2017 calendar year;

(E) Eleven cents per gallon or a fraction thereof for the 2018 calendar year; and

(F) Thirteen and one-half cents per gallon or a fraction thereof for calendar years beginning on and after January 1, 2019.

(b) (I) In the case of gasoline or special fuel shipped to a distributor from a terminal, the amount of gasoline or special fuel acquired is deemed to be the amount shipped from the terminal, as shown by the terminal manifest; except that an allowance of two percent of the total amount of gasoline or special fuel acquired during any calendar month, as shown by terminal manifests, shall be deducted by the licensed distributor to cover losses in transit and in unloading the gasoline or special fuel and costs of collection and payment to the state of the tax imposed by this section, out of which allowance the distributor shall make to each retailer an allowance of one percent of the amount of gasoline or special fuel delivered during each calendar month by the distributor to the retailer, as shown by delivery invoices signed by the retailer, but there is no allowance for liquefied petroleum gas.

(II) The tax imposed by this section is exempted on each recorded and reported sale by a distributor to the United States, or any of its agencies, and to any town, city, county, city and county, special district, or school district when the gasoline or special fuel is used exclusively by the governmental entity in performing its governmental functions and activities. The exemption applies solely to machines owned or operated by the United States or any of its agencies, by the state, or by any town, city, county, city and county, school district, or other political division of the state. Exemptions for persons conducting business for such governmental entities on a contract basis using an aircraft must be based solely on the applicable operating certificate of the

aircraft operator pursuant to sub-subparagraph (B) of subparagraph (IV) of paragraph (a) of this subsection (1). Any governmental entity referred to in this paragraph (b) shall obtain an exemption certificate from the executive director of the department of revenue. Upon receipt of an exemption certificate, a governmental entity may:

(A) Purchase gasoline or special fuel from a distributor without payment of the excise tax imposed pursuant to this part 1 if the gasoline or special fuel is used exclusively by the governmental entity in performing its governmental functions and activities.

(B) Sell to or purchase gasoline or special fuel from another governmental entity that has a fuel tax exemption certificate, and the transaction is exempt from the excise tax imposed pursuant to this part 1 if the gasoline or special fuel is used exclusively by the governmental entity in performing its governmental functions and activities. The governmental entity is required to keep a copy of the fuel tax exemption certificate on file for any entity to which it resells or distributes fuel. A governmental entity that sells gasoline or special fuel pursuant to this sub-subparagraph (B) is not required to be a licensee pursuant to the provisions of section 39-27-104. Sales authorized pursuant to this sub-subparagraph (B) are intended to facilitate intergovernmental efficiencies with respect to sales for individual vehicles or equipment. It is not the intent of this sub-subparagraph (B) for intergovernmental sales to include purchases in excess of five hundred gallons in a single transaction unless required for unusual, unforseen, or emergency circumstances.

(1.5) (Deleted by amendment, L. 2000, p. 1916, § 2, effective October 1, 2000.)

(2) (a) Except as set forth in section 39-27-102.5 (9), every person who uses any gasoline or special fuel for propelling a motor vehicle on the public highways of this state or who is licensed to import any gasoline or special fuel into this state for use or sale in this state, upon which gasoline or special fuel a licensed distributor has not paid or is not liable to pay the tax imposed in this section, is deemed to be a distributor and is liable for and shall pay an excise tax at a rate established by paragraph (a) of subsection (1) of this section on all such gasoline or special fuel so used, or imported for use or sale, in this state. Such person shall pay such tax to the department of revenue, pursuant to section 39-27-105.3, on or before the twenty-sixth day of the calendar month following the month in which such gasoline or special fuel was used or imported and shall, at the time of payment, render to the department, on forms provided by it, an itemized statement, signed under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S., of all such gasoline or special fuel so used or imported during such preceding calendar month. When such gasoline or special fuel is delivered from a terminal in a carload lot, the quantity thereof and the amount of tax thereon shall be computed in the same manner as in the case of a distributor.

(b) A person operating a passenger car into this state may bring into the state, for the operation of such passenger car, not more than the capacity for gasoline or special fuel in the ordinary fuel tank attached to such passenger car without being liable for payment of the tax on such gasoline or special fuel. Any person operating a motor truck or motor bus into this state, except those persons operating a qualified motor vehicle pursuant to motor fuel tax cooperative agreement entered into under part 3 of this article, may bring into this state, for the operation of such motor truck or motor bus, not more than the capacity for gasoline or special fuel in the ordinary fuel tank attached to such motor truck or motor bus without being liable for payment of the tax on such gasoline or special fuel. Any person operating an aircraft into this state, other than an aircraft operated by scheduled air carriers or commuter airline operators, may bring into

this state, for the operation of such aircraft, not more than the capacity for gasoline or special fuel in the ordinary fuel tank attached to such aircraft without being liable for payment of the tax on such gasoline or special fuel. In the event of a disagreement between the operator, driver, or owner of any vehicle, truck, or bus and any officer or inspector of this state regarding the capacity of the ordinary fuel tank of any vehicle traveling upon the highways, the operator, driver, or owner shall be required, at his or her own expense, to prove to the satisfaction of the officer or inspector the capacity of the ordinary fuel tank attached to such vehicle, and, in the event it exceeds that exempted by law, he or she shall be required to pay the tax on any additional gallonage then and there, securing a receipt from the officer or inspector with whom such disagreement occurred.

(c) and (d) Repealed.

(2.5) Except as otherwise provided in paragraph (b) of subsection (2) of this section, every person who imports gasoline or special fuel other than liquefied petroleum gas into this state for use or sale in this state without a valid importer, supplier, blender, or distributor license is liable for and shall pay an excise tax pursuant to paragraph (a) of subsection (1) of this section on all gasoline or special fuel such person imports for use or sale in this state. In addition to the excise tax, such person shall be subject to the civil penalties set forth in subsection (9) of this section. Every person who imports liquefied petroleum gas into this state without a valid importer, supplier, or distributor license is subject to the civil penalties set forth in subsection (9) of this section. Immediately upon discovery of a violation of this subsection (2.5), the department of revenue and agents thereof may demand payment of such excise tax, if owed, and all applicable fines associated with the unlicensed importation of gasoline or special fuel and may detain the shipment of gasoline or special fuel until such excise tax and fines are collected.

(3) to (8) Repealed.

(9) (a) Any person who imports or distributes gasoline or special fuel into this state without a license shall be subject to the following civil penalties:

(I) A five-thousand-dollar fine for the first violation;

(II) A ten-thousand-dollar fine for the second violation;

(III) A fifteen-thousand-dollar fine for a third or subsequent violation.

(b) The executive director of the department of revenue is authorized to waive, for good cause shown, any civil penalty assessed pursuant to this subsection (9).

(c) All moneys collected pursuant to this subsection (9) shall be credited to the highway users tax fund, created in section 43-4-201, C.R.S., and allocated and expended as specified in section 43-4-205 (5.5)(a), C.R.S.

(10) Nothing in this section shall be construed to prohibit the criminal prosecution of any person who commits a criminal offense in connection with or as a result of violating any provision of this part 1.

**Source: L. 33:** p. 718, § 2. **L. 35:** p. 905, § 2. **CSA:** C. 16, § 382. **L. 53:** p. 152, § 1. **CRS 53:** § 138-3-2. **L. 63:** p. 942, § 2. **C.R.S. 1963:** § 138-2-2. **L. 64:** p. 656, § 15. **L. 65:** pp. 1114-1118, §§ 2-5. **L. 67:** pp. 335, 336, 985, §§ 1, 2, 3, 1. **L. 69:** pp. 1140, 1141, §§ 1-5. **L. 71:** pp. 1257, 1258, §§ 1, 2. **L. 72:** p. 572, § 60. **L. 73:** pp. 1454, 1457, 1458, §§ 3, 4, 1, 2. **L. 75:** (4)(a) amended, p. 1517, § 1, effective January 1, 1976. **L. 77:** (2)(b) amended, p. 1838, § 1, effective July 1; (3)(a), (4)(a),and (5)(a) amended and (4)(b) repealed, pp. 1840, 1841, §§ 2, 3, effective January 1, 1978. **L. 78:** (1)(a) amended, p. 516, § 1, effective July 1. **L. 79:** (1)(a)(II)

amended, p. 1330, § 3, effective May 8; (3)(a) and (6)(a) amended, p. 426, § 21, effective July 1; (1)(a)(I), (1)(a)(II), (1)(b), (2)(a), and (2)(b) amended and (2)(c), (2)(d), (3), (4), (5), (6), (7), and (8) repealed, pp. 1475, 1501, §§ 2, 29, effective January 1, 1980. **L. 80:** (1)(b) amended, p. 737, § 1, effective April 10. **L. 81:** (1)(a)(II) amended, p. 459, § 2, effective May 18; (1)(a) and (2)(a) amended, p. 1893, § 1, effective June 19. **L. 82:** (1)(a)(III) amended, p. 573, § 1, effective April 23. **L. 83:** (1)(a)(II) amended, p. 1539, § 1, effective July 1. **L. 84:** (1)(a)(III) amended, p. 1024, § 1, effective July 1. **L. 85:** (1)(a)(III) R&RE, p. 1285, § 1, effective June 6. **L. 86:** (1)(a)(II) amended, p. 1127, § 1, effective July 1. **L. 88:** (1)(b) amended, p. 1330, § 1, effective April 13; (2)(b) amended, p. 1336, § 2, effective April 14; (1)(a)(I) and (2)(b) amended and (1)(a)(IV) added, p. 1091, § 7, effective January 1, 1989. **L. 89, 1st Ex. Sess.:** (1)(a)(II) R&RE and (1)(b) amended, p. 51, §§ 1, 3, effective July 1; (1)(a)(II) R&RE and (1)(b) amended, p. 53, §§ 1, 2, effective August 1. **L. 91:** (1)(a)(IV)(C) added, p. 2397, § 22, effective July 1. **L. 91, 1st Ex. Sess.:** (1)(a)(IV)(C) added, p. 7, § 11, effective July 1. **L. 95:** (1)(a)(I) and (1)(b) amended, p. 982, § 2, effective July 1. **L. 98:** (1)(a)(I), (1)(b), and (2)(a) amended and (1.5), (2.5), (9), and (10) added, p. 1023, § 2, effective July 1. **L. 2000:** (1)(a)(I) and (1.5) amended, p. 1916, § 2, effective October 1. **L. 2003:** (1)(a)(IV)(B) and (1)(b) amended, p. 1817, § 3, effective August 6. **L. 2005:** (9)(c) amended, p. 140, § 4, effective April 5; (1)(a)(I), (1)(a)(II), (1)(a)(III), (1)(b), (2)(a), (2)(b), (2.5), and IP(9)(a) amended and (1)(a)(V) added, p. 863, § 1, effective July 1. **L. 2013:** (1)(a)(II)(B) and (2)(a) amended and (1)(a)(VI), (1)(a)(VII), and (1)(a)(VIII) added, (HB 13-1110), ch. 225, p. 1059, § 6, effective January 1, 2014. **L. 2014:** (1)(b) amended, (HB 14-1105), ch. 107, p. 393, § 1, effective August 6. **L. 2015:** (1)(a)(I), (1)(b)(I), and (2.5) amended, (HB 15-1228), ch. 315, p. 1285, § 3, effective January 1, 2016. **L. 2016:** (1)(a)(IV)(B) amended, (SB 16-189), ch. 210, p. 796, § 114, effective June 6.

**Editor's note:** (1) Amendments to subsection (2)(b) by Senate Bill 88-28 and House Bill 88-1250 were harmonized.

(2) The amendment to this section made by chapter 1, L. 91, First Extraordinary Session, p. 7, section 12, supersedes the amendment made by chapter 330, L. 91, p. 2397, section 22. Both acts contained a July 1, 1991, effective date. However the Governor did not sign the act enacted at the First Extraordinary Session until July 5. The act contained in chapter 1 from the First Extraordinary Session was subject to an interrogatory submitted to the Supreme Court by the Governor. The court held the act constitutional on its face. (See In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).)

(3) Section 3 of chapter 107 (HB 14-1105), Session Laws of Colorado 2014, provides that changes to this section by the act apply to fuel sales between governmental entities that occur prior to, on, or after August 6, 2014.

**Cross references:** (1) For the legislative declaration contained in the 2003 act amending subsections (1)(a)(IV)(B) and (1)(b), see section 1 of chapter 278, Session Laws of Colorado 2003.

(2) For the legislative declaration in the 2013 act amending subsections (1)(a)(II)(B) and (2)(a) and adding subsections (1)(a)(VI), (1)(a)(VII), and (1)(a)(VIII), see section 1 of chapter 225, Session Laws of Colorado 2013.

(3) For the legislative declaration in HB 15-1228, see section 1 of chapter 315, Session Laws of Colorado 2015.

**39-27-102.5. Exemptions on tax imposed - ex-tax purchases.**

(1) (Deleted by amendment, L. 2005, p. 866, § 2, effective July 1, 2005.)

(1.5) Except as otherwise provided in paragraphs (a) and (b) of subsection (2) of this section, paragraph (b) of subsection (3) of this section, and section 39-27-102 (1)(b), indelible dye meeting federal regulations must be added to special fuel before or upon withdrawal at a terminal or refinery rack for that special fuel to be exempt from the excise tax imposed pursuant to this part 1. Such tax-exempt special fuel shall not be used for taxable purposes; except that dyed special fuel may be used for a taxable purpose to the extent that such use is allowed under federal law or regulations with such fuel being subject to the excise tax imposed pursuant to this part 1. For purposes of this subsection (1.5), "taxable purpose" means any use on which an excise tax on special fuel is imposed pursuant to this part 1. The terminal operator shall ensure that tax-exempt special fuel is dyed before it leaves the terminal. The seller shall give notice to the purchaser in accordance with federal regulations that the dyed special fuel is not legal for taxable use.

(2) (a) Dyed diesel fuel purchased to propel farm vehicles, when the same are being used on farms and ranches, farm tractors, and implements of husbandry only incidentally operated or moved on a highway, when operated off the public highways, and vehicles or construction equipment operated within the confines of highway construction projects when the same are actually being used in the construction of such highways shall be exempt from the excise tax imposed pursuant to this part 1. In accordance with section 39-27-104 (1)(d.5), dyed diesel fuel may be blended by a licensed distributor with biodiesel fuel after withdrawal at a terminal or refinery rack up to the maximum federally allowable blend. Such blended special fuel shall be exempt from the excise tax imposed pursuant to this part 1, so long as it is purchased for the purposes set forth in this paragraph (a). A person who purchases undyed special fuel for the purposes set forth in this paragraph (a) may, in accordance with section 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(b) (I) (Deleted by amendment, L. 2005, p. 866, § 2, effective July 1, 2005.)

(II) Dyed diesel purchased by the state of Colorado, any of its agencies, any town, city, county, city and county, school district of this state, or any other political subdivision of this state shall be exempt from the excise tax imposed pursuant to this part 1 if the special fuel is used exclusively by the governmental entity in performing its governmental functions and activities. A person who purchases dyed diesel fuel for the purposes set forth in this subparagraph (II) may, in accordance with section 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(III) Any state or local governmental entity referred to in subparagraph (II) of this paragraph (b) may obtain an exemption certificate from the executive director of the department of revenue pursuant to subsection (3) of this section. Upon receipt of an exemption certificate, such governmental entity may purchase from a distributor undyed special fuel without payment of the excise tax imposed pursuant to this part 1 if the special fuel is used exclusively by the governmental entity in performing its governmental functions and activities.

(c) Any person operating a vehicle other than a qualified motor vehicle pursuant to the motor fuel tax cooperative agreement entered into under part 3 of this article may bring into this state for the operation of such vehicle only the amount of special fuel that is in the ordinary fuel tank attached to such vehicle without being liable for the payment of the tax under this part 1.

(3) (a) The tax collected by the distributor pursuant to this section is deemed to have been received by the distributor at the time the fuel is acquired or, in the case of liquefied petroleum gas, at the time the fuel is placed in a fuel tank or used to propel a cargo tank motor vehicle, irrespective of when payment is received by the distributor for the amount of the invoice, including the tax, and the tax required to be collected by the distributor constitutes a debt owed by the distributor to this state.

(b) The executive director of the department of revenue shall issue an exemption certificate to a user of special fuel to purchase undyed special fuel from a distributor without payment of the tax if such user is exempt under the provisions of paragraph (b) of subsection (2) of this section.

(c) With each sale of special fuel made without payment of the tax pursuant to this subsection (3), the distributor shall secure evidence that the user has authorization from the executive director of the department of revenue to purchase special fuel ex-tax, together with the distributor's name and address and such other information as the executive director may require.

(4) (Deleted by amendment, L. 2000, p. 1932, § 15, effective October 1, 2000.)

(5) and (6) Repealed.

(7) Motor vehicles that are owned or operated by a nonprofit transit agency that receives public funds and that are used exclusively in performing the agency's nonprofit functions and activities shall be exempt from the special fuel tax imposed by section 39-27-102 (1)(a) upon liquefied petroleum gas and natural gas. A person who purchases special fuel for the purposes set forth in this subsection (7) may, in accordance with section 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(8) Repealed.

(9) Compressed natural gas used to propel a motor vehicle on the highways of this state that is supplied to the user at a residential home is exempt from the special fuel tax imposed by this article.

**Source: L. 2000:** Entire section added with relocated provisions, p. 1932, § 15, effective October 1. **L. 2002:** (2)(a), (2)(b)(I), (2)(b)(II), and (7) amended, p. 552, § 1, effective May 24. **L. 2005:** (1), (1.5), (2)(b)(I), IP(5)(a), (5)(b), (5)(e), (5)(f), (6)(a), and (7) amended, p. 866, § 2, effective July 1. **L. 2009:** (1.5) and (2)(a) amended, (SB 09-098), ch. 195, p. 877, § 2, effective August 5. **L. 2013:** (5), (6), and (8) repealed, (7) amended, and (9) added, (HB 13-1110), ch. 225, p. 1060, § 7, effective January 1, 2014. **L. 2015:** (3)(a) amended, (HB 15-1228), ch. 315, p. 1287, § 4, effective January 1, 2016.

**Editor's note:** This section is similar to former § 39-27-202 as it existed prior to 2000.

**Cross references:** (1) For the legislative declaration in the 2013 act repealing subsections (5), (6), and (8), amending subsection (7), and adding subsection (9), see section 1 of chapter 225, Session Laws of Colorado 2013.

(2) For the legislative declaration in HB 15-1228, see section 1 of chapter 315, Session Laws of Colorado 2015.

**39-27-103. Refunds - penalties - checkoff - limits on collections.** (1) A credit or refund shall be allowed for the tax paid or accrued on gasoline or special fuel that is lost or

destroyed by fire, lightning, flood, windstorm, explosion, accident, or other cause beyond the control of the distributor or transporter of such gasoline or special fuel. This credit or refund shall be allowed only on gasoline or special fuel in quantities of one hundred gallons or more lost or destroyed at any one time. Any loss of gasoline or special fuel while in transit or while being loaded or unloaded shall be subject to credit or refund under this section. After any such loss or destruction, the distributor or transporter shall notify the executive director of the department of revenue within thirty days of such loss or destruction and, within the same deadline, shall file with the executive director proof sufficient to establish the loss or destruction as the executive director may require.

(1.5) A refund shall be allowed to a distributor for the tax paid on gasoline or special fuel pursuant to the provisions of this part 1 that was erroneously paid due to mistake of fact, law, or computation. A distributor who has paid any such tax may, within three years from the date of payment thereof, file with the department of revenue an application for refund of such tax so erroneously paid. Such application shall be on such forms as prescribed by the department of revenue.

(2) A refund shall be made or credit allowed for the tax paid on all gasoline or special fuel that is purchased and used exclusively, pursuant to section 39-27-102 (1)(b) by the United States or any of its agencies or by the state or by any town, city, county, or other political subdivision of the state, including specifically any school district therein, solely in any machines owned or operated by the United States or any of its agencies or by the state or by such town, city, county, school district, or other political subdivision of the state. Except as provided in section 39-27-102 (1)(b)(II), for purchases between governmental entities holding gasoline or special fuel exemption certificates, any other use or any resale for any other use is a violation of paragraph (c) of subsection (3) of this section.

(3) (a) (I) Any person who purchases gasoline or special fuel and pays the tax thereon at the time of such purchase shall be entitled to a refund by the controller, upon voucher certified by the department of revenue of the amount of such tax paid by him or her upon complying with the applicable conditions and provisions of this section, if the gasoline or special fuel is used for the purpose of:

(A) Operating a stationary gas engine;

(B) Operating a motor vehicle on or over fixed rails;

(C) Operating a tractor, truck, or other farm implement or machine for agricultural purposes on a farm or ranch;

(D) Operating a state-licensed agricultural applicator aircraft from a private landing facility used solely and exclusively for agricultural applications, to the extent of fifty percent of taxes payable pursuant to section 39-27-102 (1)(a)(IV);

(E) Operating a motor boat;

(F) Operating an aircraft by a part 121 air carrier as defined in section 39-27-101 (19), a part 135 commuter air carrier as defined in section 39-27-101 (20), or a direct air carrier as defined in section 39-27-101 (6) providing transportation to an authorized public charter operator pursuant to 14 CFR 380;

(G) Cleaning or dyeing;

(H) Any commercial use other than the operation of a motor vehicle upon the highways of this state and the operation of any aircraft other than the operation of aircraft specified in sub-subparagraphs (D) and (F) of this subparagraph (I); or

(I) Any other use that entitles a person to a refund under the provisions of this part 1 or federal law.

(II) Notwithstanding any other provision of this section, no person shall be entitled to a refund on purchases of gasoline or special fuel in quantities of less than twenty gallons.

(III) The executive director of the department of revenue shall calculate the amount of the refund allowed by subparagraph (I) of this paragraph (a) for gasoline or special fuel use in accordance with the industry-specific percentages of such fuel use exempted by said subparagraph (I) that can be justified by studies done by industries that use the fuel for such exempt purposes, studies done by other states for refunds of tax imposed on the fuel used for such exempt purposes, or studies done by the department about the historical fuel usage for such exempt purposes. The executive director shall set such percentages by rule promulgated in accordance with article 4 of title 24, C.R.S.

(a.1) Repealed.

(a.3) (I) Any person who purchases or uses gasoline for the propulsion of an aircraft shall be entitled to a refund by the controller if:

(A) The use of such gasoline in such aircraft is subject to the excise tax levied pursuant to section 39-27-102 (1)(a)(IV)(A); and

(B) The excise tax actually paid was the excise tax levied pursuant to any provision of section 39-27-102 (1)(a), excluding section 39-27-102 (1)(a)(IV)(A).

(II) The amount of such refund shall be the difference between the amount actually paid and the amount that should have been paid pursuant to section 39-27-102 (1)(a)(IV) as certified by the department of revenue.

(b) All applicants claiming a refund under the provisions of this section shall obtain a refund permit from the department of revenue by application therefor on such forms as it prescribes. Such permits shall be obtained before or at the time the first application for refund is made. The application shall be made under oath and shall contain, among other things, the name, address, and occupation of the applicant, and the nature of the business, and a sufficient description of the machines and equipment in which the gasoline or special fuel is to be used for which a refund may be claimed. Upon approval of the application, the department of revenue shall issue to the applicant a refund permit number, and refund claim forms with the approved exemption percentage to calculate the amount of the refund allowed. The department shall make additional copies of the application for refund forms available to dealers. It is the duty of the department of revenue to keep a record for twenty-four months of all permits issued and cumulative records of the amount of refund claimed and paid thereon.

(c) Refund permits shall be cancelled by the department of revenue if no claim is filed by the permit holder for a period of twenty-four months. If any person makes any false statement in an application for a permit or upon any claim for refund or submits with any claim for refund an invoice that does not represent a bona fide purchase of gasoline or special fuel at the time and place and in the quantity indicated on the invoice, or if any dealer or other person prepares an invoice that does not represent a bona fide sale of gasoline or special fuel at the time and place and in the quantity indicated in the invoice, or if any person uses gasoline or special fuel on which refunds are claimed in any motor vehicle on the public highways of this state, except as provided in subsection (2) of this section, said person or dealer is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and

imprisonment. In addition, the executive director shall forthwith cancel the permit of such person, and such person shall not be issued a new permit within one year after such cancellation.

(d) Application for a refund under this section shall be made within twelve months after the date of purchase of the gasoline or special fuel but not more than once each calendar quarter. Such application shall be made on forms prescribed and furnished by the executive director, which shall contain such information as the executive director may deem necessary. At the time of making each sale and delivery of gasoline or special fuel upon which a refund of tax may be claimed, the dealer shall prepare an invoice, in duplicate, in a form approved by the executive director and containing such information as the executive director may deem necessary and carrying a serial number that shall not be repeated through any one calendar year. No additional invoices covering the same sale and delivery of gasoline or special fuel shall be issued by the dealer. The original copy of such invoice shall be delivered to the purchaser of the gasoline or special fuel, and, upon payment in full of such invoice, the dealer shall enter thereon the dealer's full name and a notation showing payment thereof. With respect to invoices covering the sale and delivery of gasoline or special fuel to the state or those political subdivisions of the state specified in subsection (2) of this section, it shall not be necessary for the dealer to enter the dealer's name and the notation showing payment thereof. Upon proper application, refund shall be made directly to such political subdivisions upon presentation of the completed refund claim form. Original invoices together with a certification of the date and number of the warrant by which such invoices were paid shall be retained by such political subdivisions for a period of twenty-four months. The duplicate copy of the invoice shall be retained by the dealer for a period of twenty-four months at the place of business where issued, and such duplicate invoices and other records of the dealer shall be available for examination by the executive director or the executive director's representatives. The executive director shall make demand for repayment of any refund of tax that has been illegally or erroneously made to any person, and the executive director is authorized to request the attorney general or any district attorney of the state to institute a suit for collection of any money illegally or erroneously refunded to any person.

(e) No refund shall be claimed by or allowed to any person on account of any gasoline or special fuel carried from this state in the ordinary fuel tank of a motor vehicle or aircraft. The application for a refund shall be made by the same person who purchased the gasoline or special fuel and paid the tax thereon as shown in the invoice of the seller thereof. The right of any person to a refund under this part 1 shall not be assignable. No refund of the gasoline or special fuel tax shall be claimed by or allowed to any person on any gasoline or special fuel used for propelling motor vehicles operated in whole or in part during the calendar year upon public highways of the state or upon the streets of any city or town in the state, except as otherwise provided in this subsection (3) or subsection (2) of this section.

(f) (Deleted by amendment, L. 2002, p. 553, § 2, effective May 24, 2002.)

(4) Any applicant for refund under the provisions of this section who willfully makes any false statement in connection with an application for a permit or an application for a refund of any taxes, or who uses the gasoline or special fuel other than as stated in the permit and application, shall be punished as provided by section 39-21-118, and by suspension or revocation of his or her permit or license. These penalties shall be in addition to any other penalty imposed by this part 1. If any applicant for refund under the provisions of this section makes any false statement on any application for permit or credit for refund, or submits any invoices on which erasures, changes, alterations, or additions have been made, or that are otherwise incorrect, the

executive director shall cancel all or part of any pending claim for refund of such applicant and shall also deduct from any subsequent claims an amount equal to one hundred percent of the amount claimed on any altered or incorrect invoice.

(5) If any person is convicted under the provisions of this section, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the executive director 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 of permit and application for refund.

(6) Repealed.

(7) Notwithstanding any provision of law to the contrary, the department of revenue shall not collect any penalties or interest related to the tax imposed under this part 1 for liquefied petroleum gas that, from January 1, 2014, until January 1, 2016, is acquired, sold, offered for sale, or used in this state for any purpose whatsoever. The department shall refund any of these prohibited penalties or interest that were collected prior to August 5, 2015.

**Source: L. 33:** p. 720, § 3. **CSA:** C. 16, § 383. **L. 43:** p. 192, § 1. **L. 51:** p. 190, §§ 1, 2. **L. 53:** p. 157, § 2. **CRS 53:** § 138-3-3. **L. 55:** pp. 912, 913, §§ 1, 1. **L. 59:** p. 789, § 1. **L. 63:** pp. 943, 944, §§ 3, 4. **C.R.S. 1963:** § 138-2-3. **L. 64:** p. 812, § 1. **L. 67:** pp. 337, 495, §§ 4, 1. **L. 79:** (3)(a.1) added, p. 1330, § 4, effective May 8; (3)(d) amended, p. 1503, § 1, effective July 1; (1), (2), (3), and (4) amended and (6) repealed, pp. 1477, 1501, §§ 3, 29, effective January 1, 1980. **L. 85:** (4) amended, p. 1259, § 16, effective January 1, 1986. **L. 87:** (1.5) added, p. 1464, § 1, effective May 8. **L. 88:** (2) amended, p. 1331, § 2, effective April 13; (3)(a) and (3)(e) amended and (3)(a.3) added, p. 1092, § 8, effective January 1, 1989. **L. 94:** (3)(a.1) repealed, p. 1646, § 83, effective May 31. **L. 97:** (3)(d) amended, p. 55, § 1, effective July 1. **L. 2002:** (1), (1.5), (2), (3)(a), (3)(b), (3)(c), (3)(d), (3)(e), (3)(f), and (4) amended, p. 553, § 2, effective May 24. **L. 2003:** (3)(a)(I)(F) and (3)(a)(I)(H) amended, p. 1818, § 4, effective August 6. **L. 2005:** (2) amended, p. 869, § 3, effective July 1. **L. 2012:** (1) amended, (HB 12-1178), ch. 79, p. 261, § 1, effective September 1. **L. 2013:** (3)(a.3) amended, (HB 13-1110), ch. 225, p. 1062, § 8, effective January 1, 2014. **L. 2014:** (2) amended, (HB 14-1105), ch. 107, p. 394, § 2, effective August 6. **L. 2015:** (7) added, (HB 15-1228), ch. 315, p. 1287, § 5, effective August 5. **L. 2016:** (3)(a)(I)(F) amended, (SB 16-189), ch. 210, p. 796, § 115, effective June 6.

**Editor's note:** Section 3 of chapter 107 (HB 14-1105), Session Laws of Colorado 2014, provides that changes to this section by the act apply to fuel sales between governmental entities that occur prior to, on, or after August 6, 2014.

**Cross references:** (1) For the legislative declaration contained in the 2003 act amending subsections (3)(a)(I)(F) and (3)(a)(I)(H), see section 1 of chapter 278, Session Laws of Colorado 2003.

(2) For the legislative declaration in the 2013 act amending subsection (3)(a.3), see section 1 of chapter 225, Session Laws of Colorado 2013.

(3) For the legislative declaration in HB 15-1228, see section 1 of chapter 315, Session Laws of Colorado 2015.

**39-27-103.5. Refunds of the tax paid on special fuel. (Repealed)**

**Source: L. 2000:** Entire section added with relocated provisions, p. 1932, § 15, effective October 1; (1)(a) amended, p. 89, § 1, effective July 1. **L. 2002:** Entire section repealed, p. 556, § 3, effective May 24.

**Editor's note:** This section was similar to former § 39-27-203 as it existed prior to 2000.

**39-27-104. License and deposit - exception.** (1) (a) It is unlawful for any person to act as a distributor, supplier, importer, exporter, carrier, or blender of gasoline or special fuel in this state without being licensed as such. Any person who acts as a distributor, supplier, importer, exporter, carrier, or blender of gasoline or special fuel within this state without being licensed as such is guilty of a misdemeanor. Each day of operation without a license shall be considered a separate offense. Such person shall also be subject to the civil penalties imposed pursuant to section 39-27-105 (5).

(b) Each applicant for the gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license required by this section shall file with the executive director of the department of revenue an application in such form and manner as the executive director shall prescribe, stating the name and address of the applicant and such other information as may be required by this section or by the executive director. The application shall include a statement that such application is signed under oath and under the penalty of perjury in the second degree, as defined in section 18-8-503, C.R.S. An applicant for a license to export gasoline or special fuel from this state shall provide verification as required by the executive director that the applicant has an appropriate license valid in any state into which the gasoline will be exported. Each application for a gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license shall be accompanied by a ten-dollar filing fee.

(c) The executive director of the department of revenue shall issue a license to an applicant if the application for a gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license is in proper form, has been accepted for filing, and meets the other conditions and requirements of this section. The license shall be valid until surrendered, suspended, or revoked.

(d) A person who engages in the business of blending or compounding any products to make gasoline or special fuel thereof shall obtain a blender license and set forth in his or her application the kind and general characteristics of the products to be blended, the place where such blending is done, the purpose of such blending, and the intended disposition of such blended products and any other information as the executive director of the department of revenue deems necessary or advisable for the enforcement of this part 1.

(d.5) No person shall blend exempt dyed diesel fuel with biodiesel fuel after withdrawal at a terminal rack or refinery rack unless such person is a licensed blender in accordance with paragraph (d) of this subsection (1) who has a valid federal blending permit. Any person who violates the provisions of this paragraph (d.5) or the reporting or other requirements of this section relating to such blending or who misrepresents the amount of biodiesel fuel that is blended with dyed diesel fuel shall be subject to the following civil penalties:

(I) A five-thousand-dollar fine for the first violation;

(II) A ten-thousand-dollar fine for the second or subsequent violation; and

(III) In accordance with rules promulgated pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., revocation of any license issued in accordance with the provisions of this section for the third violation.

(e) When any person ceases to be a distributor, supplier, importer, exporter, carrier, or blender of gasoline or special fuel by reason of discontinuance, sale, or transfer of such person's business at any location, such person shall notify the executive director of the department of revenue in writing at the time the discontinuance, sale, or transfer takes effect. The notice shall state the date of discontinuance and, in the event of sale or transfer, the name and address of the purchaser or transferee. All taxes, penalties, and interest not yet due and payable under the provisions of this part 1 shall, notwithstanding any other provisions of this part 1, become due and payable concurrently with the discontinuance, sale, or transfer; and the distributor shall make a report and pay all taxes, penalties, and interest and shall surrender to the executive director of the department of revenue the gasoline distributor, supplier, importer, exporter, carrier, or blender license together with all duplicates issued to him or her.

(f) The gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license issued under the provisions of this section shall be conspicuously displayed in the established place of business of the licensee. A licensee shall obtain a duplicate license for each established branch office or location, which shall be displayed in a like manner as the original license. Each such duplicate license shall be issued by the executive director of the department of revenue upon payment of a five-dollar fee.

(g) (I) No person shall export gasoline or special fuel out of this state without a valid license pursuant to this section. Any person who violates the reporting requirements of this part 1, exports gasoline or special fuel out of this state without a valid license, or imports gasoline or special fuel into this state without a license shall be subject to the following civil penalties:

(A) A five-thousand-dollar fine for the first violation;

(B) A ten-thousand-dollar fine for the second violation;

(C) A fifteen-thousand-dollar fine for a third or subsequent violation.

(II) The executive director of the department of revenue is authorized to waive, for good cause shown, any civil penalty assessed pursuant to this paragraph (g).

(III) All moneys collected pursuant to this paragraph (g) shall be credited to the highway users tax fund, created in section 43-4-201, C.R.S., and allocated and expended as specified in section 43-4-205 (5.5)(a), C.R.S.

(IV) Nothing in this paragraph (g) shall be construed to prohibit the criminal prosecution of any person who commits a criminal offense in connection with or as a result of violating any provision of this part 1.

(V) Immediately upon discovery of a violation of this paragraph (g), the department of revenue and agents thereof:

(A) May require payment of the excise tax imposed pursuant to section 39-27-102 (1)(a) and all applicable civil penalties imposed pursuant to this paragraph (g) from any person who violates the provisions of this paragraph (g); and

(B) May detain the shipment of gasoline or special fuel until payment is collected.

(h) The executive director of the department of revenue may refuse to issue a gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license if the executive director finds, after affording the applicant due notice and an opportunity to be heard, that the application:

(I) Was filed by any person whose license has previously been suspended or revoked for cause by the executive director of the department of revenue;

(II) Contains any misrepresentation, misstatement, or omission of material information required by the application;

(III) Was filed by some person other than the real person in interest whose license has been previously suspended or revoked for cause by the executive director of the department of revenue;

(IV) Was filed by any person who is or has been delinquent in the payment of any fee, tax, penalty, or other amount due to the department of revenue for more than two taxable periods; or

(V) Was submitted by a person who the executive director of the department of revenue determines is unable or unwilling to perform the duties and responsibilities of a licensed gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender, as applicable, based upon evidence furnished to him or her.

(2) (a) (I) (A) No license to act as a distributor, refiner, or terminal operator of gasoline or special fuel shall be issued until the applicant therefor has deposited with the department of revenue evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a surety bond or a negotiable certificate of deposit issued by a commercial bank doing business in this state acceptable to the executive director of the department of revenue. When such deposit is a surety bond, such bond shall be in the sum of approximately three times the monthly tax liability estimated by the executive director to become due by the licensee, except as otherwise limited in sub-subparagraph (B) of this subparagraph (I). If the deposit is a surety bond, it shall also be conditioned upon compliance by the distributor or refiner with all provisions of this part 1 and payment of all taxes and penalties to become due and payable thereunder; if it is a negotiable certificate of deposit, it shall be subject to forfeiture upon failure of the distributor or refiner to comply with said provisions or to pay all said taxes and penalties. Upon approval by the executive director of the application, a license to act as a distributor or refiner shall be issued to the applicant.

(B) For gasoline and special fuel other than liquefied petroleum gas, the amount of the surety bond must never be less than twenty-five thousand dollars nor more than two hundred thousand dollars. For liquefied petroleum gas, the amount of the surety bond must never be more than two hundred thousand dollars.

(II) The total amount of bond required of a distributor shall be fixed by the executive director of the department of revenue and may be increased or decreased by such director at any time, subject to the limitations imposed by this subsection (2).

(b) If at any time after issuance of the license the executive director of the department of revenue finds that the licensee is using liquefied petroleum gas or acquiring gasoline or special fuel other than liquefied petroleum gas in a quantity that makes the licensee liable for payment of excise tax, for the preceding and current month in an amount greater than the amount of the deposit, the executive director shall, by written notice to the licensee, demand an additional surety bond or negotiable certificate of deposit to be deposited in an amount determined necessary to secure payment of a greater amount of taxes, but the aggregate amount of deposit shall in no event exceed two hundred thousand dollars. If the licensee fails or refuses within ten days after receipt of the written notice and demand to deposit an additional surety bond or negotiable certificate of deposit in the amount determined, the executive director may by written

notice suspend or revoke the license held by the licensee. The requirements of this section relative to making a deposit shall apply only to distributors who are liable to the state for payment of the tax imposed by section 39-27-102.

(c) If the surety upon any surety bond so elects, said surety bond may be conditionally cancelled by the filing by said surety with the licensee and the executive director of the department of revenue of written notices of such conditional cancellation, but said surety shall not be discharged from any liability already accrued or that may accrue under said bond before the expiration of sixty days after the filing of said notices; if the licensee fails or refuses within sixty days after receiving said notice to deposit a new surety bond or a negotiable certificate of deposit acceptable to the executive director, then such license shall be revoked and cancelled.

(d) When a new surety bond or a negotiable certificate of deposit is deposited by a licensee, the executive director of the department of revenue shall surrender the old surety bond as soon as such director shall be satisfied that all liability thereunder has been fully discharged. When the liability upon a surety bond deposited by a licensee is discharged or reduced, whether by judgment rendered, payment made, or otherwise, or when a surety bond deposited by a licensee becomes insufficient by reason of the insolvency of the surety, or when for any other cause such surety bond is found to be insufficient, the executive director shall require the licensee to deposit a new surety bond or a negotiable certificate of deposit, in default of which the executive director may revoke and cancel said license. The validity of any surety bond and the liability of the surety thereon shall not be affected by the revocation of a license, or by partial recovery upon said surety bond, or by the deposit of a new surety bond or a negotiable certificate of deposit, but all such surety bonds shall continue in force and effect until surrendered by the executive director.

(e) Any surety on a bond furnished by a distributor pursuant to this subsection (2), upon written request to the executive director of the department of revenue, shall be discharged from any liability to this state accruing on the bond after expiration of sixty days from the date of filing the request but not from liability already accrued or accruing before the expiration of the sixty-day period. The executive director, upon receipt of such a request, shall promptly notify the distributor who furnished the bond in question and, unless such distributor, prior to the expiration of the sixty-day period, files a new bond satisfactory to the executive director, the executive director shall forthwith revoke such distributor's license.

(2.1) (a) No person, unless qualified as a distributor or exempt from payment of the special fuel tax imposed by this part 1, shall be issued authorization to purchase special fuel ex-tax from a distributor for use as the propulsion source for a motor vehicle that is operated upon the highways of this state, as provided in section 39-27-102.5 (3), until such person has filed a surety bond with the executive director of the department of revenue. The terms and conditions of such surety bond shall be the same as those provided under subsection (2) of this section for the bonding of distributors; except that the amount of such bond shall never be less than one hundred dollars nor more than fifty thousand dollars. The executive director may accept cash or certificates of deposits in lieu of surety meeting the requirements of section 11-35-101, C.R.S., or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S.

(b) Any person who fails or refuses to furnish additional bond or file a new bond upon the request of the executive director of the department of revenue or who has authorization to purchase special fuel ex-tax from a distributor revoked by the executive director and who

continues to use such authorization is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars for each such offense.

(c) If an examination of the financial responsibility of a person who has been issued authorization to purchase special fuel ex-tax from a distributor indicates that a financial guarantee is necessary to guarantee payment of the tax, such person may be required to deposit a surety bond. The terms and conditions of such surety bond shall be the same as those provided in subsection (2) of this section for the bonding of distributors; except that the amount of such bond shall never be less than one hundred dollars nor more than fifty thousand dollars. In lieu of a surety bond, the executive director of the department of revenue may accept cash or certificates of deposit meeting the requirements of section 11-35-101, C.R.S., or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S.

(2.2) (a) The executive director of the department of revenue, in accordance with rules promulgated pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., may revoke or suspend the license of any licensee who:

(I) Fails to timely file any report required under this part 1 or files a false report;

(II) Fails to pay the tax imposed pursuant to this part 1 together with any applicable penalty and interest;

(III) Fails to pay any civil penalty assessed pursuant to this part 1;

(IV) Is convicted of any criminal offense related to a violation of the provisions of this part 1;

(V) Abuses the privileges for which the license was issued;

(VI) Fails to produce records requested or otherwise fails to cooperate with the department in the administration of the provisions of this part 1.

(b) The executive director of the department of revenue may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked if no fact or condition exists that would constitute grounds for the executive director to refuse to reinstate, grant, or terminate a suspension of a license.

(2.5) (a) Notwithstanding the provisions of subsection (2) of this section, a distributor or refiner who has been licensed in this state for five consecutive years and who, during this period, has not been delinquent in the payment of taxes imposed under this part 1 shall be exempt from the requirement to file a bond or any other evidence of financial responsibility meeting the requirements of section 11-35-101, C.R.S.

(b) If any delinquency in the payment of taxes imposed under this part 1 subsequently occurs, the executive director may reinstate the requirement of a bond or any other evidence of financial responsibility meeting the requirements of section 11-35-101, C.R.S., as a condition of licensure.

(3) In addition to all other applicable penalties and fines set forth in this part 1, each day on which any person engages in the business of a distributor, supplier, importer, exporter, carrier, or blender within this state without a license as required by this part 1 shall constitute a separate offense, and for each such offense, such person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(4) Notwithstanding the amount specified for any fee in subsection (1) of this section, the executive director of the department of revenue, by rule or as otherwise provided by law, may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or

more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director, by rule or as otherwise provided by law, may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(5) (a) A person who sells liquefied petroleum gas at the retail level of trade that is not used as special fuel does not act as a distributor and does not need to be licensed as one under this section if the person:

(I) Submits an affidavit, signed under penalty of perjury, stating that the person will not place liquefied petroleum gas in a fuel tank as part of any sale and that, if the person does place the fuel in a fuel tank, the person is subject to the penalties set forth in this section; and

(II) Conspicuously posts at the distribution point a sign indicating that the liquefied petroleum gas is not for sale for use in motor vehicles.

(b) The department of revenue shall establish the form of the affidavit required under subparagraph (I) of this subsection (5).

**Source: L. 33:** p. 722, § 4. **CSA:** C. 16, § 384. **L. 51:** p. 186, § 1. **CRS 53:** § 138-3-4. **C.R.S. 1963:** § 138-2-4. **L. 73:** p. 1455, § 5. **L. 77:** (3) amended, p. 887, § 74, effective July 1, 1979. **L. 79:** (2)(a) amended, p. 427, § 22, effective July 1; (1)(a), (1)(c), (2)(a), (2)(b), and (3) amended, p. 1480, § 4, January 1, 1980. **L. 87:** (2.5) added, p. 486, § 32, effective July 1. **L. 89:** (3) amended, p. 853, § 146, effective July 1. **L. 95:** (1)(a) and (2)(b) amended, p. 983, § 3, effective July 1. **L. 98:** (1) and (3) amended and (2.2) added, p. 1026, § 3, effective July 1. **L. 2000:** (1) and (2) amended and (2.1) and (4) added with relocations, p. 1917, § 3, effective October 1. **L. 2002:** (3) amended, p. 1558, § 354, effective October 1. **L. 2005:** (1)(g)(III) amended, p. 141, § 5, effective April 5; (1)(g)(V)(A) amended, p. 869, § 4, effective July 1. **L. 2009:** (1)(d.5) added, (SB 09-098), ch. 195, p. 878, § 3, effective August 5. **L. 2015:** (2)(a)(I) and (2)(b) amended and (5) added, (HB 15-1228), ch. 315, p. 1287, § 6, effective January 1, 2016.

**Editor's note:** (1) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

(2) Subsections (2)(a)(II), (2)(e), (2.1), (2.1)(c), and (4) are similar to provisions of former § 39-27-204 as they existed prior to 2000.

**Cross references:** (1) For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

(2) For the legislative declaration in HB 15-1228, see section 1 of chapter 315, Session Laws of Colorado 2015.

**39-27-105. Collection of tax on gasoline and special fuel - rules.** (1) In addition to the reporting requirements set forth in subsection (1.5) of this section, every distributor, supplier, carrier, exporter, importer, blender, refiner, or terminal operator of gasoline or special fuel other than liquefied petroleum gas on or before the twenty-sixth day of each calendar month shall file with the executive director of the department of revenue, on forms prescribed and furnished by

the department, an itemized statement made under penalty of perjury in the second degree, showing the following:

(a) The number of gallons of gasoline or special fuel acquired by the distributor in this state from any source whatsoever during the preceding calendar month;

(b) The quantity of the different kinds of gasoline or special fuel so acquired;

(c) The amount of gasoline or special fuel exported from this state, with the date of shipment, the car number and initials, and the number of invoiced gallons of gasoline or special fuel contained in each tank car if exported by rail, and the name of the owner and the make and license number of the tank truck or tank wagon if such transportation is used, and the name of the person to whom such exported gasoline or special fuel was sold, the point of shipment, and the point of delivery;

(d) The date of acquisition of each shipment of gasoline or special fuel acquired by the distributor, the name of the person from whom purchased or acquired, the point of origin and point of destination of each shipment, the quantity in gallons of each of said purchases or shipments, the name of the carrier, the number of each tank car, its initial, and the number of invoiced gallons contained in each tank car if shipped by rail, and the name of the owner and the make, license number, and capacity in gallons of the tank truck or tank wagon if such transportation was used;

(e) Further information pertaining to the acquisition of gasoline or special fuel and its disposition as the executive director of the department of revenue may reasonably require. In the case of a distributor duly licensed as a blender of gasoline or special fuel, the report shall show the amount and character of the unblended products and the blended products on hand on the last day of the preceding calendar month, the amount of unblended products acquired and the amount of products blended during said calendar month, and any other information relative to the disposition of the blended products as the executive director may deem necessary or advisable for the correct determination of the amount of excise tax applicable to gasoline or special fuel acquired, used, or offered for sale by the distributor.

(f) The information required for reporting acquisition or disposition of gasoline or special fuel pursuant to this article shall be submitted electronically in the manner prescribed by the department of revenue by rule. The department, in consultation with distributors, shall promulgate rules regarding filing of information that includes, but is not limited to, the data elements, the format of the data elements, and the method and medium of transmission to the department.

(1.2) (a) Every distributor, exporter, or importer of liquefied petroleum gas on or before the twenty-sixth day of each calendar month shall file with the executive director of the department of revenue, on forms prescribed and furnished by the department, a statement made under penalty of perjury in the second degree, showing the following aggregated amounts:

(I) The number of gallons of liquefied petroleum gas that the distributor placed in a fuel tank and that are subject to the excise tax under this part 1;

(II) The number of gallons of liquefied petroleum gas that the distributor placed in a fuel tank and that are exempt from the excise tax under this part 1;

(III) The number of gallons of liquefied petroleum gas, not placed in a fuel tank, that are sold to the state of Colorado, any of its agencies, any town, city, county, city and county, school district of this state, or any other political subdivision of this state;

(IV) The number of gallons of liquefied petroleum gas sold to a nonprofit transit agency that are not placed in a fuel tank;

(V) The number of gallons of liquefied petroleum gas imported into the state; and

(VI) The number of gallons of liquefied petroleum gas exported from this state.

(b) Subsection (1.5) of this section does not apply to a licensee with respect to liquefied petroleum gas.

(1.3) (a) (Deleted by amendment, L. 2005, p. 869, § 5, effective July 1, 2005.)

(b) The executive director of the department of revenue, if said executive director deems it necessary in order to ensure payment of the tax imposed by this part 1 or to facilitate the administration of this part 1, may require a report of a distributor and payment of the tax due by the distributor to be made for other than, or in addition to, the monthly period. When such option is authorized, the amount of surety bond required by section 39-27-104 (2) may be adjusted by the executive director proportionately with the change in liability.

(c) Distributors may aggregate figures stated in the reports required by this part 1 for natural gas for all service stations or other facilities that dispense natural gas for sale to users and that are owned or operated by the same distributor.

(d) Distributors may aggregate figures stated in the reports required by this part 1 for natural gas for sales of such fuels to a particular class or type of individual user. Distributors of natural gas shall not be required to separately report the amount of sales to individual users.

(e) Any inventory reporting requirements established pursuant to this subsection (1.3) shall not apply to distributors of natural gas whose service stations or other facilities receive special fuel for sale through a pipeline and have a maximum special fuel storage capacity of less than one-thousand-gallon equivalents at the site where sales are made to users.

(f) Distributors of liquefied petroleum gas shall aggregate figures stated in the reports required by this part 1.

(1.5) On or before the twenty-sixth day of each calendar month, every licensee shall file with the executive director of the department of revenue, on forms prescribed and furnished by the department, a report made under penalty of perjury in the second degree specifying any information that the executive director shall require. The executive director shall consult with persons in the gasoline or special fuel industry to determine such reporting requirements and promulgate said requirements by rule in accordance with the "State Administrative Procedure Act", article 4 of title 24. The executive director may by rule require that such reports be filed electronically.

(2) It is the duty of every distributor of gasoline or special fuel other than liquefied petroleum gas to compute the amount of tax payable on all gasoline or special fuel acquired during the preceding calendar month at the rate of tax per gallon imposed thereon in section 39-27-102 (1), and, in computing the amount of tax, the allowance of two percent provided for in section 39-27-102 (1) shall be taken into account. It is the duty of every distributor of liquefied petroleum gas to compute the amount of tax payable on the liquefied petroleum gas placed in a fuel tank or used to propel a cargo tank motor vehicle in the preceding calendar month at the rate of tax per gallon imposed thereon. From the amount of tax so computed, the distributor of gasoline or special fuel shall deduct one-half of one percent to cover expenses of collection of the tax and bad debt losses and shall pay the remaining balance to the department of revenue at the time of filing the statement required to be filed by the provisions of this section. A penalty of thirty dollars or ten percent of the tax due, plus one-half of one percent per month from the date

when due, not to exceed eighteen percent in the aggregate, whichever is greater, shall be imposed for failure to file any statement when due or pay the tax as provided in this section, in addition to any other penalties provided by this part 1.

(3) If any distributor of gasoline or special fuel fails or refuses to make and file the sworn statement and pay the tax due for any calendar month or if any distributor of gasoline or special fuel makes and files any incorrect or fraudulent statement or return for any calendar month as required by this part 1, the executive director of the department of revenue, upon such information as is available in his or her office or elsewhere, shall determine the amount of gasoline or special fuel taxes due from said distributor and shall add to said amount a penalty of thirty percent thereof for failure to file such report or for filing such false or fraudulent report and collect the amount of said tax and penalty plus interest on the whole amount due from said distributor at the rate imposed under section 39-21-110.5 from the date due until paid. The executive director may waive, for good cause shown, any penalty assessed as provided in this article and article 21 of this title.

(4) (a) (I) Every person who has obtained a passenger-mile tax permit pursuant to section 42-3-309, C.R.S., where such permit relates to a motor vehicle that is powered by special fuel, shall, on or before the last day of the month following the end of the quarter, file with the executive director of the department of revenue a report stating the amount of special fuel subject to the tax imposed by this part 1 consumed by such person during the prior quarter and such other information relating to the use of special fuel for the propulsion of a motor vehicle on the highways of this state as the executive director may require. The executive director, under rules and procedures established by said executive director, may exempt from the reporting requirement of this subsection (4) any motor vehicle used exclusively within this state. Failure to receive the authorized report form does not relieve such person from the obligation of submitting a report to the executive director setting forth all information required on the prescribed report form. The report shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S.

(II) The tax due pursuant to subparagraph (I) of this paragraph (a) shall be computed by multiplying the rate per gallon as set forth in section 39-27-102 (1)(a)(II)(B) by the number of gallons of special fuel used in this state.

(b) From the tax due, an authorized user may claim credit for tax paid on purchases of special fuel from vendors within this state. Any credit in excess of the tax due from a user under this part 1 may be claimed on a consolidated report authorized under paragraph (c) of this subsection (4) as a credit against the taxes imposed under sections 42-3-304 to 42-3-306, C.R.S. Otherwise, such credit is refundable under the provisions of section 39-27-103 and such rules and procedures as the executive director of the department of revenue may adopt.

(c) The executive director of the department of revenue may authorize, under rules and procedures established by said executive director, the consolidation of the report required by this subsection (4) and the report required by section 42-3-308, C.R.S., into a single report.

(d) Notwithstanding any other provision of this section to the contrary, any owner or operator of a motor vehicle required to pay a special fuel tax imposed by the provisions of paragraph (a) of this subsection (4) may pay the tax and file the statement required by said paragraph (a) on a quarterly basis. The executive director of the department of revenue, under rules and procedures established by the executive director, may exempt from the reporting requirement of this subsection (4) any motor vehicle used exclusively within this state.

(5) (a) Except as provided in paragraph (a) of subsection (4) of this section and in section 39-27-102.5 (2)(c), every person who imports into this state special fuel within the fuel tank of a motor vehicle and who is not required to report special fuel usage under the provisions of subsection (4) of this section shall obtain from the port of entry, from the office of the department of revenue nearest the point of entry into this state, or from any officer of the Colorado state patrol a single trip permit that shall contain a description of the motor vehicle, a description of the points of travel within the state of Colorado, and such other information as the executive director of the department of revenue may require. At the time of issuance of such single trip permit, a tax will be computed and paid based on the consumption rate of four miles per gallon for special fuel consumed within Colorado at the special fuel tax rate provided by section 39-27-102.5. A fee of one dollar shall be paid for each single trip permit and the permit shall be valid for a period of seventy-two hours.

(b) (I) The holder of a single trip permit shall be entitled to a refund of any tax imposed by this part 1 paid to a vendor within this state if:

(A) The special fuel, upon which such tax is paid, is placed into the fuel tank of the motor vehicle described within the permit; and

(B) The sale and delivery of such special fuel is within the seventy-two-hour period for which the permit is valid.

(II) The refund allowed by this paragraph (b) shall be issued under the provisions of section 39-27-103 and such rules and procedures as the executive director of the department of revenue may adopt.

(c) Any person whose use of special fuel is for the propulsion of a privately operated automobile shall be exempt from the provisions of this subsection (5). A privately operated passenger automobile does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for the transportation of property. A motor vehicle exempt from the mileage taxes of article 3 of title 42, C.R.S., is deemed to be a privately operated passenger automobile for purposes of this subsection (5).

(d) Any person who violates this subsection (5) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of seventy-five dollars, which shall be in addition to the civil penalties imposed by section 39-27-104 (1)(g).

(6) (a) Every person who imports special fuel into this state for use or sale in this state without a single trip permit or a valid importer's, supplier's, or distributor's license is liable for and shall pay an excise tax pursuant to section 39-27-102 (1) on all undyed special fuel other than liquefied petroleum gas such person imports for use or sale in this state.

(b) Immediately upon discovering a violation of this subsection (6), the department of revenue and agents thereof:

(I) May demand payment of such excise tax and all applicable fines associated with the unlicensed importation of special fuel, as set forth in this subsection (6); and

(II) May detain the shipment of special fuel until such excise tax and fines are collected.

(c) Any person who imports special fuel into this state without a valid license pursuant to section 39-27-104 shall be subject to the civil penalties set forth in section 39-27-104 (1)(g).

(7) (a) If any person other than a licensed distributor or supplier physically diverts to one or more destinations within the boundaries of this state all or any portion of a shipment of gasoline or special fuel that is claimed as an export on the bill of lading or other affidavit, such person shall report to the department of revenue the destinations within this state to which the

diverted gasoline or special fuel shipment was delivered within one working day after such diversion. Such person shall be liable for payment of the excise tax established in this part 1 on the amount of gasoline or special fuel other than liquefied petroleum gas diverted to a destination within this state.

(b) Any licensed distributor or supplier who diverts gasoline or special fuel for use or sale within this state after claiming such shipment as an export shall report such diversion to the department of revenue within one working day after the diversion.

(c) Any person who violates the reporting requirements of this subsection (7) shall be subject to the civil penalties set forth in section 39-27-104 (1)(g).

(d) Immediately upon discovery of a violation of this section, the department of revenue and agents thereof may require payment of the excise tax and all applicable civil penalties from any person who violates the provisions of this section and may detain the shipment of special fuel until payment is collected.

(8) to (10) (Deleted by amendment, L. 2005, p. 869, § 5, effective July 1, 2005.)

(11) Distributors who sell natural gas exclusively to distributors, vendors, or other retailers of special fuels shall be exempt from the reporting and tax collection and remittance requirements of this section. This subsection (11) shall not apply to any distributor who sells natural gas to a user.

**Source: L. 33:** p. 726, § 5. **CSA:** C. 16, § 385. **CRS 53:** § 138-3-5. **C.R.S. 1963:** § 138-2-5. **L. 67:** p. 350, § 1. **L. 69:** p. 1142, § 6. **L. 77:** (2) amended, p. 1843, § 1, effective July 1. **L. 79:** Entire section amended, p. 1481, § 5, effective January 1, 1980. **L. 81:** (3) amended, p. 1867, § 14, effective July 8. **L. 85:** (2) and (3) amended, p. 1259, § 17, effective January 1, 1986. **L. 95:** IP(1), (1)(a), (1)(b), (1)(d), (1)(e) and (2) amended and (1)(f) added, p. 984, § 4, effective July 1. **L. 98:** IP(1) and (1)(e) amended and (1.5) added, p. 1030, § 4, effective July 1. **L. 2000:** IP(1), (1)(e), (1.5), (2), and (3) added and (1.3), (4), (5), (6), (7), (8), (9), (10), and (11) amended with relocations, p. 1922, § 4, effective October 1. **L. 2002:** (4)(b) and (5)(b)(II) amended, p. 557, § 4, effective May 24. **L. 2005:** (1), (1.3)(a), (1.3)(c), (1.3)(d), (1.5), (2), (3), (4)(a), (6)(a), (7)(a), (7)(b), (8), (9), (10) amended, p. 869, § 5, effective July 1; (4)(a), (4)(b), and (4)(c) amended, p. 1184, § 36, effective August 8. **L. 2013:** (1.3)(d) amended, (HB 13-1110), ch. 225, p. 1063, § 9, effective January 1, 2014. **L. 2015:** IP(1), (1.3)(c), (1.3)(d), (2), (6)(a), and (7)(a) amended and (1.2) and (1.3)(f) added, (HB 15-1228), ch. 315, p. 1288, § 7, effective January 1, 2016. **L. 2018:** (1.5) amended, (HB 18-1375), ch. 274, p. 1723, § 84, effective May 29.

**Editor's note:** (1) The provisions of this section are similar to several former provisions of § 39-27-205 as they existed prior to 2000. For a detailed comparison of this section, see House Bill 00-1479, L. 2000, p. 1922.

(2) Amendments to subsection (4)(a) by Senate Bill 05-222 and House Bill 05-1107 were harmonized.

**Cross references:** (1) For the legislative declaration in the 2013 act amending subsection (1.3)(d), see section 1 of chapter 225, Session Laws of Colorado 2013.

(2) For the legislative declaration in HB 15-1228, see section 1 of chapter 315, Session Laws of Colorado 2015.

**39-27-105.3. Remittance of tax on gasoline and special fuel - electronic funds transfers.** For any calendar month, the executive director may require any distributor, supplier, carrier, exporter, importer, blender, refiner, licensee, or terminal operator to use electronic funds transfers to remit all taxes required to be remitted to the department of revenue on or before the twenty-sixth day of each calendar month. The executive director may promulgate rules to implement this section, but shall first consult with the state treasurer to ensure that any rules promulgated do not adversely affect the ability of the state treasurer to optimize gasoline and special fuel tax investment earnings. Such rules shall be promulgated in accordance with article 4 of title 24.

**Source: L. 2005:** Entire section added, p. 873, § 6, effective July 1. **L. 2017:** Entire section amended, (HB 17-1136), ch. 76, p. 238, § 3, effective March 23.

**39-27-105.5. Lien to secure payment of taxes - exemption - recovery.** (1) (a) The state of Colorado and the department of revenue shall have a lien to secure the payment of the taxes, penalties, and interest imposed pursuant to this part 1 upon all the assets and property of the distributor owing such tax, including the stock in trade, business fixtures, and equipment owned or used by the distributor in the conduct of his business, as long as a delinquency in the payment of such tax continues. Such lien shall be prior to any lien of any kind whatsoever, including existing liens for taxes.

(b) Any distributor or person in possession shall provide a copy of any lease pertaining to the assets and property described in paragraph (a) of this subsection (1) to the department of revenue within ten days after seizure by the department of such assets and property. The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in paragraph (a) of this subsection (1). The real or personal property of an owner who has made a bona fide lease to a distributor shall be exempt from the lien created in paragraph (a) of this subsection (1) if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in paragraph (a) of this subsection (1); except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for the purposes of this section.

(2) If a distributor fails to comply with the provisions of section 39-27-105, the executive director of the department of revenue may seek to enforce collection of the unpaid taxes, penalties, and interest in accordance with the provisions of article 21 of this title.

**Source: L. 87:** Entire section added, p. 486, § 33, effective July 1. **L. 92:** (1)(b) amended, p. 2203, § 6, effective April 16. **L. 2000:** (2) amended, p. 1927, § 5, effective October 1. **L. 2004:** (2) amended, p. 1211, § 96, effective August 4.

**39-27-106. Distributor trustee of tax.** Every distributor who sells any gasoline or special fuel for any purpose that is subject to the tax imposed by this part 1 shall collect from the purchaser the amount of excise tax thereon, and any sums of money paid by the purchaser to the distributor as gasoline or special fuel taxes shall be and remain public money, the property of the state in the hands of such distributor, and such distributor shall hold the same in trust for the sole use and benefit of the state until paid to the executive director of the department of revenue as provided in this part 1. Any distributor who willfully fails or refuses upon demand to pay over to the executive director the moneys paid to the distributor as gasoline or special fuel taxes that are by this part 1 declared to be trust funds in the distributor's hands and the property of the state of Colorado or who fraudulently withholds, converts to such distributor's own use, or appropriates or otherwise uses such moneys or any part thereof belonging to the state shall be punished as provided by section 39-21-118.

**Source: L. 33:** p. 728, § 5. **CSA:** C. 16, § 385. **CRS 53:** § 138-3-6. **C.R.S. 1963:** § 138-2-6. **L. 79:** Entire section amended, p. 1482, § 6, effective January 1, 1980. **L. 85:** Entire section amended, p. 1260, § 18, effective January 1, 1986. **L. 2000:** Entire section amended, p. 1927, § 6, effective October 1.

**39-27-107. When users other than distributors must report.** Except as otherwise provided in section 39-27-102 for persons that export gasoline, every person not a licensed distributor who uses any gasoline in this state or who has in his or her possession any gasoline, other than that contained in the ordinary fuel tank attached to a motor vehicle or aircraft, upon which a licensed distributor has not paid or is not liable for the tax imposed in this part 1 shall file a sworn statement with the executive director of the department of revenue on or before the twenty-sixth day of the calendar month on such form as the executive director prescribes and furnishes, showing the amount of gasoline so used and held, and shall pay to the executive director the tax imposed on all such gasoline. This section does not apply to a user who is exempt from taxation under section 39-27-102.5 (9).

**Source: L. 33:** p. 729, § 5. **CSA:** C. 16, § 385. **CRS 53:** § 138-3-7. **C.R.S. 1963:** § 138-2-7. **L. 79:** Entire section amended, p. 1483, § 7, effective January 1, 1980. **L. 88:** Entire section amended, p. 1093, § 9, effective January 1, 1989. **L. 98:** Entire section amended, p. 1030, § 5, effective July 1. **L. 2013:** Entire section amended, (HB 13-1110), ch. 225, p. 1063, § 10, effective January 1, 2014.

**Cross references:** For the legislative declaration in the 2013 act amending this section, see section 1 of chapter 225, Session Laws of Colorado 2013.

**39-27-108. Penalty for failure to report or pay tax.** Any person who willfully fails or refuses to make the report or payment of tax due to the executive director of the department of revenue as provided in sections 39-27-105 to 39-27-108, for which no penalty is expressly

provided, and any person who willfully makes any false report or statement as to the amount of gasoline or special fuel acquired, sold, or used or any false statement relative to the kind or character and the amount of the gasoline or special fuel received by such person and required to be reported, with intent to evade the payment of the tax imposed in this part 1 on gasoline or special fuel, shall be punished as provided by section 39-21-118. The making and filing of any false statement shall be deemed prima facie evidence of intent to evade the payment of tax imposed in this part 1 on gasoline or special fuel by that means.

**Source: L. 33:** p. 729, § 5. **CSA:** C. 16, § 385. **CRS 53:** § 138-3-8. **C.R.S. 1963:** § 138-2-8. **L. 79:** Entire section amended, p. 1483, § 8, effective January 10, 1980. **L. 85:** Entire section amended, p. 1260, § 19, effective January 1, 1986. **L. 95:** Entire section amended, p. 985, § 5, effective July 1. **L. 2000:** Entire section amended, p. 1928, § 7, effective October 1.

**39-27-109. Reports by carriers. (Repealed)**

**Source: L. 33:** p. 730, § 6. **CSA:** C. 16, § 386. **L. 53:** p. 160, § 3. **CRS 53:** § 138-3-11. **C.R.S. 1963:** § 138-2-11. **L. 79:** Entire section repealed, p. 1501, § 29, effective January 1, 1980.

**39-27-109.7. Data collection services.** In order to track the movement of gasoline or special fuel within this state and thereby facilitate and expedite the collection of excise taxes imposed pursuant to this part 1, the executive director of the department of revenue may enter into a contract with one or more private entities for the provision of a computer-based program to monitor and track the data that licensees are required to report to the department pursuant to this part 1. Such computer-based program shall be funded solely with money from the highway users tax fund. The department shall update the computer-based program to monitor and track the data that liquefied petroleum licensees are required to report to the department pursuant to this part 1 based on the changes in House Bill 15-1228, enacted in 2015.

**Source: L. 98:** Entire section added, p. 1031, § 6, effective July 1. **L. 2000:** Entire section amended, p. 1928, § 8, effective October 1. **L. 2009:** Entire section amended, (SB 09-098), ch. 195, p. 878, § 4, effective August 5. **L. 2012:** Entire section amended, (HB 12-1315), ch. 224, p. 978, § 44, effective July 1. **L. 2015:** Entire section amended, (HB 15-1228), ch. 315, p. 1290, § 8, effective August 5. **L. 2018:** Entire section amended, (SB 18-003), ch. 359, p. 2149, § 12, effective June 1.

**Cross references:** For the legislative declaration in HB 15-1228, see section 1 of chapter 315, Session Laws of Colorado 2015.

**39-27-110. Inspection of records.** (1) Every distributor of gasoline shall keep a true and complete record of all purchases, acquisitions, sales, and distribution of each kind of gasoline handled by the distributor, as to which a record of the total volume of sales and deliveries shall be kept for each calendar month. Every person carrying, transporting, importing, or delivering into or within this state gasoline shall keep true and correct records of shipments of gasoline for each calendar month. Every blender of gasoline shall keep true and accurate records

of all blended gasoline on hand, acquired, sold, used, or otherwise disposed of. All the books, records, papers, receipts, invoices, and equipment of every distributor, carrier, or blender that pertain to the acquisition, sale, or shipment of gasoline shall be retained for a period of three years and shall be subject to inspection at any time during ordinary business hours by the executive director or representatives of the department of revenue. Any information gained by the executive director or the director's representatives by the investigation shall be confidential and any person divulging the information, except as such disclosure may be rendered necessary by law, shall be subject to penalties provided in this part 1.

(2) In order that the amount of taxable gasoline may be accurately determined by the department of revenue, every refiner or blender of gasoline in the state of Colorado shall maintain full and complete records of all purchases of whatever kind and of all crude runs, still charges, pumping operations, distillation processes, blending operations, treating operations, transfers of stock, invoices, and any other records as are necessary to determine the correct gallonage, and such additional information as the department of revenue may from time to time require. Every refiner of gasoline shall keep a complete record of all sales made and copies of all refinery invoices and shall submit to the executive director of the department of revenue a report of all such invoices in a form and manner as is prescribed by the executive director. Such records shall be available for inspection by authorized employees of the department of revenue during ordinary business hours.

(3) (a) Every distributor of special fuel shall keep a true and complete record of all purchases, receipts, sales, and distribution of each kind of special fuel handled by such distributor. Every person authorized by the executive director of the department of revenue to purchase special fuel ex-tax from a distributor shall keep a true and complete record of all purchases of each kind of special fuel consumed by motor vehicles operating on the highways of this state and the miles traveled by such vehicles on highways, both within and outside this state. Every person carrying, transporting, importing, or delivering into or within this state special fuel shall keep true and correct records of such shipments for each calendar month. Every refiner in this state shall keep a true and complete record of all sales made of special fuel and copies of all refiner invoices detailing such sales.

(b) Each sale or transfer of special fuel by a distributor to any person shall be recorded upon a preprinted, serially numbered invoice, which shall contain at least the following information:

(I) The name and address of the distributor;

(II) The name and department of revenue identification of the purchaser;

(III) The date of sale or transfer;

(IV) The amount of special fuel sold, price per unit volume, and total amount of the sale.

(c) Each sale or transfer of special fuel by a vendor into the tank of a motor vehicle weighing more than ten thousand pounds shall be recorded upon a preprinted, serially numbered invoice, a copy of which shall be furnished the purchaser and shall contain at least the following information:

(I) The name and address of the vendor;

(II) The date of sale;

(III) The amount of special fuel sold, price per unit volume, and total amount of the sale;

(IV) A description of the motor vehicle sufficiently detailed to identify the motor vehicle into which such special fuel was delivered.

(d) A serially numbered invoice for the sale or transfer of liquefied petroleum gas required under paragraphs (b) and (c) of this subsection (3) does not have to be preprinted.

(4) All the books, records, papers, receipts, invoices, and equipment of every vendor, distributor, carrier, user, refiner, or other person that pertain to the receipt, sale, or shipment of special fuel shall be subject to inspection at any time during regular business hours by the executive director of the department of revenue or the executive director's representative. Any information gained by the executive director or the director's representatives by the investigation shall be confidential and any person divulging the information, except as such disclosure may be rendered necessary by law, shall be subject to penalties provided in this part 1.

(5) The executive director of the department of revenue may, under rules and procedures adopted by the executive director, establish the format under which the records required by this section are to be maintained, adjust the record-keeping requirements of distributors of liquefied petroleum gases, and require such other information as the executive director deems necessary for the proper administration of this part 1. The records required by this section shall be retained for a period of at least three years.

(6) The fact that any books, papers, records, and equipment required to be maintained by this section are not maintained in this state shall not cause the executive director of the department of revenue or representatives of the executive director to lose any right of such examination.

**Source: L. 33:** p. 732, § 7. **CSA:** C. 16, § 387. **L. 51:** p. 185, § 1. **L. 53:** p. 161, § 4. **CRS 53:** § 138-3-12. **C.R.S. 1963:** § 138-2-12. **L. 64:** p. 657, § 16. **L. 79:** Entire section amended, p. 1483, § 9, effective January 1, 1980. **L. 95:** (1) amended, p. 985, § 6, effective July 1. **L. 2000:** Entire section amended with relocations, p. 1928, § 9, effective October 1. **L. 2015:** (3)(d) added, (HB 15-1228), ch. 315, p. 1290, § 9, effective January 1, 2016.

**Editor's note:** Subsections (4), (5), and (6) are similar to provisions of former § 39-27-209 as they existed prior to 2000.

**Cross references:** For the legislative declaration in HB 15-1228, see section 1 of chapter 315, Session Laws of Colorado 2015.

**39-27-111. Tax in lieu of all other taxes imposed.** The tax imposed by this part 1 shall be in lieu of all other taxes imposed upon gasoline or special fuel by this state or any political subdivision thereof, except for the tax on aviation fuel used in turbo-propeller or jet engine aircraft imposed pursuant to sections 39-26-104 and 39-26-202.

**Source: L. 33:** p. 733, § 9. **CSA:** C. 16, § 389. **CRS 53:** § 138-3-14. **C.R.S. 1963:** § 138-2-14. **L. 79:** Entire section amended, p. 1484, § 10, effective January 1, 1980. **L. 88:** Entire section amended, p. 1093, § 10, effective January 1, 1989. **L. 91:** Entire section amended, p. 2391, § 11, effective July 1. **L. 91, 1st Ex. Sess.:** Entire section amended, p. 7, § 12, effective July 1. **L. 2000:** Entire section amended, p. 1930, § 10, effective October 1.

**Editor's note:** The amendment to this section made by chapter 1, L. 91, First Extraordinary Session, p. 7, section 12, supersedes the amendment made by chapter 330, L. 91,

p. 2391, section 11. Both acts contained a July 1, 1991, effective date. However the Governor did not sign the act enacted at the First Extraordinary Session until July 5. The act contained in chapter 1 from the First Extraordinary Session was subject to an interrogatory submitted to the Supreme Court by the Governor. The court held the act constitutional on its face. See In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

**39-27-112. Payment of expenses and distribution of funds.** (1) Out of the funds thus obtained, the state treasurer shall pay such warrants as may be drawn from time to time by the controller upon vouchers issued by the executive director of the department of revenue for the purpose of making refunds to distributors and others provided for in this part 1.

(2) (a) Repealed.

(b) Effective January 1, 1989, the balance of such funds thus obtained and remaining with the state treasurer shall be placed in the highway users tax fund and distributed in accordance with the provisions of the statute governing that fund; except that, in accordance with section 18 of article X of the Colorado constitution, any moneys included in the balance of such funds which are attributable to the provisions of section 39-27-102 (1)(a)(IV) and which are remaining with the state treasurer on the twentieth day of each month shall be placed in the aviation fund created in section 43-10-109, C.R.S., and distributed in accordance with the provisions of section 43-10-110, C.R.S. The general assembly shall make proportionate appropriations from the highway users tax fund and the aviation fund for the expenses of the administration of this part 1.

(3) (Deleted by amendment, L. 91, 1st Ex. Sess., p. 7, § 13, effective July 1, 1991.)

**Source: L. 33:** p. 733, § 10. **CSA:** C. 16, § 390. **L. 47:** p. 269, § 1. **L. 53:** p. 510, § 18. **CRS 53:** § 138-3-15. **C.R.S. 1963:** § 138-2-15. **L. 64:** p. 657, § 17. **L. 79:** Entire section amended, p. 1485, § 11, effective January 1, 1980. **L. 84:** (2) amended, p. 1026, § 1, effective March 16. **L. 88:** (2) amended and (3) added, p. 1093, § 11, effective January 1, 1989. **L. 91:** (2)(b) and (3) amended, pp. 2398, 1075, §§ 23, 60, effective July 1. **L. 91, 1st Ex. Sess.:** (2)(b) and (3) amended, p. 7, § 13, effective July 1.

**Editor's note:** (1) Subsection (2)(a) provided for the repeal of subsection (2)(a), effective January 1, 1989. (See L. 88, p. 1093.)

(2) The amendment to this section made by chapter 1, L. 91, First Extraordinary Session, p. 7, section 13, supersedes the amendment made by chapter 188, L. 91, p. 1075, section 60, and chapter 330, L. 91, p. 2398, section 23. Said acts contained a July 1, 1991, effective date. However the Governor did not sign the act enacted at the First Extraordinary Session until July 5. The act contained in chapter 1 from the First Extraordinary Session was subject to an interrogatory submitted to the Supreme Court by the Governor. The court held the act constitutional on its face. See In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

**39-27-113. Tax lien - priority.** (1) If any person fails, neglects, or refuses to pay the tax imposed by this part 1, the amount of the tax, together with any penalties or interest or any costs that accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, tangible or intangible, belonging to or thereafter

acquired by that person, whether the property is employed by that person in the operation of a business or is in possession of an assignee, trustee, or receiver for the benefit of creditors.

(2) When the property of any distributor is seized upon any mesne or final process of any court of this state or when the business of any distributor is suspended by the action of creditors or put into the hands of any assignee, receiver, or trustee, then in all such cases all gasoline or special fuel tax moneys collected by such distributor under the provisions of this part 1 and due and owing to the state shall be considered and treated as preferred claims, and the state of Colorado shall be a preferred creditor and shall be paid in full.

(3) (a) Notwithstanding the provisions of subsection (1) of this section, the tax imposed by this part 1, except when paid by the user to a vendor, together with penalties and interest thereon, constitutes a lien against any motor vehicle in connection with which the taxable use is made. The lien shall not be removed until the tax, together with penalties and interest, is paid or the motor vehicle subject to the lien is sold in payment of the tax, penalty, and interest. The lien shall be prior to all private liens and encumbrances and to the rights of a conditional vendor or other holder of the legal or equitable title to the motor vehicle.

(b) If ownership of a motor vehicle subject to lien under this subsection (3) is transferred by operation of law or otherwise, no registration or title with respect to such vehicle shall be issued until the lien has been removed.

**Source: L. 33:** p. 736, § 12. **CSA:** C. 16, § 392. **CRS 53:** § 138-3-17. **C.R.S. 1963:** § 138-2-17. **L. 79:** Entire section amended, p. 1485, § 12, effective January 1, 1980. **L. 2000:** Entire section amended with relocations, p. 1930, § 11, effective October 1.

**Editor's note:** Subsections (2) and (3) are similar to provisions of former § 39-27-210 as they existed prior to 2000.

**39-27-114. False oath.** Any person who makes any oath, affirmation, affidavit, return, or deposition required to be made or taken under any of the provisions of this part 1 and who, upon such oath, affirmation, affidavit, return, or deposition, swears or affirms willfully and falsely in a matter material to any issue, point, or subject matter in question, in addition to any other penalties provided in this part 1, is guilty of perjury in the second degree, as defined in section 18-8-503, C.R.S.

**Source: L. 33:** p. 736, § 13. **CSA:** C. 16, § 393. **CRS 53:** § 138-3-18. **C.R.S. 1963:** § 138-2-18. **L. 72:** p. 572, § 61. **L. 79:** Entire section amended, p. 1485, § 13, effective January 1, 1980.

**39-27-115. Night deliveries. (Repealed)**

**Source: L. 33:** p. 737, § 14. **CSA:** C. 16, § 394. **CRS 53:** § 138-3-19. **C.R.S. 1963:** § 138-2-19. **L. 79:** Entire section repealed, p. 1501, § 29, effective January 1, 1980.

**39-27-116. Authority of executive director - enforcement.** (1) (a) It is the duty of the executive director of the department of revenue to see that all of the provisions of this part 1 are enforced and obeyed, and that all violations thereof are promptly prosecuted, and that all taxes

and penalties are collected. To that end, the executive director has the power to make and adopt such rules and regulations relating to the administration and enforcement of the provisions of this part 1 as may be deemed proper and rules and regulations to govern his proceedings and to regulate the mode and manner of all investigations and hearings and to alter and amend the same.

(b) It is the duty of officers of the Colorado state patrol, and sheriffs, county police officers, city, village, and town police officers, and all other officers whose duty it is to see to the enforcement of state laws to aid the executive director in the enforcement of this part 1. Upon request of the executive director, it is the duty of the attorney general or any district attorney to commence and prosecute to final determination in any court of competent jurisdiction all necessary actions to enforce the provisions of this part 1.

(c) All the remedies and penalties provided by this part 1 shall be cumulative, and no action or suit for recovery of one penalty, or of the tax, shall be a bar to the recovery of any other penalty or to any criminal prosecution under this part 1. The inspectors, investigators, or other persons designated by the executive director have all the powers conferred by law to serve warrants, summons, and other processes, to conduct sales in any county or city and county of this state, and to require the operator of any vehicle to stop and upon demand to exhibit any permits, licenses, registration cards, or other papers or documents required to be in his possession and to submit to a complete inspection of such vehicle and the equipment, cargo, fuel tanks, interior, and license plates.

(d) If the owner or operator of any vehicle is in violation of any of the provisions of this part 1, officers of the Colorado state patrol, sheriffs, county police officers, and city, village, and town police officers and the inspectors, investigators, or other persons designated by the executive director have the power to detain such vehicle until such time as the violation ceases.

(2) It is the duty of the executive director of the department of revenue, at the time of issuance of any new license to a refiner or distributor under this part 1, to notify the county treasurer of the county where the new licensee is located of the name and address of such licensee.

**Source: L. 33:** p. 737, § 15. **CSA:** C. 16, § 395. **L. 53:** p. 163, § 6. **CRS 53:** § 138-3-20. **C.R.S. 1963:** § 138-2-20. **L. 70:** p. 391, § 5. **L. 79:** Entire section amended, p. 1485, § 14, effective January 1, 1980.

**39-27-117. Filing with executive director - when deemed to have been made.** (1) Any report, claim, tax return, statement, or other document required or authorized under this part 1 to be filed with, or any payment made to, the executive director of the department of revenue, which:

(a) Is transmitted through the United States mails, 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;

(b) Is mailed, but not received by the executive director, or where received and the cancellation mark is not legible, or is erroneous or omitted, shall be deemed to have been filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mails on or before the date due for filing. In such cases of nonreceipt of a document by the executive director, the sender shall file a duplicate copy

thereof within thirty days after written notification is given to the sender by the executive director of the failure to receive such document.

(2) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States post office department of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the executive director, to the state officer or state agency to which it was addressed, and the date of the registration, certification, or certificate shall be deemed to be the postmark date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document, falls upon a Saturday, Sunday, or a legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

(4) Any report, claim, tax return, statement, or other document required or authorized under this part 1 to be filed with the executive director of the department of revenue that is filed electronically shall be treated for all purposes in the same manner as any other report or other document filed electronically pursuant to section 39-21-120.

**Source: L. 67:** p. 496, § 1. **C.R.S. 1963:** § 138-2-28. **L. 79:** IP(1) amended, p. 1486, § 15, effective January 1, 1980. **L. 2000:** (4) added, p. 1931, § 12, effective October 1.

**39-27-118. Exchange of information. (Repealed)**

**Source: L. 33:** p. 738, § 16. **CSA:** C. 16, § 396. **L. 51:** p. 183, § 1. **CRS 53:** § 138-3-21. **C.R.S. 1963:** § 138-2-21. **L. 79:** Entire section repealed, p. 1501, § 29, effective January 1, 1980.

**39-27-119. Not applicable to interstate commerce.** No provision of this part 1 shall apply or be construed to apply to interstate commerce.

**Source: L. 33:** p. 739, § 17. **CSA:** C. 16, § 397. **CRS 53:** § 138-3-22. **C.R.S. 1963:** § 138-2-22. **L. 79:** Entire section amended, p. 1486, § 16, effective January 1, 1980.

**39-27-120. Penalties.** Any person who in any way violates any of the provisions of this part 1 for which no penalty is expressly provided shall be punished as provided by section 39-21-118. In addition to the foregoing penalties, the executive director of the department of revenue may suspend or revoke the license of any distributor who violates any of the provisions of this part 1 and shall notify such distributor of such suspension or revocation and, upon application to any court of competent jurisdiction without furnishing bond, shall be entitled to an injunction restraining any such distributor from operating, transporting, using, selling, delivering, or transferring any gasoline or special fuel in this state while the license or permit of such distributor has been suspended or revoked. The attorney general shall institute an action on behalf of the state against any person required to collect or pay the tax imposed by this part 1, or the sureties of such person, to collect or recover the amount of tax due from such person, together with penalties and interest thereon.

**Source: L. 33:** p. 733, § 8. **CSA:** C. 16, § 388. **L. 53:** p. 162, § 5. **CRS 53:** § 138-3-13. **C.R.S. 1963:** § 138-2-13. **L. 79:** Entire section amended, p. 1486, § 17, effective January 1, 1980. **L. 85:** Entire section amended, p. 1261, § 20, effective January 1, 1986. **L. 2000:** Entire section amended, p. 1931, § 13, effective October 1.

**39-27-121. State treasurer custodian of deposits.** All surety bonds and negotiable certificates of deposit deposited in compliance with the provisions of this part 1 shall be delivered into the custody of the state treasurer and held by the treasurer subject to further order of the executive director of the department of revenue. In the event any licensee ceases operations, voluntarily or otherwise, the deposit made by the licensee, or any balance thereof, shall be returned to the licensee after all taxes, penalties, fees, and charges owing by said licensee, pursuant to this part 1, have been paid.

**Source: L. 73:** p. 1456, § 6. **C.R.S. 1963:** § 138-2-29. **L. 79:** Entire section amended, p. 1487, § 18, effective January 1, 1980. **L. 2000:** Entire section amended, p. 1932, § 14, effective October 1.

**39-27-122. Measurement - liquefied petroleum gas and natural gas - director of division of oil and public safety - rules.** Prior to January 1, 2014, the director of the division of oil and public safety shall promulgate reasonable rules related to the accurate measurement of liquefied petroleum gas and natural gas. Thereafter, the director may modify or update the rules in his or her discretion.

**Source: L. 2013:** Entire section added, (HB 13-1110), ch. 225, p. 1063, § 11, effective August 15.

**Cross references:** For the legislative declaration in the 2013 act adding this section, see section 1 of chapter 225, Session Laws of Colorado 2013.

**39-27-123. Department of transportation - special fuels - impact - report.** (1) On or before January 1, 2017, the department of transportation, the department of revenue, the division of oil and public safety in the department of labor and employment, and the Colorado energy office shall jointly prepare and submit a report to the transportation legislation review committee created in section 43-2-145 (1), C.R.S. The report must include:

(a) An evaluation of the effectiveness of any statutory provision included in House Bill 13-1110, enacted in 2013;

(b) An analysis of the impact of alternative fuels for propelling a motor vehicle on the public roads and highways of this state and on the amount of excise taxes collected related to those vehicles;

(c) A recommendation on whether the tax levied pursuant to this part 1 should be collected when the special fuel is supplied to the user at a residential home, including compressed natural gas that is exempt from taxation under section 39-27-102.5 (9), and if so, any recommendations for how to collect this tax; and

(d) Recommendations for a tax system that fairly and equitably taxes all fuels and methods for propelling motor vehicles on the public roads and highways of this state and that

helps pay for the construction, improvement, repair, and maintenance of those public roads and highways.

(2) Section 24-1-136 (11), C.R.S., does not apply to the report required by subsection (1) of this section.

**Source: L. 2013:** Entire section added, (HB 13-1110), ch. 225, p. 1063, § 11, effective August 15.

**Cross references:** For the legislative declaration in the 2013 act adding this section, see section 1 of chapter 225, Session Laws of Colorado 2013.

PART 2

SPECIAL FUEL TAX

**39-27-201 to 39-27-218. (Repealed)**

**Source: L. 2000:** Entire part repealed, p. 1939, § 23, effective October 1.

**Editor's note:** Some provisions of this part 2 were relocated to part 1 of this article in 2000. This part 2 was added in 1979. For amendments to this part 2 prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 3

MOTOR FUELS AGREEMENTS

**39-27-301. Definitions.** As used in this part 3, unless the context otherwise requires:

(1) "Agreement" means a motor fuel tax agreement under this part 3.

(2) "Base jurisdiction" means the jurisdiction in which the motor carrier is legally domiciled or, in the case of a motor carrier who has no legal domicile, the jurisdiction from or in which the motor carrier's vehicles are most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled.

(3) "Department" means the department of revenue.

(3.5) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or a foreign country, including a state, province, territory, or possession of a foreign country.

(4) "Licensee" means a motor carrier who has been issued a fuel tax license under a motor fuel tax agreement.

(5) "Motor carrier" means an individual, limited liability company, partnership, firm, association, or private or public corporation engaged in commercial operation of motor vehicles involving two or more jurisdictions, any part of which is within this state or any other jurisdiction that is party to an agreement under this part 3.

(6) "Motor fuel" means all fuel subject to tax under this article.
(7) (Deleted by amendment, L. 98, p. 1093, § 1, effective June 1, 1998.)

**Source: L. 88:** Entire part added, p. 1334, § 1, effective April 14; (5) amended, p. 1437, § 39, effective June 11. **L. 90:** (5) amended, p. 458, § 43, effective April 18. **L. 98:** (2), (5), and (7) amended and (3.5) added, p. 1093, § 1, effective June 1.

**39-27-302. Agreements between jurisdictions.** The department may enter into a motor fuel tax cooperative agreement with another jurisdiction or jurisdictions that provide for the administration, collection, and enforcement of each jurisdiction's motor fuel taxes on motor fuel used by motor carriers. The agreement shall not contain any provision that exempts any motor vehicle, owner, or operator from complying with the laws, rules, and regulations pertaining to motor vehicle licensing, size, weight, load, or operation upon the public highways of this state.

**Source: L. 88:** Entire part added, p. 1335, § 1, effective April 14. **L. 98:** Entire section amended, p. 1094, § 2, effective June 1.

**39-27-303. Tax imposed.** The amount of the tax imposed and collected on behalf of this state under an agreement entered into under this part 3 shall be determined as provided in part 1 of this article.

**Source: L. 88:** Entire part added, p. 1335, § 1, effective April 14. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 796, § 116, effective June 6.

**Editor's note:** Part 2 of this article, referenced in this section, was repealed, effective October 1, 2000, but has been left in for historical purposes.

**39-27-304. Provisions of agreements.** (1) An agreement entered into under this part 3 may provide for:
(a) Defining the classes of motor vehicles upon which taxes are to be collected under the agreement;
(b) Establishing methods for base jurisdiction fuel tax licensing, license revocation, and tax collection from motor carriers on behalf of the jurisdictions that are parties to the agreement;
(c) Establishing procedures for the granting of credits or refunds on the purchase of excess tax-paid fuel;
(d) Defining conditions and criteria relative to bonding requirements, including criteria for exemption from bonding;
(e) Establishing tax reporting periods not to exceed one calendar quarter and tax report due dates not to exceed one calendar month after the close of the reporting period;
(f) Penalties and interest for filing of tax reports after the due dates prescribed by the agreement;
(g) Establishing procedures for the forwarding of fuel taxes, penalties, and interest collected on behalf of another jurisdiction to such jurisdiction;
(h) Record-keeping requirements for licensees; and
(i) Any additional provisions which facilitate the administration of the agreement.

**Source: L. 88:** Entire part added, p. 1335, § 1, effective April 14. **L. 98:** (1)(b) and (1)(g) amended, p. 1094, § 3, effective June 1.

**39-27-305. Credit for purchases.** Any licensee purchasing more tax-paid motor fuel in this state than the licensee uses in this state during the course of a reporting period shall be permitted a credit against future tax liability for the excess tax-paid fuel purchased. Upon request, this credit may be refunded to the licensee by the department in accordance with the agreement.

**Source: L. 88:** Entire part added, p. 1335, § 1, effective April 14.

**39-27-306. Tax collection.** (1) The agreement may require the department to perform audits of licensees or persons required to be licensed and who are based in this state to determine whether motor fuel taxes to be collected under the agreement have been reported properly and paid to each jurisdiction that is a party to the agreement. The agreement may authorize other jurisdictions to perform audits on licensees or persons required to be licensed and who are based in such other jurisdictions on behalf of the state of Colorado and forward the audit findings to the department. Such findings may be served upon the licensee or such other person in the same manner as audits performed by the department.

(2) The agreement shall not preclude the department from auditing the records of any person who has used motor fuels in this state. Any licensee or person required to be licensed from whom the department has requested records shall make the records available at the location designated by the department or may request the department to audit such records at that licensee's or person's place of business. If the place of business is located outside this state, the department may require the licensee or such other person to reimburse the department for authorized per diem and travel expenses.

**Source: L. 88:** Entire part added, p. 1335, § 1, effective April 14. **L. 98:** (1) amended, p. 1094, § 4, effective June 1.

**39-27-307. Compliance.** (1) The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this part 3 or any rules or regulations issued pursuant to section 39-27-310 (2).

(2) For the purpose of any investigation or proceeding under this part 3, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

**Source: L. 88:** Entire part added, p. 1336, § 1, effective April 14.

**39-27-308. Appeals.** The agreement shall specify procedures by which a licensee may appeal a license revocation or audit assessment by the department.

**Source: L. 88:** Entire part added, p. 1336, § 1, effective April 14.

**39-27-309. Exchange of information.** The agreement may require each jurisdiction to forward to other jurisdictions that are a party to the agreement any information available relating to the acquisition, sales, use, or movement of motor fuels by any licensee or person required to be licensed. The department may further disclose to other jurisdictions that are a party to the agreement information relating to the persons, offices, motor vehicles, and other real and personal property of persons licensed or required to be licensed under the agreement.

**Source: L. 88:** Entire part added, p. 1336, § 1, effective April 14. **L. 98:** Entire section amended, p. 1094, § 5, effective June 1.

**39-27-310. Construction of this part 3 - rules and regulations.** (1) This part 3 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part 3 among jurisdictions enacting it for the purpose of participating in a multijurisdictional motor fuel tax agreement.

(2) The department shall adopt such rules and regulations as are necessary to implement this part 3 and any agreement entered into under this part 3.

**Source: L. 88:** Entire part added, p. 1336, § 1, effective April 14. **L. 98:** (1) amended, p. 1095, § 6, effective June 1.

## Tobacco Tax

## ARTICLE 28

Cigarette Tax

**Cross references:** For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution; for the apportionment of the gross state cigarette tax to incorporated cities and incorporated towns, see § 39-22-623.

### PART 1

### CIGARETTE TAX

**39-28-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Consumer" means any person, firm, limited liability company, partnership, or corporation who has title to or possession of cigarettes in storage for use or consumption in this state.

(2) "Department" means the department of revenue.

(2.5) "Master settlement agreement" shall have the same meaning as section 39-28-202 (5).

(3) "Sale" or "resale" includes installment, credit, and conditional sales and means any exchange, barter, or transfer of title or possession, or both, for a consideration to any other person, firm, partnership, limited liability company, or corporation within this state. It includes a gift by a person engaged in the business of selling cigarettes for advertising as a means of evading provisions of this article or for any other purpose whatsoever.

(4) "Wholesaler" means any person, firm, limited liability company, partnership, or corporation who imports cigarettes into this state for sale or resale.

(5) "Wholesale subcontractor" means any person, firm, limited liability company, partnership, or corporation who purchases cigarettes from a wholesaler for resale to a retailer in this state.

**Source: L. 64:** p. 821, § 1. **C.R.S. 1963:** § 138-8-1. **L. 90:** (1), (3), and (4) amended, p. 458, § 44, effective April 18. **L. 2005:** (2.5) and (5) added, p. 717, § 1, effective June 1.

**39-28-102. Licensing of wholesalers - rules - fines.** (1) It is unlawful for any wholesaler to sell or offer for sale in this state cigarettes without first obtaining a license therefor, granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such licenses shall be granted only to such wholesalers who own or operate the places from which such sales are to be made, and, in case sales are made from two or more separate places by any such wholesaler, a separate license for each place of business shall be required. Such licenses shall be renewed only upon timely application and payment of the required fee prior to expiration. Such licenses may be transferred in the discretion of and pursuant to the rules adopted by the department. The license fee shall be ten dollars per year, and such license fees shall be credited to the general fund. Such license fees shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, suspend or revoke the license of any wholesaler violating any provision of this article, and no license shall be issued to such wholesaler within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased cigarettes for resale with the department of public health and environment and county and district public health agencies. The department shall refuse to issue a new or renewal wholesaler license, and shall revoke a wholesaler's license, if the wholesaler owes the state any delinquent taxes administered by the department or interest thereon pursuant to this title that have been determined by law to be due and unpaid, unless the wholesaler has entered into an agreement approved by the department to pay the amount due.

(1.3) (a) In addition to the requirements set forth in subsection (1) of this section, no license shall be issued to a wholesaler unless the wholesaler:

(I) Has a current license issued pursuant to section 39-26-103;

(II) Provides evidence to the satisfaction of the executive director of the department demonstrating that the wholesaler will buy cigarettes from at least one manufacturer that is either part of the master settlement agreement or that places funds into a qualified escrow account pursuant to section 39-28-203 (2); and

(III) Has filed with the department evidence of a surety bond issued by a company authorized to do business in this state in an amount equal to the wholesaler's anticipated total monthly purchase of stamps pursuant to section 39-28-104 for the benefit of the department. The amount of a wholesaler's anticipated total monthly purchase shall be determined solely in the

discretion of the wholesaler. A wholesaler may file a replacement surety bond if the wholesaler's anticipated total monthly purchase of stamps changes after the wholesaler has been issued a license pursuant to this section.

(b) In addition to the requirements set forth in subsection (1) of this section, no license shall be renewed unless a wholesaler:

(I) Has a current license issued pursuant to section 39-26-103;

(II) Provides evidence to the satisfaction of the executive director of the department demonstrating that the wholesaler has bought and will continue to buy cigarettes from at least one manufacturer that is either part of the master settlement agreement or places funds into a qualified escrow account pursuant to section 39-28-203 (2); and

(III) Has filed with the department evidence of a surety bond issued by a company authorized to do business in this state in an amount equal to the wholesaler's anticipated total monthly purchase of stamps pursuant to section 39-28-104 for the benefit of the department. The amount of a wholesaler's anticipated total monthly purchase shall be solely in the discretion of the wholesaler. For each consecutive preceding year that a wholesaler has not been delinquent in the payment of taxes imposed under this part 1, as determined by the executive director of the department, the amount of the bond required shall be reduced by twenty percentage points of the wholesaler's anticipated total monthly purchase of stamps. A wholesaler may file a replacement surety bond if the wholesaler's anticipated total monthly purchase of stamps changes after the wholesaler's license has been renewed pursuant to this section. A wholesaler that has not been delinquent in the payment of such taxes for five consecutive years shall be exempt from the requirement to file a surety bond with the department.

(1.5) (Deleted by amendment, L. 2008, p. 182, § 1, effective August 5, 2008.)

(2) Repealed.

**Source: L. 64:** p. 821, § 2. **C.R.S. 1963:** § 138-8-2. **L. 2001:** Entire section amended, p. 579, § 4, effective May 30. **L. 2004:** Entire section amended, p. 246, § 1, effective August 4. **L. 2005:** (1) amended and (1.3) added, p. 717, § 2, effective June 1. **L. 2008:** (1) and (1.5) amended, p. 182, § 1, effective August 5. **L. 2010:** (1) amended, (HB 10-1422), ch. 419, p. 2122, § 177, effective August 11.

**Editor's note:** Subsection (2)(b) provided for the repeal of subsection (2), effective July 1, 2008. (See L. 2004, p. 246.)

**39-28-102.5. Licensing of wholesale subcontractors - rules - fines.** (1) It is unlawful for any wholesale subcontractor to sell or offer for sale cigarettes to a retailer in this state without first obtaining a license therefor, granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such licenses shall be granted only to such wholesale subcontractors who own or operate the places from which such sales are to be made, and, in case sales are made from two or more separate places by any such wholesale subcontractor, a separate license for each place of business shall be required. No license shall be issued to a wholesale subcontractor unless the wholesale subcontractor has a current license issued pursuant to section 39-26-103. Such licenses shall be renewed only upon timely application and payment of the required fee prior to expiration. Such licenses may be transferred in the discretion of and pursuant to rules adopted by the department.

The license fee shall be ten dollars per year, and such license fees shall be credited to the wholesale and distributing subcontractor license fund, which is hereby created in the state treasury. All moneys in the fund shall be subject to annual appropriation by the general assembly to the department for costs incurred in administering this section and section 39-28.5-104.5. Such license fees shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, suspend or revoke the license of any wholesale subcontractor violating any provision of this article, and no license shall be issued to such wholesale subcontractor within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased cigarettes from a wholesale subcontractor for resale with the department of public health and environment and county and district public health agencies. The department shall refuse to issue a new or renewal wholesale subcontractor license and shall revoke a wholesale subcontractor's license, if the wholesaler owes the state any delinquent taxes administered by the department or interest thereon pursuant to this title that have been determined by law to be due and unpaid, unless the wholesaler has entered into an agreement approved by the department to pay the amount due.

(2) (Deleted by amendment, L. 2008, p. 183, § 2, effective August 5, 2008.)

**Source: L. 2005:** Entire section added, p. 719, § 3, effective June 1. **L. 2008:** Entire section amended, p. 183, § 2, effective August 5. **L. 2010:** (1) amended, (HB 10-1422), ch. 419, p. 2122, § 178, effective August 11.

**39-28-103. Tax levied.** There is levied and shall be collected and paid to the department a tax upon the sale of cigarettes by wholesalers of ten mills on each cigarette.

**Source: L. 64:** p. 822, § 3. **C.R.S. 1963:** § 138-8-3. **L. 65:** p. 1129, § 1. **L. 73:** p. 1451, § 2. **L. 77:** Entire section amended, p. 1793, § 4, effective July 1. **L. 83:** (3) added, p. 2099, § 11, effective October 13; (2) repealed, p. 2053, § 28, effective October 14. **L. 85:** Entire section R&RE, p. 1267, § 4, effective May 30. **L. 86:** Entire section amended, p. 1113, § 11, effective July 1.

**Cross references:** For tax on tobacco products other than cigarettes, see article 28.5 of this title.

**39-28-103.5. Tax levied - state constitution.** Pursuant to section 21 of article X of the state constitution, there is levied, in addition to the tax levied pursuant to section 39-28-103, a tax on the sale of cigarettes by wholesalers, at a rate of three and two-tenths cents per cigarette. The tax shall be paid to and collected by the department.

**Source: L. 2005:** Entire section added, p. 907, § 2, effective June 2; entire section added, p. 922, § 3, effective June 2.

**Cross references:** For the legislative declaration contained in the 2005 act enacting this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28-104. Evidence of payment of tax - credits - redemptions.** (1) (a) Payment of the taxes imposed by the provisions of this article and section 21 of article X of the state constitution shall be evidenced by the affixing of stamps to, or by an imprint or impression by suitable metering machines approved by the department on, packages containing cigarettes. The department shall procure stamps of such design and legend as it deems necessary and suitable for the purpose. Except as provided in paragraph (b) of this subsection (1), the department shall sell such stamps for cash to licensed wholesalers at a discount of four percent of their face value for sales occurring prior to July 1, 2003, or on or after July 1, 2005, and three percent of their face value for sales occurring on or after July 1, 2003, but before July 1, 2005, if payment is made on or before the tenth day of the month following the month in which the purchase is made to cover the licensed wholesaler's expense in the collection and remittance of such tax; but, if any licensed wholesaler is delinquent in remitting such payment, other than in unusual circumstances shown to the satisfaction of the executive director of the department, the licensed wholesaler shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and, in addition, the penalty imposed under section 39-28-108 (2) shall apply. The department shall keep accurate records of all stamps sold to each wholesaler. No wholesaler shall sell or transfer any stamps purchased pursuant to the provisions of this article.

(b) The tax imposed pursuant to section 39-28-103.5 and section 21 of article X of the state constitution shall not be subject to the discount provided for in paragraph (a) of this subsection (1).

(c) The department may require wholesalers to use electronic funds transfers to remit tax payments due pursuant to this article 28 and section 21 of article X of the state constitution to the department and may require wholesalers to file tax returns electronically. The department may promulgate rules governing electronic payment and filing.

(1.5) In any month that a wholesaler purchases an amount of stamps that is greater than the wholesaler's anticipated total monthly purchase of stamps, which shall be determined from the surety bond filed pursuant to section 39-28-102 (1.3)(a)(III) and (1.3)(b)(III), the wholesaler shall be required to pay cash or certified funds or use one of the electronic payment options offered by the department for the stamps that exceed the anticipated total monthly purchase of stamps upon the delivery of the stamps. This subsection (1.5) shall not apply if the wholesaler is exempt from the surety bond requirement pursuant to section 39-28-102 (1.3)(b)(III).

(2) Each wholesaler shall affix stamps or cause them to be affixed, in such manner as the department may specify, to each individual package of cigarettes sold or distributed by such wholesaler or, in lieu thereof, an imprint or impression by means of a suitable metering machine approved by the department. Such stamps or imprints or impressions may be affixed by the wholesaler at any time before the cigarettes are transferred out of his possession.

(3) Credit shall be given by the department for all taxes levied pursuant to the provisions of this article on unsalable merchandise when the department is satisfied that the same has been returned to the manufacturer or has been destroyed by the wholesaler. The department shall redeem any unused and uncancelled stamps presented by any wholesaler within one year after the date of issue of said stamps at the price paid therefor by such wholesaler.

(4) (a) Credit shall be given by the department to a wholesaler for all taxes levied pursuant to this article and section 21 of article X of the state constitution and paid pursuant to the provisions of this article that are bad debts. Such credit shall offset taxes levied pursuant to this article and section 21 of article X of the state constitution and paid pursuant to the provisions

of this article only. No credit shall be given unless the bad debt has been charged off as uncollectible on the books of the wholesaler. Subsequent to receiving the credit, if the wholesaler receives a payment for the bad debt, the wholesaler shall be liable to the department for the amount received and shall remit this amount in the next payment to the department under this section or section 39-28-105.

(b) Any claim for a bad debt credit under this subsection (4) shall be supported by all of the following:

(I) A copy of the original invoice issued by the wholesaler;

(II) Evidence that the cigarettes described in the invoice were delivered to the person who ordered them; and

(III) Evidence that the person who ordered and received the cigarettes did not pay the wholesaler for them and that the wholesaler used reasonable collection practices in attempting to collect the debt.

(c) If credit is given to a wholesaler for a bad debt, the person who ordered and received the cigarettes but did not pay the wholesaler for them shall be liable in an amount equal to the credit for the tax imposed in this article on the cigarettes. Subsequent to receiving the credit, if the wholesaler receives a payment for the bad debt and the wholesaler makes a payment to the department, the amount of taxes owed by such person shall be reduced by the amount paid to the department.

(d) As used in this subsection (4), "bad debt" means the taxes attributable to any portion of a debt that is related to a sale of cigarettes subject to tax under this article, that is not otherwise deductible or excludable, that has become worthless or uncollectible in the time after the tax has been paid pursuant to this section or section 39-28-105, and that is eligible to be claimed as a deduction pursuant to section 166 of the federal "Internal Revenue Code of 1986", as amended. A bad debt shall not include any interest on the wholesale price of cigarettes, uncollectible amounts on property that remain in the possession of the wholesaler until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, an account receivable that has been sold to a third party for collection, or repossessed property.

**Source: L. 64:** p. 822, § 1. **C.R.S. 1963:** § 138-8-4. **L. 65:** p. 1129, § 2. **L. 73:** p. 1451, § 3. **L. 83:** (1) amended, p. 2106, § 1, effective October 14. **L. 86:** (1) amended, p. 1113, § 12, effective July 1. **L. 87:** (1) amended, p. 1466, § 1, effective April 16. **L. 88:** (1) amended, p. 1338, § 1, effective July 1. **L. 2003:** (1) amended, p. 2636, § 4, effective June 5. **L. 2004:** (4) added, p. 265, § 1, effective August 4. **L. 2005:** (1.5) added, p. 720, § 4, effective June 1; (1) and (4)(a) amended, p. 907, § 3, effective June 2; (1) and (4)(a) amended, p. 922, § 4, effective June 2. **L. 2017:** (1)(c) amended, (HB 17-1136), ch. 76, p. 238, § 4, effective March 23.

**Cross references:** For the legislative declaration contained in the 2005 act amending subsections (1) and (4)(a), see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28-104.5. Federal requirements - placement of labels - penalty.** (1) No person shall import into this state any package of cigarettes that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards, required to be placed on the container or individual package.

(2) No person shall sell or offer to sell a package of cigarettes or affix the stamp or imprint required by section 39-28-104 on a package of cigarettes unless that package of cigarettes complies with all federal tax laws, federal trademark and copyright laws, and federal laws regarding the placement of labels, warnings, or any other information upon a package of cigarettes.

(3) No person shall sell or offer to sell a package of cigarettes or affix the stamp or imprint required by section 39-28-104 on a package of cigarettes if the package is marked as manufactured for use outside of the United States or if any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States.

(4) (a) No person shall affix a stamp, label, or decal on a package of cigarettes to conceal the fact that the package was manufactured for use outside of the United States.

(b) No person shall sell or offer to sell a package of cigarettes on which a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(5) The violation of any provision of this section is a class 1 misdemeanor.

(6) (a) Any package of cigarettes found for sale at retail or wholesale at any place in this state that is marked for use outside of the United States is declared to be contraband goods and may be seized without a warrant by the department, by its agents or employees, or by any peace officer in this state when directed or requested by the department to do so. Nothing in this section shall be construed to require the department to confiscate packages of cigarettes that are so marked in quantities less than ten cartons when the packages are held for personal consumption and not for resale.

(b) Any cigarettes seized by virtue of the provisions of this subsection (6) shall be confiscated, and the department shall destroy such confiscated goods.

**Source: L. 99:** Entire section added, p. 92, § 1, effective March 24.

**39-28-105. Use of metering machines.** (1) The department, if it determines that it is practicable to stamp by imprint or impression on packages of cigarettes by means of a metering machine, may authorize any licensed wholesaler to use any metering machine approved by the department in lieu of requiring the wholesaler to affix stamps to such packages. Such metering machines shall be sealed by the department and shall be used in accordance with rules and regulations prescribed by it. Any wholesaler authorized to use a metering machine shall file with the department evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a bond issued by a surety company authorized to do business in this state in the amount of one thousand dollars, conditioned upon the payment of the tax upon cigarettes so imprinted.

(2) (a) The department may cause each metering machine approved by it to be read and inspected at least once each month. The department shall set the machine to the number of units requested by the wholesaler and shall determine as of the time of setting the amount of tax due from the wholesaler using such machine, after allowing the discount provided in section 39-28-104. The tax for each unit placed on the machine at the time of setting, less any discount that is not otherwise prohibited by paragraph (b) of this subsection (2) to cover the licensed wholesaler's expense in the collection and remittance of such tax, shall be due and payable to the

department on or before the tenth day of the month following the month in which the meter is set. If any licensed wholesaler is delinquent in remitting such payment, other than in unusual circumstances shown to the satisfaction of the executive director, the licensed wholesaler shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and, in addition, the penalty imposed under section 39-28-108 (2) shall apply.

(b) The tax imposed pursuant to section 39-28-103.5 and section 21 of article X of the state constitution shall not be subject to the discount provided for in paragraph (a) of this subsection (2).

**Source: L. 64:** p. 823, § 5. **C.R.S. 1963:** § 138-8-5. **L. 79:** (1) amended, p. 428, § 23, effective July 1. **L. 83:** (2) amended, p. 2106, § 2, effective October 14. **L. 86, 2nd Ex. Sess.:** (2) amended, p. 74, § 2, effective August 15. **L. 87:** (2) amended, p. 1468, § 1, effective May 1. **L. 88:** (2) amended, p. 1338, § 2, effective July 1. **L. 2005:** (2) amended, p. 908, § 4, effective June 2; (2) amended, p. 923, § 5, effective June 2.

**Cross references:** For the legislative declaration contained in the 2005 act amending subsection (2), see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28-106. Nonresident wholesalers.** (1) When the department determines that the collection of the tax imposed by the provisions of this article and section 21 of article X of the state constitution would be facilitated thereby, it may authorize any person, firm, limited liability company, partnership, or corporation outside of this state and engaged in the business of selling and shipping into this state cigarettes, upon complying with the requirements of this article, to affix or cause to be affixed the stamps, imprints, or impressions required by this article on behalf of the wholesalers within this state. The department may sell such stamps and approve the use of metering machines to such nonresident wholesalers as provided in this article; except that the nonresident wholesaler shall agree in writing to submit his or her books, accounts, and records to examination during reasonable business hours by any duly authorized agent of the department. Each such nonresident wholesaler shall appoint in writing the secretary of state of the state of Colorado to be his or her agent in this state for service of process, pursuant to part 7 of article 90 of title 7, C.R.S., with respect to foreign corporations.

(2) Any nonresident wholesaler complying with the requirements and provisions of this section shall be deemed a licensed wholesaler within the meaning of this article and shall be subject to all provisions of this article applicable to wholesalers.

**Source: L. 64:** p. 823, § 6. **C.R.S. 1963:** § 138-8-6. **L. 90:** (1) amended, p. 459, § 45, effective April 18. **L. 93:** (1) amended, p. 865, § 44, effective July 1, 1994. **L. 2003:** (1) amended, p. 2356, § 346, effective July 1, 2004. **L. 2005:** (1) amended, p. 908, § 5, effective June 2; (1) amended, p. 924, § 6, effective June 2.

**Cross references:** For the legislative declaration contained in the 2005 act amending subsection (1), see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28-107. Unstamped packages - tax collected - fines - subject to confiscation - tobacco tax enforcement cash fund - creation.** (1) (a) Any package of cigarettes found at any

place in this state without a stamp or imprint affixed thereto as provided in this article, unless such cigarettes are in the possession of a licensed wholesaler in the original unopened shipping package or in transit to such wholesaler, are declared to be contraband goods and may be seized without a warrant by the department, its agents or employees, or by any peace officer in this state when directed or requested by the department to do so. Nothing in this section shall be construed to require the department to confiscate unstamped packages of cigarettes when it has reason to believe that the owner thereof is not willfully or intentionally evading the taxes imposed by the provisions of this article and section 21 of article X of the state constitution. The executive director may impose a civil penalty on any person, firm, limited liability company, partnership, or corporation for the purchase or possession of unstamped cigarettes, regardless of whether the cigarettes have been confiscated, in an amount that does not exceed twenty-five cents per cigarette purchased or possessed; except that the penalty shall not apply if the cigarettes are in the possession of a licensed wholesaler in the original unopened shipping package or in transit to such wholesaler. Any civil penalties received pursuant to this paragraph (a) shall be remitted to the state treasurer for deposit in the tobacco tax enforcement cash fund created in paragraph (b) of this subsection (1).

(b) There is hereby created in the state treasury the tobacco tax enforcement cash fund. The fund shall consist of moneys deposited therein pursuant to paragraph (a) of this subsection (1) and section 39-28.5-106 (4). The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the purpose of enforcing the provisions of this article and article 28.5 of this title. Any moneys not appropriated by the general assembly shall remain in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

(c) The provisions of this section shall not apply to cigarettes purchased from a United States military exchange or commissary, so long as the cigarettes are not for resale in this state.

(2) Any cigarettes seized by virtue of the provisions of this section shall be confiscated, and the department shall sell such confiscated goods at a public sale to a licensed wholesaler to the best advantage of this state. The proceeds from such sale shall be remitted to the state treasurer and distributed as provided in section 39-28-110 (1). Such sale by the state shall not relieve the purchaser at such sale from paying the tax and stamping the articles so sold to him or her in the manner provided in this article. The act or omission of any officer, agent, or other person acting for or employed by any person, firm, limited liability company, partnership, or corporation shall be deemed to be the act or omission of such person, firm, limited liability company, partnership, or corporation, as well as his or her own.

**Source: L. 64:** p. 823, § 7. **C.R.S. 1963:** § 138-8-7. **L. 90:** (2) amended, p. 459, § 46, effective April 18. **L. 2005:** Entire section amended, p. 909, § 6, effective June 2; entire section amended, p. 924, § 7, effective June 2. **L. 2009:** (1) amended, (HB 09-1173), ch. 372, p. 2016, § 3, effective August 5. **L. 2010:** (1)(a) amended and (1)(c) added, (HB 10-1058), ch. 158, p. 543, § 1, effective August 11.

**Cross references:** For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28-108. Penalty.** (1) Any person, firm, limited liability company, partnership, or corporation or agent thereof who at retail sells or offers for sale, displays for sale, or possesses with intent to sell any cigarettes, the package of which does not bear the stamp, or an imprint or impression by a suitable metering machine approved by the department, evidencing the payment of the taxes imposed by this article and section 21 of article X of the state constitution, shall be punished as provided in section 39-21-118.

(2) (a) If a person neglects or refuses to make a return as required by this article, the executive director of the department shall impose a penalty of one hundred dollars.

(b) If a person fails to pay the tax in the time allowed for the discount in section 39-28-104 (1), a penalty equal to ten percent thereof plus one-half of one percent per month from the date when due, not to exceed eighteen percent in the aggregate, together with interest on such delinquent taxes at the rate computed under section 39-21-110.5, shall apply.

(c) In computing and assessing the penalty, penalty interest, and interest pursuant to paragraph (b) of this subsection (2), the executive director of the department may make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent.

**Source: L. 64:** p. 824, § 8. **C.R.S. 1963:** § 138-8-8. **L. 81:** (2) amended, p. 1868, § 15, effective June 8. **L. 85:** Entire section amended, p. 1262, § 24, effective January 1, 1986. **L. 86:** (2) amended, p. 1223, § 37, effective May 30. **L. 87:** (2) R&RE, p. 1466, § 2, effective April 16. **L. 90:** (1) amended, p. 459, § 47, effective April 18. **L. 2005:** (1) amended, p. 909, § 7, effective June 2; (1) amended, p. 925, § 8, effective June 2.

**Cross references:** For the legislative declaration contained in the 2005 act amending subsection (1), see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28-109. Records - examination - returns.** Each wholesaler shall keep and preserve complete and accurate records of all cigarettes purchased and sold by him in accordance with the provisions of section 39-21-113. Any nonresident wholesaler, authorized pursuant to section 39-28-106, shall make available to the department, in the city and county of Denver, said records or, in the alternative, shall bear the cost of examination by an agent authorized by the executive director of the department of revenue at the place where such books, accounts, and records are kept. Such cost shall consist of a charge of twenty-five dollars per diem for the period required to make such examination, with a minimum charge of seventy-five dollars. The department may investigate and examine the stock of cigarettes upon any premises where the same are possessed, stored, or sold for the purpose of determining whether the provisions of this article have been complied with. The records which the wholesaler keeps shall be of such kind and in such form as the department prescribes. Each wholesaler shall make a return to the department each month containing, among other things, the total number of packages of cigarettes sold by him during the preceding month and the tax due thereon, which return shall be upon forms prescribed and furnished by the department and shall be filed by the tenth day of the month following the month reported.

**Source: L. 64:** p. 824, § 9. **C.R.S. 1963:** § 138-8-9. **L. 88:** Entire section amended, p. 1339, § 3, effective July 1.

**39-28-110. Distribution of tax collected.** (1) All sums of money received and collected in payment of the tax imposed by the provisions of this article, except license fees received under section 39-28-102 and the moneys collected pursuant to section 39-28-103.5, shall be transmitted to the state treasurer who shall distribute the money as follows: Fifteen percent to the general fund, and eighty-five percent to the old age pension fund.

(2) All moneys received and collected in payment of the tax imposed pursuant to section 39-28-103.5 shall be transmitted to the state treasurer for deposit in the tobacco tax cash fund created in section 24-22-117, C.R.S.

**Source: L. 64:** p. 825, § 10. **C.R.S. 1963:** § 138-8-10. **L. 2005:** Entire section amended, p. 909, § 8, effective June 2; entire section amended, p. 925, § 9, effective June 2.

**Cross references:** (1) For the old age pension fund, see article XXIV of the state constitution and § 26-2-115; for distribution to local governments of an amount from income tax proceeds equal to the cigarette tax, see § 39-22-623.

(2) For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28-111. Exempt sales.** The sales of cigarettes to the United States government or any of its agencies, sales in interstate commerce, or transactions the taxation of which is prohibited by the constitution of the United States are exempted from the provisions of this article. Such exempt sales shall be reported to the department with such information as the department shall require.

**Source: L. 64:** p. 825, § 11. **C.R.S. 1963:** § 138-8-11.

**39-28-112. Taxation by cities and towns.** No provision of this article shall be construed to prevent the imposing, levying, and collecting of any tax upon sales of cigarettes or upon the occupation or privilege of selling cigarettes by any city or town in this state, nor shall the provisions of this article be interpreted to affect any existing authority of local municipalities to impose a tax on cigarettes to be used for local and municipal purposes.

**Source: L. 64:** p. 825, § 13. **C.R.S. 1963:** § 138-8-13.

**39-28-113. Provisions not applicable. (Repealed)**

**Source: L. 64:** p. 826, § 14. **C.R.S. 1963:** § 138-8-14. **L. 76:** Entire section amended, p. 319, § 78, effective May 20. **L. 2004:** Entire section amended, p. 1047, § 20, effective July 1. **L. 2005:** Entire section amended, p. 781, § 73, effective June 1. **L. 2013:** Entire section repealed, (HB 13-1144), ch. 304, p. 1615, § 2, effective July 1.

**39-28-114. Prohibited acts - penalties.** It is unlawful for any wholesaler to sell and distribute any cigarettes in this state without a license or without first affixing the stamp, imprint, or impression upon each package of cigarettes, as provided for in this article, or to willfully make any false or fraudulent return, or false statement on any return, or to willfully evade the

payment of the tax, or any part thereof, as imposed by this article. Any wholesaler, or agent thereof, who willfully violates any provision of this article shall be punished as provided by section 39-21-118.

**Source: L. 64:** p. 826, § 15. **C.R.S. 1963:** § 138-8-15. **L. 85:** Entire section amended, p. 1262, § 25, effective January 1, 1986.

**39-28-115. List of licensed wholesalers - published on website.** On or before December 31, 2009, the department shall publish on its website a list of the names and addresses of all licensed wholesalers. The list shall be updated within seven days of any changes to the list.

**Source: L. 2009:** Entire section added, (HB 09-1173), ch. 372, p. 2017, § 4, effective August 5.

PART 2

TOBACCO ESCROW FUNDS

**39-28-201. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares:

(a) That cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) That cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) That under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) That it is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) That on November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "master settlement agreement," with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state, tied in part to their volume of sales; to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) That it would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will

have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

**Source: L. 99:** Entire part added, p. 944, § 1, effective July 1.

**39-28-202. Definitions.** As used in this part 2:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C to the master settlement agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) "Allocable share" means allocable share as that term is defined in the master settlement agreement.

(4) (a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(I) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(II) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(III) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (I) of this paragraph (a).

(b) The term "cigarette" includes roll-your-own, i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(c) For purposes of this definition of "cigarettes", 0.09 ounces of roll-your-own tobacco shall constitute one individual "cigarette".

(5) "Master settlement agreement" means the settlement agreement and related documents dated November 23, 1998, entered into by the state and leading United States tobacco product manufacturers and attached as exhibit A to the consent decree approved by the district court for the city and county of Denver on November 25, 1998, in civil action no. 97CV3432.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars, where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with section 39-28-203 (2).

(7) "Released claims" means released claims as that term is defined in the master settlement agreement.

(8) "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

(9) (a) "Tobacco product manufacturer" means an entity that, after July 1, 1999, directly and not exclusively through any affiliate:

(I) Manufactures anywhere cigarettes which the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer; provided, however, that an entity that manufactures cigarettes that it intends to be sold in the United States shall not be considered a tobacco product manufacturer under this paragraph (a) if:

(A) Such cigarettes are sold in the United States exclusively through an importer that is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in section II(z) of the master settlement agreement; and

(B) The manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(II) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(III) Becomes a successor of an entity described in subparagraph (I) or (II) of this paragraph (a).

(b) "Tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within subparagraphs (I) through (III) of paragraph (a) of this subsection (9).

(10) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on containers of roll-your-own tobacco, and on packs of cigarettes bearing the excise tax stamp of the state. The department shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

**Source: L. 99:** Entire part added, p. 945, § 1, effective July 1.

**39-28-203. Requirements.** Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after July 1, 1999, shall either:

(1) Become a participating manufacturer as that term is defined in section II(jj) of the master settlement agreement and generally perform its financial obligations under the master settlement agreement; or

(2) (a) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts as such amounts are adjusted for inflation:

(I) 1999: $.0094241 per unit sold after July 1, 1999;

(II) 2000: $.0104712 per unit sold;

(III) For each of 2001 and 2002: $.0136125 per unit sold;

(IV) For each of 2003 through 2006: $.0167539 per unit sold;

(V) For each of 2007 and each year thereafter: $.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) of this subsection (2) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(I) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph (I):

(A) In the order in which they were placed into escrow; and

(B) Only to the extent and at the time necessary to make payments required under such judgment or settlement;

(II) (A) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer;

(B) If Senate Bill 04-182, enacted at the second regular session of the sixty-fourth general assembly, or any portion of the amendment to sub-subparagraph (A) of this subparagraph (II) made by Senate Bill 04-182 is held by a court of competent jurisdiction to be unconstitutional, then sub-subparagraph (A) of this subparagraph (II) shall be deemed to be repealed in its entirety. If this paragraph (b) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then Senate Bill 04-182 shall be deemed repealed, and sub-subparagraph (A) of this subparagraph (II) shall be restored as if no such amendments had been made. Neither any holding of unconstitutionality nor the repeal of sub-subparagraph (A) of this subparagraph (II) shall affect, impair, or invalidate any other portion of this section, and such remaining portions of this section shall at all times continue in full force and effect.

(III) To the extent not released from escrow under subparagraph (I) or (II) of this paragraph (b), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which the funds were placed into escrow.

(c) (I) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection (2) shall annually certify to the attorney general that it is in compliance with this subsection (2). The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) Be required within fifteen days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection (2), may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection (2), may impose a civil penalty, to be paid to the general

fund of the state, in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow; and

(C) In the case of a second or subsequent knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, for a period not to exceed two years.

(II) Each failure to make an annual deposit required under this section shall constitute a separate violation.

**Source: L. 99:** Entire part added, p. 947, § 1, effective July 1. **L. 2004:** (2)(b)(II) amended, p. 404, § 1, effective April 8.

PART 3

ADDITIONAL REQUIREMENTS FOR TOBACCO PRODUCT MANUFACTURERS AND STAMPING AGENTS

**39-28-301. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) Violations of the tobacco escrow funds act threaten the integrity of the master settlement agreement, the fiscal soundness of the state, and the public health.

(b) Enacting procedural enhancements will aid the enforcement of the tobacco escrow funds act and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health.

(c) The provisions of this part 3 are not intended to and shall not be interpreted to amend the tobacco escrow funds act.

**Source: L. 2003:** Entire part added, p. 1752, § 1, effective May 14.

**39-28-302. Definitions.** As used in this part 3, unless the context otherwise requires:

(1) "Brand family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol", "lights", "kings", and "100s", and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Cigarette" has the same meaning as set forth in section 39-28-202 (4).

(3) "Department" means the department of revenue.

(4) "Master settlement agreement" has the same meaning as set forth in section 39-28-202 (5).

(5) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the same meaning as set forth in section II (jj) of the master settlement agreement and all amendments thereto.

(7) "Qualified escrow fund" has the same meaning as set forth in section 39-28-202 (6).

(8) "Stamping agent" means a person that is authorized to affix tax stamps to packages or other containers of cigarettes or tobacco products under section 39-28-104 or a person that is required to pay the tobacco products tax imposed pursuant to section 39-28.5-102 on roll-your-own tobacco for cigarettes.

(9) "Tobacco control special fund" means a separate fund created by this part 3, the revenues of which do not pass through the general fund, and that will by used by the department for the enforcement of this part 3 and the tobacco escrow funds act.

(10) "Tobacco escrow funds act" or "act" means those provisions that are referred to as the model act in the master settlement agreement and that are codified as part 2 of this article.

(11) "Tobacco product manufacturer" has the same meaning as set forth in section 39-28-202 (9).

(12) "Units sold" has the same meaning as set forth in section 39-28-202 (10).

**Source: L. 2003:** Entire part added, p. 1752, § 1, effective May 14.

**39-28-303. Certifications - directory - tax stamps.** (1) **Certification.** (a) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, retailer, or similar intermediary or intermediaries shall execute and deliver in the manner prescribed by the department a certification to the executive director of the department no later than the thirtieth day of April each year certifying under penalty of perjury that, as of the date of such certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with the tobacco escrow funds act and all implementing regulations.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the department.

(c) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families, and the list shall:

(I) Separately list:

(A) Brand families of cigarettes and the number of units sold for each brand family that were sold in the state during the preceding calendar year; and

(B) All of the nonparticipating manufacturer's brand families that have been sold in the state at any time during the current calendar year;

(II) Indicate by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and

(III) Identify by name and address any other manufacturer of such brand families in the preceding calendar year.

(d) A nonparticipating manufacturer shall update a certification thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the department.

(e) A certification of a nonparticipating manufacturer shall further certify:

(I) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by section 39-28-304;

(II) That the nonparticipating manufacturer has:

(A) Established and continues to maintain a qualified escrow fund, as defined in section 39-28-202 (6); and

(B) Executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(III) That the nonparticipating manufacturer is in full compliance with the tobacco escrow funds act, this part 3, and any rules promulgated pursuant to the tobacco escrow funds act or this part 3; and

(IV) That information pertaining to the qualified escrow fund, including:

(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by section 39-28-203 and all rules promulgated thereto;

(B) The account number of the qualified escrow fund and sub-account number for the state of Colorado;

(C) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and such evidence or verification as may be deemed necessary by the department to confirm the foregoing; and

(D) The amounts of and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to the tobacco escrow funds act and all rules promulgated thereto.

(f) (I) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year in the volume and shares determined pursuant to the master settlement agreement; and

(B) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of the tobacco escrow funds act.

(II) Nothing in this paragraph (f) shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of part 2 of this article.

(g) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period.

(2) **Directory of cigarettes approved for stamping and sale.** (a) Not later than June 1, 2003, the department shall develop and publish on its website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section and all brand families that are listed in such certifications; except that:

(I) The department shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the department determines is not in compliance with paragraphs (c) and (d)

of subsection (1) of this section, unless the department has determined that the violation has been cured to the satisfaction of the department.

(II) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the executive director of the department concludes that:

(A) In the case of a nonparticipating manufacturer, any escrow payment required pursuant to the tobacco escrow funds act for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(B) Any outstanding final judgment, including interest thereon, for violations of the tobacco escrow funds act has not been fully satisfied for the brand family and the manufacturer.

(b) The department shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this part 3.

(c) The department shall transmit by electronic mail or other practicable means to each stamping agent notice of any addition to or removal from the directory of a tobacco product brand manufacturer or brand family. In addition, the department shall transmit by electronic mail or other practical means to each stamping agent notice of the potential removal from the directory of a tobacco product brand manufacturer or brand family three calendar days before the tobacco product brand manufacturer or brand family is actually removed from the directory. Unless otherwise provided by agreement between a stamping agent and a tobacco product manufacturer, a stamping agent shall be entitled to a refund from a tobacco product manufacturer of any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the department of the removal from the directory of the tobacco product manufacturer or the brand family of the cigarettes. The department shall not restore to the directory a tobacco product manufacturer or a brand family until the tobacco product manufacturer has paid the stamping agent any refund due.

(d) Every stamping agent shall provide and update as necessary an electronic mail address to the department for the purpose of receiving any notifications that may be required by this part 3.

(3) **Prohibition against stamping or sale of cigarettes not in the directory.** It shall be unlawful for any person to:

(a) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(b) Sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory.

**Source: L. 2003:** Entire part added, p. 1753, § 1, effective May 14. **L. 2011:** (1)(a) and IP(2)(a) amended, (HB 11-1303), ch. 264, p. 1176, § 94, effective August 10.

**39-28-304. Agent for service of process.** (1) A nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in the state to act as an agent for the service of process on whom all process, and any action or

proceeding against the nonparticipating manufacturer concerning or arising out of the enforcement of this part 3 and the tobacco escrow funds act, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to and to the satisfaction of the executive director of the department and the attorney general.

(2) A nonparticipating manufacturer shall provide notice to the executive director of the department and the attorney general at least thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent at least five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the executive director and the attorney general of the termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) A nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as herein required shall be deemed to have appointed the secretary of state as the agent and may be proceeded against in the courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as the agent shall not satisfy the condition precedent to having the nonparticipating manufacturer's brand families listed or retained in the directory.

**Source: L. 2003:** Entire part added, p. 1757, § 1, effective May 14.

**39-28-305. Reporting of information - escrow installments.** (1) **Reporting by stamping agents.** Not later than twenty days after the end of each month, each stamping agent shall submit to the department such information as the department requires to facilitate compliance with this part 3, including, but not limited to, a list by brand family of the total number of cigarettes, or in the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous calendar month or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain and make available to the department all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the department for a period of five years.

(2) **Disclosure of information.** The department is authorized to disclose to the attorney general any information received under this part 3 and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this part 3. The department and the attorney general shall share with each other the information received under this part 3 and may share the information with other federal, state, or local agencies only for purposes of enforcement of this part 3, the tobacco escrow funds act, or corresponding laws of other states.

(3) **Verification of qualified escrow fund.** The attorney general may require at any time from a nonparticipating manufacturer, proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with the tobacco escrow funds act of the amount of money in the fund, exclusive of interest, being held on behalf of the state, the dates of deposits, and the dates and amounts of all withdrawals from such fund.

(4) **Requests for additional information.** In addition to the information required to be submitted pursuant to regulation number 39-28-202 (3) and (4) or any successor rule of the department (1 CCR 201-7), the department or the attorney general may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the department or the attorney general to determine whether a tobacco product manufacturer is in compliance with this part 3.

(5) **Quarterly escrow installments.** To promote compliance with the provisions of this part 3, the department may promulgate rules requiring a tobacco product manufacturer subject to the requirements of section 39-28-303 (1)(c) to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The department may require production of information sufficient to enable the department to determine the adequacy of the amount of the installment deposit.

**Source: L. 2003:** Entire part added, p. 1758, § 1, effective May 14.

**39-28-306. Penalties and other remedies.** (1) **License revocation and civil penalty.** In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated section 39-28-303 (3) or any rule adopted pursuant thereto, the executive director of the department may revoke or suspend the license of any stamping agent in the manner provided by sections 39-28-102 (1) and 39-28.5-104. Each stamp affixed and each offer to sell cigarettes in violation of section 39-28-303 (3) shall constitute a separate violation. For each violation, the executive director may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes sold or five thousand dollars upon a determination of a violation of section 39-28-303 (3) or any rules adopted pursuant thereto.

(2) **Contraband and seizure.** Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of section 39-28-303 (3) shall be deemed a contraband article as defined by section 16-13-502 (1), C.R.S. The cigarettes shall be subject to seizure and forfeiture as provided in the "Colorado Contraband Forfeiture Act", part 5 of article 13 of title 16, C.R.S., and any cigarettes so seized and forfeited shall be destroyed and not resold.

(3) **Injunction.** The attorney general, on behalf of the department, may seek an injunction to restrain a threatened or actual violation of section 39-28-303 (3) or 39-28-305 (1) or (4) by a stamping agent and to compel the stamping agent to comply with those statutory provisions.

(4) **Unlawful sale and distribution.** It is unlawful for a person to sell, distribute, acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of section 39-28-303 (3). A violation of this section is a class 2 misdemeanor.

(5) **Colorado consumer protection act.** A person who violates section 39-28-303 (3) engages in an unfair and deceptive trade practice in violation of section 6-1-105, C.R.S.

(6) **Disgorgement of profits for violations of this part 3.** If a court determines that a person has violated this part 3, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit into the tobacco control special fund, which is hereby created. Unless otherwise expressly provided, the

remedies or penalties provided by this part 3 are cumulative to each other and to the remedies or penalties available under all other laws of this state.

**Source: L. 2003:** Entire part added, p. 1759, § 1, effective May 14.

**39-28-307. Miscellaneous provisions.** (1) **Notice and review of determination.** A determination of the department to not list or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(2) **Applicants for licenses.** No stamping agent for a license shall be issued a license or granted a renewal of a license unless the stamping agent has certified in writing, under penalty of perjury, that the stamping agent has in the past and will continue to comply fully with this part 3. No applicant for a license shall be issued a license unless the applicant has certified in writing, under penalty of perjury, that the stamping agent will fully comply with this section.

(3) Repealed.

(4) **Promulgation of rules.** The department may promulgate rules necessary to effect the purposes of this statute. The department shall promulgate such rules in accordance with article 4 of title 24, C.R.S.

(5) **Recovery of costs and fees by attorney general.** In any action brought by the state to enforce this part 3, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(6) **Construction and severability.** If a court of competent jurisdiction finds that the provisions of this part 3 and of the tobacco escrow funds act conflict and cannot be harmonized, then the provisions of the tobacco escrow funds act shall control. If any provision of this part 3 causes the tobacco escrow funds act to no longer constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of this part 3 shall not be valid. If any provision of this part 3 is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of this part 3 or any part thereof.

**Source: L. 2003:** Entire part added, p. 1759, § 1, effective May 14. **L. 2011:** (3) repealed, (HB 11-1303), ch. 264, p. 1176, § 95, effective August 10.

## ARTICLE 28.5

Tax on Tobacco Products

**Cross references:** For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

**39-28.5-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Department" means the department of revenue.

(1.5) "Distributing subcontractor" means every person, firm, limited liability company, partnership, or corporation who purchases tobacco products from a distributor for resale to a retailer in this state.

(2) "Distributor" means every person who first receives tobacco products in this state, every person who sells tobacco products in this state who is primarily liable for the tobacco products tax on such products, and every person who first sells or offers for sale in this state tobacco products imported into this state from any other state or country.

(3) "Manufacturer's list price" means the invoice price for which a manufacturer or supplier sells a tobacco product to a distributor exclusive of any discount or other reduction.

(4) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, including all sales made by any person. The term includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this article or for any other purposes whatsoever.

(5) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise, or both for chewing and smoking, but does not include cigarettes which are taxed separately pursuant to article 28 of this title.

**Source: L. 86:** Entire article added, p. 1113, § 13, effective July 1. **L. 2005:** (1.5) added, p. 721, § 5, effective June 1.

**39-28.5-102. Tax levied.** (1) There is levied and shall be collected a tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of twenty percent of the manufacturer's list price of such tobacco products. Such tax shall be imposed at the time the distributor:

(a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;

(b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

**Source: L. 86:** Entire article added, p. 1114, § 13, effective July 1.

**Cross references:** For the tax on cigarettes, see article 28 of this title.

**39-28.5-102.5. Tax levied - state constitution.** Pursuant to section 21 of article X of the state constitution, there is levied, in addition to the tax levied pursuant to section 39-28.5-102, a tax on the sale, use, consumption, handling, or distribution of tobacco products by distributors, at a rate of twenty percent of the manufacturer's list price. The tax shall be paid to and collected by the department. The tax shall be imposed in the same manner as the tax described in section 39-28.5-102.

**Source: L. 2005:** Entire section added, p. 910, § 9, effective June 2; entire section added, p. 925, § 10, effective June 2.

**Cross references:** For the legislative declaration contained in the 2005 act enacting this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28.5-103. Exempt sales.** The tax imposed by section 39-28.5-102 shall not apply with respect to any tobacco products which, under the constitution and laws of the United States, may not be made the subject of taxation by this state. Such exempt sales shall be reported to the department with such information as the department shall require.

**Source: L. 86:** Entire article added, p. 1114, § 13, effective July 1.

**39-28.5-104. Licensing required - rules - fines.** (1) It is unlawful for any person to engage in the business of a distributor of tobacco products at any place of business without first obtaining a license granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such license shall be granted only to a person who owns or operates the place from which the person engages in the business of a distributor of tobacco products, and, if such business is operated in two or more separate places by any such person, a separate license for each place of business shall be required. Such license shall be renewed only upon timely application and payment of the required fee prior to expiration. Such licenses may be transferred in the discretion of and pursuant to the rules adopted by the department. The fee for a license shall be ten dollars per year, and such fee shall be credited to the general fund. Such fee shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, suspend or revoke the license of any person violating any provision of this article, and no license shall be issued to such person within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased tobacco products for resale with the department of public health and environment and county and district public health agencies. The department shall refuse to issue a new or renewal distributor license, and shall revoke a distributor's license, if the distributor owes the state any delinquent taxes administered by the department or interest thereon pursuant to this title that have been determined by law to be due and unpaid, unless the distributor has entered into an agreement approved by the department to pay the amount due. The department shall only issue a new or renewal distributor license to a distributor that has a current license issued pursuant to section 39-26-103.

(2) (Deleted by amendment, L. 2008, p. 184, § 3, effective August 5, 2008.)

**Source: L. 86:** Entire article added, p. 1114, § 13, effective July 1. **L. 2001:** Entire section amended, p. 580, § 5, effective May 30. **L. 2004:** Entire section amended, p. 247, § 2, effective August 4. **L. 2005:** (1) amended, p. 721, § 6, effective June 1. **L. 2008:** Entire section amended, p. 184, § 3, effective August 5. **L. 2010:** (1) amended, (HB 10-1422), ch. 419, p. 2123, § 179, effective August 11.

**39-28.5-104.5. Licensing of distributing subcontractors - rules - fines.** (1) It is unlawful for any person to engage in the business of a distributing subcontractor of tobacco products at any place of business without first obtaining a license granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such license shall be granted only to a person who owns or operates the place from which the person engages in the business of a distributing subcontractor of tobacco products, and, if such business is operated in two or more separate places by any such person, a separate license for each place of business shall be required. Such license shall be renewed only upon timely application and payment of the required fee prior to expiration. Such licenses may be transferred in the discretion of and pursuant to the rules adopted by the department. The fee for a license shall be ten dollars per year, and such fee shall be credited to the wholesale and distributing subcontractor license fund created in section 39-28-102.5. Such fee shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, suspend or revoke the license of any person violating any provision of this article, and no license shall be issued to such person within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased tobacco products for resale with the department of public health and environment and county and district public health agencies. The department shall refuse to issue a new or renewal distributor license and shall revoke a distributor's license, if the distributor owes the state any delinquent taxes administered by the department or interest thereon pursuant to this title that have been determined by law to be due and unpaid, unless the distributor has entered into an agreement approved by the department to pay the amount due. The department shall only issue a new or renewal distributing subcontractor license to a distributing subcontractor that has a current license issued pursuant to section 39-26-103.

(2) (Deleted by amendment, L. 2008, p. 185, § 4, effective August 5, 2008.)

**Source: L. 2005:** Entire section added, p. 721, § 7, effective June 1. **L. 2008:** Entire section amended, p. 185, § 4, effective August 5. **L. 2010:** (1) amended, (HB 10-1422), ch. 419, p. 2123, § 180, effective August 11.

**39-28.5-105. Books and records to be preserved.** (1) Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

(2) These records shall show the names and addresses of purchasers, the inventory of all tobacco products on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products.

(3) When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records, and other papers and documents required by this section to be kept shall be preserved for a period of at least three years after the date of the documents, unless the department, in writing, authorizes their destruction or disposal at an earlier date.

(4) (a) Every retailer that is not also a licensed distributor shall keep at its place of business complete and accurate records to show that all tobacco products received by the retailer were purchased from a licensed distributor. The retailer shall provide a copy of such records to the department if so requested. The department may establish the acceptable form of such records.

(b) Any expenses incurred by the department related to enforcing paragraph (a) of this subsection (4) shall be paid from the tobacco settlement defense account, created in section 24-22-115 (2)(a), C.R.S., for the state fiscal year 2009-10, and from the tobacco tax enforcement cash fund created in section 39-28-107 (1)(b), for each state fiscal year thereafter.

**Source: L. 86:** Entire article added, p. 1115, § 13, effective July 1. **L. 2009:** (4) added, (HB 09-1173), ch. 372, p. 2017, § 5, effective August 5.

**39-28.5-106. Returns and remittance of tax - civil penalty.** (1) Every distributor shall file a return with the department each quarter. The return, which shall be upon forms prescribed and furnished by the department, shall contain, among other things, the total amount of tobacco products purchased by the distributor during the preceding quarter and the tax due thereon.

(2) Every distributor shall file a return with the department by the twentieth day of the month following the month reported and shall therewith remit the amount of tax due, less three and one-third percent of any sum so remitted that consists of tax collected before July 1, 2003, or on or after July 1, 2005, and less two and one-third percent of any sum so remitted that consists of tax collected on or after July 1, 2003, but before July 1, 2005, to cover the distributor's expense in the collection and remittance of said tax; except that no part of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of article X of the state constitution shall be subject to the discount provided for in this subsection (2). If any distributor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the executive director of the department, the distributor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and in addition the penalty imposed under section 39-28.5-110 (2)(b) shall apply.

(3) The department may require distributors to use electronic funds transfers to remit tax payments due pursuant to this article 28.5 and section 21 of article X of the state constitution to the department and may require distributors to file tax returns electronically. The department may promulgate rules governing electronic payment and filing.

(4) (a) Any person, firm, limited liability company, partnership, or corporation, other than a distributor, in possession of tobacco products for which taxes have not otherwise been remitted pursuant to this section shall be liable and responsible for the uncollected tax that is levied pursuant to section 39-28.5-102 and section 21 of article X of the state constitution on behalf of the distributor who failed to pay the tax. The person or entity shall make the payment to the department within thirty days of first taking possession of the tobacco product. The department shall establish a form to be used for remittance of the payment. The department shall remit the proceeds it receives pursuant to this paragraph (a) to the state treasurer for distribution as follows:

(I) For all moneys received and collected in payment of the tax imposed pursuant to section 39-28.5-102, fifteen percent shall be credited to the tobacco tax enforcement cash fund

created in section 39-28-107 (1)(b), and eighty-five percent shall be credited to the old age pension fund; and

(II) All moneys received and collected in payment of the tax imposed pursuant to section 39-28.5-102.5 shall be credited to the tobacco tax cash fund created in section 24-22-117, C.R.S.

(b) The executive director of the department may impose a civil penalty on any person, firm, limited liability company, partnership, or corporation in possession of tobacco products that fails to make a payment required pursuant to paragraph (a) of this subsection (4) or who is a distributor by virtue of being the first person who receives the tobacco products in the state and who fails to make a payment required pursuant to this section in an amount that does not exceed five hundred percent of such payment. Any moneys received pursuant to this paragraph (b) shall be remitted to the state treasurer for deposit in the tobacco tax enforcement cash fund created in section 39-28-107 (1)(b).

**Source: L. 86:** Entire article added, p. 1115, § 13, effective July 1. **L. 87:** (2) amended, p. 1467, § 3, effective April 16. **L. 2003:** (2) amended, p. 2637, § 5, effective June 5. **L. 2005:** (2) amended and (3) added, p. 910, § 10, effective June 2; (2) amended and (3) added, p. 925, § 11, effective June 2. **L. 2009:** (4) added, (HB 09-1173), ch. 372, p. 2018, § 6, effective August 5. **L. 2017:** (3) amended, (HB 17-1136), ch. 76, p. 238, § 5, effective March 23.

**Cross references:** For the legislative declaration contained in the 2005 act amending subsection (2) and enacting subsection (3), see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28.5-107. When credit may be obtained for tax paid.** (1) Where tobacco products, upon which the tax imposed by this article has been reported and paid, are shipped or transported by the distributor to retailers without the state to be sold by those retailers, are shipped or transported by the distributor to a consumer without the state on or after September 1, 2015, but prior to September 1, 2018, or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor in accordance with regulations prescribed by the department.

(2) (a) Credit shall be given by the department to a distributor for all taxes levied pursuant to this article and section 21 of article X of the state constitution and paid pursuant to the provisions of this article that are bad debts. Such credit shall offset taxes levied pursuant to this article and section 21 of article X of the state constitution and paid pursuant to the provisions of this article only. No credit shall be given unless the bad debt has been charged off as uncollectible on the books of the distributor. Subsequent to receiving the credit, if the distributor receives a payment for the bad debt, the distributor shall be liable to the department for the amount received and shall remit this amount in the next payment to the department under section 39-28.5-106.

(b) Any claim for a bad debt credit under this subsection (2) shall be supported by all of the following:

(I) A copy of the original invoice issued by the distributor;

(II) Evidence that the tobacco products described in the invoice were delivered to the person who ordered them; and

(III) Evidence that the person who ordered and received the tobacco products did not pay the distributor for them and that the distributor used reasonable collection practices in attempting to collect the debt.

(c) If credit is given to a distributor for a bad debt, the person who ordered and received the tobacco products but did not pay the distributor for them shall be liable in an amount equal to the credit for the tax imposed in this article on the tobacco products. Subsequent to receiving the credit, if the distributor receives a payment for the bad debt and the distributor makes a payment to the department, the amount of taxes owed by such person shall be reduced by the amount paid to the department.

(d) As used in this subsection (2), "bad debt" means the taxes attributable to any portion of a debt that is related to a sale of tobacco products subject to tax under this article, that is not otherwise deductible or excludable, that has become worthless or uncollectible in the time after the tax has been paid pursuant to section 39-28.5-106, and that is eligible to be claimed as a deduction pursuant to section 166 of the federal "Internal Revenue Code of 1986", as amended. A bad debt shall not include any interest on the wholesale price of tobacco products, uncollectible amounts on property that remain in the possession of the distributor until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, an account receivable that has been sold to a third party for collection, or repossessed property.

**Source: L. 86:** Entire article added, p. 1115, § 13, effective July 1. **L. 2004:** Entire section amended, p. 266, § 2, effective August 4. **L. 2005:** (2)(a) amended, p. 910, § 11, effective June 2; (2)(a) amended, p. 926, § 12, effective June 2. **L. 2015:** (1) amended, (HB 15-1301), ch. 336, p. 1364, § 3, effective June 5.

**Cross references:** (1) For the legislative declaration contained in the 2005 act amending subsection (2)(a), see section 1 of chapter 241, Session Laws of Colorado 2005.

(2) For the short title ("Cigar On-line Sales Equalization Act") and the legislative declaration in HB 15-1301, see sections 1 and 2 of chapter 336, Session Laws of Colorado 2015.

**39-28.5-108. Distribution of tax collected.** (1) All sums of money received and collected in payment of the tax imposed by the provisions of this article, except license fees received under section 39-28.5-104 and the moneys collected pursuant to section 39-28.5-102.5, shall be transmitted to the state treasurer, who shall distribute such money as follows: Fifteen percent to the general fund and eighty-five percent to the old age pension fund.

(2) All moneys received and collected in payment of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of article X of the state constitution shall be transmitted to the state treasurer for deposit in the tobacco tax cash fund created in section 24-22-117, C.R.S.

**Source: L. 86:** Entire article added, p. 1115, § 13, effective July 1. **L. 2005:** Entire section amended, p. 911, § 12, effective June 2; entire section amended, p. 926, § 13, effective June 2.

**Cross references:** For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

**39-28.5-109. Taxation by cities and towns.** No provision of this article shall be construed to prevent the imposing, levying, and collecting of any tax upon sales of tobacco products or upon the occupation or privilege of selling such products by any city or town in this state, nor shall the provisions of this article be interpreted to affect any existing authority of local municipalities to impose a tax on tobacco products to be used for local and municipal purposes.

**Source: L. 86:** Entire article added, p. 1115, § 13, effective July 1.

**39-28.5-110. Prohibited acts - penalties.** (1) It is unlawful for any distributor to sell and distribute any tobacco products in this state without a license as required in section 39-28.5-104, or to willfully make any false or fraudulent return or false statement on any return, or to willfully evade the payment of the tax, or any part thereof, as imposed by this article. Any distributor or agent thereof who willfully violates any provision of this article shall be punished as provided by section 39-21-118.

(2) (a) If a person neglects or refuses to make a return as required by this article and no amount of tax is due, the executive director of the department shall impose a penalty in the amount of twenty-five dollars.

(b) If a person fails to pay the tax in the time allowed in section 39-28.5-106 (2), a penalty equal to ten percent of such tax plus one-half of one percent per month from the date when due, not to exceed eighteen percent in the aggregate, together with interest on such delinquent taxes at the rate computed under section 39-21-110.5, shall apply.

(c) In computing and assessing the penalty, penalty interest, and interest pursuant to paragraph (b) of this subsection (2), the executive director of the department may make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent.

**Source: L. 86:** Entire article added, p. 1116, § 13, effective July 1. **L. 87:** (2) R&RE, p. 1467, § 4, effective April 16.

**39-28.5-111. Federal requirements - affixing labels - penalty.** (1) No person shall import into this state any tobacco product that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards, required to be placed on the container or individual package.

(2) No person shall sell or offer to sell any tobacco product unless the package or container of the tobacco product complies with all federal tax laws, federal trademark and copyright laws, and federal laws regarding the placement of labels, warnings, or any other information upon a package or container of tobacco products.

(3) No person shall sell or offer to sell any tobacco product if the package or container is marked as manufactured for use outside of the United States or if any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package or container of tobacco products was manufactured for use outside of the United States.

(4) (a) No person shall affix a stamp, label, or decal on a package or container of tobacco products to conceal the fact that the package or container of tobacco products was manufactured for use outside of the United States.

(b) No person shall sell or offer to sell any tobacco product on which a stamp, label, or decal was affixed to conceal the fact that the package or container of tobacco products was manufactured for use outside of the United States.

(5) The violation of any provision of this section is a class 1 misdemeanor.

(6) (a) Any package or container of tobacco products found at any place in this state that is marked for use outside of the United States is declared to be contraband goods and may be seized without a warrant by the department, its agents or employees, or by any peace officer in this state when directed or requested by the department to do so. Nothing in this section shall be construed to require the department to confiscate packages or containers of tobacco products that are so marked when it has reason to believe that the owner possesses the tobacco products for personal use and not for resale.

(b) Any tobacco products seized by virtue of the provisions of this subsection (6) shall be confiscated, and the department shall destroy such confiscated goods.

**Source: L. 99:** Entire section added, p. 93, § 2, effective March 24.

**Cross references:** For the classification and penalty provisions for class 1 misdemeanors, see § 18-1.3-501.

**39-28.5-112. List of licensed distributors - published on website.** On or before December 31, 2009, the department shall publish on its website a list of the names and addresses of all licensed distributors. The list shall be updated within seven days of any changes to the list.

**Source: L. 2009:** Entire section added, (HB 09-1173), ch. 372, p. 2018, § 7, effective August 5.

## Controlled Substances Tax

## ARTICLE 28.7

Controlled Substances Tax

**39-28.7-101 to 39-28.7-109. (Repealed)**

**Source: L. 96:** Entire article repealed, p. 135, § 2, effective March 25.

**Editor's note:** This article was added in 1988. For amendments to this article prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## ARTICLE 28.8

Taxes on Marijuana and
Marijuana Products

PART 1

DEFINITIONS

**39-28.8-101. Definitions.** Unless the context otherwise requires, any terms not defined in this article 28.8 have the meanings set forth in article 26 of this title 39. As used in this article 28.8, unless the context otherwise requires:

(1) "Affiliated marijuana business licensees" means marijuana business licensees that are owned or controlled by the same or related interests, where "related interests" includes individuals who are related by blood or marriage or entities that are directly or indirectly controlled by an entity or individual or related individuals.

(1.5) "Average market rate" means the average price, as determined by the department on a quarterly basis, of all unprocessed retail marijuana that is sold or transferred from retail marijuana cultivation facilities in the state to retail marijuana product manufacturing facilities or retail marijuana stores, less taxes paid on the sales or transfers. An "average market rate" may be based on the purchaser or transferee of unprocessed retail marijuana or on the nature of the unprocessed retail marijuana that is sold or transferred. The "average market rate" must include one or more rates that cover unprocessed marijuana that is allocated to extractions, and the initial rates for these product types must be lower than the rate for unprocessed marijuana that is allocated for direct sale to consumers.

(2) "Consumer" means a person twenty-one years of age or older who purchases retail marijuana or retail marijuana products for personal use by persons twenty-one years of age or older but not for resale to others.

(2.5) "Contract price" means the invoice price charged by a retail marijuana cultivation facility to each licensed purchaser for each sale or transfer of unprocessed retail marijuana, exclusive of any tax that is included in the written invoice price, and exclusive of any discount or other reduction. In the case of multiple invoices reflecting multiple prices for the same transaction, "contract price" is the highest such price.

(3) "Department" means the department of revenue.

(4) "Industrial hemp" means the plant of the genus cannabis and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

(5) "Local government" means a county, municipality, or city and county.

(6) "Medical marijuana center" means an entity licensed by the department to sell marijuana and marijuana products pursuant to section 14 of article XVIII of the state constitution and the "Colorado Medical Marijuana Code", article 11 of title 44.

(7) "Retail marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Retail marijuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

(8) "Retail marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package retail marijuana and sell retail marijuana to retail marijuana stores, to retail

marijuana product manufacturing facilities, and to other retail marijuana cultivation facilities, but not to consumers.

(9) "Retail marijuana products" means concentrated retail marijuana products and retail marijuana products that are comprised of retail marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

(10) "Retail marijuana product manufacturing facility" means an entity licensed to purchase retail marijuana; manufacture, prepare, and package retail marijuana products; and sell retail marijuana and retail marijuana products to other retail marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

(11) "Retail marijuana sales tax" means the sales tax imposed on retail marijuana and retail marijuana products pursuant to part 2 of this article.

(12) "Retail marijuana store" means an entity licensed by the department to purchase retail marijuana from retail marijuana cultivation facilities and retail marijuana and retail marijuana products from retail marijuana product manufacturing facilities and to sell retail marijuana and retail marijuana products to consumers.

(12.5) "Retail marijuana taxes" means the retail marijuana excise tax imposed under section 39-28.8-302 and the retail marijuana sales tax imposed under section 39-28.8-202.

(13) "Sale" means any exchange or barter, in any manner or by any means whatsoever, for consideration.

(14) "Transfer" means to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration.

(15) "Unprocessed retail marijuana" means marijuana at the time of the first transfer or sale from a retail marijuana cultivation facility to a retail marijuana product manufacturing facility or a retail marijuana store.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1866, § 1, effective May 28. **L. 2015:** (12.5) added, (HB 15-1367), ch. 271, p. 1065, § 2, effective June 4. **L. 2017:** IP and (1) amended and (1.5) and (2.5) added, (SB 17-192), ch. 299, p. 1639, § 3, effective August 9. **L. 2018:** (6) amended, (HB 18-1023), ch. 55, p. 592, § 26, effective October 1.

**Cross references:** For the legislative declaration in HB 15-1367, see section 1 of chapter 271, Session Laws of Colorado 2015.

## PART 2

## RETAIL MARIJUANA SALES TAX

**39-28.8-201. Retail marijuana sales tax - administration - enforcement.** The tax imposed pursuant to this part 2 shall be administered and enforced in accordance with the provisions of article 21 of this title and part 1 of article 26 of this title, including, without limitation, any penalties for failure to make any return or to collect or pay any tax; except that, in the event of a conflict between the provisions of this part 2 and the provisions of article 21 of this title or part 1 of article 26 of this title, the provisions of this part 2 shall control.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1868, § 1, effective May 28.

**39-28.8-202. Retail marijuana sales tax.** (1) (a) (I) In addition to the tax imposed pursuant to part 1 of article 26 of this title 39 and the sales tax imposed by a local government pursuant to title 29, 30, 31, or 32, but except as otherwise set forth in subsections (1)(a)(II) and (1)(a)(III) of this section, beginning January 1, 2014, and through June 30, 2017, there is imposed upon all sales of retail marijuana and retail marijuana products by a retailer a tax at the rate of ten percent of the amount of the sale. Beginning July 1, 2017, there is imposed upon all sales of retail marijuana and retail marijuana products by a retailer a tax at the rate of fifteen percent of the amount of the sale. The tax imposed by this section is computed in accordance with schedules or forms prescribed by the executive director of the department; except that a retail marijuana store is not allowed to retain any portion of the retail marijuana sales tax collected pursuant to this part 2 to cover the expenses of collecting and remitting the tax and except that the department of revenue may require a retailer to make returns and remit the tax described in this part 2 by electronic funds transfers. The executive director may promulgate rules to implement this section.

(II) If, for the fiscal year 2014-15, fiscal year spending is greater than twelve billion eighty million dollars or if the revenue from retail marijuana taxes is greater than sixty-seven million dollars, then on September 16, 2015, the rate of the tax imposed under subparagraph (I) of this paragraph (a) is reduced as specified in section 20 (3)(c) of article X of the state constitution. On September 17, 2015, in accordance with paragraph (b) of this subsection (1) and the authority that the voters conferred through their approval of proposition AA at the November 2013 election, the rate is increased back to ten percent.

(III) (A) If the ballot issue referred to the voters in accordance with section 39-28.8-603 (1) is placed on the November 3, 2015, ballot and a majority of the electors voting thereon vote "No/Against", then on January 1, 2016, the rate of the tax imposed under subparagraph (I) of this paragraph (a) is reduced to one-tenth of one percent as a method to refund revenues that exceed an estimate included in the ballot information booklet for proposition AA.

(B) If the retail marijuana sales tax rate is reduced in accordance with sub-subparagraph (A) of this subparagraph (III), then on March 3, 2016, and on the third business day of the next three months thereafter, if necessary, the executive director of the department shall determine whether the amount refunded to that date through the rate reduction is greater than or equal to the required retail marijuana sales tax refund. If so, then the rate reduction expires on the fifth day after the determination. If, as of June 3, 2016, the amount refunded through the rate reduction is still less than the required retail marijuana sales tax refund, then the rate reduction expires on June 30, 2016. The executive director shall estimate the amount of the refund for the time included in a determination for which the actual revenue is unknown.

(C) On the day after the temporary retail marijuana rate reduction expires in accordance with sub-subparagraph (B) of this subparagraph (III), the retail marijuana tax rate is increased back to ten percent.

(D) As used in this subparagraph (III), "required retail marijuana sales tax refund" means an amount equal to the total proposition AA blue book refund amount calculated under section 39-28.8-602 (1) minus the sum of the amounts refunded through section 39-28.8-605 (3) and (4).

(b) The maximum tax rate that may be imposed pursuant to this section is fifteen percent. At any time on or after January 1, 2014, the general assembly may, by a bill enacted by the general assembly and that becomes law:

(I) Establish a tax rate to be imposed pursuant to this subsection (1) that is lower than fifteen percent of the sale of retail marijuana or retail marijuana products; or

(II) After establishing a tax rate that is lower than fifteen percent pursuant to subparagraph (I) of this paragraph (b), increase the tax rate to be imposed pursuant to this subsection (1); except that, in no event shall the general assembly increase the tax rate above fifteen percent of the sale of retail marijuana or retail marijuana products. Notwithstanding any other provision of law, an increase in the tax rate pursuant to this subparagraph (II) shall not require voter approval subsequent to the voter approval required pursuant to part 4 of this article.

(2) Nothing in this section shall be construed to impose a tax on the sale of marijuana or marijuana products to any person by a medical marijuana center.

(3) The department may require retail marijuana stores to file tax returns electronically and to remit payments due pursuant to this part 2 by electronic funds transfers. The department may promulgate rules governing electronic payment and filing.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1868, § 1, effective May 28. **L. 2015:** (1)(a) amended, (HB 15-1367), ch. 271, p. 1065, § 3, effective June 4. **L. 2017:** (1)(a)(I) and (3) amended, (HB 17-1136), ch. 76, p. 238, § 6, effective March 23; (1)(a)(I) amended, (SB 17-267), ch. 267, p. 1471, § 29, effective May 30.

**Editor's note:** Amendments to subsection (1)(a)(I) by HB 17-1136 and SB 17-267 were harmonized.

**Cross references:** (1) For the legislative declaration in HB 15-1367, see section 1 of chapter 271, Session Laws of Colorado 2015.

(2) For the legislative declaration in SB 17-267, see section 1 of chapter 267, Session Laws of Colorado 2017.

**39-28.8-203. Disposition of collections - definitions.** (1) The proceeds of all money collected from the retail marijuana sales tax are initially credited to the old age pension fund created in section 1 of article XXIV of the state constitution in accordance with paragraphs (a) and (f) of section 2 of article XXIV of the state constitution and thereafter are transferred to the general fund in accordance with section 7 of article XXIV of the state constitution. For each fiscal year in which a tax is collected pursuant to this part 2, an amount shall be appropriated or distributed from the general fund as follows:

(a) (I) Before July 1, 2017, an amount equal to fifteen percent of the gross retail marijuana sales tax revenue collected by the department is apportioned to local governments. On and after July 1, 2017, an amount equal to ten percent of the gross retail marijuana sales tax revenue collected by the department is apportioned to local governments. The city or town share is apportioned according to the percentage that retail marijuana sales tax revenue collected by the department within the boundaries of the city or town bear to the total retail marijuana sales tax revenue collected by the department. The county share is apportioned according to the percentage that retail marijuana sales tax revenue collected by the department in the

unincorporated area of the county bear to total retail marijuana sales tax revenue collected by the department.

(I.5) Repealed.

(II) The department of revenue shall certify to the state treasurer, at least annually, the percentage for apportionment to each local government, and the percentage for apportionment so certified shall be applied by said department in all distributions to local governments until changed by certification to the state treasurer.

(III) Distribution to each local government pursuant to this paragraph (a) shall be made monthly, no later than the fifteenth day of the second successive month after the month for which retail marijuana sales tax collections are made.

(IV) Each local government, upon request and during established business hours, shall be entitled to verify with the executive director of the department or the executive director's designee the proceeds to which the local government is entitled pursuant to the provisions of this paragraph (a).

(V) Moneys apportioned pursuant to this paragraph (a) shall be included for informational purposes in the general appropriation bill or in supplemental appropriation bills for the purpose of complying with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103, C.R.S.

(VI) Nothing in this paragraph (a) shall be construed to prevent a local government from imposing, levying, and collecting any fee or any tax upon the sale of retail marijuana or retail marijuana products or upon the occupation or privilege of selling retail marijuana products, nor shall the provisions of this paragraph (a) be interpreted to affect any existing authority of a local government to impose a tax on retail marijuana or retail marijuana products to be used for local and municipal purposes; however, any local tax imposed at other than the local jurisdiction's general sales tax rate shall not be collected, administered, and enforced by the department of revenue pursuant to section 29-2-106, C.R.S., but shall instead be collected, administered, and enforced by the local government itself.

(b) (I) Until July 1, 2017, the state treasurer shall transfer from the general fund to the marijuana tax cash fund an amount equal to eighty-five percent of the gross retail marijuana sales tax revenue collected by the department.

(I.3) On and after July 1, 2017, but before July 1, 2018, of the ninety percent of the gross retail marijuana sales tax revenue in the general fund remaining after the allocation to local governments required by subsection (1)(a)(I) of this section is made, the state treasurer shall retain twenty-eight and fifteen one-hundredths percent less thirty million dollars in the general fund for use for any lawful purpose and shall transfer from the general fund:

(A) Seventy-one and eighty-five one-hundredths percent to the marijuana tax cash fund; and

(B) Thirty million dollars to the state public school fund created in section 22-54-114 (1) for use as specified in section 22-54-139 (2).

(I.5) On and after July 1, 2018, of the ninety percent of the gross retail marijuana sales tax revenue in the general fund remaining after the allocation to local governments required by subsection (1)(a)(I) of this section is made, the state treasurer shall retain fifteen and fifty-six one-hundredths percent in the general fund for use for any lawful purpose and shall transfer from the general fund:

(A) Seventy-one and eighty-five one-hundredths percent to the marijuana tax cash fund; and

(B) Twelve and fifty-nine one-hundredths percent to the state public school fund created in section 22-54-114 (1) for use as specified in section 22-54-139 (3).

(II) Repealed.

(III) The general assembly shall make appropriations from the marijuana tax cash fund for the expenses of the administration of this section.

(2) Repealed.

(3) As used in this section:

(a) "Ballot issue" means the ballot issue referred to the voters in accordance with section 39-28.8-603 (1).

(b) "Marijuana tax cash fund" is the cash fund created in section 39-28.8-501 (1).

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1869, § 1, effective May 28. **L. 2014:** (1)(b) amended, (SB 14-215), ch. 352, p. 1615, § 8, effective July 1. **L. 2015:** IP(1), (1)(a)(I), and (1)(b) amended, (1)(a)(I.5) and (3) added, and (2) repealed, (HB 15-1367), ch. 271, p. 1066, § 4, effective June 4. **L. 2016:** (1)(b)(I) amended and (1)(b)(II) repealed, (HB 16-1418), ch. 156, p. 488, § 2, effective May 4. **L. 2017:** IP(1), (1)(a)(I), and (1)(b)(I) amended, (1)(a)(I.5) repealed, and (1)(b)(I.3) and (1)(b)(I.5) added, (SB 17-267), ch. 267, p. 1471, § 30, effective May 30.

**Cross references:** (1) For the legislative declaration in HB 15-1367, see section 1 of chapter 271, Session Laws of Colorado 2015.

(2) For the legislative declaration in SB 17-267, see section 1 of chapter 267, Session Laws of Colorado 2017.

**39-28.8-204. Revenue and spending limitations.** Notwithstanding any limitations on revenue, spending, or appropriations contained in section 20 of article X of the state constitution or any other provision of law, any revenues generated by the retail marijuana sales tax imposed pursuant to this part 2 as approved by the voters at the statewide election in November 2013, may be collected and spent as voter-approved revenue changes and shall not require voter approval subsequent to the voter approval required pursuant to part 4 of this article.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1870, § 1, effective May 28.

**39-28.8-205. Rules.** The department shall promulgate rules for the implementation of this part 2 in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1871, § 1, effective May 28.

PART 3

**39-28.8-301. Retail marijuana excise tax - administration - enforcement.** The tax imposed pursuant to this part 3 shall be administered and enforced in accordance with the provisions of article 21 of this title and part 1 of article 26 of this title, including, without limitation, any penalties for failure to make any return or to collect or pay any tax; except that, in the event of a conflict between the provisions of this part 3 and the provisions of article 21 of this title or part 1 of article 26 of this title, the provisions of this part 3 shall control.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1871, § 1, effective May 28.

**39-28.8-302. Retail marijuana - excise tax levied at first transfer from retail marijuana cultivation facility - tax rate.** (1) (a) (I) **[*Editor's note: This version of subparagraph (I) is effective until January 1, 2019.*]** Except as otherwise provided in subsection (1)(b) of this section, there is levied and shall be collected, in addition to the sales tax imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at a rate of fifteen percent of the average market rate of the unprocessed retail marijuana if the transaction is between affiliated retail marijuana business licensees. Except as otherwise provided in subsection (1)(b) of this section, there is levied and shall be collected, in addition to the sales tax imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at a rate of fifteen percent of the contract price for unprocessed retail marijuana if the transaction is between unaffiliated retail marijuana business licensees. The tax shall be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to a retail marijuana product manufacturing facility or a retail marijuana store.

(I) **[*Editor's note: This version of subparagraph (I) is effective January 1, 2019.*]** Except as otherwise provided in subsection (1)(b) of this section, there is levied and shall be collected, in addition to the sales tax imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at a rate of fifteen percent of the average market rate of the unprocessed retail marijuana if the transaction is between affiliated retail marijuana business licensees. Except as otherwise provided in subsection (1)(b) of this section, there is levied and shall be collected, in addition to the sales tax imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at a rate of fifteen percent of the contract price for unprocessed retail marijuana if the transaction is between unaffiliated retail marijuana business licensees. Retail marijuana excise tax shall also be calculated as fifteen percent of the contract price when the first transfer of retail marijuana that has been harvested for sale at a retail marijuana store or extraction by a retail marijuana product manufacturing facility is between unaffiliated retail marijuana cultivation facilities. The tax shall be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the

retail marijuana cultivation facility to a retail marijuana product manufacturing facility or a retail marijuana store.

(II) If, for the fiscal year 2014-15, fiscal year spending is greater than twelve billion eighty million dollars or if the revenue from retail marijuana taxes is greater than sixty-seven million dollars, then on September 16, 2015, the rate of the tax imposed under subparagraph (I) of this paragraph (a) is reduced as specified in section 20 (3)(c) of article X of the state constitution. On September 17, 2015, in accordance with paragraph (b) of this subsection (1) and the authority that the voters conferred through their approval of proposition AA at the November 2013 election, the rate is increased back to fifteen percent.

(b) The fifteen percent tax rate specified in paragraph (a) of this subsection (1) is the maximum tax rate that may be imposed pursuant to this section. At any time on or after January 1, 2014, the general assembly may, by a bill enacted by the general assembly and that becomes law:

(I) Establish a tax rate to be imposed pursuant to this subsection (1) that is lower than fifteen percent of the average market rate of unprocessed retail marijuana at the time that it is sold or transferred; or

(II) After establishing a tax rate that is lower than fifteen percent pursuant to subparagraph (I) of this paragraph (b), increase the tax rate to be imposed pursuant to this subsection (1); except that, in no event shall the general assembly increase the tax rate above fifteen percent of the average market rate of unprocessed retail marijuana at the time that it is sold or transferred. Notwithstanding any other provision of law, an increase in the tax rate pursuant to this subparagraph (II) shall not require voter approval subsequent to the voter approval required pursuant to part 4 of this article.

(2) The tax imposed pursuant to subsection (1) of this section shall not be levied on the sale or transfer of unprocessed marijuana by a marijuana cultivation facility to a medical marijuana center.

(3) The department of revenue shall provide local governments with information regarding the tax collected pursuant to this section under a confidential shared-use agreement.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1871, § 1, effective May 28. **L. 2015:** (1)(a) amended, (HB 15-1367), ch. 271, p. 1068, § 5, effective June 4. **L. 2017:** (1)(a)(I) amended and (3) added, (SB 17-192), ch. 299, p. 1640, § 4, effective August 9. **L. 2018:** (1)(a)(I) amended, (SB 18-259), ch. 406, p. 2390, § 3, effective January 1, 2019.

**Cross references:** For the legislative declaration in HB 15-1367, see section 1 of chapter 271, Session Laws of Colorado 2015.

**39-28.8-303. Books and records to be preserved.** (1) Every retail marijuana cultivation facility shall keep at each licensed place of business complete and accurate electronic records for that place of business, including itemized invoices of all retail marijuana grown, held, shipped, or otherwise transported or sold to retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities in this state.

(2) The records required by subsection (1) of this section shall include the names and addresses of retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities to which unprocessed retail marijuana is sold or transferred,

the inventory of all unprocessed retail marijuana on hand, and other pertinent papers and documents relating to the sale or transfer of unprocessed retail marijuana.

(3) A retail marijuana cultivation facility shall keep itemized invoices of all unprocessed marijuana transferred to retail marijuana stores owned or controlled by the owners of the retail marijuana cultivation facility.

(4) Every retail marijuana store shall keep at its place of business complete and accurate records to show that all retail marijuana received by the retail marijuana store was purchased from a retail marijuana cultivation facility. The retail marijuana store shall provide a copy of such records to the department if so requested. The department may establish the acceptable form of such records.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1872, § 1, effective May 28.

**39-28.8-304. Returns and remittance of tax - civil penalty.** (1) Every retail marijuana cultivation facility shall file a return with the department each month. The return, which shall be upon forms prescribed and furnished by the department, shall contain, among other things, the total amount of unprocessed retail marijuana sold or transferred during the preceding month and the tax due thereon.

(2) Every retail marijuana cultivation facility shall file a return with the department by the twentieth day of the month following the month reported and with the report shall remit the amount of tax due.

(3) The department may require retail marijuana cultivation facilities to file tax returns electronically and to remit payments due pursuant to this part 3 by electronic funds transfers. The department may promulgate rules governing electronic payment and filing.

(4) Repealed.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1872, § 1, effective May 28. **L. 2016:** (4) repealed, (HB 16-1041), ch. 14, p. 33, § 6, effective March 11. **L. 2017:** (3) amended, (HB 17-1136), ch. 76, p. 239, § 7, effective March 23.

**Cross references:** For the legislative declaration in HB 16-1041, see section 1 of chapter 14, Session Laws of Colorado 2016.

**39-28.8-305. Distribution of tax collected.** (1) All money received and collected in payment of the tax imposed by this part 3 shall be transmitted to the state treasurer, who shall distribute the money as follows:

(a) (I) Until June 30, 2018, the first forty million dollars received and collected annually shall be transferred to the public school capital construction assistance fund created by article 43.7 of title 22 or to any successor fund dedicated to a similar purpose; and

(II) On and after July 1, 2018, the greater of the first forty million dollars received and collected annually or ninety percent of the money received and collected annually shall be transferred to the public school capital construction assistance fund created by article 43.7 of title 22 or to any successor fund dedicated to a similar purpose; and

(b) Any amount remaining after the transfer pursuant to subsection (1)(a) of this section shall be transferred to the public school fund created in section 3 of article IX of the state constitution, which is the same as the public school fund described in section 22-41-102.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1873, § 1, effective May 28. **L. 2014:** (1)(b) amended, (SB 14-215), ch. 352, p. 1616, § 9, effective July 1. **L. 2015:** (1)(b) amended, (HB 15-1367), ch. 271, p. 1068, § 6, effective June 4. **L. 2018:** Entire section amended, (HB 18-1070), ch. 322, p. 1930, § 2, effective May 30.

**Cross references:** For the legislative declaration in HB 15-1367, see section 1 of chapter 271, Session Laws of Colorado 2015.

**39-28.8-306. Prohibited acts - penalties.** It is unlawful for any retail marijuana cultivation facility to sell or transfer retail marijuana without a license as required by law, or to willfully make any false or fraudulent return or false statement on any return, or to willfully evade the payment of the tax, or any part thereof, as imposed by this part 3. Any retail marijuana cultivation facility or agent thereof who willfully violates any provision of this part 3 shall be punished as provided by section 39-21-118.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1873, § 1, effective May 28.

**39-28.8-307. Revenue and spending limitations.** Notwithstanding any limitations on revenue, spending, or appropriations contained in section 20 of article X of the state constitution or any other provision of law, any revenues generated by the retail marijuana excise tax imposed pursuant to this part 3 as approved by the voters at the statewide election in November 2013 may be collected and spent as voter-approved revenue changes and shall not require voter approval subsequent to the voter approval required pursuant to part 4 of this article.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1873, § 1, effective May 28.

**39-28.8-308. Rules.** The department shall promulgate rules for the implementation of this part 3 in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1873, § 1, effective May 28.

## PART 4

## SUBMISSION OF BALLOT QUESTIONS REGARDING RETAIL MARIJUANA SALES AND EXCISE TAX

**39-28.8-401. Submission of ballot questions regarding imposition of retail marijuana sales and excise tax.** (1) The secretary of state shall submit a ballot question to a vote of the registered electors of the state of Colorado at the statewide election to be held in November 2013, for their approval or rejection. For purposes of title 1, C.R.S., the ballot question is a proposition. Each elector voting at said November election shall cast a vote as provided by law either "Yes/For" or "No/Against" on the proposition: "Shall state taxes be increased by $70,000,000 annually in the first full fiscal year and by such amounts as are raised annually thereafter by imposing an excise tax of 15% when unprocessed retail marijuana is first sold or transferred by a retail marijuana cultivation facility with the first $40,000,000 of tax revenues being used for public school capital construction as required by the state constitution, and by imposing an additional sales tax of 10% on the sale of retail marijuana and retail marijuana products with the tax revenues being used to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters, with the rate of either or both taxes being allowed to be decreased or increased without further voter approval so long as the rate of either tax does not exceed 15%, and with the resulting tax revenue being allowed to be collected and spent notwithstanding any limitations provided by law?"

(2) The votes cast for the adoption or rejection of the question submitted pursuant to subsection (1) of this section shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in congress.

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1874, § 1, effective May 28.

**Editor's note:** The ballot question specified in subsection (1) was referred to the registered electors on November 5, 2013, and was approved with the following vote count:

| | |
|---|---|
| FOR: | 902,181 |
| AGAINST: | 479,992 |

**39-28.8-402. Repeal of article. (Repealed)**

**Source: L. 2013:** Entire article added, (HB 13-1318), ch. 330, p. 1874, § 1, effective May 28.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective February 1, 2014. (See L. 2013, p. 1874.)

PART 5

MARIJUANA TAX CASH FUND

**39-28.8-501. Marijuana tax cash fund - creation - distribution - legislative declaration.** (1) The marijuana tax cash fund, referred to in this part 5 as the "fund", is created in the state treasury. The fund consists of any applicable retail marijuana sales tax transferred

pursuant to section 39-28.8-203 (1)(b) on or after July 1, 2014, and any revenues transferred to the fund from any sales tax imposed pursuant to section 39-26-106 on the retail sale of products under articles 43.3 and 43.4 of title 12, C.R.S.

(2) (a) The general assembly shall not appropriate the money in the fund for the fiscal year in which it was received by the state; except that:

(I) The general assembly may appropriate money in the fund to the department of revenue for the fiscal years in which it was received by the state for the direct and indirect costs associated with implementing this article 28.8 and articles 11 and 12 of title 44; and

(II) Repealed.

(b) (I) The general assembly hereby finds and declares that the retail marijuana excise tax and sales tax created a new revenue stream for the state, and the basis of these taxes is the legalization of marijuana, which presents unique issues and challenges for the state and local governments. Thus, there is a need to use some of the sales tax revenue for marijuana-related purposes. But, as this is revenue from a tax, the general assembly may appropriate this money for any purpose.

(II) The general assembly further declares that the new retail marijuana tax revenue presents an opportunity to invest in services, support, intervention, and treatment related to marijuana and other drugs.

(III) Therefore, the purposes identified in this subsection (2) prioritize appropriations related to legalized marijuana, such as drug use prevention and treatment, protecting the state's youth, and ensuring the public peace, health, and safety.

(IV) Subject to the limitation in subsection (5) of this section, the general assembly may annually appropriate any money in the fund for any fiscal year following the fiscal year in which it was received by the state for the following purposes:

(A) To educate people about marijuana to prevent its illegal use or legal abuse;

(B) To provide services for adolescents and school-aged children in school settings or through community-based organizations;

(C) To treat and provide related services to people with any type of substance use or mental health disorder, including those with co-occurring disorders, or to evaluate the effectiveness and sufficiency of behavioral health services;

(D) For jail-based and other behavioral health services for persons involved in or diverted from the criminal justice system;

(E) For state regulatory enforcement, policy coordination, or litigation defense costs related to retail or medical marijuana;

(F) For law enforcement and law enforcement training, including any expenses for the police officers standards and training board training or certification;

(G) For the promotion of public health, including poison control, prescription drug take-back programs, the creation of a marijuana laboratory testing reference library, and other public health services related to controlled substances;

(H) To study the use of marijuana and other drugs, their health effects, and other social impacts related to them;

(I) To research, regulate, study, and test industrial hemp or hemp seeds;

(J) For the start-up expenses of the division of financial services related to the regulation of marijuana financial services cooperatives pursuant to article 33 of title 11, C.R.S., until the state commissioner of financial services first collects assessments on such cooperatives;

(K) Repealed.

(L) For the Colorado veterans' service-to-career program created in part 2 of article 14.3 of title 8;

(M) For the expenses of the department of education and the department of public health and environment in developing and maintaining the resource bank for educational materials on marijuana and providing technical assistance as required in section 22-2-127.7;

(N) For housing, rental assistance, and supportive services, including reentry services, pursuant to section 24-32-721; and

(O) For the development of local dually identified crossover youth plans and services as described in section 19-2-211 (2).

(c) Subject to the limitations in subsection (5) of this section and in addition to the purposes for which the general assembly may appropriate moneys in the fund specified in paragraphs (a) and (b) of this subsection (2), the general assembly may also direct the state treasurer to transfer moneys in the fund to the general fund as specified in subsection (4) of this section. The general assembly may direct the state treasurer to make such transfers only for a fiscal year following the fiscal year in which the moneys in the fund were received by the state.

(3) Any moneys in the fund not expended for the purposes specified in subsection (2) of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year remain in the fund and shall not be credited or transferred to the general fund or another fund. All interest and income derived from the investment and deposit of moneys in the fund are subject to annual appropriation by the general assembly for any fiscal year following the fiscal year in which they were received by the state.

(4) The state treasurer shall make the following transfers from the fund to the general fund:

(a) Repealed.

(b) On June 30, 2015, thirty million eight hundred eight thousand three hundred sixty-nine dollars;

(c) On August 15, 2015, one hundred thirty-eight thousand four hundred sixty-six dollars;

(d) On July 1, 2016, twenty-six million two hundred seventy-seven thousand six hundred sixty-one dollars;

(e) On June 30, 2018, thirty-seven thousand five hundred dollars for the purpose specified in section 25.5-4-214.

(5) Beginning with appropriations made for the 2015-16 state fiscal year, the total amount that the general assembly appropriates from the fund shall not exceed ninety-three and one-half percent of the amount of moneys in the fund available for appropriation.

(6) To increase transparency, the marijuana enforcement division in the department shall include a link on its website that describes the disposition of the retail marijuana excise tax revenue and how the revenue from the fund was appropriated for the fiscal year 2015-16 and each fiscal year thereafter.

**Source: L. 2014:** (2)(b)(XI) and (2)(b)(XII) amended and (2)(b)(XIV) added, (SB 14-184), ch. 315, p. 1370, § 10, effective May 31; entire part added, (SB 14-215), ch. 352, p. 1600,

§ 2, effective July 1; (2)(b)(XI) and (2)(b)(XII) amended and (2)(b)(XV) added, (HB 14-1398), ch. 353, p. 1646, § 5, effective July 1. **L. 2015:** (2)(a), IP(2)(b), and (4)(b) amended, (SB 15-167), ch. 15, p. 37, § 1, effective March 13; (4)(b) amended, (SB 15-249), ch. 136, p. 416, § 1, effective May 1; (1) amended, (2)(b) R&RE, and (6) added, (HB 15-1367), ch. 271, p. 1069, § 7, effective June 4; (4)(c) added, (HB 15-1379), ch. 250, p. 913, § 5, effective August 5. **L. 2016:** (4)(d) added, (HB 16-1418), ch. 156, p. 488, § 1, effective May 4; IP(2)(b)(IV) and (2)(b)(IV)(C) amended, (SB 16-202), ch. 209, p. 751, § 2, effective June 1; IP(2)(b)(IV), (2)(b)(IV)(J), and (2)(b)(IV)(K) amended and (2)(b)(IV)(L) added, (HB 16-1267), ch. 187, p. 663, § 4, effective August 10. **L. 2017:** IP(2)(b)(IV), (2)(b)(IV)(K), and (2)(b)(IV)(L) amended and (2)(b)(IV)(M) added, (SB 17-025), ch. 306, p. 1662, § 2, effective June 2; (2)(b)(IV)(K) and (2)(b)(IV)(L) amended and (2)(b)(IV)(N) added, (SB 17-021), ch. 305, p. 1660, § 4, effective June 2; (4)(e) added, (HB 17-1351), ch. 288, p. 1602, § 3, effective June 2; IP(2)(b)(IV) and (2)(b)(IV)(D) amended, (SB 17-264), ch. 353, p. 1839, § 1, effective June 5; (2)(b)(IV)(C) and (2)(b)(IV)(D) amended, (SB 17-207), ch. 205, p. 769, § 8, effective August 9. **L. 2018:** (2)(b)(IV)(M) and (2)(b)(IV)(N) amended and (2)(b)(IV)(O) added, (SB 18-154), ch. 161, p. 1126, § 4, effective April 25; (2)(b)(IV)(K) repealed, (HB 18-1336), ch. 177, p. 1215, § 2, effective July 1; (2)(b)(IV)(L) amended, (HB 18-1343), ch. 242, p. 1507, § 7, effective July 1; IP(2)(a) and (2)(a)(I) amended, (HB 18-1023), ch. 55, p. 592, § 27, effective October 1.

**Editor's note:** (1) Subsection (2)(b)(XV) was numbered as (2)(b)(XIII) in HB 14-1398 but has been renumbered on revision for ease of location.

(2) Subsection IP(2)(b) was amended in SB 15-167. Those amendments were superseded by the repeal and reenactment of subsection (2)(b) in HB 15-1367, effective June 4, 2015. For the amendments to subsection IP(2)(b) in SB 15-167 in effect from March 13, 2015, to June 4, 2015, see chapter 15, Session Laws of Colorado 2015. (L. 2015, p. 37.)

(3) Subsection (2)(a)(II) provided for the repeal of subsection (2)(a)(II), effective July 1, 2015. (See L. 2015, p. 37.)

(4) Subsection (4)(a)(II) provided for the repeal of subsection (4)(a), effective July 1, 2016. (See L. 2014, p. 1600.)

(5) Amendments to subsection (2)(b)(IV)(K) by SB 17-021 and SB 17-025 were harmonized.

**Cross references:** (1) For the legislative declaration in HB 15-1367, see section 1 of chapter 271, Session Laws of Colorado 2015.

(2) For the legislative declaration in SB 17-021, see section 1 of chapter 305, Session Laws of Colorado 2017; for the legislative declaration in HB 17-1351, see section 1 of chapter 288, Session Laws of Colorado 2017; for the legislative declaration in SB 17-207, see section 1 of chapter 205, Session Laws of Colorado 2017.

**39-28.8-502. Marijuana tax cash fund - budget requests.** (1) Beginning with the budget request required to be submitted to the joint budget committee by November 1, 2014, and for the budget request required to be submitted each November thereafter, the governor shall include the governor's requested expenditures of moneys in the fund and the purposes of such expenditures for the fiscal year following the fiscal year in which the moneys were received by the state.

(2) Beginning with the budget request required to be submitted to the joint budget committee by November 1, 2014, and for each budget request required to be submitted each November thereafter, the executive director of the department of revenue shall include in its budget request for the direct and indirect costs associated with implementing this article 28.8 and articles 11 and 12 of title 44 the amount that the department requests from the money in the marijuana cash fund created in section 44-11-501, and the amount that the department requests from the marijuana tax cash fund.

**Source: L. 2014:** Entire part added, (SB 14-215), ch. 352, p. 1603, § 2, effective July 1. **L. 2018:** (2) amended, (HB 18-1023), ch. 55, p. 592, § 28, effective October 1.

PART 6

BALLOT ISSUE RELATED TO PROPOSITION AA
REFUNDS - PERMITTED USES

**39-28.8-601 to 39-28.8-607. (Repealed)**

**Editor's note:** (1) This part 6 was added in 2015 and was not amended prior to its repeal in 2017. For the text of this part 6 prior to 2017, consult the 2016 Colorado Revised Statutes.

(2) Section 39-28.8-607 provided for the repeal of this part 6, effective July 1, 2017. (See L. 2015, p. 1073.)

## Severance Tax

## ARTICLE 29

Severance Tax

**Cross references:** For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

**39-29-101. Legislative declaration.** (1) The general assembly hereby finds and declares that, when nonrenewable natural resources are removed from the earth, the value of such resources to the state of Colorado is irretrievably lost. Therefore, it is the intent of the general assembly to recapture a portion of this lost wealth through a special excise tax, in addition to other business taxes, on the nonrenewable natural resources removed from the soil of this state and sold for private profit.

(2) The general assembly further finds and declares that the severance of nonrenewable resources provides a potential source of revenue to the state and its political subdivisions. Therefore, it is the intent of the general assembly to impose a tax on the process of severance in addition to other business taxes.

(3) It additionally is the intent of the general assembly that a portion of the revenues derived from such a severance tax be used by the state for public purposes, that a portion be held

by the state in a perpetual trust fund, and that a portion be made available to local governments to offset the impact created by nonrenewable resource development.

**Source: L. 77:** Entire article added, p. 1844, § 1, effective January 1, 1978.

**39-29-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Coal" means coal which has been processed into the form in which it is sold or otherwise used. Such processing includes, but is not limited to, cleaning and washing.

(1.5) "Commercial production", for a commercial oil shale facility, means production from such facility in excess of the first fifteen thousand tons per day of oil shale or ten thousand barrels per day of shale oil, whichever is greater. The calculation of the daily production shall be determined by dividing the total production of a calendar month by the total number of days in such month.

(2) "Executive director" means the executive director of the department of revenue.

(2.5) For tax years commencing on or after January 1, 2000, "gas" means natural gas, coalbed methane, and carbon dioxide.

(3) "Gross income" means:

(a) For oil and gas, the net amount realized by the taxpayer for sale of the oil or gas, whether the sale occurs at the wellhead or after transportation, manufacturing, and processing of the product. Net amount shall be calculated on the basis of the gross lease revenues, less deductions for any transportation, manufacturing, and processing costs borne by the taxpayer. Where the parties to the sale are related parties and the sales price is lower than the price for which that oil or gas could otherwise have been sold to a ready, willing, and able buyer and where the taxpayer was legally able to sell the oil or gas to such a buyer, gross income shall be determined by reference to comparable arms-length sales of like kind, quality, and quantity in the same field or area, less deductions for transportation, manufacturing, and processing done prior to the sale. For purposes of this paragraph (a), "related parties" shall be defined by the department of revenue pursuant to rules and regulations.

(b) For metallic minerals, the value of ore immediately after its removal from the mine, and does not include any value added subsequent to mining by any treatment processes, such as crushing, grinding or concentration, by transportation from the mine, or by marketing of such ore or any products derived therefrom, but does not include income from the extraction or processing of ores or minerals from mine waste or residue of previously processed ores.

(4) "Gross proceeds", for oil shale, means the value of the oil shale at the point of severance. Such value shall be determined by deducting from the first sales price of the shale oil all costs, including direct and indirect expenditures, for:

(a) Equipment and machinery;

(b) Fragmenting, crushing, conveying, beneficiating, pyrolysis, retorting, refining, and transporting; and

(c) Royalty payments.

(4.5) "Local units of government locally impacted" means units of government in the geographic area wherein reside employees of the operation producing the minerals and mineral fuels taxed pursuant to this article. The geographic area shall be determined on the basis of residence as reported in accordance with section 39-29-110 (1)(d).

(5) "Metallic minerals" means all minerals except molybdenum, oil and gas, carbon dioxide, coal, oil shale, rock, sand, gravel, stone products, earths, limestone, and dolomite.

(6) "Molybdenum ore" means ore which is mined primarily for the extraction of molybdenum therefrom.

(6.5) For tax years commencing on or after January 1, 2000, "oil" means crude oil and condensate.

(7) "Transportation" means the cost of moving identifiable, measurable oil or gas, including gas that is not in need of initial separation, from the point at which it is first identifiable and measurable to the sales point or other point where value is established. Any compression downstream of the meter or measurement point is deductible as a component of transportation. "Gathering" means the movement of an unseparated, bulk production stream to a point, on or off the lease, where the production stream undergoes initial separation into identifiable oil, gas, or free water and is not deductible as transportation. This definition shall not be construed to affect the legal relationship between royalty owners and lessees.

**Source: L. 77:** Entire article added, p. 1845, § 1, effective January 1, 1978. **L. 80:** (4.5) added, p. 739, § 1, effective April 10. **L. 82:** (1.5) added, p. 576, § 1, effective April 2; (5) amended, p. 578, § 1, effective January 1, 1983. **L. 85:** (3)(a) R&RE, p. 1287, § 1, effective July 1. **L. 95:** (3)(a) amended and (7) added, p. 979, § 2, effective May 25. **L. 2000:** (2.5) and (6.5) added, p. 1442, § 1, effective July 1.

**Cross references:** For the legislative declaration contained in the 1995 act amending this section, see section 1 of chapter 202, Session Laws of Colorado 1995.

**39-29-103. Tax on severance of metallic minerals.** (1) In addition to any other tax, there shall be levied, collected, and paid for each taxable year a tax upon the severance from the earth in this state of all metallic minerals as to all such severance occurring on and after January 1, 1978. Such tax shall be levied against every mining operation engaged in the severance of metallic minerals and shall be based upon the gross income of such mining operation. The rate of the tax for all metallic minerals shall be as follows:

(a) For taxable years commencing prior to July 1, 1999:

| **Amount of gross income** | **Percentage tax on gross income** |
|---|---|
| First $11,000,000 | No tax |
| Amount exceeding $11,000,000 | 2.25% |

(b) For taxable years commencing on or after July 1, 1999:

| **Amount of gross income** | **Percentage tax on gross income** |
|---|---|
| First $19,000,000 | No tax |
| Amount exceeding $19,000,000 | 2.25% |

(2) There shall be allowed, as a credit against the tax computed in accordance with subsection (1) of this section, an amount equal to all ad valorem taxes assessed during the taxable year in the case of accrual basis taxpayers or paid during the taxable year in the case of cash basis taxpayers on producing mines valued for assessment pursuant to section 39-6-106. Such credit shall not exceed fifty percent of the tax computed in accordance with subsection (1) of this section.

**Source: L. 77:** Entire article added, p. 1845, § 1, effective January 1, 1978. **L. 99:** (1) amended, p. 925, § 2, effective May 24. **L. 2008:** IP(1) amended, p. 1679, § 2, effective August 5.

**Cross references:** For the legislative declaration contained in the 1999 act amending subsection (1), see section 1 of chapter 235, Session Laws of Colorado 1999.

**39-29-104. Tax on severance of molybdenum ore.** (1) In addition to any other tax, there shall be levied, collected, and paid for each calendar quarter a tax upon the severance of all molybdenum ore in this state. Such tax shall be levied against every person engaged in the severance of molybdenum ore. The rate of the tax for each calendar quarter shall be five cents per ton of molybdenum ore. On and after July 1, 1999, no tax provided for in this section shall be imposed on the first six hundred twenty-five thousand tons of molybdenum ore produced each quarter of the taxable year.

(2) Such actual severance shall be reported on quarterly declaration forms prescribed by the executive director. Such forms shall be filed with and the tax owed shall be paid to the department of revenue on or before the fifteenth day following the end of each such quarter.

**Source: L. 77:** Entire article added, p. 1846, § 1, effective January 1, 1978. **L. 86:** Entire section amended, p. 1135, § 1, effective April 1. **L. 88:** IP(1) amended and (1)(a) to (1)(c) repealed, p. 1343, §§ 1, 2, effective March 4. **L. 94:** (1) amended, p. 334, § 1, effective March 29. **L. 99:** (1) amended, p. 926, § 3, effective May 24. **L. 2008:** (1) amended, p. 1680, § 3, effective August 5.

**Cross references:** For the legislative declaration contained in the 1999 act amending subsection (1), see section 1 of chapter 235, Session Laws of Colorado 1999.

**39-29-105. Tax on severance of oil and gas.** (1) (a) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing prior to January 1, 2000, a tax upon the gross income of crude oil, natural gas, carbon dioxide, and oil and gas severed from the earth in this state; except that oil produced from any wells that produce ten barrels per day or less of crude oil for the average of all producing days during the taxable year shall be exempt from the tax. Nothing in this paragraph (a) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1)(d)(I). The tax for crude oil, natural gas, carbon dioxide, and oil and gas shall be at the following rates of the gross income:

Under $25,0002%

$25,000 and under $100,0003%
$100,000 and under $300,0004%
$300,000 and over5%

(b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state; except that oil produced from any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. The tax for oil and gas shall be at the following rates of the gross income:

| | |
|---|---|
| Under $25,000 | 2% |
| $25,000 and under $100,000 | 3% |
| $100,000 and under $300,000 | 4% |
| $300,000 and over | 5% |

(2) (a) With respect to crude oil, natural gas, carbon dioxide, and oil and gas, there shall be allowed, as a credit against the tax computed in accordance with the provisions of paragraph (a) of subsection (1) of this section for each taxable year commencing prior to January 1, 2000, an amount equal to eighty-seven and one-half percent of all ad valorem taxes assessed during the taxable year in the case of accrual basis taxpayers or paid during the taxable year in the case of cash basis taxpayers upon crude oil, natural gas, carbon dioxide, and oil and gas leaseholds and leasehold interests and oil and gas royalties and royalty interests for state, county, municipal, school district, and special district purposes, except such ad valorem taxes assessed or paid for such purposes upon equipment and facilities used in the drilling for, production of, storage of, and pipeline transportation of crude oil, natural gas, and carbon dioxide. However, no credit shall be allowed for ad valorem taxes paid or assessed on oil wells that produce ten barrels per day or less of crude oil for the average of all producing days during the taxable year.

(b) With respect to oil and gas, there shall be allowed, as a credit against the tax computed in accordance with the provisions of paragraph (b) of subsection (1) of this section for each taxable year commencing on or after January 1, 2000, an amount equal to eighty-seven and one-half percent of all ad valorem taxes assessed during the taxable year in the case of accrual basis taxpayers or paid during the taxable year in the case of cash basis taxpayers upon oil and gas leaseholds and leasehold interests and oil and gas royalties and royalty interests for state, county, municipal, school district, and special district purposes, except such ad valorem taxes assessed or paid for such purposes upon equipment and facilities used in the drilling for, production of, storage of, and pipeline transportation of oil and gas. However, no credit shall be allowed for ad valorem taxes paid or assessed on oil and gas production that is exempt from the state severance tax pursuant to subsection (1) of this section.

**Source: L. 77:** Entire article added, p. 1846, § 1, effective January 1, 1978. **L. 82:** Entire section amended, p. 578, § 2, effective January 1, 1983. **L. 84:** (2) amended, p. 1028, § 1, effective January 1, 1985. **L. 2000:** Entire section amended, p. 1442, § 2, effective July 1. **L. 2008:** (1)(b) amended, p. 1680, § 4, effective August 5.

**39-29-106. Tax on the severance of coal.** (1) In addition to any other tax, there shall be levied, collected, and paid for each taxable year a tax upon the severance of all coal in this state.

Such tax shall be levied against every person engaged in the severance of coal. Subject to the exemption and credits authorized in subsections (2), (3), and (4) of this section, the rate of the tax shall be thirty-six cents per ton of coal.

(2) (a) Repealed.

(b) On and after July 1, 1999, no tax provided for in subsection (1) of this section shall be imposed on the first three hundred thousand tons of coal produced in each quarter of the taxable year.

(c) Repealed.

(3) There shall be allowed, as a credit against the tax imposed by subsection (1) of this section, an amount equal to fifty percent of such tax for coal produced from underground mines.

(4) There shall be allowed, as an additional credit against the tax imposed by subsection (1) of this section, an amount equal to fifty percent of such tax for the production of lignitic coal, as such coal is classified by the American society for testing and materials (ASTM) in their D 388 standard for the classification of coals by rank.

(5) For every full one and one-half percent change in the index of producers' prices for all commodities prepared by the bureau of labor statistics of the United States department of labor, the tax rate provided in subsection (1) of this section shall be increased or decreased one percent. The executive director shall determine such adjustments to the rate of tax based upon changes in the index of producers' prices from the level of such index as of January, 1978, to the level of such index as of the last month of the quarter immediately preceding the quarter for which any taxes are due.

**Source: L. 77:** Entire article added, p. 1846, § 1, effective January 1, 1978. **L. 79:** (5) amended, p. 1505, § 1, effective January 1, 1980. **L. 84:** (2) amended, p. 1030, § 1, effective July 1. **L. 86:** (2) amended, p. 1137, § 1, effective April 11. **L. 88:** (5) amended, p. 1344, § 2, effective January 1; (1) amended, p. 1344, § 1, effective July 1. **L. 90:** (2)(a) and (2)(b) amended and (2)(c) repealed, p. 1747, §§ 1, 2, effective May 25. **L. 94:** (1) amended, p. 334, § 2, effective March 29. **L. 99:** (2)(a) and (2)(b) amended, p. 926, § 4, effective May 24. **L. 2008:** (2)(b) amended, p. 1680, § 5, effective August 5.

**Editor's note:** Subsection (2)(a) provided for the repeal of subsection (2)(a), effective July 1, 1999. (See L. 99, p. 926.)

**Cross references:** For the legislative declaration contained in the 1999 act amending subsections (2)(a) and (2)(b), see section 1 of chapter 235, Session Laws of Colorado 1999.

**39-29-107. Tax on severance of oil shale.** (1) In addition to any other tax, there shall be levied, collected, and paid for each taxable year a tax upon the severance of oil shale as to all such severance occurring on and after January 1, 1978. Such tax shall be levied against every person engaged in the severance of oil shale. Subject to the provisions of subsections (2) and (3) of this section, such tax shall be levied on the gross proceeds from each commercial oil shale facility at a rate of four percent of such gross proceeds.

(2) The tax shall only have application to a commercial oil shale facility one hundred eighty days after the facility commences commercial production, as follows:

| Year | Fraction of tax imposed by subsection (1) |
|---|---|
| First year | 1/4 |
| Second year | 1/2 |
| Third year | 3/4 |
| Fourth and each succeeding year | Entire rate imposed by subsection (1) |

(3) The production of the first fifteen thousand tons per day of oil shale or ten thousand barrels per day of shale oil, whichever is greater, shall be exempt from the tax.

(3.1) The calculation of the daily production subject to the tax and to the exemption in subsection (3) of this section shall be determined by dividing the total production of a calendar month by the total number of days in such month.

(4) Repealed.

**Source: L. 77:** Entire article added, p. 1847, § 1, effective January 1, 1978. **L. 82:** (2) amended and (3.1) added, p. 576, § 2, effective April 2; (4) repealed, p. 580, § 1, effective July 1. **L. 2004:** (1) amended, p. 1211, § 97, effective August 4.

**39-29-107.5. Credit allowed for prior payment of impact assistance.** (1) (a) There shall be allowed, as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels from or for a new operation from or for which first severance occurs subsequent to June 30, 1979, an amount equal to the value of approved contributions by the taxpayer made prior to first severance of such minerals or mineral fuels to assist in solving the impact problems of units of local government resulting from the initiation of such new operation.

(b) There shall be allowed, as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels from or for an operation which has an increase in production from or for which increased severance occurs subsequent to June 30, 1980, an amount equal to the value of approved contributions by the taxpayer made to assist in solving the impact problems of units of local government or local units of government locally impacted by the increase in production of an operation.

(c) There shall be allowed, pursuant to an agreement between or on behalf of the taxpayer and the unit of local government specified in subparagraph (I) of paragraph (a) of subsection (2) of this section as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels, in addition to any amounts determined under paragraphs (a) and (b) of this subsection (1) and subsection (2) of this section, an amount equal to three-fourths of one percent per month times the amount of approved contributions by a taxpayer for each month that any approved contribution precedes the month in which said approved contribution is credited against a taxpayer's yearly severance tax liability. Any amounts of approved contributions credited against a taxpayer's yearly severance tax liability shall be applied to reduce the amount, if any, of approved contributions not previously credited, and the additional percentage provided in this paragraph (c) shall apply solely to said reduced amount of approved contributions.

(2) (a) Approved contributions, for the purpose of such credits, shall include the contribution of property or payment of money to units of local government or local units of government locally impacted, for use in planning, including financial, architectural, and engineering services, construction, or expansion of public facilities, including but not limited to county or municipal roads, schools, recreation facilities, water facilities, sewage facilities, police

and fire protection facilities, and hospitals, which are deemed to be necessitated by the initiation of a new operation or increase in production of an existing operation. In addition, subject to the agreement reached pursuant to paragraph (c) of subsection (1) of this section, approved contributions may also include any loss sustained by reason of the sale of any bonds by the taxpayer who purchased such bonds, the proceeds of which bonds are used in the planning, construction, or expansion of any such public facilities by a unit of local government or local unit of government locally impacted, and any loss by reason of the default on loans made by a taxpayer or satisfaction of a guaranty obligation of the taxpayer arising out of the issuance of such bonds, whether or not such bonds are purchased by the taxpayer. Such losses shall be approved contributions as of the date of the making of a loan, the date of issuance of the bonds, or the date of entering into the guaranty obligation; except that, for purposes of the additional credit allowed pursuant to paragraph (c) of subsection (1) of this section, the date of the approved contribution shall be the date of default on any such loan, the date of loss on any such bond, or the date of satisfaction of any such guaranty obligation. In no event shall the total amount of approved contributions by a taxpayer exceed fifty percent of the severance tax liability which the taxpayer anticipates will be incurred during the first ten years of severance from a new operation or fifty percent of the increased severance tax liability which the taxpayer anticipates will be incurred during the first ten years of severance from an expanded existing operation plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section. In order for an approved contribution to qualify for credit, the following requirements shall be fulfilled:

(I) Each contribution shall be based on an agreement between or on behalf of the taxpayer and a unit of local government or local unit of government locally impacted, specifying the need for such contribution and its nature, value or amount, and purpose;

(II) Each contribution must be acted upon for credit and, if approved, a certificate of eligibility issued, within ninety days after joint submission by the taxpayer and the unit of local government, or local unit of government locally impacted, by the executive director of the department of local affairs upon the recommendation of the energy impact assistance advisory committee created by section 34-63-102 (5)(b), C.R.S., and failure to act upon the eligibility within said ninety days shall be deemed as approval and certification of the contribution; and

(III) Certification of eligibility for credit of a contribution of a specified value or amount must be transmitted by the executive director of the department of local affairs to the executive director of the department of revenue, the unit of local government or local unit of government locally impacted, and the taxpayer.

(b) In the event that the taxpayer purchases any bonds relating to public facilities as provided in this subsection (2) or makes any loans or guaranty arising out of the issuance of such bonds, the contribution, for purposes of subparagraphs (I) and (II) of paragraph (a) of this subsection (2), shall be the purchase price of any bonds purchased, the face value of any bonds guaranteed, or the amount loaned; except that the taxpayer shall be entitled to claim as a credit pursuant to subsection (3) of this section only the amount of loss on any such bonds, the amount paid in satisfaction of any such guaranty, or the amount of default on any such bonds.

(c) In order for a loss from the purchase and sale of bonds to qualify as an approved contribution:

(I) The purchase must arise out of the original distribution of such bonds; and

(II) The sale of such bonds must be made through a registered broker; and

(III) The sale must take place within five business days of the purchase.

(3) A taxpayer shall be entitled to credit against its severance tax liability in an amount equal to the total of all contributions made and certified as eligible for credit plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section. The taxpayer may claim such credit by submitting with the annual declarations and returns required by section 39-29-112 the certifications of eligibility for such credit or evidence regarding deemed certification, and in the case of losses sustained by reason of the sale of any bonds purchased by the taxpayer, by reason of satisfaction of a guaranty obligation of the taxpayer arising out of the issuance of bonds, or by reason of loans made by the taxpayer, evidence of such losses. The amount of credit available in any one taxable year, including carry-overs, shall not exceed the taxpayer's severance tax liability in such year. Any excess shall be carried over and shall be available as a credit in the next succeeding year or years subject to the same annual limitation.

(4) For the purposes of this section, minerals or mineral fuels shall include, but not be limited to, oil shale, crude oil, natural gas, and oil and gas.

(5) The executive director of the department of local affairs, or his or her designee; the executive director of the department of natural resources, or his or her designee; the executive director of the department of revenue, or his or her designee; and the energy impact assistance advisory committee created in section 34-63-102 (5)(b)(I), C.R.S., shall work together with the executive director, or his or her designee, of the Colorado municipal league, or its successor organization; the executive director, or his or her designee, of Colorado counties, incorporated, or its successor organization; representatives of the energy and mineral industry; and any other stakeholders to determine how best to improve the impact assistance credit established in this section so that any major infrastructure needs of communities impacted by the energy and mineral industry are addressed. The group specified in this subsection (5) shall recommend any proposed legislation to the agriculture, livestock, and natural resources committee of the house of representatives and the agriculture, natural resources, and energy committee of the senate, or any successor committees, no later than January 31, 2009.

**Source: L. 79:** Entire section added, p. 1506, § 1, effective May 31. **L. 80:** Entire section amended, p. 739, § 2, effective April 10. **L. 81:** Entire section amended, p. 1900, § 1, effective July 1. **L. 83:** (1)(c), (2)(a)(I), and (4) amended, p. 1543, § 1, effective May 20. **L. 2008:** (5) added, p. 898, § 1, effective August 5.

**39-29-107.8. Refunds.** (1) Prior to the allocation in section 39-29-108, the state treasurer shall set aside and maintain all revenue from the tax imposed pursuant to this article in a reserve that is available for the payment of refunds related to the tax in accordance with section 39-21-108. At the end of each month, any moneys in the reserve that are not required for a refund are the total gross receipts realized that are available for allocation under section 39-29-108.

(2) (a) Prior to July 1, 2016, if the amount in the reserve is less than the amount of refunds that are required to be made from the reserve, then the state treasurer shall credit to the reserve from the proceeds of the money collected under article 22 of this title an amount equal to the deficit.

(b) On or after July 1, 2016, but prior to July 1, 2017, the state treasurer shall credit to the reserve from the proceeds of the money collected under article 22 of this title an amount

equal to the amount by which the refunds for the tax imposed pursuant to this article that are made for a month exceed fifteen percent of the gross severance tax revenues for the same month.

(c) (I) If, as of the end of the state fiscal year commencing on July 1, 2017, the amount in the reserve is less than the amount of refunds that are required to be made from the reserve, then the state treasurer shall credit to the reserve from the proceeds of the money collected under article 22 of this title 39 an amount equal to one-fourth of the deficit.

(II) The amount credited to the reserve in accordance with subsection (2)(c)(I) of this section replaces any money from the reserve that was transferred to the severance tax operational fund, and as a result, no amount shall be recouped from the operational fund for purposes of making a refund for the fiscal year commencing on July 1, 2017.

(3) The state treasurer shall credit money to the reserve in accordance with subsection (2) of this section on a monthly basis. If there is insufficient revenue available to be credited, the state controller may authorize an advance under section 24-75-203 (2), C.R.S., to the reserve to be used for the refunds. There is no limit on the amount of an advance that the state controller may make for this purpose.

**Source: L. 2016:** Entire section added, (SB 16-218), ch. 289, p. 1173, § 3, effective June 10. **L. 2018:** (2)(c) added, (HB 18-1338), ch. 201, p. 1311, § 13, effective May 4.

**39-29-108. Allocation of severance tax revenues - definitions.** (1) Except as provided in subsections (2) and (3) of this section, the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article shall be credited as follows:

(a) For oil and gas, one hundred percent to the state general fund;

(b) For oil shale, forty percent to the state general fund, forty percent to the state severance tax trust fund created by section 39-29-109, and twenty percent to the local government severance tax fund created by section 39-29-110;

(c) For molybdenum, as follows:

(I) For fiscal years ending on or before June 30, 1979, seventy percent to the state general fund, twenty percent to the state severance tax trust fund created by section 39-29-109, and ten percent to the local government severance tax fund created by section 39-29-110;

(II) For the fiscal year ending June 30, 1980, sixty percent to the state general fund, thirty percent to the state severance tax trust fund created by section 39-29-109, and ten percent to the local government severance tax fund created by section 39-29-110;

(III) For the fiscal year ending June 30, 1981, fifty percent to the state general fund, forty percent to the state severance tax trust fund created by section 39-29-109, and ten percent to the local government severance tax fund created by section 39-29-110;

(d) For coal and metallic minerals, as follows:

(I) For fiscal years ending on or before June 30, 1979, forty percent to the state general fund, fifteen percent to the state severance tax trust fund created by section 39-29-109, and forty-five percent to the local government severance tax fund created by section 39-29-110;

(II) For the fiscal year ending June 30, 1980, thirty percent to the state general fund, twenty-five percent to the state severance tax trust fund created by section 39-29-109, and forty-five percent to the local government severance tax fund created by section 39-29-110;

(III) For the fiscal year ending June 30, 1981, twenty percent to the state general fund, thirty-five percent to the state severance tax trust fund created by section 39-29-109, and forty-five percent to the local government severance tax fund created by section 39-29-110.

(2) (a) Repealed.

(b) Of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article after June 30, 2017, fifty percent shall be credited to the state severance tax trust fund created by section 39-29-109, and fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(c) Repealed.

(2.5) Repealed.

(3) Effective July 1, 1981, the total gross receipts from any taxpayer who has previously claimed the full amount of the credit for an approved contribution under section 39-29-107.5 shall be allocated solely to the state severance tax trust fund until such time as there is allocated to such fund, in addition to any current allocation to such fund, an amount equal to what would have been allocated to such fund during the time the taxpayer claimed such credit.

(4) (a) Notwithstanding any provisions of this section to the contrary, for the 1987-88, 1988-89, 1989-90, 1990-91, 1991-92, 1992-93, and 1993-94 fiscal years, those gross receipts realized from the severance taxes imposed on minerals and mineral fuels which would otherwise be credited to the state severance tax trust fund under the provisions of this section shall be credited to the state general fund.

(b) Notwithstanding any provisions of this section to the contrary, for the 1994-95 fiscal year, those gross receipts realized from the severance taxes imposed on minerals and mineral fuels which would otherwise be credited to the state severance tax trust fund under the provisions of this section shall be credited to the uranium mill tailings remedial action program fund created in section 39-29-116 (2); except that the amount credited to such fund during the 1994-95 fiscal year shall not exceed five million dollars. Any receipts in excess of five million dollars shall be credited to the state severance tax trust fund.

(c) Notwithstanding any provisions of this section to the contrary, for the 1995-96 and 1996-97 fiscal years, those gross receipts realized from the severance taxes imposed on minerals and mineral fuels which would otherwise be credited to the state severance tax trust fund under the provisions of this section shall be credited to the uranium mill tailings remedial action program fund created in section 39-29-116 (2); except that the amount credited to such fund during the 1995-96 and 1996-97 fiscal years shall not exceed two and one-half million dollars per fiscal year. Any receipts in excess of two and one-half million dollars shall be credited to the state severance tax trust fund.

(5) (a) To assist in the preparation of state budgets, the consensus revenue estimate group shall prepare a quarterly forecast of severance revenues, including price and production volume.

(b) As used in this subsection (5):

(I) "Consensus revenue estimate group" means the staff of the legislative council appointed pursuant to section 2-3-304, C.R.S., in consultation with the office of state planning and budgeting created in section 24-37-102, C.R.S.

(II) "Price insurance contract" means a written agreement between the state treasurer and a qualified counterparty relating to a commodity price for crude oil and natural gas based on

levels of floor transactions or forward rate transactions executed through standard financial industry mechanisms.

(III) "Qualified counterparty" means a person whose long-term obligations are rated, at the time a price insurance contract is executed, in one of the two top rating categories of a nationally recognized rating agency.

(IV) "Severance revenues" means:

(A) The revenues generated from taxes levied pursuant to this article; and

(B) The state share of federal mineral leasing royalties received pursuant to section 34-63-102, C.R.S.

(c) Repealed.

**Source: L. 77:** Entire article added, p. 1847, § 1, effective January 1, 1978. **L. 79:** (1)(c)(III), (1)(d)(III), and (2) amended, pp. 1508, 1641, §§ 2, 56, effective July 19. **L. 81:** IP(1) amended and (3) added, p. 1903, § 2, effective June 19. **L. 87:** (4) added, p. 1469, § 1, effective July 1. **L. 88:** (4) amended, p. 1346, § 1, effective May 11. **L. 89:** (4) amended, p. 1516, § 1, effective April 7. **L. 90:** (4) amended, p. 1748, § 1, effective April 3. **L. 91:** (4) amended, p. 1951, § 1, effective April 11. **L. 92:** (4) amended, p. 2237, § 1, effective February 25. **L. 93:** (4) amended, p. 10, § 1, effective February 16; (4) amended, p. 445, § 1, effective April 19. **L. 95:** (2.5) added, p. 980, § 3, effective May 25. **L. 2007:** (5) added, p. 1900, § 1, effective June 1. **L. 2012:** (2) amended, (HB 12-1315), ch. 224, p. 978, § 45, effective July 1. **L. 2015:** (2)(a)(I) amended and (2)(c) added, (SB 15-255), ch. 138, p. 419, § 1, effective May 1. **L. 2016:** (2)(a)(II) amended, (SB 16-218), ch. 289, p. 1173, § 4, effective June 10.

**Editor's note:** (1) Subsection (2.5)(b) provided for the repeal of subsection (2.5), effective June 30, 1999. (See L. 95, p. 980.)

(2) Subsection (5)(c)(II) provided for the repeal of subsection (5)(c), effective July 1, 2008. (See L. 2007, p. 1900.)

(3) (a) Subsection (2)(a)(II) provided for the repeal of subsection (2)(a), effective July 1, 2017. (See L. 2016, p. 1173.)

(b) Subsection (2)(c)(II) provided for the repeal of subsection (2)(c), effective January 1, 2017. (See L. 2015, p. 419.)

**Cross references:** For the legislative declaration contained in the 1995 act enacting subsection (2.5), see section 1 of chapter 202, Session Laws of Colorado 1995.

**39-29-108.5. Credit of state share to capital construction fund - repayment. (Repealed)**

**Source: L. 83:** Entire section added, p. 2099, § 13, effective October 13. **L. 84:** (2) amended, p. 735, § 2, effective April 30. **L. 85:** (2) amended, p. 1268, § 8, effective May 30. **L. 86, 2nd Ex. Sess.:** (2) amended, p. 72, § 3, effective August 14. **L. 2002:** Entire section repealed, p. 1006, § 2, effective August 7.

**39-29-109. Severance tax trust fund - created - administration - distribution of money - repeal.** (1) There is hereby created in the state treasury the severance tax trust fund,

also referred to in this section as the "fund", which the department of natural resources shall administer. The fund is to be perpetual and held in trust as a replacement for depleted natural resources, for the development and conservation of the state's water resources pursuant to sections 37-60-106 (1)(j) and (1)(l), 37-60-119, and 37-60-122, C.R.S., for the use in funding programs that promote and encourage sound natural resource planning, management, and development related to minerals, energy, geology, and water and for the use in funding programs to reduce the burden of increasing home energy costs on low-income households.

(2) State severance tax receipts shall be credited to the severance tax trust fund as provided in section 39-29-108. Except as otherwise set forth in section 39-29-109.5, all income derived from the deposit and investment of the money in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered money in the fund remains in the fund and shall not be credited or transferred to the general fund or any other fund. All money in the fund is subject to appropriation by the general assembly for the following purposes:

(a) **The severance tax perpetual base fund.** (I) Repealed.

(I.5) There is hereby created in the state treasury the severance tax perpetual base fund, also referred to in this paragraph (a) as the "fund", which the Colorado water conservation board, also referred to in this paragraph (a) as the "board", shall administer. The state treasurer shall transfer moneys to the fund from the severance tax trust fund, as specified in this section. The moneys in the fund are continuously appropriated to the board for purposes authorized by this paragraph (a).

(II) One-half of the severance tax receipts credited to the fund for fiscal years commencing on or after July 1, 2009, shall be credited to the severance tax perpetual base fund and used for state water projects pursuant to sections 37-60-119 and 37-60-122, C.R.S.; except that the total amount of severance tax receipts credited to the severance tax perpetual base fund during the fiscal year shall not exceed fifty million dollars unless the cap established in subparagraph (III) of this paragraph (a) is exceeded. The authorization and contract for each project must require repayment of principal and interest to the fund, and moneys so repaid shall be credited to the severance tax perpetual base fund.

(III) For fiscal years commencing on or after July 1, 2009, the state treasurer shall transfer the moneys credited to the fund that are not credited to either the severance tax perpetual base fund or the severance tax operational fund to the small communities water and wastewater grant fund created in section 25-1.5-208 (4), C.R.S.; except that the maximum amount of moneys annually credited to the small communities water and wastewater grant fund shall not exceed ten million dollars.

(IV) to (XI) Repealed.

(XII) (A) Notwithstanding any provision of this paragraph (a) to the contrary, on July 1, 2013, the state treasurer shall transfer two million dollars from the fund to the Colorado water conservation board construction fund, and on July 1, 2016, the state treasurer shall transfer two hundred thousand dollars from the fund to the Colorado water conservation board construction fund, for use by the board to make a grant to the municipal subdistrict of the northern Colorado water conservancy district for the planning, design, and construction of the Windy Gap reservoir bypass channel project, as part of the Windy Gap firming project on the Colorado river.

(B) This subparagraph (XII) is repealed, effective July 1, 2020.

(XIII) Repealed.

(XIV) Notwithstanding any provision of this paragraph (a) to the contrary, on July 1, 2015, the state treasurer shall transfer five hundred thousand dollars from the fund to the Colorado water conservation board construction fund, created in section 37-60-121 (1)(a), C.R.S., for use by the Colorado water conservation board, created in section 37-60-102, C.R.S., to continue the watershed restoration program.

(XV) Repealed.

(XVI) Notwithstanding any provision of this subsection (2)(a) to the contrary, on July 1, 2017, and each year thereafter on July 1, the state treasurer shall transfer ten million dollars from the fund to the Colorado water conservation board construction fund, created in section 37-60-121 (1)(a), for use by the Colorado water conservation board, created in section 37-60-102, for the board to fund studies, programs, or projects that assist in implementing the state water plan adopted pursuant to section 37-60-106 (1)(u).

(XVII) Notwithstanding any provision of this paragraph (a) to the contrary, an amount equal to nineteen million one hundred thousand dollars in the fund is restricted from being used for any purpose whatsoever, until such time that the joint budget committee, by a majority vote, releases the restriction on some or all of the money.

(XVIII) Notwithstanding any provision of this subsection (2)(a) to the contrary, on June 30, 2018, the state treasurer shall transfer eleven million four hundred twenty-five thousand dollars from the fund to the general fund.

(XIX) and (XX) Repealed.

(XXI) (A) Notwithstanding any provision of this subsection (2)(a) to the contrary, on June 30, 2018, the state treasurer shall transfer four million dollars from the fund to the Colorado water conservation board construction fund created in section 37-60-121 for use by the board to pay for its proportionate cost increase and its assessments in the Chatfield reservoir reallocation project as authorized by section 37-60-120.1.

(B) This subsection (2)(a)(XXI) is repealed, effective September 1, 2020.

(b) (I) **The severance tax operational fund.** There is hereby created in the state treasury the severance tax operational fund, also referred to in this subsection (2)(b) as the "fund", which the department of natural resources shall administer. The state treasurer shall transfer one-half of the severance tax receipts credited to the severance tax trust fund for tax years commencing on and after July 1, 1995, to the fund. Money in the fund shall be distributed as set forth in section 39-29-109.3.

(II) (A) On June 1, 2018, the state treasurer shall transfer from the fund to the general fund an amount equal to the amount transferred to the fund from the severance tax trust fund from February 1, 2018, through the effective date of this subsection (2)(b)(II)(A).

(B) Notwithstanding subsection (2)(b)(I) of this section, from the effective date of this subsection (2)(b)(II)(B) through the end of the fiscal year commencing on July 1, 2018, the state treasurer shall transfer one-half of the severance tax receipts credited to the severance tax trust fund to the general fund instead of the fund; except that the amount transferred and credited to the general fund under this subsection (2)(b)(II) shall not exceed forty million nine hundred forty-two thousand sixteen dollars.

(C) This subsection (2)(b)(II) is repealed, effective July 1, 2019.

(c) **The water supply reserve fund.** (I) There is hereby created in the office of the state treasurer the water supply reserve fund, also referred to in this paragraph (c) as the "fund", which shall be administered by the Colorado water conservation board. The state treasurer shall transfer

moneys to the fund from the severance tax operational fund as specified in section 39-29-109.3 (2)(a). The moneys in the fund are hereby continuously appropriated, for purposes authorized by this paragraph (c), to the Colorado water conservation board, also referred to in this paragraph (c) as the "board". All interest derived from the investment of moneys in the fund shall be credited to the statewide account of the fund, which account is hereby created. Repayments of both the principal and interest on loans from the fund shall be credited to the fund. Any balance remaining in the fund at the end of any fiscal year remains in the fund. The board shall allocate moneys by grant or loan from the fund only for water activities approved by a roundtable pursuant to article 75 of title 37, C.R.S. The approving roundtable is the roundtable for the basin in which a proposed water diversion or nonstructural activity would occur. If the applicant is a covered entity, as defined in section 37-60-126, C.R.S., the board shall allocate moneys by grant or loan from the fund only if the applicant has adopted a water conservation plan, as defined in section 37-60-126, C.R.S. The board, in consultation with the interbasin compact committee created in section 37-75-105, C.R.S., shall establish criteria and guidelines for allocating moneys from the fund, including criteria that ensure that the allocations will assist in meeting water supply needs identified under section 37-75-104 (2)(c), C.R.S., in a manner consistent with section 37-75-102, C.R.S., and shall facilitate both structural and nonstructural projects or methods. Eligible water activities include the following:

(A) Competitive grants for environmental compliance and feasibility studies;

(B) Technical assistance regarding permitting, feasibility studies, and environmental compliance;

(C) Studies or analyses of structural, nonstructural, consumptive, and nonconsumptive water needs, projects, or activities; and

(D) Structural and nonstructural water projects or activities.

(II) On or before October 31 of each year, commencing with the year 2010, the board shall consult with the interbasin compact committee to produce the annual report required by section 37-75-105 (4), C.R.S., regarding how moneys in the fund were allocated in the previous twelve-month period.

(III) If the board notifies the state treasurer that a water storage study has been authorized pursuant to section 37-60-115 (11), C.R.S., on October 15, 2016, the state treasurer shall transfer two hundred eleven thousand one hundred sixty-eight dollars from the fund to the Colorado water conservation board construction fund, created in section 37-60-121 (1)(a), C.R.S., for use by the Colorado water conservation board, created in section 37-60-102, C.R.S., to implement the South Platte river water storage study pursuant to section 37-60-115 (11), C.R.S.

(IV) Repealed.

**Source: L. 77:** Entire article added, p. 1848, § 1, effective January 1, 1978. **L. 79:** (1) amended, p. 1508, § 1, effective July 19. **L. 83:** (3) added, p. 1522, § 9, effective March 22. **L. 85:** (1) amended, p. 1268, § 9, effective May 30; (4) added, p. 1289, § 1, effective June 6. **L. 86, 2nd Ex. Sess.:** (1)(b) amended, p. 72, § 4, effective August 14. **L. 87:** (3) amended, p. 1109, § 5, effective April 22. **L. 88:** (4) amended, p. 1347, § 1, effective May 17. **L. 89:** (4) repealed, p. 1517, § 1, effective July 1. **L. 90:** (5) added, p. 1750, § 2, effective May 2. **L. 93:** (5) repealed, p. 446, § 2, effective April 19. **L. 96:** (1) and (3) amended, p. 997, § 1, effective May 23. **L. 99:** IP(1)(a) amended, p. 926, § 5, effective May 24. **L. 2000:** (1)(d) added, p. 554, § 1, effective

May 16; (1)(c)(I)(D) amended, p. 1750, § 17, effective June 1. **L. 2001:** (1)(e) added, p. 1, § 1, effective January 17; (1)(c)(I)(D) amended, p. 690, § 26, effective May 30. **L. 2002:** (1)(f) added, p. 158, § 19, effective March 27; (1)(c)(III) added, p. 307, § 1, effective April 18. **L. 2003:** (1)(g) added, p. 458, § 19, effective March 5; (1)(h) added, p. 1544, § 7, effective May 1. **L. 2004:** (1)(i) added, p. 362, § 5, effective April 7. **L. 2005:** (6) added, p. 413, § 2, effective April 28; (1)(j) added, p. 485, § 1, effective May 5; (1)(c)(III) amended, p. 1483, § 2, effective June 7; (1)(c)(I)(C) amended, p. 692, § 2, effective July 1. **L. 2006:** (1.5) added, p. 1, § 1, effective February 3; (1)(k) added, p. 1048, § 3, effective May 25; (7) added, p. 1140, § 2, effective May 25; (1)(c)(I)(D) and (1)(c)(III)(A) amended, p. 1283, § 5, effective May 26; (1)(a)(IV) added, p. 1648, § 1, effective June 5; (1)(m), (8), and (8.5) added, pp.1744, 1738, §§ 5, 1, effective June 6; (1)(a)(III) added, p. 1227, § 1, effective July 1; (1)(a)(II) and (1)(c)(I)(C) amended, p. 218, § 17, effective August 7; (1)(l) added, p. 1346, § 2, effective August 7. **L. 2007:** (8)(a) amended, p. 490, § 1, effective April 16; (1.5)(h)(VI) amended and (1.5)(h)(VII) added, p. 1364, § 4, effective May 29; IP(1)(a) amended, p. 1408, § 3, effective May 30; (1)(k)(III) and (1)(l)(IV) amended and (1)(k)(IV), (1)(k)(V), (1)(k)(VI), and (1)(k)(VII) added, pp. 1595, 1594, §§ 4, 3, effective May 31; (7) amended, p. 1549, § 1, effective May 31; IP(1)(a)(III) amended, p. 1887, § 1, effective June 1; (1)(c)(III)(B) amended, p. 2049, § 98, effective June 1; (1)(c)(III)(B) amended and (1)(c)(III)(C) added, p. 1892, § 3, effective June 1. **L. 2008:** (1.5)(b)(II), (1.5)(c)(II), (1.5)(d)(I)(B), (1.5)(e)(I)(B), IP(1.5)(h)(I), IP(1.5)(h)(III), (1.5)(h)(IV), IP(1.5)(h)(V), (1.5)(h)(VI), (1.5)(h)(VII), (1.5)(i)(IV), and (8)(a) amended, p. 72, § 13, effective March 18; (1) amended, p. 1336, § 11, effective May 27; entire section R&RE, p. 1861, § 1, effective June 2. **L. 2009:** (2)(a) amended, (SB 09-208), ch. 149, p. 628, § 34, effective April 20; (2)(a) amended, (SB 09-165), ch. 183, p. 804, § 2, effective April 22; (2)(a)(I)(C), (2)(a)(IV), and (2)(a)(V) added, (SB 09-279), ch. 367, p. 1931, § 22, effective June 1; (2)(c) amended, (SB 09-106), ch. 386, p. 2089, § 1, effective July 1. **L. 2010:** (2)(a)(VI) added, (HB 10-1327), ch. 135, p. 451, § 8, effective April 15; (2)(a)(VII) added, (HB 10-1388), ch. 362, p. 1716, § 2, effective June 7; (2)(a)(VIII) added, (HB 10-1250), ch. 381, p. 1782, § 7, effective June 7. **L. 2011:** (2)(a)(VII) amended, (SB 11-164), ch. 33, p. 94, § 9, effective March 18; (2)(a)(IX) added, (SB 11-226), ch. 190, p. 734, § 6, effective May 19; (2)(a)(IV), (2)(a)(V), and (2)(a)(VI) repealed, (HB 11-1303), ch. 264, p. 1176, § 96, effective August 10. **L. 2012, 1st Ex. Sess.:** IP(2), (2)(a)(VIII)(A), and (2)(c), amended and (2)(a)(X) and (2)(a)(XI) added, (SB 12S-002), ch. 1, p. 2420, § 19, effective May 19. **L. 2013:** (1), (2)(a)(II), (2)(a)(III), (2)(a)(VIII)(D), (2)(a)(XI), (2)(b), and IP(2)(c)(I) amended, (2)(a)(I.5) and (2)(a)(XII) added, and (2)(a)(VII) and (2)(a)(IX) repealed, (SB 13-181), ch. 209, p. 868, § 16, effective May 13. **L. 2014:** (2)(a)(VIII)(B) and (2)(a)(XII)(B) amended and (2)(a)(XIII) added, (HB 14-1333), ch. 356, p. 1660, § 16, effective June 6. **L. 2015:** (2)(a)(XIV) added, (SB 15-253), ch.192, p. 638, § 14, effective May 14. **L. 2016:** IP(2) and (2)(a)(XII) amended and (2)(a)(XV) and (2)(a)(XVI) added, (SB 16-174), ch. 163, p. 520, § 16, effective May 16; IP(2) amended and (2)(c)(III) added, (HB 16-1256), ch. 268, p. 1111, § 2, effective June 9; (2)(a)(XVII) added, (SB 16-218), ch. 289, p. 1173, § 5, effective June 10. **L. 2017:** (2)(a)(XVIII) added, (SB 17-260), ch. 157, p. 536, § 1, effective April 28; (2)(a)(X)(A), (2)(a)(X)(B), (2)(a)(X)(C), (2)(a)(XV), and (2)(a)(XVI) amended and (2)(a)(X)(E), (2)(a)(XIX), and (2)(a)(XX) added, (HB 17-1248), ch. 229, p. 891, § 22, effective May 23. **L. 2018:** (2)(b) amended and (2)(c)(IV) added, (HB 18-1338), ch. 201, p. 1311, § 14, effective May 4; (2)(a)(XXI) added, (SB 18-218), ch. 336, p. 2016, § 15, effective May 30.

**Editor's note:** (1) Subsection (1)(d)(II) provided for the repeal of subsection (1)(d), effective July 1, 2001. (See L. 2000, p. 554.)

(2) Subsection (1)(e)(II) provided for the repeal of subsection (1)(e), effective July 1, 2002. (See L. 2001, p. 1.)

(3) Subsection (1)(j)(II) provided for the repeal of subsection (1)(j), effective July 1, 2006. (See L. 2005, p. 485.)

(4) Subsection (1)(a)(IV) was originally numbered as (1)(a)(III) in House Bill 06-1393 but was renumbered on revision for ease of location.

(5) Amendments to subsection (1)(c)(III)(B) by House Bill 07-1367 and Senate Bill 07-008 were harmonized.

(6) Subsection (1)(k)(III) provided for the repeal of subsections (1)(k)(I) and (1)(k)(II), effective July 1, 2007. (See L. 2007, p. 1595.)

(7) Subsection (6)(d) provided for the repeal of subsection (6), effective July 1, 2007. (See L. 2005, p. 413.)

(8) Subsections (1.5)(b)(II), (1.5)(c)(II), (1.5)(d)(I)(B), (1.5)(e)(I)(B), the introductory portions to subsections (1.5)(h)(I) and (1.5)(h)(III), subsection (1.5)(h)(IV), the introductory portion to subsection (1.5)(h)(V), and subsections (1.5)(h)(VI), (1.5)(h)(VII), (1.5)(i)(IV), and (8)(a) were amended in House Bill 08-1025. Those amendments were superseded by the repeal and reenactment of the section in House Bill 08-1398.

(9) (a) Amendments to subsection (2)(a) by Senate Bill 09-165 and Senate Bill 09-279 were harmonized. Subsection (2)(a)(I)(C) was numbered as subsection (2)(a)(III) in Senate Bill 09-279 but was renumbered as a result of the harmonization. (See L. 2009, p. 1931).

(b) Subsection (2)(a)(I)(C) from Senate Bill 09-165 was renumbered as subsection (2)(a)(I)(D) as a result of the harmonization of Senate Bill 09-165 and Senate Bill 09-279. (See L. 2009, p. 804.)

(10) Subsection (2)(a)(I)(D) provided for the repeal of subsection (2)(a)(I), effective July 1, 2009. (See L. 2009, p. 804.)

(11) Subsection (2)(a)(VIII)(E) provided for the repeal of subsection (2)(a)(VIII), effective July 1, 2015. (See L. 2010, p. 1782.)

(12) Subsection (2)(a)(XI)(B) provided for the repeal of subsection (2)(a)(XI), effective July 1, 2016. (See L. 2013, p. 868.)

(13) Subsection (2)(a)(XIII)(B) provided for the repeal of subsection (2)(a)(XIII), effective September 1, 2016. (See L. 2014, p.1660.)

(14) Amendments to subsection IP(2) by HB 16-1256 and SB 16-174 were harmonized.

(15) (a) For the amendments in HB 18-1338 in effect from May 4, 2018, to July 1, 2018, see chapter 201, Session Laws of Colorado 2018. (L. 2018, p. 1311.)

(b) Subsection (2)(b)(IV)(B) provided for the repeal of subsection (2)(b)(IV), effective July 1, 2018. (See L. 2018, p. 1311.)

(16) (a) Subsection (2)(a)(X)(E) provided for the repeal of subsection (2)(a)(X), effective September 1, 2018. (See L. 2017, p. 891.)

(b) Subsection (2)(a)(XV)(B) provided for the repeal of subsection (2)(a)(XV), effective September 1, 2018. (See L. 2017, p. 891.)

(c) Subsection (2)(a)(XIX)(B) provided for the repeal of subsection (2)(a)(XIX), effective September 1, 2018. (See L. 2017, p. 891.)

(d) Subsection (2)(a)(XX)(C) provided for the repeal of subsection (2)(a)(XX), effective September 1, 2018. (See L. 2017, p. 891.)

**Cross references:** For the legislative declaration stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled in 2012, see sections 1 and 6 of chapter 321, Session Laws of Colorado 2007. To obtain a copy of the review, once completed, go to "Legislative Reports and Requirements" on the Colorado General Assembly's website.

**39-29-109.3. Severance tax operational fund - repeal.** (1) For fiscal years commencing on and after July 1, 1997, the executive director of the department of natural resources shall submit with the department's budget request for each fiscal year a list and description of the programs the executive director recommends to be funded from the severance tax operational fund created in section 39-29-109 (2)(b), referred to in this section as the "operational fund". The general assembly may appropriate moneys from the total moneys available in the operational fund to fund recommended programs as follows:

(a) (I) For programs or projects within the Colorado oil and gas conservation commission, up to thirty-five percent of the moneys in the operational fund for fiscal years commencing on or after July 1, 2009.

(II) Moneys appropriated for programs or projects pursuant to subparagraph (I) of this paragraph (a) shall be used by the Colorado oil and gas conservation commission for plugging and abandonment projects, for well-site location reclamation projects, or for regulatory and environmental programs or projects as specifically appropriated by the general assembly for use on such programs or projects; except that, if the commission determines that an emergency exists, the commission may expend any moneys received for the emergency without any further appropriation. In determining the uses of these moneys, the commission shall give priority to uses that reduce industry fees and mill levies.

(b) For programs within the Colorado geological survey, up to fifteen percent of the moneys in the operational fund;

(b.5) For the avalanche information center, up to five percent of the moneys in the operational fund;

(c) For programs within the division of reclamation, mining, and safety, up to thirty percent of the moneys in the operational fund for fiscal years commencing before July 1, 2008, and up to twenty-five percent of the moneys in the operational fund for fiscal years commencing on or after July 1, 2008. As part of any appropriation made, five hundred thousand dollars, or so much as may be available, shall be transferred to the abandoned mine reclamation fund created in section 34-34-102 (1), C.R.S.

(d) For programs within the Colorado water conservation board and for purposes authorized by article 75 of title 37, C.R.S., up to five percent of the moneys in the operational fund;

(e) For fiscal years commencing on or after July 1, 2008, only, for programs within the division of parks and wildlife that monitor, manage, or mitigate the impacts of mineral or mineral fuel production activities on wildlife in any region of the state in which production activity is occurring or, from any location in the state, research such impacts, up to five percent

of the moneys in the operational fund, which moneys shall not supplant moneys that would otherwise be made available for such programs;

(f) For fiscal years commencing on or after July 1, 2009, for programs within the division of parks and wildlife that operate, maintain, or improve state parks in any region of the state in which production activity is occurring, up to ten percent of the moneys in the operational fund.

(1.5) and (1.7) Repealed.

(2) Subject to the requirements of subsections (3) and (4) of this section, if the general assembly chooses not to spend up to one hundred percent of the money in the operational fund as specified in subsection (1) of this section, the state treasurer shall transfer the following amounts, with the exception of the fiscal year commencing on July 1, 2018:

(a) (I) To the water supply reserve fund created in section 39-29-109 (2)(c), the following amounts:

(A) to (D) Repealed.

(E) For each state fiscal year commencing on or after July 1, 2012, ten million dollars.

(II) (Deleted by amendment, L. 2009, (SB 09-106), ch. 386, p. 2090, § 2, effective July 1, 2009.)

(b) To fund the conservation district grant fund created in section 35-1-106.7, C.R.S., for soil and water conservation, the following amounts:

(I) to (III) Repealed.

(IV) (A) For the state fiscal year commencing July 1, 2011, through the state fiscal year commencing on July 1, 2021, four hundred fifty thousand dollars.

(B) This subparagraph (IV) is repealed, effective July 1, 2023.

(c) (I) To the water efficiency grant program cash fund created in section 37-60-126 (12), C.R.S., for use in accordance with that section, the following amounts:

(A) For each state fiscal year commencing on or after July 1, 2012, five hundred fifty thousand dollars.

(B) (Deleted by amendment, L. 2009, (SB 09-293), ch. 370, p. 2008, § 1, effective June 1, 2009.)

(II) Moneys transferred pursuant to this paragraph (c) shall be in addition to and shall not replace any moneys appropriated to the Colorado water conservation board pursuant to paragraph (d) of subsection (1) of this section.

(III) This paragraph (c) is repealed, effective July 1, 2020.

(d) Repealed.

(e) To the species conservation trust fund created in section 24-33-111 (2)(a), C.R.S., the following amounts:

(I) to (IX) Repealed.

(X) (A) For the state fiscal year commencing July 1, 2017, five million dollars.

(B) This subparagraph (X) is repealed, effective July 1, 2019.

(XI) (A) For the state fiscal year commencing July 1, 2018, five million dollars.

(B) This subparagraph (XI) is repealed, effective July 1, 2020.

(f) For providing energy-related assistance to low-income households as specified in section 40-8.7-112:

(I) to (IV) Repealed.

(V) (A) For the state fiscal year commencing July 1, 2012, and each state fiscal year thereafter, through the state fiscal year commencing July 1, 2023, thirteen million dollars as follows: Twenty-five percent to the department of human services low-income energy assistance fund created in section 40-8.7-112 (1); twenty-five percent to the energy outreach Colorado low-income energy assistance fund created in section 40-8.7-112 (2)(a); and fifty percent to the Colorado energy office low-income energy assistance fund created in section 40-8.7-112 (3)(a).

(B) This subsection (2)(f)(V) is repealed, effective July 1, 2025.

(g) and (h) Repealed.

(i) To the interbasin compact committee operation fund created in section 37-75-107, C.R.S., the following amounts:

(I) Repealed.

(II) For the state fiscal year commencing July 1, 2009, and for each state fiscal year thereafter, seven hundred forty-five thousand sixty-seven dollars.

(j) Repealed.

(k) (I) For seven state fiscal years, beginning with the state fiscal year commencing on July 1, 2017, one million fifty thousand dollars per year to the forest restoration and wildfire risk mitigation grant program cash fund created in section 23-31-310 (8.5).

(II) This subsection (2)(k) is repealed, effective September 1, 2023.

(l) Repealed.

(m) For the mitigation of aquatic nuisance species as specified in article 10.5 of title 33:

(I) Repealed.

(II) For the state fiscal year commencing July 1, 2009, and every state fiscal year thereafter, four million six thousand five dollars to the division of parks and wildlife aquatic nuisance species fund created in section 33-10.5-108 (1).

(n) (I) For seven fiscal years commencing on or after July 1, 2017, the state treasurer shall transfer:

(A) One million three hundred five thousand dollars to the healthy forests and vibrant communities fund created in section 23-31-313 (10);

(B) Fifty thousand dollars to the wildland-urban interface training fund created in section 24-33.5-1212 (5);

(C) Ninety-five thousand dollars to the wildfire preparedness fund created in section 24-33.5-1227 (1).

(II) This subsection (2)(n) is repealed, effective September 1, 2023.

(o) For the state fiscal year commencing July 1, 2015, and for each state fiscal year thereafter, one hundred twenty-seven thousand dollars to the special account in the general fund established pursuant to section 34-32-122 (1)(a), C.R.S., by the mined land reclamation board established in section 34-32-105, C.R.S., for the purpose of reclaiming lands that were obligated to be reclaimed under permits upon which financial warranties have been forfeited;

(p) Repealed.

(q) For the state fiscal year commencing July 1, 2015, one million dollars to the Colorado water conservation board construction fund, created in section 37-60-121 (1)(a), C.R.S., for the Colorado water conservation board to continue to provide planning and engineering studies, including implementation measures, to address: Technical needs for watershed restoration and flood mitigation projects throughout the state; aquatic habitat protection; flexible operations for multiple uses; restoration work; quantification of

environmental flow needs; and monitoring efforts to support watershed health goals outlined in the Colorado water plan. The money remains available for the designated purposes until June 30, 2019, at which time any unused money will revert to the operational fund.

(r) For the state fiscal year commencing July 1, 2015, one million two hundred thousand dollars to the Colorado water conservation board construction fund, created in section 37-60-121 (1)(a), C.R.S., for the Colorado water conservation board to participate in the development of modern tools and methods for determining large rain events for regulating and designing dam spillways in the state. The money remains available for the designated purposes until June 30, 2019, at which time any unused money will revert to the operational fund.

(s) Repealed.

(3) (a) Except as provided in paragraph (b) of this subsection (3), it is the intent of the general assembly that the operational fund maintain a reserve equal to the current state fiscal year's operating appropriations for the programs specified in subsection (1) of this section plus fifteen percent of the current fiscal year's transfers specified in subsection (2) of this section. Moneys may be transferred from the reserve to offset temporary revenue reductions in the programs specified in subsection (1) of this section and to offset reductions for programs specified in subsection (2) of this section, up to fifteen percent of the current fiscal year's transfers specified in subsection (2) of this section; except that, if the general assembly determines that transfers of moneys from the reserve are needed during a state revenue crisis, the transfers shall be a loan from the reserve to be repaid as soon as moneys are available. This provision is intended to mitigate the impact of fluctuations in the amount of revenue credited to the fund from year to year so as to maintain current levels of service for the programs specified in subsection (1) of this section.

(b) and (c) Repealed.

(4) (a) Except as provided in subsections (4)(b) and (4)(c) of this section, all transfers specified in subsection (2) of this section shall be made by the state treasurer in three installments, as follows:

(I) Forty percent on July 1;

(II) Thirty percent on January 4;

(III) Thirty percent on April 1.

(b) (I) If the revenue estimate prepared by the staff of the legislative council in June of any fiscal year indicates that the amount of severance tax revenues to be credited to the operational fund in the next fiscal year as specified in section 39-29-109 (2)(b) is insufficient for the state treasurer to make the transfers set forth in subsection (2) of this section and to meet the reserve requirement specified in subsection (3) of this section, all transfers scheduled to be made on July 1 shall be proportionally reduced. The July 1 proportional reduction shall be calculated based on the size of the annual transfers as specified in subsection (2) of this section and shall be made to the extent necessary to cover forty percent of the projected shortfall between total moneys available in the operational fund and the sum of the total operating appropriations for the programs specified in subsection (1) of this section, the total fiscal year's transfers specified in subsection (2) of this section, and the reserve requirement specified in subsection (3) of this section; except that up to one-third of the fifteen percent of the current fiscal year's transfers specified as part of the reserve set forth in subsection (3) of this section shall be used to offset any proportional reduction required by this subparagraph (I) in any fiscal year.

(II) If the revenue estimate prepared by the staff of the legislative council in December of any fiscal year indicates that the amount of severance tax revenues credited to the operational fund as specified in section 39-29-109 (2)(b) is insufficient for the state treasurer to make the transfers set forth in subsection (2) of this section and to meet the reserve requirement specified in subsection (3) of this section, all transfers scheduled to be made on January 4 of the fiscal year shall be proportionally reduced. The January 4 proportional reduction shall be calculated based on the size of the annual transfers as specified in subsection (2) of this section and shall be made to the extent necessary to cover seventy percent of the projected shortfall between total moneys available in the operational fund and the sum of the total operating appropriations for the programs specified in subsection (1) of this section, the total fiscal year's transfers specified in subsection (2) of this section, and the reserve requirement specified in subsection (3) of this section; except that up to one-third of the fifteen percent of the current fiscal year's transfers specified as part of the reserve set forth in subsection (3) of this section shall be used to offset any proportional reduction required by this subparagraph (II) in any fiscal year.

(III) If the revenue estimate prepared by the staff of the legislative council in March of any fiscal year indicates that the amount of severance tax revenues credited to the operational fund as specified in section 39-29-109 (2)(b) is insufficient for the state treasurer to make the transfers set forth in subsection (2) of this section and to meet the reserve requirement specified in subsection (3) of this section, all transfers scheduled to be made on April 1 of the fiscal year shall be proportionally reduced. The April 1 proportional reduction shall be calculated based on the size of the annual transfers as specified in subsection (2) of this section and shall be made to the extent necessary to cover the projected shortfall between total moneys available in the operational fund and the sum of the total operating appropriations for the programs specified in subsection (1) of this section, the total fiscal year's transfers specified in subsection (2) of this section, and the reserve requirement specified in subsection (3) of this section; except that any moneys remaining of the fifteen percent of the current fiscal year's transfers specified as part of the reserve set forth in subsection (3) of this section shall be used to offset any proportional reduction required by this subparagraph (III) in any fiscal year.

(IV) If proportional reductions are made to either the July 1 or January 4 installments, the April 1 installment may be increased to offset proportional reductions made earlier in the current fiscal year to the maximum extent allowable under the revenue estimate prepared by the staff of the legislative council in March of any fiscal year. The April 1 installment shall only be increased if the revenue estimate indicates that the amount of severance tax revenues credited to the operational fund as specified in section 39-29-109 (2)(b) is sufficient to fund the increased installments and still meet the reserve requirement specified in subsection (3) of this section.

(c) Repealed.

(d) Due to decreases in state severance tax revenue, the state treasurer shall not make any transfers specified in subsection (2) of this section for the fiscal year commencing on July 1, 2018, unless severance tax receipts are deposited in the severance tax operational fund during the fiscal year and there is sufficient money in the operational fund reserve so that no transfer is required under subsection (7)(c) of this section.

(5) In addition to the distributions specified in paragraph (a) of subsection (4) of this section, if there were any proportional reductions required in a fiscal year as specified in paragraph (b) of said subsection (4), after the reserve specified in subsection (3) of this section is made whole if any portion of the reserve was used as specified in paragraph (b) of subsection (4)

of this section to offset any proportional reduction required by said paragraph (b) of subsection (4), the state treasurer shall make proportional distributions on August 20 of the following fiscal year to the programs specified in subsection (2) of this section if the revenues actually received in the operational fund for the previous fiscal year were sufficient for the state treasurer to more fully make the transfers set forth in subsection (2) of this section and to fully meet the reserve requirement specified in subsection (3) of this section.

(6) Repealed.

(7) The state treasurer shall transfer the following amounts from the general fund to the operational fund:

(a) On July 1, 2018, seventeen million thirty thousand nine hundred twenty-five dollars;

(b) On January 1, 2019, three million dollars; and

(c) On July 1, 2019, an amount equal to the portion of the operational fund reserve required by subsection (3)(a) of this section for the operating appropriations for the fiscal year commencing on July 1, 2019, for the programs specified in subsection (1) of this section or fourteen million two hundred fourteen thousand eight hundred fifty-four dollars, whichever amount is less.

**Source: L. 2008:** Entire section added, p. 1863, § 2, effective June 2; (2)(j) added, p. 978, § 3, effective May 21; (2)(f) and IP(4)(a) amended and (4)(c) added, pp. 1328, 1336, §§ 3, 10, effective May 27; (2)(k) added, p. 1535, § 5, effective May 28; (2)(d)(I)(A) and (2)(e)(I)(A) amended, p. 1581, § 6, effective May 29; (2)(d)(I)(A) and (2)(e)(I)(A) amended and (2)(m) added, p. 1591, §§ 9, 8, effective May 29; (2)(l) added, p. 1576, § 33, effective May 29; (1) amended, p. 1689, § 2, effective June 2. **L. 2009:** (2)(a)(I)(A), (2)(a)(I)(B), (2)(c)(I)(B), (2)(d)(II)(A), (2)(e)(II)(A), (2)(f)(II)(A), (2)(n)(I)(A), and (2)(n)(II) amended and (2)(f)(V) added, (SB 09-293), ch. 370, pp. 2008, 2010, §§ 1, 3, effective June 1; (2)(i) amended, (SB 09-125), ch. 328, p. 1751, § 22, effective June 1; (2)(n) added, (HB 09-1199), ch. 411, p. 2277, § 2, effective June 3; (2)(a) amended, (SB 09-106), ch. 386, p. 2090, § 2, effective July 1; (2)(h) amended, (SB 09-124), ch. 256, p. 1162, § 2, effective July 1. **L. 2010:** (2)(f)(III)(A) and (2)(f)(IV)(A) amended, (HB 10-1319), ch. 28, p. 103, § 1, effective March 18; (1)(a)(I), (1)(f), (2)(a)(I)(C), (2)(a)(I)(D) amended and (2)(a)(I)(E) added, (HB 10-1326), ch. 36, pp. 140, 141, §§ 1, 2, effective March 22; (6) added, (HB 10-1327), ch. 135, p. 451, § 9, effective April 15; (2)(c)(I)(A) and (2)(c)(III) amended, (SB 10-025), ch. 379, p. 1775, § 2, effective June 7; (2)(d)(IV)(A) amended and (2)(d)(V), (2)(d)(VI), (2)(e)(IV), (2)(e)(V), and (2)(e)(VI) added, (HB 10-1398), ch. 380, pp. 1777, 1778, §§ 4, 5, effective June 7. **L. 2011:** (2)(b)(IV) added, (HB 11-1156), ch. 134, p. 471, § 2, effective May 4; (6) amended, (SB 11-226), ch. 190, p. 735, § 7, effective May 19; (2)(e)(IV)(A), (2)(e)(V)(A), and (2)(e)(VI)(A) amended, (SB 11-203), ch. 231, p. 989, § 3, effective May 27. **L. 2012:** (2)(f)(V) amended, (HB 12-1028), ch. 60, p. 217, § 1, effective March 24; (2)(k) and (2)(n) amended, (HB 12-1032), ch. 69, p. 239, § 4, effective March 24; (3), (4)(b), and (5) amended, (HB 12-1353), ch. 221, p. 947, § 1, effective May 24; IP(2)(d), (2)(d)(III), (2)(d)(IV), (2)(d)(V), and (2)(d)(VI) repealed and IP(2)(e), (2)(e)(V)(A), and (2)(e)(VI)(A) amended, (HB 12-1349), ch. 282, p. 1635, § 4, effective June 8; (2)(f)(V)(A) and (4)(c)(I)(A) amended, (HB 12-1315), ch. 224, p. 978, § 46, effective July 1; (2)(h) amended, (HB 12-1334), ch. 219, p. 938, § 2, effective July 1. **L. 2012, 1st Ex. Sess.:** IP(2)(a)(I) amended, (SB 12S-002), ch. 1, p. 2422, § 20, effective May 19. **L. 2013:** (1)(b) amended and (1)(b.5) added, (HB 13-1057), ch. 1, p. 3, § 7, effective January 31; (4)(c) amended, (HB 13-1185), ch.

76, p. 244, § 1, effective March 22; IP(1), (1)(a)(I), (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), IP(2), (3)(a), (4)(b), and (5) amended and (6) repealed, (SB 13-181), ch. 209, p. 874, § 26, effective May 13; (2)(e)(VI)(A) amended, (HB 13-1283), ch. 378, p. 2220, § 3, effective June 5; IP(1) amended, (HB 13-1139), ch. 120, p. 409, § 10, effective August 7. **L. 2014:** (2)(e)(VII), (2)(e)(VIII), (2)(e)(IX), (2)(e)(X), and (2)(e)(XI) added, (SB 14-188), ch. 219, p. 821, § 3, effective May 17; IP(2)(n)(I) and (2)(n)(I)(A) amended and (2)(n)(I)(C) amended, (SB 14-154), ch. 313, p. 1357, § 4, effective May 31. **L. 2015:** (2)(o) added, (HB 15-1150), ch. 56, p. 135, § 1, effective March 30; (2)(p) added, (SB 15-022), ch. 183, p. 600, § 4, effective May 12; (2)(q) and (2)(r) added, (SB 15-253), ch. 192, p. 637, § 13, effective May 14; (2)(s) added, (HB 15-1006), ch. 185, p. 605, § 2, effective August 5. **L. 2016:** (1.5) added, (SB 16-218), ch. 289, p. 1174, § 6, effective June 10; (3)(c) added, (SB 16-167), ch. 279, p. 1147, § 1, effective June 10. **L. 2017:** (1.7) added, (SB 17-260), ch. 157, p. 536, § 2, effective April 28; IP(2), (2)(k), and (2)(n) amended, (SB 17-050), ch. 34, p. 98, § 3, effective July 1; IP(2)(f) and (2)(f)(V) amended, (HB 17-1116), ch. 393, p. 2024, § 1, effective August 9. **L. 2018:** (1.5) and (1.7) repealed, IP(2) and IP(4)(a) amended, and (4)(d) and (7) added, (HB 18-1338), ch. 201, p. 1312, § 15, effective May 4; (2)(m) amended, (HB 18-1008), ch. 137, p. 900, § 10, effective August 8.

**Editor's note:** (1) Subsection (2)(m) was originally numbered as (2)(i) in Senate Bill 08-226 but has been renumbered on revision for ease of location.

(2) Amendments to subsection (2)(a) by Senate Bill 09-106 and Senate Bill 09-293 were harmonized.

(3) (a) Subsections (2)(a)(I)(A), (2)(b)(I)(B), (2)(d)(I)(B), (2)(e)(I)(B), and (2)(g)(II) provided for the repeal of subsections (2)(a)(I)(A), (2)(b)(I), (2)(d)(I), (2)(e)(I), and (2)(g), respectively, effective July 1, 2010. (See L. 2008, p. 1863.)

(b) Subsection (2)(f)(I)(D) provided for the repeal of subsection (2)(f)(I), effective July 1, 2010. (See L. 2008, p. 1328.)

(c) Subsection (2)(j)(II) provided for the repeal of subsection (2)(j), effective July 1, 2010. (See L. 2008, p. 978.)

(d) Subsection (2)(l)(II) provided for the repeal of subsection (2)(l), effective July 1, 2010. (See L. 2008, p. 1576.)

(e) Subsection (2)(m)(I)(B) provided for the repeal of subsection (2)(m)(I), effective July 1, 2010. (See L. 2008, p. 1591.)

(f) Subsection (2)(i)(I)(B) provided for the repeal of subsection (2)(i)(I), effective July 1, 2010. (See L. 2009, p. 1751.)

(4) Subsections (2)(a)(I)(B), (2)(b)(II)(B), (2)(d)(II)(B), (2)(e)(II)(B), and (2)(f)(II)(B) provided for the repeal of subsections (2)(a)(I)(B), (2)(b)(II), (2)(d)(II), (2)(e)(II), and (2)(f)(II), respectively, effective July 1, 2011. (See L. 2008, p. 1863.)

(5) Subsections (2)(a)(I)(C), (2)(b)(III)(B), (2)(e)(III)(B), and (2)(f)(III)(B) provided for the repeal of subsections (2)(a)(I)(C), (2)(b)(III), (2)(e)(III), and (2)(f)(III), respectively, effective July 1, 2012. (See L. 2008, p. 1863.)

(6) Amendments to subsection (2)(f)(V)(A) by House Bill 12-1028 and House Bill 12-1315 were harmonized.

(7) Subsection (2)(a)(I)(D) provided for the repeal of said subsection (2)(a)(I)(D), effective July 1, 2013. (See L. 2010, p. 141.) Subsection (2)(e)(IV)(B) provided for the repeal of

subsection (2)(e)(IV), effective July 1, 2013. (See L. 2010, p. 1778.) Subsection (2)(f)(IV)(B) provided for the repeal of subsection (2)(f)(IV), effective July 1, 2013. (See L. 2008, p. 1330.)

(8) Amendments to the introductory portion to subsection (1) by House Bill 13-1139 and Senate Bill 13-181 were harmonized. Amendments to subsection (1)(b) by House Bill 13-1057 and Senate Bill 13-181 were harmonized.

(9) For the amendments to subsection (4)(c) that were in effect from March 22, 2013, to July 1, 2013, see chapter 76, Session Laws of Colorado 2013. Subsection (4)(c)(III)(B) provided for the repeal of subsection (4)(c), effective July 1, 2013. (See L. 2013, p. 244.)

(10) (a) Subsection (2)(e)(V)(B) provided for the repeal of subsection (2)(e)(V), effective July 1, 2014. (See L. 2010, p. 1778.)

(b) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective July 1, 2014. (See L. 2012, p. 947.)

(11) Subsection (2)(e)(VI)(B) provided for the repeal of subsection (2)(e)(VI), effective July 1, 2015. (See L. 2010, p. 1777.)

(12) Subsection (2)(e)(VII)(B) provided for the repeal of subsection (2)(e)(VII), effective July 1, 2016. (See L. 2014, p. 821.)

(13) (a) Subsection (2)(e)(VIII)(B) provided for the repeal of subsection (2)(e)(VIII), effective July 1, 2017. (See L. 2014, p. 821.)

(b) Subsection (2)(p)(II) provided for the repeal of subsection (2)(p), effective July 1, 2017. (See L. 2015, p. 600.)

(c) Subsection (3)(c)(II) provided for the repeal of subsection (3)(c), effective July 1, 2017. (See L. 2016, p. 1147.)

(14) (a) Subsection (2)(e)(IX)(B) provided for the repeal of subsection (2)(e)(IX), effective July 1, 2018. (See L. 2014, p. 821.)

(b) Subsection (2)(h)(II) provided for the repeal of subsection (2)(h), effective July 1, 2018. (See L. 2012, p. 938.)

(c) Subsection (2)(s)(II) provided for the repeal of subsection (2)(s), effective July 1, 2018. (See L. 2015, p. 605.)

(15) Section 11(2) of chapter 137 (HB 18-1008), Session Laws of Colorado 2018, provides that the act changing this section applies to offenses committed and conveyances operated in Colorado on or after August 8, 2018.

**Cross references:** (1) For the legislative declaration contained in the 2008 act amending subsections (2)(d)(I)(A) and (2)(e)(I)(A), see section 1 of chapter 339, Session Laws of Colorado 2008.

(2) For the legislative declaration in the 2011 act amending subsections (2)(e)(IV)(A), (2)(e)(V)(A), and (2)(e)(VI)(A), see section 1 of chapter 231, Session Laws of Colorado 2011.

(3) For the legislative declaration in the 2012 act repealing the introductory portion to subsection (2)(d) and subsections (2)(d)(III), (2)(d)(IV), (2)(d)(V), and (2)(d)(VI) and amending the introductory portion to subsection (2)(e) and subsections (2)(e)(V)(A) and (2)(e)(VI)(A), see section 1 of chapter 282, Session Laws of Colorado 2012.

(4) For the legislative declaration in the 2013 act amending subsection (2)(e)(VI)(A), see section 1 of chapter 378, Session Laws of Colorado 2013.

(5) For the legislative declaration in SB 14-188, see section 1 of chapter 219, Session Laws of Colorado 2014.

**39-29-109.5. Interest differential - public school energy efficiency fund - creation - uses - definitions - repeal. (Repealed)**

**Source: L. 2007:** Entire section added, p. 1409, § 4, effective May 30. **L. 2008:** (1)(a.5) added and (2) and IP(3) amended, pp. 74, 75, §§ 14, 15, effective March 18. **L. 2009:** (3)(c), (3)(d), and (5) amended and (3)(e) added, (HB 09-1312), ch. 253, p. 1145, § 4, effective August 5. **L. 2011:** (2) amended, (SB 11-230), ch. 305, p. 1468, § 11, effective June 9. **L. 2012:** (1)(a), (1)(a.5), (2), and IP(3) amended, (HB 12-1315), ch. 224, p. 979, § 47, effective July 1.

**Editor's note:** Subsection (5) provided for the repeal of this section, effective July 1, 2017. (See L. 2009, p. 1145.)

**39-29-110. Local government severance tax fund - creation - administration - definitions.** (1) (a) (I) There is hereby created in the department of local affairs a local government severance tax fund. In accordance with section 39-29-108, portions of the state severance tax receipts shall be credited to the local government severance tax fund. Except as otherwise provided in section 39-29-109.5, all income derived from the deposit and investment of the moneys in the local government severance tax fund shall be credited to the local government severance tax fund.

(II) Repealed.

(III) The executive director of the department of local affairs shall distribute any moneys and make loans from such fund in accordance with the purposes and priorities provided in paragraph (b) of this subsection (1).

(b) (I) Seventy percent of the funds from the local government severance tax fund shall be distributed to those political subdivisions socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article and used for the planning, construction, and maintenance of public facilities and for the provision of public services. Such funds shall also be distributed to political subdivisions to compensate them for loss of property tax revenue resulting from the deduction of severance taxes paid in the determination of the valuation for assessment of producing mines. The executive director of the department of local affairs shall consider the economic needs of a political subdivision for purposes of making distributions pursuant to this subparagraph (I).

(II) (A) In addition to the distribution of moneys authorized under subparagraph (I) of this paragraph (b), the executive director may distribute moneys or make loans, or any combination thereof, to such political subdivisions for the planning, design, construction, erection, building, acquisition, alteration, modernization, reconstruction, improvement, or expansion of domestic wastewater treatment works or potable water treatment facilities. Any loan made by the executive director under the authority of this section shall only be made under such terms as will insure repayment of the loan with interest assessed and collected at an interest rate of not less than five percent.

(B) As used in this subparagraph (II), "domestic wastewater treatment works" means a system or facility of a political subdivision for treating, neutralizing, stabilizing, collecting, or disposing of domestic wastewater, which system or facility has a designed capacity to receive more than two thousand gallons of domestic wastewater per day, and "domestic wastewater treatment works" includes appurtenances to such system or facility, such as outfall sewers,

pumping stations, and collection and interceptor lines, and the equipment related to such appurtenances.

(C) As used in this subparagraph (II), "potable water treatment facilities" means a system or facility of a political subdivision for treating water to be supplied to the public for domestic use, and "potable water treatment facilities" includes water treatment plants, treated water storage facilities, water mains, water distribution lines, pumps, and appurtenances.

(III) In addition to the distribution of moneys authorized under subparagraphs (I) and (II) of this paragraph (b), the executive director shall distribute:

(A) Moneys to the uranium mill tailings remedial action program fund in accordance with the provisions of section 39-29-116 (3);

(B) Moneys to the department of public health and environment for any direct and indirect costs associated with the monitoring, notification, and handling of designated uranium mill tailings that are authorized in section 25-11-303, C.R.S., and the amount of the distribution made pursuant to this sub-subparagraph (B) shall be equal to the amount appropriated to the department of public health and environment by the general assembly for such direct and indirect costs; and

(C) Up to fifty thousand dollars each state fiscal year to political subdivisions that include mill sites designated for cleanup pursuant to federal Public Law 95-604 for reimbursement of actual, documented costs related to the cleanup of uranium mill tailings.

(IV) In addition to the distribution of moneys authorized under subparagraphs (I), (II), and (III) of this paragraph (b), the executive director may distribute moneys to those privately organized volunteer fire departments serving areas socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article, for the purpose of purchasing equipment to fight fires.

(V) In addition to the distribution of moneys authorized under subparagraphs (I), (II), (III), and (IV) of this paragraph (b), the executive director of the department of local affairs may distribute moneys for planning, analyses, public engagement, and coordination and collaboration with federal land managers and stakeholders, or for similar or related local government processes needed by local governments for engagement in federal land management decision-making.

(c) (I) For state fiscal years commencing prior to July 1, 2008, an amount equal to thirty percent of said gross receipts credited to the local government severance tax fund shall be distributed to counties or municipalities on the basis of the proportion of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation who reside in any such county's unincorporated area or in any such municipality to the total number of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. Such distribution shall be made on the basis of the report required in paragraph (d) of this subsection (1). For state fiscal years commencing on or after July 1, 2008, thirty percent of said gross receipts credited to the local government severance tax fund shall be allocated to counties based upon the following factors:

(A) On the basis of the report required in paragraph (d) of this subsection (1), the proportion of employees of mines or related facilities or crude oil, natural gas, or oil and gas operations who reside in a county to the total number of employees of mines or related facilities or crude oil, natural gas, or oil and gas operations who reside in the state;

(B) The proportion of the mine and well permits issued in a county to the total number of such permits issued in the state; and

(C) The proportion of the overall quantity of mineral production within a county to the total overall quantity of production within the state.

(II) (A) For the state fiscal year commencing on July 1, 2008, the factor set forth in sub-subparagraph (A) of subparagraph (I) of this paragraph (c) shall be weighted fifty percent and the factors set forth in sub-subparagraphs (B) and (C) of subparagraph (I) of this paragraph (c) shall be weighted twenty-five percent each.

(B) For state fiscal years commencing on or after July 1, 2009, each of the three factors set forth in subparagraph (I) of this paragraph (c) shall be weighted thirty percent, and the executive director of the department of local affairs, in consultation with the energy impact assistance advisory committee established pursuant to section 34-63-102 (5)(b)(I), C.R.S., shall establish guidelines that set forth the factor or factors under which the remaining ten percent shall be weighted.

(III) Except as otherwise set forth in subparagraph (IV) of this paragraph (c), the moneys allocated to each county pursuant to this paragraph (c) shall be further distributed to the county and to each municipality within the county based upon the following factors:

(A) The proportion of employees reported as residents under paragraph (d) of this subsection (1) in any such county's unincorporated area or in any such municipality within the county to the total number of employees reported as residents in the county as a whole under paragraph (d) of this subsection (1);

(B) The proportion of the population in any such county's unincorporated area or in any such municipality within the county to the total population in the county, as such population is reported in the most recently published population estimate from the state demographer appointed by the executive director of the department of local affairs; and

(C) The proportion of road miles in any such county's unincorporated area or in any such municipality within the county to the total road miles in the county, as such miles are certified by the department of transportation to the state treasurer pursuant to sections 43-4-207 (2)(d) and 43-4-208 (3), C.R.S.

(IV) With respect to the distribution made pursuant to subparagraph (III) of this paragraph (c), the executive director of the department of local affairs, in consultation with the energy impact assistance advisory committee established pursuant to section 34-63-102 (5)(b)(I), C.R.S., shall establish guidelines that set forth the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (III) of this paragraph (c) shall be given. These guidelines shall apply uniformly across the state; except that the executive director may:

(A) Accept a memorandum of understanding from a county and all municipalities contained therein that establishes an alternative distribution that shall be effective within such county; and

(B) After consultation with the energy impact advisory committee established pursuant to section 34-63-102 (5)(b)(I), C.R.S., vary the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (III) of this paragraph (c) receives in an individual county, in order to more fairly distribute the gross receipts among the county and all municipalities contained therein.

(V) Moneys distributed from the local government severance tax fund pursuant to this paragraph (c) shall be distributed no later than August 31 of each year. Counties and

municipalities shall utilize revenues received under this subsection (1) only for the purposes of capital expenses and general operating expenses.

(VI) On or before January 1, 2010, and every second January 1 thereafter, the executive director of the department of local affairs shall submit to each member of the general assembly a report that evaluates the effectiveness of the allocation and distribution of moneys pursuant to this paragraph (c) to counties and municipalities impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article, and, if appropriate, that proposes changes to the allocation and distribution. The provisions of section 24-1-136 (11)(a)(I), C.R.S., shall not apply to the report.

(c.5) (Deleted by amendment, L. 2008, p. 1680, § 6, effective August 5, 2008.)

(d) (I) (A) Ninety days prior to the end of each fiscal year, for each taxable year to which this sub-subparagraph (A) applies, the executive director of the department of revenue shall send every producer who is subject to the severance tax and whose payment is subject to the distribution formula provided in this subsection (1) a form on which the producer shall submit a report to the department of revenue indicating the following: The name and address of the producer, the name of the mine, related facility, or operation, the names of the municipalities or counties in which its employees maintain their actual residences as given by the employees, giving the number of employees for each such municipality or unincorporated area of each such county, and the total number of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. The producer may use and submit any other report form in lieu of the state form sent by the executive director of the department of revenue that contains the same information as prescribed in the state form. The report shall be due April 30 of each year. The executive director of the department of revenue shall submit a copy of the report required by this paragraph (d) to the executive director of the department of local affairs. In the case of failure of any producer to submit the report on or before the date required by this paragraph (d) to the department of revenue, a written notice shall be sent to the producer by the department of revenue by first-class mail as set forth in section 39-21-105.5 stating that the producer has failed to submit a copy of the report required by this paragraph (d) and informing the producer of the penalty provision contained in this paragraph (d). If the producer fails within forty-five days after receipt of the written notice to submit the required report, there shall be levied and collected a penalty for the failure in the amount of fifty dollars for each day, or portion thereof, during which the failure continues. Any moneys and interest collected under this paragraph (d) shall be added to the fifteen percent of gross receipts from the local government severance tax fund and distributed to counties or municipalities in the manner prescribed by paragraph (c) of this subsection (1). Moneys distributed from the local government severance tax fund pursuant to paragraph (c) of this subsection (1) shall be distributed no later than August 31 of each year. Any producer not liable for severance tax under this section shall not be required to submit a report under this subsection (1). This sub-subparagraph (A) shall apply to any report for a taxable year commencing prior to January 1, 2008.

(B) Every party that registers exempt production with the department of revenue, withholds income pursuant to section 39-29-111 (1), or files a declaration pursuant to section 39-29-104 (2) or 39-29-112 (2) shall submit a report to the department of local affairs in a format specified by the executive director of the department indicating the following: The name and address of the party; the name of the mine, related facility, or operation; the names of the municipalities or counties in which the party's employees maintain their actual residences as

given by the employees, giving the number of the employees for each such municipality or unincorporated area of each such county; and the total number of the employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. The report shall be due April 30 of each year. This sub-subparagraph (B) shall apply to any report for a taxable year commencing on or after January 1, 2008.

(II) (A) (Deleted by amendment, L. 2008, p. 1680, § 6, effective August 5, 2008.)

(B) For purposes of this paragraph (d), an "employee of a crude oil, natural gas, or oil and gas operation" means any individual who is employed and compensated for at least five hundred hours of work in any six months during the calendar year preceding the due date of the report by a producer, interest owner, or party who contracts with a producer or interest owner for the purposes of extracting such crude oil, natural gas, or oil and gas out of the ground and at point of first sale.

(C) In the case of failure of any party to submit the report required pursuant to sub-subparagraph (B) of subparagraph (I) of this paragraph (d) on or before the required date to the department of local affairs, a written notice shall be sent to the party by the department by first-class mail stating that the party has failed to submit a copy of the report required by sub-subparagraph (B) of subparagraph (I) of this paragraph (d) and informing the party of the penalty provision contained in this sub-subparagraph (C). If the party fails within forty-five days after receipt of the written notice to submit the required report, there shall be levied and collected a penalty for the failure in the amount of fifty dollars for each day, or portion thereof, during which the failure continues. Any moneys and interest collected under this sub-subparagraph (C) shall be added to the thirty percent of gross receipts from the local government severance tax fund distributed to counties or municipalities in the manner prescribed by paragraph (c) of this subsection (1). The notice required pursuant to this sub-subparagraph (C) shall be sent in accordance with the provisions of section 39-21-105.5, and the provisions of that section shall otherwise apply to the notice.

(e) and (f) (Deleted by amendment, L. 2008, p. 1680, § 6, effective August 5, 2008.)

(2) Repealed.

(2.5) In accordance with the provisions of section 34-63-102 (5)(b)(I), C.R.S., the energy impact assistance advisory committee established pursuant to said section shall make recommendations to the executive director of the department of local affairs regarding the distribution of moneys authorized pursuant to this section.

(3) Notwithstanding section 24-1-136 (11)(a)(I), the executive director of the department of local affairs shall deliver to the state auditor and file with the general assembly annually before February 1 a detailed report accounting for the distribution of all funds for the previous year. The energy impact assistance advisory committee shall review the report prior to it being delivered and filed.

(4) Repealed.

(5) Notwithstanding any provision of this section to the contrary, on June 1, 2009, the state treasurer shall deduct seven million five hundred thousand dollars from the local government severance tax fund and transfer such sum to the general fund.

(6) Notwithstanding any provision of this section to the contrary, on April 15, 2010, the state treasurer shall deduct fifty million three hundred twenty-seven thousand seven hundred ninety-six dollars from the local government severance tax fund and transfer such sum to the general fund.

(7) Notwithstanding any provision of this section to the contrary:

(a) On June 30, 2011, the state treasurer shall deduct seventy million dollars from the local government severance tax fund and transfer such sum to the general fund.

(b) Due to the transfer made pursuant to paragraph (a) of this subsection (7), for the state fiscal year commencing on July 1, 2010, the amount of the gross receipts credited to the local government severance tax fund that are distributed pursuant to paragraph (b) of subsection (1) of this section shall be decreased by three million dollars and the amount of gross receipts that are distributed pursuant to paragraph (c) of subsection (1) of this section shall be increased by three million dollars.

(c) On June 30, 2012, the state treasurer shall deduct forty-one million dollars from the local government severance tax fund and transfer such sum to the general fund.

(d) On June 30, 2018, the state treasurer shall transfer twenty-two million eight hundred fifty thousand dollars from the local government severance tax fund to the general fund.

(8) Notwithstanding any provision of this section to the contrary, an amount equal to forty-eight million three hundred thousand dollars in the local government severance tax fund that would otherwise be distributed under paragraph (b) of subsection (1) of this section is restricted from being used for any purpose whatsoever, until such time that the joint budget committee, by a majority vote, releases the restriction on some or all of the money. It is the general assembly's intent that the restriction of money in the fund shall not affect the distributions made under paragraph (c) of subsection (1) of this section.

**Source: L. 77:** Entire article added, p. 1848, § 1, effective January 1, 1978. **L. 81:** (1)(c) and (1)(d) amended, p. 1903, § 3, effective June 19. **L. 82:** (1)(d) amended, p. 581, § 1, effective April 6. **L. 85:** (1)(a) and (1)(b) amended, p. 1290, § 1, effective May 31. **L. 86:** (2)(c) added, p. 426, § 65, effective March 26. **L. 88:** (2) repealed, p. 319, § 18, effective April 14. **L. 93:** (1)(b)(III) added, p. 448, § 5, effective April 19. **L. 96:** (1)(d)(I) amended, p. 168, § 12, effective July 1. **L. 97:** (1)(a) amended, p. 1147, § 2, effective May 28. **L. 98:** (1)(a)(II) amended, p. 829, § 54, effective August 5. **L. 99:** (1)(a)(I) amended, p. 927, § 6, effective May 24. **L. 2002, 3rd Ex. Sess.:** (1)(b)(IV) added, p. 39, § 8, effective July 17. **L. 2005:** (4) added, p. 414, § 3, effective April 28. **L. 2007:** (1)(b)(I) and (1)(c) amended and (1)(c.5) added, p. 1338, § 1, effective May 29; (1)(b)(III) amended, p. 1366, § 1, effective May 29; (1)(a)(I) amended, p. 1410, § 5, effective May 30. **L. 2008:** (1)(b)(I), (1)(c), (1)(c.5), (1)(d), (1)(e), (1)(f), and (3) amended and (2.5) added, p. 1680, § 6, effective August 5. **L. 2009:** (5) added, (SB 09-279), ch. 367, p. 1932, § 23, effective June 1; (1)(d)(II)(C) amended, (SB 09-292), ch. 369, p. 1980, § 116, effective August 5. **L. 2010:** (6) added, (HB 10-1327), ch. 135, p. 451, § 10, effective April 15; (7) added, (HB 10-1388), ch. 362, p. 1717, § 3, effective June 7. **L. 2011:** (7)(a) amended, (SB 11-164), ch. 33, p. 94, § 10, effective March 18; (7)(c) added, (SB 11-226), ch. 190, p. 735, § 8, effective May 19; (1)(a)(II) repealed, (SB 11-238), ch. 300, p. 1446, § 3, effective June 8. **L. 2013:** (1)(a)(III) amended, (HB 13-1300), ch. 316, p. 1707, § 131, effective August 7. **L. 2015:** (1)(b)(V) added, (HB 15-1225), ch. 187, p. 622, § 5, effective May 13. **L. 2016:** (8) added, (SB 16-218), ch. 289, p. 1174, § 7, effective June 10. **L. 2017:** (7)(d) added, (SB 17-260), ch. 157, p. 537, § 3, effective April 28; (3) amended, (HB 17-1047), ch. 26, p. 79, § 4, effective August 9.

**Editor's note:** Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2007. (See L. 2005, p. 414.)

**Cross references:** (1) For the legislative declaration contained in the 1999 act amending subsection (1)(a)(I), see section 1 of chapter 235, Session Laws of Colorado 1999.

(2) For the legislative declaration in HB 15-1225, see section 1 of chapter 187, Session Laws of Colorado 2015.

**39-29-111. Withholding of income from oil and gas interest.** (1) (a) Every producer or purchaser who disburses funds that are owed to any person owning a working interest, a royalty interest, a production payment, or any other interest in any oil or gas produced in Colorado shall, unless such production is exempt under section 39-29-105 (1) and the producer or purchaser has registered such exempt production with the department of revenue in accordance with rules promulgated by the department, withhold from the amount owed to such person an amount equal to one percent of the gross income from such interest, except for income accruing to the United States or the state of Colorado or to any political subdivision of the state of Colorado. The amount withheld shall be based on gross income as defined in section 39-29-102 (3)(a). On or before each March 1, June 1, September 1, and December 1 prior to July 1, 2007, the aggregate of all such amounts withheld during the prior calendar quarter shall be paid to the department; and, no later than such dates, a report covering the withholding of such amounts shall be filed with the department upon forms prescribed by the executive director. On the first day of each month beginning with July 1, 2007, the aggregate of all such amounts withheld during the calendar month that was three months prior thereto shall be paid to the department in the manner set forth in paragraph (b) of this subsection (1). Nothing in this section shall be so construed as to reduce the tax imposed by this article.

(b) On and after July 1, 2007, all amounts paid to the department of revenue pursuant to paragraph (a) of this subsection (1) shall be remitted electronically. The department shall promulgate rules in accordance with article 4 of title 24, C.R.S., governing electronic payment.

(2) Every person making a return as required by section 39-29-112 may take credit for the amount withheld by the producer or the first purchaser against the tax shown to be due upon such return, and any overpayment shown on such return shall be refunded to the taxpayer.

(3) For the purposes of subsection (1) of this section, "producer" means every person producing or extracting oil shale or oil and gas deposits located within this state or the first purchaser of oil shale or oil and gas produced from deposits located within this state.

(4) On or before March 1 of each year, every producer or purchaser shall provide each person holding any interest pursuant to subsection (1) of this section with a statement of the amounts deducted and withheld pursuant to this section from disbursements made to such person during the preceding calendar year. Such statements shall be retained in the records of every producer or purchaser for a period of three years and shall be made available to the department of revenue upon the written request of the department.

**Source: L. 77:** Entire article added, p. 1850, § 1, effective January 1, 1978. **L. 85:** (1) R&RE, p. 1292, § 1, effective June 6. **L. 89:** (4) added, p. 1518, § 1, effective April 7. **L. 2000:** (1) and (4) amended, p. 1444, § 3, effective July 1. **L. 2007:** (1) amended, p. 1410, § 6, effective May 30.

**39-29-112. Procedures and reports.** (1) Except as set forth in subsections (6) and (7) of this section, every person subject to taxation under the provisions of this article shall make an

annual return to the department of revenue, separate and apart from other returns required to be made under the provisions of articles 20 to 28 of this title, upon a form to be prescribed by the executive director. Such return shall be filed with the department of revenue on or before the fifteenth day of the fourth month following the end of the taxable year. Payment of the tax shown to be due shall be made at the time such return is filed. The executive director may grant a reasonable extension of time for filing returns and for paying the tax under such rules as he may prescribe. In the event of the failure to file the return within the time required or the extension of the time granted by the executive director, there shall be added to the tax a penalty as provided for in section 39-29-115.

(2) Every corporation subject to taxation under the provisions of this article shall make a declaration and payment of estimated tax if the tax imposed by this article for the taxable year can reasonably be expected to exceed one thousand dollars. Such declaration and payment shall be made to the department of revenue, separate and apart from other returns required under the provisions of articles 20 to 28 of this title, upon a form prescribed by the executive director. Such declaration shall be filed with and payment made to the department of revenue in accordance with the provisions of section 39-22-606.

(3) All unexpended balances in any oil shale and oil and gas severance tax withholding fund established to carry out the purposes of this article as of June 30, 1978, and on each June 30 thereafter, or at any time determined by the controller with the approval of the state treasurer shall be credited to the general fund of the state. Such unexpended balances shall include all moneys which for any reason cannot be refunded. All warrants covering refunds from said severance tax withholding fund which cannot for any reason be delivered to the taxpayer to whom due and which are not presented for payment within six months after the date of issuance thereof shall be void, and the moneys represented thereby shall be included in the unexpended balance in said fund at the expiration of any fiscal year. Persons entitled to the refunds of moneys represented by warrants which cannot be delivered to the taxpayer and which are not presented for payment within six months after the date of issuance thereof may file claims for refund at any time within four years after the date the tax return which establishes the right to the refund was required to be filed. Claims for refund not filed within the prescribed four-year period shall not be allowed or paid.

(4) The tax imposed by this article is hereby declared to be a special classified and limited tax in accordance with the provisions of section 17 of article X of the state constitution.

(5) The taxpayer's taxable year under this article shall be the same as his taxable year for federal income tax purposes.

(6) The provisions of subsections (1) to (3) and subsection (5) of this section shall not apply to persons filing quarterly declaration forms and making quarterly payments of tax pursuant to the provisions of section 39-29-104.

(7) A person is not required to make a separate, annual return to the department of revenue for a taxable year pursuant to subsection (1) of this section if:

(a) The person has less than two hundred fifty dollars withheld by all unit operators or first purchasers pursuant to section 39-29-111 (1) for the taxable year; and

(b) The amount of withholding is greater than or equal to the amount of tax levied pursuant to this article that is owed by the person for the taxable year.

**Source: L. 77:** Entire article added, p. 1850, § 1, effective January 1, 1978. **L. 83:** (1) amended, p. 1545, § 1, effective May 20. **L. 86:** (6) added, p. 1136, § 2, effective April 1. **L. 2012:** (1) amended and (7) added, (HB 12-1314), ch. 250, p. 1244, § 1, effective August 8.

**39-29-113. Exemption prohibited - when.** (1) If any person likely to be liable for taxes imposed pursuant to the provisions of this article transfers all or part of his property to another person controlled, directly or indirectly, by the transferor before or after the transfer, the executive director may disallow to the transferee any exemption from tax otherwise authorized pursuant to this article unless such transferee establishes by a clear preponderance of the evidence that the securing of such an exemption was not a major purpose of such transfer.

(2) As used in this section, "control" means:

(a) The ownership, directly or indirectly, of more than fifty percent of the voting stock of the transferee corporation; or

(b) With respect to a transferee other than a corporation, that the transferor owns, during any part of the transferee's taxable year, a greater economic interest than any other owner of the transferee.

**Source: L. 77:** Entire article added, p. 1851, § 1, effective January 1, 1978.

**39-29-114. Component members of a controlled group treated as one taxpayer.** (1) For the purposes of this article, persons who are members of the same controlled group of corporations shall be treated as one taxpayer.

(2) If fifty percent or more of the beneficial interest in two or more corporations, trusts, or estates is owned by the same or related persons (taking into account only persons who own at least five percent of such beneficial interest), the exemptions allowed under this article shall be allocated among all such entities in proportion to their respective quantities of production from the property of such entities.

(3) In the case of individuals who are members of the same family, the exemptions allowed under this article shall be allocated among such individuals in proportion to their respective quantities of production from the property of such individuals. For the purposes of this article, the family of an individual shall be deemed to include only his spouse and children.

(4) For the purposes of this section, the term "controlled group of corporations" has the meaning given to such term by the "Internal Revenue Code of 1986", in section 613A, as of January 1, 1987. The change of the reference in this section from the "Internal Revenue Code of 1954" to the "Internal Revenue Code of 1986" shall not affect any act done or any right accrued or accruing before or after such change, but all rights and liabilities shall continue and may be enforced in the same manner as if such references had not been changed.

**Source: L. 77:** Entire article added, p. 1851, § 1, effective January 1, 1978. **L. 88:** (4) amended, p. 1327, § 6, effective April 6.

**39-29-115. Penalties and interest.** (1) Any person who fails to file a report or to pay the tax due thereon shall pay a penalty of thirty percent of the tax assessed or thirty dollars, whichever is greater, and the interest due under the provisions of section 39-21-110.5.

(1.5) Any person who fails to withhold income and make a payment required pursuant to section 39-29-111 shall pay a penalty of up to thirty percent of the required payment or thirty dollars, whichever is the greater amount, and the interest due under the provisions of section 39-21-110.5. Any person who withholds income pursuant to section 39-29-111 and who fails to file the annual report required by the rules promulgated by the department of revenue related to such withholding shall pay a penalty of up to fifteen percent of the amount of withholding that should have been reflected in the report or one thousand five hundred dollars, whichever is the lesser amount. The penalty set forth in this subsection (1.5) for failing to withhold income and make a payment shall not apply if the income was from a well that qualified for the exemption set forth in section 39-29-105 (1)(b) for the prior taxable year.

(2) Tax assessed pursuant to an error contained on a previously filed return which was due to negligence or disregard of the law shall have added thereto:

(a) A penalty of ten percent of the tax assessed; and

(b) Penalty interest of one-half of one percent per month, in addition to the interest due under section 39-21-110.5, on the tax assessed.

(3) (a) Except as set forth in paragraph (b) of this subsection (3), if any person fails, neglects, or refuses to file a report required by this article, the executive director may, upon such information as may be available to him, estimate the amount of tax due for the period for which no report was filed, with applicable penalties and interest, and mail such estimate to the last-known address of such person. The amount so estimated, together with the penalties and interest, shall become fixed, due, and payable, as if such person had filed a report showing such amounts unless, within ten days after receiving the estimate, such person files a true and correct report for the period and pays the tax, penalty, and interest due thereon.

(b) The executive director shall not send an estimate for a taxable year pursuant to paragraph (a) of this subsection (3) to a person who has less than two hundred fifty dollars withheld by all unit operators or first purchasers for the taxable year pursuant to section 39-29-111 (1), unless the executive director has good cause to believe that such person does not qualify for the exception to the filing requirement set forth in section 39-29-112 (7).

(4) The executive director may waive, for good cause shown, any of the penalties authorized by this section.

**Source: L. 83:** Entire section added, p. 1545, § 2, effective May 20. **L. 85:** (1) amended, p. 1263, § 26, effective January 1, 1986. **L. 2010:** (1.5) and (4) added, (HB 10-1060), ch. 277, p. 1269, § 1, effective September 1. **L. 2012:** (3) amended, (HB 12-1314), ch. 250, p. 1245, § 2, effective August 8.

**39-29-116. Uranium mill tailings remedial action program fund - creation - oversight committee - repeal.** (1) The general assembly hereby declares that the purpose of creating the uranium mill tailings remedial action program fund is to provide a funding source to match federal funds available under the federal "Uranium Mill Tailings Radiation Control Act of 1978", 42 U.S.C. 7901 et seq., for the purpose of cleaning up certain sites designated in Colorado for cleanup. The general assembly states that its intent in enacting this section is to assure that Colorado has those state moneys set aside in order to obtain the federal funds before those federal funds are completely used in cleaning up other sites or are no longer available. The general assembly further intends that the amount of moneys transferred into this new fund from

the severance tax trust fund and the amounts which will be awarded from the local government severance tax fund and the local government mineral impact fund should be sufficient to clean up all of the federal designated sites in Colorado without additional appropriation, transfers, or awards.

(2) There is hereby created in the office of the state treasurer the uranium mill tailings remedial action program fund for the sole purpose of providing a state match to federal funds available for the cleanup of uranium mill tailing sites as designated for cleanup under the federal "Uranium Mill Tailings Radiation Control Act of 1978", 42 U.S.C. sec. 7901 et seq. The fund shall consist of moneys transferred to the fund from the severance tax trust fund in accordance with section 39-29-109 (5) as it existed prior to its repeal and any other moneys made available or appropriated into the uranium mill tailings remedial action program fund pursuant to subsection (3) of this section. The moneys in the uranium mill tailings remedial action program fund available for remedial costs only shall not exceed fifty-seven million dollars. Moneys in the fund shall be subject to annual appropriation. All interest derived from the deposit and investment of moneys in the uranium mill tailings remedial action program fund shall be credited to such fund. Any unexpended and unencumbered moneys in the uranium mill tailings remedial action program fund at the end of the 1998-99 fiscal year shall be credited and transferred to the local government severance tax fund established pursuant to section 39-29-110.

(3) (a) The state treasurer may accept and credit to the uranium mill tailings remedial action program fund any donations received by the state for the express purpose of projects for the cleanup of uranium mill tailings. The donations may include any amounts made available from the local government severance tax fund and the local government mineral impact fund as directed by the executive director of the department of local affairs pursuant to section 39-29-110 and section 34-63-102, C.R.S. It is the intent of the general assembly that a minimum of six million dollars be retained in the local government severance tax fund and the local government mineral impact fund for grants and loans to local communities.

(b) Before or during fiscal year 1993-94, the executive director of the department of local affairs shall distribute not less than five million dollars to the uranium mill tailings remedial action program fund from the local government mineral impact fund, the local government severance tax fund, or a combination thereof. The executive director shall determine the amount of moneys, if any, to be distributed from each fund.

(c) Before or during fiscal years 1994-95, 1995-96, and 1996-97, the executive director of the department of local affairs shall distribute in the aggregate not less than five million dollars to the uranium mill tailings remedial action program fund from the local government mineral impact fund, the local government severance tax fund, or a combination thereof; except that at least two and one-half million dollars shall be distributed before or during fiscal year 1995-96. The executive director shall determine the amount of moneys, if any, to be distributed from each fund.

(d) For fiscal years after 1996-97, the executive director of the department of local affairs may distribute moneys from the local government mineral impact fund and the local government severance tax fund pursuant to sections 34-63-102 and 39-29-110 (1)(b)(III)(A), C.R.S., respectively.

(4) Repealed.

(5) No new sites may be added to the uranium mill tailings remedial action program without the approval of the general assembly acting by bill.

(6) This section is repealed, effective July 1, 2027.

**Source: L. 90:** Entire section added, p. 1749, § 1, effective May 2. **L. 93:** (1) to (4) and (6) amended, p. 446, § 3, effective April 19. **L. 94:** (4) amended, p. 2805, § 578, effective July 1. **L. 97:** (2) amended, p. 336, § 1, effective April 16. **L. 99:** (6) amended, p. 204, § 1, effective March 31. **L. 2002:** (6) amended, p. 140, § 1, effective March 27. **L. 2007:** (4) amended, p. 191, § 29, effective March 22; (3)(d), (4), and (6) amended, p. 1367, § 2, effective May 29. **L. 2011:** (3)(a) and (3)(d) amended, (SB 11-238), ch. 300, p. 1446, § 4, effective June 8. **L. 2016:** (3)(a) and (6) amended and (4) repealed, (HB 16-1141), ch. 128, p. 365, § 3, effective August 10.

**Editor's note:** Subsection (4)(a.5)(I)(B) provided for the repeal of subsection (4)(a.5)(I), effective July 1, 2007 (See L. 2007, p. 1367.), but the entire subsection (4) was repealed in 2016.

## Enterprise Zones

## ARTICLE 30

Urban and Rural Enterprise Zone Act

**39-30-101. Short title.** This article shall be known and may be cited as the "Urban and Rural Enterprise Zone Act".

**Source: L. 86:** Entire article added, p. 1139, § 1, effective July 1.

**39-30-102. Legislative declaration.** (1) The general assembly hereby finds and declares:

(a) That the health, safety, and welfare of the people of this state are dependent upon the continued encouragement, development, and expansion of opportunities for employment in the private sector in this state;

(b) That there currently exist in this state both rural and urban areas which require new employment opportunities to overcome conditions of unemployment, underemployment, net out-migration of the population, chronic economic distress, deterioration of main street business districts, or sudden and severe economic dislocations and that such conditions may well exist, from time to time, in other areas of the state; and

(c) That some rural counties in this state continue to have difficulty in promoting economic growth despite the existence of enterprise zones and their associated tax credits.

(2) It is, therefore, declared to be the policy of the state, in order to provide incentives for private enterprise to expand and for new businesses to locate in such economically depressed areas and to provide more job opportunities for residents of such areas, to establish a pilot program for tax incentives and other assistance for enterprises in designated areas to be known as enterprise zones.

(3) (a) It is the intent of the general assembly that state agencies, including but not limited to the division of local government in the department of local affairs, the department of

labor and employment, the department of revenue, the state board for community colleges and occupational education in the department of higher education, and the Colorado office of economic development created in the office of the governor, place special emphasis on providing assistance to designated enterprise zones.

(b) It is further declared to be the intent of the general assembly that areas so designated also be eligible to apply for designation under federal enterprise zone legislation that may be enacted.

**Source: L. 86:** Entire article added, p. 1139, § 1, effective July 1. **L. 97:** (3)(a) amended, p. 527, § 11, effective July 1. **L. 2002:** (1)(c) added, p. 1103, § 1, effective August 7. **L. 2008:** (3)(a) amended, p. 216, § 1, effective March 26.

**39-30-103. Zones established - review - termination - repeal.** (1) Any municipality, county, or group of contiguous municipalities or counties may propose an area of such municipality, county, or group of municipalities or counties to be designated as an enterprise zone if the area has a population of no more than one hundred fifteen thousand persons as calculated pursuant to subsection (1.3) of this section, or one hundred fifty thousand persons as calculated pursuant to subsection (1.3) of this section if the area is a rural area, and meets at least one of the following additional criteria:

(a) An unemployment rate at least twenty-five percent above the state average for the most recent period of twelve consecutive months for which data is available from the United States census bureau or the department of local affairs;

(b) A population growth rate less than twenty-five percent of the state average rate for the most recent five-year period for which data are available from the United States census bureau or the department of local affairs, or, if such data is not available for any five-year period, for the most recent period of not less than five nor more than ten years for which such data is available; or

(c) A per capita income less than seventy-five percent of the state average for the most recent period for which data is available from the United States census bureau or the department of local affairs.

(1.3) For the purposes of this article, the population of an enterprise zone shall be calculated using data from the United States census bureau or the department of local affairs at the county, municipal, or block levels. Such calculations that require the use of block level data shall include the entire population of each block in which the enterprise zone is located.

(1.5) As used in this section, "rural area" means:

(a) A county with a population of less than fifty thousand people, according to the most recently available population statistics of the United States bureau of the census;

(b) A municipality with a population of less than fifty thousand people, according to the most recently available population statistics of the United States bureau of the census, that is located ten miles or more from a municipality with a population of more than fifty thousand people; or

(c) The unincorporated part of a county located ten miles or more from a municipality with a population of more than fifty thousand people, according to the most recently available population statistics of the United States bureau of the census.

(2) (a) Except as provided in paragraph (c) of this subsection (2), the director of the Colorado office of economic development shall determine whether an area meets the criteria specified in subsection (1) of this section based on the most recent statistics available. Except as provided in paragraph (c) of this subsection (2), all decisions concerning the designation or termination of an enterprise zone or any portion of an enterprise zone shall be made by the Colorado economic development commission created in section 24-46-102, C.R.S., upon the recommendations of the director of the Colorado office of economic development.

(b) Repealed.

(c) (I) Commencing January 1, 2014, the director of the Colorado office of economic development and the Colorado economic development commission shall review the enterprise zone designations no less frequently than once every ten years to ensure that the existing zones continue to meet the criteria specified in subsection (1) of this section. The director and the commission may modify existing enterprise zone designations based on the review specified in this paragraph (c). If it is determined that existing enterprise zone designations need to be modified, such modification shall not be undertaken in a high unemployment period, but the director and the commission shall review the need for such modifications again as soon as the state is no longer in a high unemployment period. Any modification shall be reported to the legislative audit committee in conjunction with the annual presentation described in paragraph (b.7) of subsection (4) of this section and shall also be reported to the finance committees of the house of representatives and the senate, or any successor committees.

(II) For purposes of this section, "high unemployment period" means a period in which the average of the seasonally adjusted U-3 unemployment rate, or successor index, for Colorado as determined by the United States secretary of labor, for the most recent three months for which data for Colorado is published, equals or exceeds eight percent.

(3) In proposing an area for designation as an enterprise zone, the local government shall submit to the director of the Colorado office of economic development a development plan. This plan shall include information describing the following items:

(a) The boundaries of the proposed zone;

(b) The proposed zone's potential for business development and job creation;

(c) How the proposed zone will support and be consistent with maintenance of an economically viable central business district;

(d) The specific economic development objectives, to be achieved in the zone, including specific objectives that have measurable outcomes, and the measures that local government and the private sector will undertake to support those objectives;

(e) The person or agency to be designated as administrator of the proposed zone;

(e.5) How the specific economic development objectives of the zone that have measurable outcomes will be measured and the specific, verifiable data that will be used to measure such outcomes;

(f) Any other pertinent information the director of the Colorado office of economic development or the Colorado economic development commission may require.

(4) (a) The Colorado economic development commission, after consultation with the executive directors of the department of labor and employment and the department of revenue, may approve the designation of not more than sixteen areas as enterprise zones. The commission shall designate administrative entities for enterprise zones.

(b) The Colorado economic development commission shall work with the zone administrators of each enterprise zone to ensure that each zone has specific economic development objectives with outcomes that can be measured with specific, verifiable data. The director of the Colorado office of economic development shall require the zone administrators for each zone to submit annual documentation of efforts to improve conditions in areas designated as enterprise zones and the results of those efforts. Such annual documentation shall include specific, verifiable data that can be used to measure whether the zone has achieved the specific economic development objectives for the zone that have measurable outcomes. In order for the commission to determine if the enterprise zones or portions thereof are achieving the specific economic development objectives submitted pursuant to this paragraph (b) or to paragraph (d) of subsection (3) of this section, such annual documentation shall include, but need not be limited to, the most recent statistics available for companies claiming enterprise zone tax credits on:

(I) The number of jobs created in the enterprise zone and the North American industry classification system (NAICS) code of each company reporting the creation of jobs within the zone;

(II) The number of jobs retained in the zone;

(III) The average annual compensation level, including benefits, of the jobs created or retained within the zone, categorized by full time permanent, part time, temporary, and contract jobs;

(IV) (Deleted by amendment, L. 99, p. 725, § 2, effective May 20, 1999.)

(V) The number of employees from outside the zone transferred to a facility within the zone;

(VI) (Deleted by amendment, L. 99, p. 725, § 2, effective May 20, 1999.)

(VII) An analysis of capital investment in the enterprise zone, including:

(A) The number and amount of qualified rehabilitation expenses made on rehabilitated vacant buildings;

(B) The amount of investment in qualifying property for which tax credits were claimed pursuant to section 39-30-104;

(VIII) The number of employees trained and the amount of investment in job training programs pursuant to section 39-30-104 (4);

(IX) The number of employees employed in new or expanded business facilities for which a credit is claimed pursuant to section 39-30-105 and the number of business facility employees for which a credit is claimed pursuant to section 39-30-105.1;

(X) The amount of investment tax credits claimed pursuant to section 39-30-104, the amount of credits claimed for new business facility employees pursuant to section 39-30-105, and the amount of credits claimed pursuant to section 39-30-105.1;

(XI) Any other information reasonably required by the zone administrator, the director of the Colorado office of economic development, or the Colorado economic development commission to evaluate the effectiveness of each zone in accomplishing the specific measurable objectives of the zone.

(b.5) In addition to the annual documentation required pursuant to paragraph (b) of this subsection (4), the director of the Colorado office of economic development shall require the zone administrators for each enterprise zone to submit, to the extent practicable, annual documentation on the most recent statistics available on:

(I) Any change in the unemployment rate in the zone;

(II) Any change in per capita income in the zone;

(III) Any change in population in the zone;

(IV) The amount of all monetary or in-kind contributions for the purpose of implementing the economic development plan for the zone and the specific purpose of the contributions as provided in section 39-30-103.5.

(b.7) The director of the Colorado office of economic development, or the director's designee, on behalf of the Colorado economic development commission, shall submit an annual report to the general assembly on or before November 1 of each year summarizing the annual documentation submitted by zone administrators to the director of the Colorado office of economic development each year pursuant to paragraphs (b) and (b.5) of this subsection (4). The director of the Colorado office of economic development, or the director's designee, on behalf of the commission, shall make an annual presentation to the legislative audit committee that reviews and summarizes the information in the report submitted to the general assembly pursuant to this paragraph (b.7).

(c) (I) (Deleted by amendment, L. 2004, p. 364, § 1, effective August 4, 2004.)

(II) The state auditor shall submit a report to the governor and the general assembly, at the discretion of the state auditor and the legislative audit committee, evaluating the implementation of the enterprise zone program, making recommendations for statutory changes, if any, and including any other information requested by the governor or the general assembly. The evaluation shall be based upon the data included in the annual reports submitted by the director of the Colorado office of economic development on behalf of the Colorado economic development commission to the general assembly pursuant to paragraph (b.7) of this subsection (4) and objective verifiable data submitted by the enterprise zone administrators and maintained by the Colorado office of economic development, local governments, and enterprise zone administrators. The report shall also include information concerning the amounts of tax credits claimed and allowed under the program. For purposes of preparing the report required by this paragraph (c), the state auditor shall have access to all records and documents applicable to the program, whether maintained by the Colorado office of economic development, local governments, or enterprise zone administrators.

(c.5) Companies claiming enterprise zone credits shall provide information reasonably required by zone administrators, the director of the Colorado office of economic development, and the Colorado economic development commission to evaluate the effectiveness of each zone in accomplishing the measurable economic development objectives to be achieved in the zone. Such information shall be considered public records as defined in section 24-72-202 (6), C.R.S., shall be preserved for at least five years by the zone administrator who collected the information, who shall be the custodian of such information, and shall be made available by the zone administrator for inspection by any person at reasonable times. Nothing in this paragraph (c.5) shall be construed to require the disclosure to the public of any information that reveals the amount of compensation paid to any individual employee of a company, any Colorado income tax return, or any information regarding expenditures on research and development.

(d) Repealed.

(e) (Deleted by amendment, L. 2008, p. 216, § 2, effective March 26, 2008.)

(5) No later than March 1, 1997, the Colorado economic development commission created in section 24-46-102, C.R.S., shall report to the governor and the general assembly the

results of a competitive benchmarking study, performed by a private consultant with experience in evaluation of state business assistance programs in multiple states, comparing Colorado's business climate, as it affects the retention and growth of basic employers and their investment, with the business climate of other states. In addition, the study shall assess long term economic development strategies, including but not limited to encouraging primary job creation throughout Colorado. Along with the report, the commission shall provide the governor and the general assembly its recommendations for additional study or modifications to Colorado's public policy concerning the state's business climate and its recommendations concerning specific business development and job creation objectives that should be used as minimum requirements or standards for future designation of enterprise zones or portions of enterprise zones consistent with statewide economic development targets and objectives.

(6) (a) When the termination of an enterprise zone or portion of an enterprise zone would prevent a taxpayer from qualifying for tax benefits under this article and the taxpayer can identify job creation or capital expansion activities that were planned prior to the termination announcement and that would have otherwise entitled the taxpayer to claim tax benefits under section 39-30-103.5, 39-30-104, 39-30-105, or 39-30-105.1, the enterprise zone administrator and the taxpayer shall jointly certify detailed information about such planned activities. A taxpayer who files such certification with the taxpayer's state income tax return may claim tax benefits otherwise actually earned up to the limits of such certified information for a period not to exceed the ten tax years following the year in which the enterprise zone or portion of an enterprise zone was terminated. It is the intent of this subsection (6) only to permit taxpayers to claim tax benefits on which they demonstrably relied in making business planning decisions, and, except as specifically provided in this subsection (6), nothing in this subsection (6) shall be construed to authorize the commission or any enterprise zone administrator to grant tax benefits that have been repealed by the general assembly or to grant tax benefits in excess of the limits established by law.

(b) Notwithstanding any date restriction set forth in its text, any certification that was prepared pursuant to paragraph (a) of this subsection (6) prior to June 3, 2002, that extends the right of a taxpayer to claim tax benefits for the maximum period that was allowed by law at the time the certification was prepared, and that allows the taxpayer to claim tax benefits for one or more income tax years that end on or after June 3, 2002, shall extend the right of the taxpayer to claim tax benefits for the maximum period specified in paragraph (a) of this subsection (6).

(7) (a) Beginning on January 1, 2012, before a taxpayer engages in any activity for which the taxpayer intends to claim an income tax credit pursuant to section 39-30-104, 39-30-105, 39-30-105.1, 39-30-105.5, or 39-30-105.6, an authorized company official of the taxpayer's business or the taxpayer who is the owner of the business shall submit a pre-certification form to the enterprise zone administrator as specified in this subsection (7). A taxpayer that completes an activity prior to January 1, 2012, for which the taxpayer intends to claim an income tax credit pursuant to this article shall submit to the zone administrator on or before December 31, 2012, any information related to such completed activity that is necessary to receive certification from the zone administrator that the taxpayer's business is located in the enterprise zone. Nothing in this subsection (7) shall be construed to require a taxpayer to submit a pre-certification form to the zone administrator for activities completed prior to January 1, 2012. In connection with the pre-certification, the taxpayer shall be required to:

(I) Obtain verification from the enterprise zone administrator that the taxpayer's business is located in an enterprise zone;

(II) Certify that the taxpayer is aware of the enterprise zone income tax credits allowed pursuant to this article;

(III) Certify that the enterprise zone income tax credits allowed pursuant to this article are a contributing factor to the start-up, expansion, or relocation of the taxpayer's business in the enterprise zone; and

(IV) Certify that the taxpayer acknowledges that the pre-certification required pursuant to this section is for activities that shall commence after the date that the pre-certification form is executed by the enterprise zone administrator through the end of the business's then-current income tax year.

(b) The department of revenue shall amend the current certification forms that a taxpayer is required to complete in connection with claiming an income tax credit pursuant to this article, to include a section through which the taxpayer or an authorized company official of the taxpayer's business may provide the information required pursuant to subparagraphs (II) to (IV) of paragraph (a) of this subsection (7).

(8) Notwithstanding any other provision to the contrary, for tax years commencing on or after January 1, 2014, only a taxpayer that is engaged in a business that is legal under both state and federal law is eligible to claim a credit pursuant to the provisions of this article.

**Source: L. 86:** Entire article added, p. 1140, § 1, effective July 1. **L. 87:** (4) amended, p. 1470, § 1, effective May 28. **L. 89:** (3)(e) R&RE, (3)(f) added, and (4) amended, p. 1521, §§ 2-4, effective June 7. **L. 90:** (1)(b), (2), and (4) amended, p. 1752, § 1, effective May 24. **L. 96:** IP(1), (3)(d), and (4) amended, and (5) and (6) added, p. 1121, § 1, effective July 1. **L. 97:** (4)(b)(VIII) amended, p. 1397, § 3, effective June 3. **L. 99:** (3)(d), (4)(b), (4)(c), (4)(d)(I), and (6) amended and (3)(e.5), (4)(b.5), (4)(b.7), and (4)(c.5) added, p. 725, §§ 1, 2, effective May 20. **L. 2000:** (4)(e) amended, p. 1680, § 8, effective July 1. **L. 2002:** (4)(d) repealed and (6) amended, pp. 1121, 1122, §§ 5, 6, effective June 3; IP(1), (4)(c)(II), (4)(c.5), and (6) amended and (1.5) added, p. 1103, § 2, effective August 7. **L. 2004:** (4)(b.7) and (4)(c) amended, p. 364, § 1, effective August 4. **L. 2008:** (2), IP(3), (3)(f), (4)(a), IP(4)(b), (4)(b)(XI), IP(4)(b.5), (4)(b.7), (4)(c)(II), (4)(c.5), and (4)(e) amended, p. 216, § 2, effective March 26; (4)(c)(II) amended, p. 115, § 1, effective August 5. **L. 2010:** IP(1), (4)(b)(I), and (4)(c)(II) amended and (1.3) and (7) added, (SB 10-162), ch. 395, p. 1875, § 1, effective January 1, 2012. **L. 2012:** (1)(a), (1.3), (2), and IP(4)(b) amended, (HB 12-1241), ch. 262, p. 1356, § 1, effective June 6; (4)(b.7) amended, (SB 12-166), ch. 243, p. 1149, § 5, effective August 8. **L. 2013:** (2)(a) and (2)(c)(I) amended, (2)(b) repealed, and (8) added, (HB 13-1142), ch. 224, p. 1049, §§ 3, 2, effective May 15. **L. 2014:** (4)(b)(IX), (4)(b)(X), (6)(a), and IP(7)(a) amended, (HB 14-1363), ch. 302, p. 1273, § 41, effective May 31.

**Editor's note:** (1) Amendments to subsection (6) by House Bill 02-1161 and House Bill 02-1399 were harmonized.

(2) Amendments to subsection (4)(c)(II) by Senate Bill 08-107 and House Bill 08-1305 were harmonized.

**Cross references:** For the legislative declaration in the 2013 act amending subsections (2)(a) and (2)(c)(I), repealing subsection (2)(b), and adding subsection (8), see section 1 of chapter 224, Session Laws of Colorado 2013.

**39-30-103.2. Enhanced rural enterprise zones - criteria - termination.** (1) The portion of any county within an enterprise zone designated pursuant to section 39-30-103 shall be designated as an enhanced rural enterprise zone if the county that contains the area to be so designated meets two or more of the following criteria:

(a) The county has an unemployment rate at least fifty percent above the state average unemployment rate for the most recent period of twelve consecutive months for which data are available from the department of labor and employment;

(b) The county has a population growth rate less than twenty-five percent of the state average population growth rate for the most recent five-year period for which data are available from the United States census bureau or the department of local affairs, or if such data are not available for any five-year period, for the most recent period of not less than five nor more than ten years for which such data are available;

(c) The average per capita income in the county is less than seventy-five percent of the state average per capita income for the most recent period for which data are available from the United States census bureau or the department of local affairs;

(d) The total assessed value of all nonresidential property within the county ranks in the lower one-half of all counties based on the total value of nonresidential property for the most recent year for which such data are available from the department of local affairs;

(e) The county has a population of five thousand or less as estimated by the department of local affairs.

(2) By December 1, 2002, and every two years thereafter, the director of the Colorado office of economic development shall determine whether each county meets two or more of the criteria specified in subsection (1) of this section. Such determination shall be based on the most recent statistics available. The director of the Colorado office of economic development shall provide to each enterprise zone administrator and to the board of county commissioners of each eligible county a list of the counties that meet two or more of the criteria specified in subsection (1) of this section.

(3) If a county containing a previously designated enhanced rural enterprise zone does not appear on the biennial list of eligible counties provided by the director of the Colorado office of economic development, the enterprise zone within such county shall be terminated as an enhanced rural enterprise zone as of January 1 following the issuance of such list. If the county appears again on a subsequent list of eligible counties, the portion of the county within an enterprise zone shall be designated as an enhanced rural enterprise zone.

(4) The termination of an enhanced rural enterprise zone shall not restrict, curtail, terminate, or otherwise cut off any tax credits that were earned by any taxpayer based on transactions completed while a county was designated as an enhanced rural enterprise zone. In addition, the director of the Colorado office of economic development shall establish procedures for recognizing and allowing credits to taxpayers who have taken actions in reliance on agreements reached with enhanced rural enterprise zone administrators or local governments for long-term investments.

(5) If the termination of an enhanced rural enterprise zone would prevent a taxpayer from qualifying for tax benefits under this article and the taxpayer can identify job creation or capital expansion activities that were planned before the director of the Colorado office of economic development issued the list of eligible counties and that would have otherwise entitled the taxpayer to claim tax benefits under section 39-30-105 or 39-30-105.1, the enterprise zone administrator and the taxpayer shall jointly certify detailed information about such planned activities. A taxpayer who files such certification with the taxpayer's state income tax return may claim tax benefits otherwise actually earned up to the limits of such certified information for a period not to exceed the five tax years following the year in which the enhanced rural enterprise zone was terminated. It is the intent of this subsection (5) to permit taxpayers to claim only those tax benefits on which they demonstrably relied in making business planning decisions, and, except as specifically provided in this subsection (5), nothing in this subsection (5) shall be construed to authorize any enterprise zone administrator to grant tax benefits that have been repealed by law or to grant tax benefits in excess of the limits established by law.

**Source: L. 2002:** Entire section added, p. 1105, § 3, effective August 7. **L. 2008:** (2), (3), (4), and (5) amended, p. 219, § 3, effective March 26. **L. 2014:** (5) amended, (HB 14-1363), ch. 302, p. 1274, § 42, effective May 31.

**39-30-103.5. Credit against tax - contributions to enterprise zone administrators to implement economic development plans.** (1) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), for income tax years commencing on or after January 1, 1989, any taxpayer who makes a monetary or in-kind contribution for the purpose of implementing the economic development plan for the enterprise zone to the person or agency designated as the enterprise zone administrator by the department of local affairs, and on or after July 1, 2008, by the person or agency designated as the enterprise zone administrator by the Colorado economic development commission, shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to fifty percent of the total value of the contribution as certified by the enterprise zone administrator.

(II) For income tax years commencing on or after January 1, 1996, the amount of the credit allowed for contributions made pursuant to this paragraph (a) shall be twenty-five percent of the total value of the contribution as certified by the enterprise zone administrator; except that nothing in this subparagraph (II) shall be construed to affect the amount of the credit:

(A) For contributions made prior to July 1, 1997: To an enterprise zone administrator for a project, program, or organization that was originally approved by an enterprise zone administrator in writing prior to May 1, 1996; or directly to a project, program, or organization that was originally approved by an enterprise zone administrator prior to May 1, 1996, and that is certified by the enterprise zone administrator pursuant to subsection (5) of this section; or

(B) For contributions made on or after July 1, 1997, through December 31, 2000, pursuant to a written agreement executed prior to July 1, 1997, between a taxpayer and an enterprise zone administrator in which the taxpayer pledges to make future contributions to a project, program, or organization that was approved by the enterprise zone administrator pursuant to this section prior to May 1, 1996.

(b) The credit allowed by paragraph (a) of this subsection (1) shall not exceed one hundred thousand dollars or the total amount of the income tax imposed on the taxpayer's

income by article 22 of this title for the tax year for which the credit is claimed, whichever is less. In-kind contributions shall not exceed fifty percent of the total credit claimed.

(c) Upon request, the enterprise zone administrator, acting on behalf of the department of revenue, shall provide the taxpayer with a form to be filed with the department of revenue for the purpose of claiming the credit allowed by this section which shall be accompanied by a copy of the certification of the value and purpose of the contribution furnished to the taxpayer by the enterprise zone administrator.

(d) If the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding five years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(e) On or before November 1, 2000, and November 1 of each year thereafter, each zone administrator shall provide to the director of the Colorado office of economic development on behalf of the Colorado economic development commission a list of all programs, projects, and organizations to which taxpayers may contribute during the next calendar year for the purpose of implementing the economic development plan of the zone and receiving a tax credit pursuant to this section. The list shall be accompanied by a description of each program, project, or organization, including the purpose and relationship of the program, project, or organization to the economic development goals of the enterprise zone, the expected benefits of the program, project, or organization to the enterprise zone, and an estimate of the amount of potential contributions to the program, project, or organization during the next calendar year. Any modifications to a list, including programs, projects, or organizations that are to be added thereto, shall be submitted to the director of the office of economic development on behalf of the commission by the zone administrator no later than thirty days after the modification is made. Commencing July 1, 1999, the commission is authorized to hold hearings and review any new program, project, or organization included on a list that is submitted to the director of the Colorado office of economic development on behalf of the commission pursuant to this section, any modification to a list, and any other program, project, or organization that the commission determines has changed materially. A list or modification of a list that is submitted to the director of the Colorado office of economic development on behalf of the commission pursuant to this section shall not be considered final until thirty days after the commission has received such information. The commission shall approve any program, project, or organization that it determines is eligible under the requirements of this section or is essential to the mission of the enterprise zone upon a majority vote of the members of the commission present at a meeting at which such approval is considered. The director of the Colorado office of economic development on behalf of the commission shall notify the zone administrator of any program, project, or organization that is not approved within thirty days of receipt of the list or modification of the list. Any program, project, or organization not approved by the commission may request that the commission reconsider its decision within thirty days after the date the notice indicating that the program, project, or organization was not approved was provided to the zone administrator. A zone administrator may accept contributions for any program, project, or organization it has submitted pursuant to this paragraph (e).

(2) (a) For income tax years commencing prior to January 1, 1999, monetary or in-kind contributions to promote child care in enterprise zones shall be deemed to be for the purpose of implementing the economic development plan for the enterprise zone and shall include but shall not be limited to the following types of contributions:

(I) Donating money, real estate, or property to the enterprise zone for the establishment of a child care facility;

(II) Donating money to the enterprise zone to establish a grant or loan program for a parent or parents requiring financial assistance for child care;

(III) Pooling moneys of several businesses and donating such moneys to the enterprise zone for the establishment of a child care facility;

(IV) Donating money to the enterprise zone for the training of child care providers; and

(V) Donating money, services, or equipment to the enterprise zone for the establishment of an information dissemination program to provide information and referral services to assist a parent or parents in obtaining child care.

(b) Notwithstanding any other provision to the contrary, nothing in this subsection (2) shall be construed to limit the ability of a taxpayer to claim a credit under this subsection (2) for contributions made on or after January 1, 1999, pursuant to the terms of an agreement entered into prior to such date between the taxpayer and an enterprise zone administrator.

(3) (a) Monetary or in-kind contributions to promote temporary, emergency, or transitional housing programs for the homeless that offer or provide referrals to child care, job placement, and counseling services for the purpose of promoting employment for homeless persons in enterprise zones shall be deemed to be for the purpose of implementing the economic development plan for the enterprise zone and shall include but not be limited to the following types of contributions:

(I) Donating money, real estate, or property to the enterprise zone for the establishment of temporary, emergency, or transitional housing for the homeless to include child care and job placement services;

(II) Donating money to the enterprise zone to establish a grant or loan program for homeless individuals requiring financial assistance for temporary, emergency, or transitional housing or child care;

(III) Pooling moneys of several businesses and donating those moneys to the enterprise zone for the establishment of temporary, emergency, or transitional housing programs for the homeless that offer or provide referrals to child care, job placement, and counseling services for the purpose of promoting employment for homeless persons;

(IV) Donating money to the enterprise zone for the training of homeless individuals to obtain employment; and

(V) Donating money, services, or equipment to the enterprise zone for the establishment of an information dissemination program to provide information and referral services to assist a homeless individual in obtaining temporary, emergency, or transitional housing, child care, or employment.

(b) Repealed.

(3.5) For income tax years commencing on and after January 1, 2003, monetary or in-kind contributions to promote nonprofit or government-funded community development projects in enterprise zones shall be deemed to be for the purpose of implementing the economic development plan for the enterprise zone.

(4) In no event shall credits be allowed pursuant to this section for contributions that directly benefit the contributor or that are not directly related to job creation, job preservation, or other purposes specified in subsections (2), (3), and (3.5) of this section.

(5) (a) (I) Contributions pursuant to this section may be made directly to programs, projects, or organizations certified by the enterprise zone administrator. The enterprise zone administrator shall only certify programs, projects, or organizations that meet the criteria set forth in this section for the purpose of receiving direct contributions.

(II) Each program, project, and organization certified by the enterprise zone administrator pursuant to this paragraph (a) shall submit a report at least once per year, or more often if required by the enterprise zone administrator, indicating the total value of contributions received for which tax credits would be allowed pursuant to this section and the source of the contribution.

(b) For income tax years commencing on and after January 1, 2013, contributions pursuant to this section may be made directly to an organization that has attained tax exempt status under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, if such organization is obligated to disburse the contribution as directed by the taxpayer to a recipient organization that has attained tax exempt status under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, or to such recipient organization's program or project, so long as either the recipient organization, program, or project is certified by the enterprise zone administrator as meeting the criteria set forth in this section for the purpose of receiving direct contributions as allowed in paragraph (a) of this subsection (5).

(6) No later than ninety days after making a certification of value pursuant to subsection (1) of this section, the enterprise zone administrator making the certification shall report to the director of the Colorado office of economic development on behalf of the Colorado economic development commission the total value of the contribution as certified by the administrator, the source of the contribution, the purpose of the contribution, and the relationship of the stated purpose of the contribution to the enterprise zone's goals or job creation objectives.

(7) The director of the Colorado office of economic development on behalf of the Colorado economic development commission or the enterprise zone administrator may release information concerning the source and amount of contributions made pursuant to this section, as well as the amount of the credits allowed pursuant to this section.

(8) (a) Any enterprise zone administrator that provides oversight, management, or other administrative services to a program, project, or organization that has been approved by the economic development commission for purposes of the contribution tax credit as defined in this section is authorized to charge reasonable fees to programs, projects, and organizations as defined in this section. Each enterprise zone administrator that charges administrative fees pursuant to this paragraph (a) shall establish a reasonable policy regarding the imposition of such fees and shall submit the policy to the Colorado economic development commission for review and approval.

(b) The Colorado economic development commission shall review the administrative fee policy established by an enterprise zone administrator and shall approve the policy or require that the enterprise zone administrator make modifications to the policy as specified by the commission before approving the policy.

**Source: L. 89:** Entire section added, p. 1519, § 1, effective June 7. **L. 90:** (2) added, p. 1399, § 14, effective May 24. **L. 94:** (3) added, p. 2085, § 1, effective July 1. **L. 96:** (1)(a) and (1)(c) amended and (1)(e), (4), (5), (6), and (7) added, p. 1125, §§ 2, 3, effective July 1. **L. 98:** (3)(b) repealed, p. 225, § 1, effective April 10; (2) amended, p. 1371, § 2, effective August 5. **L. 99:** (1)(e) amended, p. 729, § 3, effective May 20. **L. 2000:** (1)(a)(I), (1)(e), (6), and (7) amended, p. 1680, § 9, effective July 1. **L. 2002:** (3.5) added and (4) amended, p. 1107, § 4, effective August 7. **L. 2006:** (2) amended, p. 1508, § 60, effective June 1. **L. 2007:** (1)(a)(I) amended, p. 343, § 1, effective August 3. **L. 2008:** (1)(a)(I), (1)(e), (6), and (7) amended, p. 220, § 4, effective March 26. **L. 2010:** (8) added, (SB 10-162), ch. 395, p. 1877, § 2, effective January 1, 2012. **L. 2013:** (5) amended, (HB 13-1190), ch. 158, p. 511, § 1, effective May 3.

**39-30-104. Credit against tax - investment in certain property - definitions.** (1) (a) In lieu of any credit allowable under section 39-22-507.5, there shall be allowed to any person as a credit against the tax imposed by article 22 of this title, for income tax years commencing on or after January 1, 1986, an amount equal to the total of three percent of the total qualified investment, as determined under section 46 (c)(2) of the federal "Internal Revenue Code of 1986", as amended, in such taxable year in qualified property as defined in section 48 of the internal revenue code to the extent that such investment is in property that is used solely and exclusively in an enterprise zone for at least one year. The references in this subsection (1) to sections 46 (c)(2) and 48 of the internal revenue code mean sections 46 (c)(2) and 48 of the internal revenue code as they existed immediately prior to the enactment of the federal "Revenue Reconciliation Act of 1990".

(b) (I) Except as provided in subparagraph (IV) of this paragraph (b), for income tax years commencing on or after January 1, 2011, and for each income tax year thereafter, a commercial truck, truck tractor, tractor, or semitrailer with a gross vehicle weight rating of fifty-four thousand pounds or greater that is model year 2010 or newer and is designated as Class A personal property as specified in section 42-3-106 (2)(a), C.R.S., as well as any parts associated with the vehicle at the time of purchase, shall be deemed to be used solely and exclusively in an enterprise zone if it is licensed and registered within the state and predominantly housed and based at the taxpayer's business trucking facility within an enterprise zone for the twelve-month period following its purchase.

(II) The income tax credit for a qualified investment in a commercial truck, truck tractor, tractor, or semitrailer with a gross vehicle weight rating of fifty-four thousand pounds or greater that is model year 2010 or newer and is designated as Class A personal property as specified in section 42-3-106 (2)(a), C.R.S., as well as any parts associated with the vehicle at the time of purchase, shall be allowed in an amount equal to one and one-half of one percent of the total qualified investment if the model year of the commercial truck, truck tractor, tractor, or semitrailer was sold as new during such income tax year;

(III) For purposes of this paragraph (b), "facility" means any factory, mill, plant, refinery, warehouse, feedlot, building, or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment, and other real and tangible personal property located at or within such facility and used in connection with the operation of such facility, which facility the taxpayer owns, rents, or leases in the business's name at which continuous and ongoing operational activities of the business are maintained and at which at least one full-time employee of the business is employed.

(IV) To qualify for the tax credit granted under this paragraph (b), a claimant shall be certified by the Colorado economic development commission created in section 24-46-102, C.R.S.

(V) The Colorado economic development commission shall certify people eligible for the income tax credit granted in this paragraph (b) but shall not certify the income tax credit granted in this paragraph (b) if the certification results in more credits being claimed than are allocated pursuant to section 42-1-225, C.R.S.

(VI) To implement this section, the Colorado economic development commission shall track the amount of the credits authorized and, by January 30 of each year, transmit to the state treasurer a statement of the amount of tax credits certified pursuant to this paragraph (b) for the previous year.

(VII) No later than September 1, 2012, and no later than September 1 of each year thereafter through September 1, 2014, the Colorado economic development commission shall provide the department of revenue with an electronic report of the taxpayers receiving a credit allowed in this paragraph (b) for the preceding calendar year or any fiscal year ending in the preceding calendar year and any credits disallowed pursuant to subparagraph (V) of this paragraph (b). The report shall contain the following information:

(A) The taxpayer's name;

(B) The taxpayer's Colorado account number and federal employer identification number;

(C) The amount of the credit allowed in this section; and

(D) Any associated taxpayers' names, Colorado account numbers, and federal employer identification numbers or social security numbers, if the credit allowed in this section is allocated from a pass-through entity.

(2) (a) For income tax years commencing prior to January 1, 2014, the amount of the credit set forth in subsection (1) of this section shall be subject to the limitations of section 39-22-507.5; except that, in computing the limitations on credit pursuant to section 39-22-507.5 (3), a taxpayer's actual tax liability for the income tax year shall not be reduced by the amount of credits allowed by section 39-30-105 and the limit on that portion of a taxpayer's tax liability that exceeds five thousand dollars shall be fifty percent.

(b) In addition to the limitations set forth in paragraph (a) of this subsection (2), for income tax years commencing on or after January 1, 2011, but prior to January 1, 2014, any taxpayer that is eligible to claim a credit pursuant to subsection (1) of this section in excess of five hundred thousand dollars shall defer claiming any amount of the credit allowed pursuant to this section that exceeds five hundred thousand dollars until an income tax year commencing on or after January 1, 2014. The five hundred thousand dollar limitation specified in this paragraph (b) shall apply to any credit allowed in the income tax years commencing on or after January 1, 2011, but prior to January 1, 2014, including any amount carried forward from a prior year.

(c) (I) For income tax years commencing on or after January 1, 2014, except as provided in subparagraph (II) of this paragraph (c), the amount that may be claimed by a taxpayer for an income tax year is limited to the lesser of:

(A) The sum of up to five thousand dollars of the taxpayer's actual tax liability for the income tax year plus fifty percent of any portion of the tax liability for the income tax year that exceeds five thousand dollars; or

(B) Seven hundred fifty thousand dollars plus any investment tax credit carryovers previously allowed in subsection (2.5) of this section.

(II) (A) A taxpayer may seek a waiver of the limitation specified in subparagraph (I) of this paragraph (c) by completing a written application to the Colorado economic development commission for permission to claim a credit in excess of such limit for the income tax year in which the total qualified investment is made. The application must include an identification of the substantial positive impact the waiver of the limitation would have on investments and on well-paying jobs in the enterprise zone, documentation that demonstrates that without the waiver of the limitation the substantial positive impact on investments and on well-paying jobs in the enterprise zone is not likely to occur, and information that the waiver of the limitation is a substantial factor to the start-up, expansion, or relocation of the taxpayer's business, that receipt of the waiver of the limitation is a major factor in the taxpayer's decision, and that without the waiver of the limitation the taxpayer is not likely to make the qualified investment. In deciding whether to grant the waiver of the limitation, the commission must consider the overall economic health of this state and the economic viability of the arguments made by the taxpayer in support of the taxpayer's application. The Colorado economic development commission may require the taxpayer to provide an independent analysis, at the taxpayer's expense, substantiating the taxpayer's arguments in support of the application. The taxpayer's application must be considered at a regularly scheduled meeting of the Colorado economic development commission where the public is allowed to comment.

(B) The Colorado economic development commission may allow all, part, or none of a taxpayer's application to waive the limitation specified in subparagraph (I) of this paragraph (c). The Colorado economic development commission shall issue a credit certificate that sets forth the amount of the credit that the taxpayer may claim for the income tax year in which the total qualified investment is made. The credit certificate shall be submitted by the taxpayer to the department of revenue with the taxpayer's income tax return for the tax year for which the credit certificate is issued.

(C) In the event the Colorado economic development commission approves a taxpayer's application to waive the limitation specified in subparagraph (I) of this paragraph (c), the Colorado economic development commission shall include its decision in the enterprise zone annual report to the general assembly specified in section 39-30-103 (4)(b.7), including the taxpayer's name, the amount of the credit that the commission allowed the taxpayer to claim, and the Colorado economic development commission's justification for approving the application.

(III) (A) Except as provided in sub-subparagraph (B) of this subparagraph (III), any excess credit allowed pursuant to this paragraph (c) shall be an investment tax credit carryover to each of the fourteen income tax years following the unused credit year.

(B) Any excess credit allowed pursuant to this paragraph (c) for a renewable energy investment made in an income tax year commencing before January 1, 2018, shall be an investment tax credit carryover for twenty-two income tax years following the year the credit was originally allowed.

(IV) The limitation contained in this paragraph (c) on the amount a taxpayer may claim for the income tax year in which the total qualified investment is made does not limit the total amount of the credit allowed under subsection (1) of this section, nor does it limit the ability of a taxpayer to carryover a credit to subsequent tax years as allowed in subparagraph (III) of this paragraph (c) or previously allowed in subsection (2.5) of this section.

(V) In computing the amount that may be claimed by a taxpayer pursuant to this paragraph (c), a taxpayer's actual tax liability for the income tax year shall be derived from the calculated tax before any reduction of credits.

(2.5) (a) (I) Notwithstanding section 39-22-507.5 (7)(b), and except as otherwise provided in section 24-46-104.3 and subsections (2.5)(a)(II) and (2.5)(b) of this section, any excess credit allowed pursuant to this section shall be an investment tax credit carryover to each of the twelve income tax years following the unused credit year.

(II) Any excess credit claimed pursuant to this section for a renewable energy investment made in an income tax year commencing before January 1, 2018, shall be an investment tax credit carryover for twenty income tax years following the year the credit was originally allowed.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), a taxpayer that deferred claiming any credit in excess of five hundred thousand dollars during an income tax year commencing on or after January 1, 2011, but prior to January 1, 2014, pursuant to paragraph (b) of subsection (2) of this section shall be allowed to claim the deferred credit as an investment tax credit carryover for twelve income tax years following the year the credit was originally allowed plus one additional income tax year for each income tax year that the credit was deferred pursuant to paragraph (b) of subsection (2) of this section.

(II) A taxpayer is allowed to claim the deferred credit described in subparagraph (I) of this paragraph (b) for a renewable energy investment made in an income tax year commencing before January 1, 2018, as an investment tax credit carryover for twenty income tax years following the year the credit was originally allowed plus one additional income tax year for each income tax year that the credit was deferred pursuant to paragraph (b) of subsection (2) of this section.

(2.6) (a) Except as provided in section 24-46-104.3 and subsection (2.6)(b) of this section and notwithstanding any other provision in this section, in each income tax year commencing on or after January 1, 2015, but before January 1, 2021, a taxpayer who places a new renewable energy investment in service on or after January 1, 2015, but before January 1, 2021, that results in a credit pursuant to subsection (1) of this section may elect to receive a refund of eighty percent of the amount of such credit as specified in this subsection (2.6)(a) and forego the remaining twenty percent as a cost of such election. If eighty percent of the amount of the credit in subsection (1) of this section is:

(I) Seven hundred fifty thousand dollars or less, the taxpayer receives the full refund in the first tax year; or

(II) More than seven hundred fifty thousand dollars, the taxpayer annually receives a refund not to exceed seven hundred fifty thousand dollars per income tax year until eighty percent of the amount of the credit in subsection (1) of this section for the new renewable energy investment described in the final certification is completely refunded to the taxpayer.

(b) A taxpayer may make the election allowed in paragraph (a) of this subsection (2.6) for more than one new renewable energy investment per income tax year. If a taxpayer makes an election allowed in paragraph (a) of this subsection (2.6) for more than one new renewable energy investment, then the taxpayer may only receive the refund allowed in said paragraph (a) for any subsequent new renewable energy investment after the eighty percent of the amount of the credit for the previous new renewable energy investment is completely refunded to the taxpayer. Under no circumstances may a taxpayer making the required election specified in

paragraph (a) of this subsection (2.6) receive refunds allowed pursuant to this subsection (2.6) totaling more than seven hundred fifty thousand dollars per income tax year.

(c) The taxpayer makes an election described in paragraph (a) of this subsection (2.6) by filing an election statement on such form as prescribed by the department of revenue not later than the due date, including extensions, for filing the tax return for the taxable year during which the new renewable energy investment described in the final certification is placed into service.

(d) The election described in paragraph (a) of this subsection (2.6) only applies to the renewable energy investment described in the final certification.

(e) The limitations on investment tax credit carryovers specified in subsections (2) and (2.5) of this section do not apply to any credit for which a taxpayer elects to seek a refund pursuant to this subsection (2.6). The refund specified in this subsection (2.6) is in addition to any other credits that a taxpayer may claim for other renewable energy investments pursuant to this section.

(f) For purposes of this subsection (2.6), unless the context otherwise requires:

(I) "Final certification" means a document prepared by the Colorado office of economic development and provided to the taxpayer granting approval for a project after it is placed in service.

(II) "Taxpayer" means the entire affiliated group if the taxpayer is part of an affiliated group.

(2.7) (a) The Colorado economic development commission shall annually post on its website or on the Colorado office of economic development's website the following information regarding any enterprise zone investment tax credit certified under this section:

(I) The enterprise zone for the certified credit;

(II) The name of the taxpayer or business;

(III) The type of business;

(IV) The tax year for which the credit is certified;

(V) The total qualified investment reported;

(VI) Whether the credit is for a renewable energy investment as defined in subsection (2.8) of this section;

(VII) The number of employees or contractors hired for a qualified investment;

(VIII) The number of construction personnel hired for a qualified investment;

(IX) The average salary or hourly wage of the employees, contractors, and construction personnel hired for a qualified investment;

(X) Any landowner lease payments made or land purchased for a qualified investment;

(XI) The estimated tax revenues the state and local governments will receive as a result of the qualified investment;

(XII) Any other economic benefits resulting from the qualified investment;

(XIII) The amount of the qualified investment that qualifies for the credit;

(XIV) The calculated credit; and

(XV) The county where the qualified investment is made.

(b) The taxpayer who made the qualified investment shall use reasonable efforts to obtain, estimate, and provide to the Colorado economic development commission the information required to be reported pursuant to this subsection (2.7).

(c) Notwithstanding section 24-1-136 (11), C.R.S., no later than November 1, 2020, and every November 1 thereafter, the Colorado economic development commission shall post on its

website or on the Colorado office of economic development's website the level of renewable energy investment on and after June 5, 2015.

(2.8) For purposes of this section, "renewable energy investment" means an investment that qualifies for the credit specified in paragraph (a) of subsection (1) of this section for projects that generate electricity from eligible energy resources as defined in section 40-2-124 (1), C.R.S.

(3) (Deleted by amendment, L. 96, p. 1127, § 4, effective July 1, 1996.)

(4) (a) (I) In addition to any other credit allowed under this section, for income tax years commencing on or after January 1, 1997, but prior to January 1, 2014, there shall be allowed to any person as a credit against the tax imposed by article 22 of this title an amount equal to ten percent of the total investment made during the taxable year in a qualified job training program.

(II) In addition to any other credit allowed under this section, for income tax years commencing on or after January 1, 2014, there shall be allowed to any person as a credit against the tax imposed by article 22 of this title an amount equal to twelve percent of the total investment made during the taxable year in a qualified job training program.

(b) For purposes of this subsection (4):

(I) "Qualified job training program" means a structured training or basic education program conducted on-site or off-site by the taxpayer or another entity to improve the job skills of employees employed by the taxpayer working predominantly within an enterprise zone.

(II) "Total investment" means:

(A) Land, building, real property improvement, leasehold improvement, or space lease costs and the costs of any capital equipment purchased or leased by the taxpayer and used entirely within an enterprise zone primarily for qualified job training program purposes or to make a training site accessible, when such costs are not the subject of a credit under subsection (1) of this section; and

(B) Expenses of a qualified job training program, whether incurred within or outside of an enterprise zone, including expensed equipment, supplies, training staff wages or fees, training contract costs, temporary space rental, travel expenses, and other expense costs of qualified job training programs for employees working predominantly within an enterprise zone.

(5) Repealed.

(6) For credits claimed for income tax years commencing on or after January 1, 1997, no credit shall be allowed pursuant to this section if the investment resulted from the relocation of a business operation from within the state to an enterprise zone, regardless of whether the original location of the operation was within an enterprise zone, except to the extent such relocation meets the criteria for an expansion pursuant to section 39-30-105 (7)(c)(II) and (7)(c)(III).

**Source: L. 86:** Entire article added, p. 1141, § 1, effective July 1. **L. 87:** (3) added, p. 1470, § 2, effective May 28. **L. 91:** (3) amended, p. 1988, § 7, effective April 20. **L. 92:** (2) amended, p. 2220, § 3, effective May 29. **L. 96:** Entire section amended, p. 1127, § 4, effective July 1. **L. 97:** (5) repealed, p. 1396, § 2, effective June 3. **L. 2007:** (6) amended, p. 352, § 9, effective August 3. **L. 2009:** (1) amended, (HB 09-1298), ch. 417, p. 2313, § 2, effective July 1, 2010. **L. 2010:** (2) and (2.5) amended, (HB 10-1200), ch. 321, p. 1495, § 1, effective May 27; (1)(b)(I), (1)(b)(II), and (1)(b)(IV) amended and (1)(b)(V), (1)(b)(VI), and (1)(b)(VII) added, (HB 10-1285), ch. 423, p. 2191, § 6, effective July 1. **L. 2013:** (2), (2.5)(a), and (4)(a) amended and (2.7) added, (HB 13-1142), ch. 224, p. 1049, § 4, effective May 15; (2)(c)(III), (2.5), and (2.7) amended and (2.8) added, (SB 13-286), ch. 302, pp. 1598, 1597, §§ 2, 1, effective May 28.

**L. 2014:** IP(2)(c)(I) and (2)(c)(I)(B) amended, (HB 14-1163), ch. 83, p. 326, § 1, effective March 27. **L. 2015:** (2.6) added and (2.7) and (2.8) amended, (HB 15-1219), ch. 314, p. 1279, § 2, effective June 5. **L. 2017:** (2.5)(a)(I) and IP(2.6)(a) amended, (HB 17-1356), ch. 237, p. 973, § 3, effective May 24.

**Editor's note:** Amendments to subsection (2.5) by House Bill 13-1142 and Senate Bill 13-286 were harmonized.

**Cross references:** (1) For the legislative declaration in the 2013 act amending subsections (2), (2.5)(a), and (4)(a) and adding subsection (2.7), see section 1 of chapter 224, Session Laws of Colorado 2013.

(2) For the legislative declaration in HB 15-1219, see section 1 of chapter 314, Session Laws of Colorado 2015.

**39-30-105. Credit for new business facility employees - definitions - repeal.** (1) (a) (I) (A) For any income tax year commencing on or after January 1, 1993, but prior to January 1, 2014, any taxpayer who establishes a new business facility in an enterprise zone shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars per income tax year for each new business facility employee, pursuant to subsection (6) of this section, who is working within the zone, prorated according to the number of months the employee was employed by the taxpayer during the income tax year. An employee whose primary duties consist of operating a commercial motor vehicle with a commercial driver's license shall be deemed to be working one hundred percent within the zone if the employee spends no more than five percent of his or her total time at any facility of the employer other than the facility within the zone.

(B) Repealed.

(II) (Deleted by amendment, L. 2002, p. 1107, § 5, effective August 7, 2002.)

(III) For any income tax year commencing on or after January 1, 2003, but prior to January 1, 2014, any taxpayer who establishes a new business facility in an enhanced rural enterprise zone shall be allowed an additional credit against the income tax imposed by article 22 of this title in an amount equal to two thousand dollars per income tax year for each new business facility employee who is working within the enhanced rural enterprise zone, prorated according to the number of months such employee was employed by the taxpayer during the income tax year.

(IV) A new business facility qualifying for credit shall be allowed the credit for each subsequent tax year for each additional new business facility employee in excess of the maximum number employed in any prior tax year. Any credit shall be allowed for a maximum of twelve consecutive months for each new business facility employee employed by the taxpayer.

(b) (I) For any income tax year commencing prior to January 1, 2014, in addition to the credit available under sub-subparagraph (A) of subparagraph (I) of paragraph (a) of this subsection (1) and subparagraph (III) of paragraph (a) of this subsection (1), a taxpayer qualified for such credits shall be allowed for the first two full income tax years while located in an enterprise zone a credit in an amount equal to two hundred dollars for each new business facility employee who is insured under a health insurance plan or program provided through his or her employer. To be eligible for such credit, the employer must contribute fifty percent or more of

the total cost of a health insurance plan or program, and such plan or program must be in accordance with the provisions of article 8 of title 10 or part 1, 2, 3, or 4 of article 16 of title 10, C.R.S., or be a self-insurance program and include partial or complete coverage for hospital and physician services.

(II) Repealed.

(2) For new business facilities in enterprise zones or enhanced rural enterprise zones, the number of new business facility employees engaged or maintained in employment at the new business facility for each taxable year for which the credit is claimed must equal or exceed one person.

(3) (a) For any income tax year commencing prior to January 1, 2014, any taxpayer who operates a business within an enterprise zone that adds value through manufacturing or processing to agricultural commodities shall be allowed in addition to the credit allowed under subsection (1) of this section, while located in the enterprise zone, a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars for each additional new business facility employee in excess of the maximum number employed in any prior tax year.

(b) For any income tax year commencing on or after January 1, 2003, but prior to January 1, 2014, any taxpayer who operates a business within an enhanced rural enterprise zone that adds value through manufacturing or processing to agricultural commodities shall be allowed in addition to the credit allowed under paragraph (a) of this subsection (3) a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars for each additional new business facility employee in excess of the maximum number employed in any prior tax year.

(4) Repealed.

(5) (a) (I) For taxable years beginning on or after January 1, 1993, but prior to January 1, 2014, if the total amount of the credits claimed by a taxpayer pursuant to the provisions of subparagraph (I) of paragraph (a) of subsection (1), paragraph (b) of subsection (1), and paragraph (a) of subsection (3) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of the credits not used as an offset against income taxes in said income tax year shall not be allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding five years and shall be applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period shall not be refundable to the taxpayer.

(II) For taxable years beginning on or after January 1, 2003, but prior to January 1, 2014, if the total amount of credits claimed by a taxpayer pursuant to subparagraph (III) of paragraph (a) of subsection (1) of this section and paragraph (b) of subsection (3) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of credits not used as an offset against income taxes in said income tax year shall not be allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding seven years and shall be applied first to the earliest income tax years possible. Any amount of the credit which is not used during said period shall not be refundable to the taxpayer.

(b) (I) Subparagraph (I) of paragraph (a) of this subsection (5) is effective for income tax years commencing on or after January 1, 1993, but prior to January 1, 2014; except that

application of subparagraph (I) of paragraph (a) of this subsection (5) to the credit described in paragraph (b) of subsection (1) of this section shall be effective for income tax years commencing on or after January 1, 1996, but prior to January 1, 2014.

(II) Subparagraph (II) of paragraph (a) of this subsection (5) is effective for income tax years commencing on or after January 1, 2003, but prior to January 1, 2014.

(c) For purposes of this section, a partnership, S corporation, limited liability company, or other entity electing not to be taxed as a corporation may pass through the credits earned under this section in any tax year to its participating partners, shareholders, or members, hereinafter referred to as the "investors" of the entity, in any percentage the entity chooses, up to the amount of the credit earned in the tax year. Credits earned but unclaimed in a tax year for which the entity elects to be taxed as a corporation may not be distributed to investors in a later tax year for which the entity elects not to be taxed as a corporation. In any tax year for which the entity elects not to be taxed as a corporation, all credits passed through to investors may be carried forward at the investor level for the carryover periods specified in this section.

(d) For purposes of this section, a taxpayer may only claim the new business facility employee credit for employees for whom:

(I) The taxpayer withholds social security, medicare, and income taxes under the taxpayer's own federal and state taxpayer identification numbers; or

(II) The taxpayer is the work-site employer, as defined in section 8-70-114 (2)(a)(VII), C.R.S., and an employee leasing company, as defined in section 8-70-114 (2)(a)(V), C.R.S., as the employing unit for, or co-employer with, the taxpayer, withholds social security, medicare, and income taxes under the employee leasing company's own federal and state taxpayer identification numbers.

(6) (a) The number of new business facility employees during any taxable year shall be determined by dividing by twelve the sum of the number of new business facility employees on the last business day of each month of such taxable year. If the new business facility is in operation for less than the entire taxable year, the number of new business facility employees shall be determined by dividing the sum of the number of new business facility employees on the last business day of each full calendar month during the portion of the taxable year during which the new business facility was in operation by the number of full calendar months during the period.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (6), for the purpose of determining the credit allowed by this section in the case of a facility that qualifies as a new business facility but is a replacement business facility, the number of new business facility employees employed in the operation of the facility shall be reduced by the average number, determined pursuant to paragraph (a) of this subsection (6), of individuals employed in the operation of the facility that the new business facility replaces during the three taxable years preceding the taxable year in which commencement of commercial operations occurs at the new business facility.

(7) As used in this section, unless the context otherwise requires:

(a) "Building" means only structures within which individuals are customarily employed or that are customarily used to house machinery, equipment, or other property.

(b) "Commencement of commercial operations" means the first taxable year that the new business facility is first available for use by the taxpayer, or first capable of being used by the

taxpayer, in the revenue-producing enterprise in which the taxpayer intends to use the new business facility.

(c) (I) "Facility" means any factory, mill, plant, refinery, warehouse, feedlot, building, or complex of buildings located within the state, including the land on which the facility is located and all machinery, equipment, and other real and tangible personal property located at or within the facility and used in connection with the operation of the facility.

(II) (A) If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility eligible for the credit allowed by this section if: The taxpayer's investment in the expansion exceeds one million dollars or the investment is less than one million dollars but the investment in the expansion exceeds one hundred percent of the investment in the original facility prior to expansion; and the expansion otherwise constitutes a new business facility.

(B) The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in paragraph (g) of this subsection (7).

(III) If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility for purposes of the credit allowed by this section if:

(A) The expansion results in the employment of ten or more new business facility employees or, for income tax years commencing on or after January 1, 1996, but prior to January 1, 2014, a ten percent increase in the number of new business facility employees resulting in the employment of at least one full-time new business facility employee, whichever is less, during the taxable year over and above the average number of employees employed in the enterprise zone by the taxpayer during the twelve months immediately prior to the expansion, determined pursuant to subsection (6) of this section; and

(B) The expansion otherwise constitutes a new business facility.

(d) "Net annual rental rate" means the annual rental rate paid by the taxpayer on real and tangible personal property, less any annual rental rate received by the taxpayer from subrentals.

(e) "New business facility" means a facility that satisfies the following requirements:

(I) The facility is operated by the taxpayer in the operation of a revenue-producing enterprise. A facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person. If the taxpayer operates only a portion of the facility in the operation of a revenue-producing enterprise and leases another portion of the facility to another person or does not otherwise use the other portions in the operation of a revenue-producing enterprise, the portion operated by the taxpayer in the operation of a revenue-producing enterprise shall be considered a new business facility if the requirements of subparagraphs (II) and (III) of this paragraph (e) are satisfied.

(II) If the facility was acquired by the taxpayer from another person, the facility was not operated immediately prior to the transfer of title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by any other person in the operation of a revenue-producing enterprise, and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the facility.

(III) The facility is not a replacement business facility.

(f) "New business facility employee" means a person employed by the taxpayer in the operation of a new business facility during the taxable year for which the credit allowed by this

section is claimed. A person shall be deemed an employee if the person performs duties in connection with the operation of the new business facility on:

(I) A regular, full-time basis;

(II) A part-time basis if the person is customarily performing his or her duties at least twenty hours per week throughout the taxable year; or

(III) A seasonal basis if the person performs his or her duties for substantially all of the season customary for the position in which the person is employed.

(g) "New business facility investment" means the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, that constitutes the new business facility or that is used by the taxpayer in the operation of the new business facility during the taxable year for which the credit allowed by this section is claimed. The value of the property during the taxable year shall be:

(I) The original cost of the real and tangible personal property if owned by the taxpayer; or

(II) Eight times the net annual rental rate of the real and tangible personal property if leased by the taxpayer.

(h) (I) "Related taxpayer" means:

(A) A corporation, partnership, limited liability company, trust, or association controlled by the taxpayer;

(B) An individual, corporation, limited liability company, partnership, trust, or association under the control of the taxpayer; or

(C) A corporation, limited liability company, partnership, trust, or association controlled by an individual, corporation, limited liability company, partnership, trust, or association under the control of the taxpayer.

(II) For the purposes of this paragraph (h), unless the context otherwise requires:

(A) "Control of a corporation" means ownership, directly or indirectly, of stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and at least eighty percent of all other classes of stock of the corporation.

(B) "Control of a partnership, limited liability company, or association" means ownership of at least eighty percent of the capital or profits interest in the partnership, limited liability company, or association.

(C) "Control of a trust" means ownership, directly or indirectly, of at least eighty percent of the beneficial interest in the principal or income of the trust.

(i) (I) "Replacement business facility" means a facility, otherwise described in paragraph (e) of this subsection (7) and referred to in this paragraph (i) as a "new facility", which replaces another facility, referred to in this paragraph (i) as an "old facility", located within the state that the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first taxable year in which the credit allowed by this section is claimed. A new facility shall be deemed to replace an old facility if the following conditions are met:

(A) The old facility was operated by the taxpayer or a related taxpayer for more than three full taxable years out of the five taxable years next preceding the taxable year in which commencement of commercial operations occurs at the new facility; and

(B) The old facility was operated by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the new facility.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (i), a facility shall not be considered a replacement business facility if the taxpayer's investment in the new facility exceeds three million dollars or the investment is less than three million dollars but the investment in the new facility exceeds three hundred percent of the investment in the old facility by the taxpayer or related taxpayer. The investment in the new facility and in the old facility shall be determined in the manner provided in paragraph (g) of this subsection (7).

(j) "Revenue-producing enterprise" means an enterprise that engages in the following:

(I) The production, assembly, fabrication, manufacturing, or processing of any agricultural, mineral, or manufactured product;

(II) The storage, warehousing, distribution, or sale of any products of agriculture, mining, or manufacturing;

(III) The feeding of livestock at a feedlot;

(IV) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing;

(V) The performance of services of any type;

(VI) The administrative management of any of the activities listed in subparagraphs (I) to (V) of this paragraph (j); or

(VII) Any combination of any of the activities referred to in subparagraphs (I) to (VI) of this paragraph (j).

(k) "Same or a substantially identical revenue-producing enterprise" means a revenue-producing enterprise in which the products produced or sold, services performed, or activities conducted are the same in character and use and are produced, sold, performed, or conducted in the same manner and to or for the same types of customers as the products, services, or activities produced, sold, performed, or conducted in another revenue-producing enterprise.

(8) This section is repealed, effective December 31, 2019.

**Source: L. 86:** Entire article added, p. 1141, § 1, effective July 1. **L. 87:** (1) and (2) amended and (4) added, p. 1473, § 1, effective May 25; (1) amended and (3) added, p. 1471, § 3, effective May 28. **L. 89:** (1)(a) amended, p. 1521, § 5, effective June 7. **L. 90:** (4) amended, p. 1840, § 20, effective May 31. **L. 91:** (4) amended, p. 1987, § 4, effective January 1, 1992. **L. 91, 1st Ex. Sess.:** (4) repealed, p. 13, § 3, effective July 5. **L. 92:** (1)(a) and (3) amended and (5) added, p. 2219, § 1, effective May 29; (1)(b) amended, p. 1728, § 21, effective July 1. **L. 94:** (1)(a)(I) amended, p. 1990, § 1, effective July 1. **L. 96:** (1)(b) and (5) amended, p. 1129, § 5, effective July 1. **L. 2002:** (1), (2), (3), and (5) amended, p. 1107, § 5, effective August 7. **L. 2003:** (1)(b) amended, p. 2003, § 70, effective May 22. **L. 2007:** (1)(a)(I), (1)(a)(IV), (2), and (3)(a) amended and (6) and (7) added, p. 343, § 2, effective August 3; (5)(c) amended, p. 555, § 2, effective August 3. **L. 2008:** (5)(c) amended and (5)(d) added, p. 16, § 1, effective March 6. **L. 2009:** (5)(d)(II) amended, (SB 09-292), ch. 369, p. 1981, § 117, effective August 5. **L. 2013:** (1)(a)(I), (1)(a)(III), (1)(b), (3), (5)(a), (5)(b), and (7)(c)(III)(A) amended and (8) added, (HB 13-1265), ch. 164, p. 524, § 1, effective May 3; (1)(a)(I) and (1)(b) amended, (HB 13-1142), ch. 224, p. 1052, § 5, effective May 15. **L. 2014:** (1)(a)(I)(B) and (1)(b)(II) repealed, (HB 14-1363), ch. 302, p. 1274, § 43, effective May 31.

**Editor's note:** Amendments to subsections (1)(a)(I) and (1)(b) by House Bill 13-1142 and House Bill 13-1265 were harmonized.

**Cross references:** For the legislative declaration in the 2013 act amending subsections (1)(a)(I) and (1)(b), see section 1 of chapter 224, Session Laws of Colorado 2013.

**39-30-105.1. Credit for new enterprise zone business employees - definitions.** (1) (a) (I) For any income tax year commencing on or after January 1, 2014, any taxpayer who operates a business facility in an enterprise zone is allowed a credit against the income tax imposed by article 22 of this title in an amount equal to one thousand one hundred dollars per income tax year for each business facility employee, pursuant to subsection (5) of this section, who is working within the zone, prorated according to the number of months the employee was employed by the taxpayer during the income tax year. An employee whose primary duties consist of operating a commercial motor vehicle with a commercial driver's license shall be deemed to be working one hundred percent within the zone if the employee spends no more than five percent of his or her total time at any business of the employer other than the business within the zone.

(II) For any income tax year commencing on or after January 1, 2014, any taxpayer who operates a business facility in an enhanced rural enterprise zone is allowed an additional credit against the income tax imposed by article 22 of this title in an amount equal to two thousand dollars per income tax year for each business facility employee who is working within the enhanced rural enterprise zone, prorated according to the number of months such employee was employed by the taxpayer during the income tax year.

(III) A business facility qualifying for the credit is allowed the credit for each subsequent tax year for each business facility employee over the number employed in any prior tax year. Any credit is allowed for a maximum of twelve consecutive months for each business facility employee employed by the taxpayer.

(b) In addition to the credit available under paragraph (a) of this subsection (1), for any income tax year commencing on or after January 1, 2014, a taxpayer qualified under said paragraph (a) is allowed for the first two full income tax years while located in an enterprise zone a credit in an amount equal to one thousand dollars for each business facility employee who is insured under a health insurance plan or program provided through his or her employer. To be eligible for the credit, the employer must contribute fifty percent or more of the total cost of a health insurance plan or program, and such plan or program must be in accordance with the provisions of article 8 of title 10 or part 1, 2, 3, or 4 of article 16 of title 10, C.R.S., or be a self-insurance program and include partial or complete coverage for hospital and physician services.

(2) For business facilities established in an enterprise zone or an enhanced rural enterprise zone, the number of business facility employees engaged or maintained in employment at the business facility for each taxable year for which the credit is claimed must equal or exceed one person.

(3) (a) For any income tax year commencing on or after January 1, 2014, any taxpayer who operates a business within an enterprise zone that adds value through manufacturing or processing to agricultural commodities is allowed in addition to the credit allowed under subsection (1) of this section, while located in the enterprise zone, a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars for each additional business facility employee in excess of the maximum number employed in any prior tax year.

(b) For any income tax year commencing on or after January 1, 2014, any taxpayer who operates a business within an enhanced rural enterprise zone that adds value through

manufacturing or processing to agricultural commodities is allowed in addition to the credit allowed under paragraph (a) of this subsection (3) a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars for each additional business facility employee in excess of the maximum number employed in any prior tax year.

(4) (a) (I) Except as provided in section 24-46-104.3, for any income tax year commencing on or after January 1, 2014, if the total amount of the credits claimed by a taxpayer pursuant to subsections (1)(a)(I), (1)(b), and (3)(a) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of the credits not used as an offset against income taxes in said income tax year is not allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding five years and is applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period is not refundable to the taxpayer.

(II) Except as provided in section 24-46-104.3, for any income tax year commencing on or after January 1, 2014, if the total amount of credits claimed by a taxpayer pursuant to subsections (1)(a)(III) and (3)(b) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of credits not used as an offset against income taxes in said income tax year is not allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding seven years and is applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period is not refundable to the taxpayer.

(b) For purposes of this section, a partnership, S corporation, limited liability company, or other entity electing not to be taxed as a corporation may pass through the credits earned under this section in any tax year to its participating partners, shareholders, or members, hereinafter referred to as the "investors" of the entity, in any percentage the entity chooses, up to the amount of the credit earned in the tax year. Credits earned but unclaimed in a tax year for which the entity elects to be taxed as a corporation may not be distributed to investors in a later tax year for which the entity elects not to be taxed as a corporation. In any tax year for which the entity elects not to be taxed as a corporation, all credits passed through to investors may be carried forward at the investor level for the carryover periods specified in this section.

(c) For purposes of this section, a taxpayer may only claim the business facility employee credit for employees for whom:

(I) The taxpayer withholds social security, medicare, and income taxes under the taxpayer's own federal and state taxpayer identification numbers; or

(II) The taxpayer is the work-site employer, as defined in section 8-70-114 (2)(a)(VII), C.R.S., and an employee leasing company, as defined in section 8-70-114 (2)(a)(V), C.R.S., as the employing unit for, or coemployer with, the taxpayer, and withholds social security, medicare, and income taxes under the employee leasing company's own federal and state taxpayer identification numbers.

(5) (a) The number of business facility employees during any taxable year is determined by dividing by twelve the sum of the number of business facility employees on the last business day of each month of such taxable year. If the business facility is in operation for less than the entire taxable year, the number of business facility employees is determined by dividing the sum of the number of business facility employees on the last business day of each full calendar month

during the portion of the taxable year during which the business facility was in operation by the number of full calendar months during the period.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (5), for the purpose of determining the credit allowed by this section in the case of a facility that qualifies as a business facility but is a replacement business facility, the number of business facility employees employed in the operation of the facility is reduced by the average number, determined pursuant to paragraph (a) of this subsection (5), of individuals employed in the operation of the facility that the business facility replaces during the three taxable years preceding the taxable year in which commencement of commercial operations occurs at the business facility.

(6) As used in this section, unless the context otherwise requires:

(a) "Building" means only structures within which individuals are customarily employed or that are customarily used to house machinery, equipment, or other property.

(b) "Business facility" means a facility that is operated by the taxpayer in the operation of a revenue-producing enterprise. A facility is not considered a business facility in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person. If the taxpayer operates only a portion of the facility in the operation of a revenue-producing enterprise and leases another portion of the facility to another person or does not otherwise use the other portions in the operation of a revenue-producing enterprise, the portion operated by the taxpayer in the operation of a revenue-producing enterprise is considered a business facility.

(c) "Business facility employee" means a person employed by the taxpayer in the operation of a business facility during the taxable year for which the credit allowed by this section is claimed. A person is deemed an employee if the person performs duties in connection with the operation of the business facility on:

(I) A regular, full-time basis;

(II) A part-time basis if the person is customarily performing his or her duties at least twenty hours per week throughout the taxable year; or

(III) A seasonal basis if the person performs his or her duties for substantially all of the season customary for the position in which the person is employed.

(d) "Commencement of commercial operations" means the first taxable year that the business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue-producing enterprise in which the taxpayer intends to use the business facility.

(e) "Facility" means any factory, mill, plant, refinery, warehouse, feedlot, building, or complex of buildings located within the state, including the land on which the facility is located and all machinery, equipment, and other real and tangible personal property located at or within the facility and used in connection with the operation of the facility.

(f) "Revenue-producing enterprise" means an enterprise that engages in the following:

(I) The production, assembly, fabrication, manufacturing, or processing of any agricultural, mineral, or manufactured product;

(II) The storage, warehousing, distribution, or sale of any products of agriculture, mining, or manufacturing;

(III) The feeding of livestock at a feedlot;

(IV) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing;

(V) The performance of services of any type;

(VI) The administrative management of any of the activities listed in subparagraphs (I) to (V) of this paragraph (f); or

(VII) Any combination of any of the activities referred to in subparagraphs (I) to (VI) of this paragraph (f).

**Source: L. 2013:** Entire section added, (HB 13-1265), ch. 164, p. 526, § 2, effective May 3; (1)(a)(I) and (1)(b) amended, (HB 13-1265), ch. 164, p. 530, § 3, effective May 15. **L. 2017:** (4)(a) amended, (HB 17-1356), ch. 237, p. 973, § 4, effective May 24.

**39-30-105.5. Credit against Colorado income taxes based on expenditures for research and experimental activities.** (1) Any taxpayer who makes expenditures in research and experimental activities, as defined in section 174 of the federal "Internal Revenue Code of 1986", as amended, which activities are conducted in an enterprise zone for the purpose of carrying out a trade or business, shall be allowed a credit against the income tax imposed by article 22 of this title as follows:

(a) For income tax years commencing on or after January 1, 1989, an amount equal to three percent of the amount by which the amount expended for research and experimental activities in the enterprise zone in the income tax year of the taxpayer exceeds the taxpayer's average of the total actual expenditures for such purposes made in the same area as that which comprises the enterprise zone in the next preceding two income tax years.

(b) Repealed.

(2) Except as provided in section 24-46-104.3, in any one tax year, the amount of such credit allowable for deduction from the taxpayer's tax liability shall be the total of:

(a) Twenty-five percent of the total amount of such credit, with the balance carrying forward to the next tax year; and

(b) Any applicable carryforward amount, which amount shall be twenty-five percent of the original amount of such credit. The amount by which the credit allowed by subsection (1) of this section in any one taxable year exceeds the credit allowed to be deducted pursuant to paragraph (a) of this subsection (2) may be carried forward until the total amount of the credit is used.

(3) As used in this section, the term "expenditures in research and experimental activities" means expenditures made for such purposes, other than expenditures of moneys made available to the taxpayer pursuant to federal or state law, which are paid as expenses under the provisions of the federal "Internal Revenue Code of 1986", as amended.

**Source: L. 88:** Entire section added, p. 1349, § 1, effective July 1. **L. 89:** (1)(a) amended and (1)(b) repealed, pp. 1522, 1523, §§ 7, 11, effective June 7. **L. 2017:** IP(2) amended, (HB 17-1356), ch. 237, p. 974, § 5, effective May 24.

**39-30-105.6. Credit against tax - rehabilitation of vacant buildings.** (1) For income tax years commencing on or after January 1, 1989, any taxpayer who is the owner or tenant of a building which is located in an enterprise zone, which is at least twenty years old, and which has

been unoccupied for at least two years and who makes qualified expenditures for the purpose of rehabilitating said building shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to twenty-five percent of the aggregate qualified expenditures per building or fifty thousand dollars per building, whichever is less.

(2) Any taxpayer who is allowed a credit for costs incurred in the rehabilitation of property pursuant to the provisions of section 38 of the federal "Internal Revenue Code of 1986", as amended, shall not be allowed the credit provided for in subsection (1) of this section.

(3) If the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding five years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(4) As used in this section, unless the context otherwise requires: "Qualified expenditures" means expenditures associated with any exterior improvements, structural improvements, mechanical improvements, or electrical improvements necessary to rehabilitate for commercial use a building which meets the requirements established in subsection (1) of this section. "Qualified expenditures" includes, but shall not be limited to, expenditures associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, sprinkler systems installed for fire protection purposes, roofing and flashing, exterior repair, cleaning, tuckpointing, and cleanup. "Qualified expenditures" does not include expenditures, commonly referred to as soft costs, which include, but are not limited to, costs associated with appraisals; architectural, engineering, and interior design fees; legal, accounting, and realtor fees; loan fees; sales and marketing; closing; building permit, use, and inspection fees; bids; insurance; project signs and phones; temporary power; bid bonds; copying; and rent loss during construction. "Qualified expenditures" also does not include costs associated with acquisition; interior furnishings; new additions except as may be required to comply with building and safety codes; excavation; grading; paving; landscaping; and repairs to outbuildings.

(5) Any form filed with the department of revenue for the purpose of claiming the credit allowed by this section shall be accompanied by a copy of the certification of the qualified nature of the expenditures furnished to the taxpayer by the enterprise zone administrator and by copies of any receipts, bills, or other documentation of the qualified expenditures claimed for the purpose of receiving the credit.

**Source: L. 89:** Entire section added, p. 1519, § 1, effective June 7.

**39-30-106. Sales and use tax - machinery and equipment exempted.** (1) (a) On or after July 1, 1995, purchases of machinery or machine tools, or parts thereof, and materials for the construction or repair of machinery or machine tools, in excess of five hundred dollars to be used solely and exclusively in an enterprise zone in manufacturing tangible personal property, for sale or profit, whether or not such purchases are capitalized or expensed, are exempt from taxation under article 26 of this title.

(b) The provisions of section 39-26-709 (1) shall govern the administration of this subsection (1), except to the extent that such section and this subsection (1) are inconsistent. For

purposes of this section, in addition to the definition of "manufacturing" found in section 39-26-709 (1)(c)(III), "manufacturing" shall include refining, blasting, exploring, mining and mined land reclamation, quarrying for, processing and beneficiation, or otherwise extracting from the earth or from waste or stockpiles or from pits or banks any natural resource.

(2) Repealed.

**Source: L. 86:** Entire article added, p. 1141, § 1, effective July 1. **L. 87:** Entire section amended, p. 1451, § 26, effective June 22. **L. 88:** Entire section amended, p. 1317, § 15, effective May 29. **L. 89:** Entire section amended, p. 1523, § 8, effective June 7. **L. 91:** Entire section amended, p. 2428, § 2, effective June 8; entire section amended, p. 1975, § 1, effective July 1, 1992. **L. 95:** (1)(a) amended, p. 137, § 2, effective April 7. **L. 2004:** (1)(b) amended, p. 1047, § 21, effective July 1. **L. 2007:** (1)(b) amended, p. 1177, § 6, effective May 23.

**Editor's note:** (1) Subsection (2)(b) provided for the repeal of subsection (2) unless a certified or licensed air carrier of persons or property executed or delivered to the state of Colorado, before July 1, 1994, a letter of commitment to operate an aircraft maintenance facility employing more than two thousand persons in the state. (See L. 91, p. 1975.)

(2) Amendments to this section by Senate Bill 91-131 and House Bill 91-1182 were harmonized.

**Cross references:** For the legislative declaration contained in the 2007 act amending subsection (1)(b), see section 1 of chapter 281, Session Laws of Colorado 2007.

**39-30-107. Zoning regulations and labor agreements not affected.** Nothing in this article shall affect any zoning measure or labor-management agreement in effect when an enterprise zone is established or adopted or entered into after the establishment.

**Source: L. 86:** Entire article added, p. 1142, § 1, effective July 1.

**39-30-107.5. Taxable property valuations - sales taxes - incentives - definitions.** (1) (a) Notwithstanding any law to the contrary, any special district, county, municipality, or city and county within an enterprise zone may negotiate with any taxpayer who qualifies for a credit pursuant to section 39-30-105 or 39-30-105.1 for an incentive payment or credit equal to not more than the amount of the taxes levied upon the taxable property of the taxpayer; but in no instance shall any such negotiation result in such an incentive payment or credit which is greater than the difference between the current property tax liability and the tax liability for the same property for the year preceding the year in which the enterprise zone was approved.

(b) A special district shall not enter into an agreement pursuant to the provisions of this subsection (1) unless, prior to or simultaneous with the execution of the agreement, the taxpayer also enters into an agreement with a municipality or county pursuant to this section.

(2) Notwithstanding any law to the contrary, any county, municipality, or city and county within an enterprise zone may negotiate with any taxpayer who qualifies for a credit pursuant to section 39-30-105 or 39-30-105.1 a refund of the sales taxes levied by such county, municipality, or city and county for the purchase of equipment, machinery, machine tools, or supplies used in the taxpayer's business in the enterprise zone.

(3) As used in this section, unless the context otherwise requires:
(a) and (b) Repealed.
(c) "Special district" means a special district as defined in section 32-1-103 (20), C.R.S.

**Source: L. 87:** Entire section added, p. 1472, § 4, effective May 28. **L. 92:** Entire section amended, p. 2220, § 4, effective May 29. **L. 94:** (1) amended, p. 2834, § 5, effective January 1, 1995. **L. 95:** Entire section amended, p. 1213, § 2, effective May 31. **L. 2005:** (1) amended and (3)(c) added, pp. 107, 108, §§ 2, 3, effective August 8. **L. 2007:** IP(3), (3)(a), and (3)(b) amended, p. 352, § 10, effective August 3. **L. 2014:** (1)(a) and (2) amended and (3)(a) and (3)(b) repealed, (HB 14-1363), ch. 302, p. 1275, § 44, effective May 31.

**39-30-107.6. Parallel credits and refunds - insurance premium taxes.** (1) Any taxpayer who is subject to the tax on insurance premiums established by sections 10-3-209, 10-5-111, and 10-6-128, C.R.S., and who is therefore exempt from the payment of income tax and who is otherwise eligible to claim a credit or refund pursuant to this article may claim such credit or refund against such insurance premium tax to the same extent as the taxpayer would have been able to claim such credit or refund against income tax.
(2) For purposes of administering this section, any reference in this article to "income tax year" means the calendar year.

**Source: L. 89:** Entire section added, p. 1519, § 1, effective June 7.

**39-30-108. Rules and regulations.** (1) In accordance with article 4 of title 24, C.R.S., the executive director of the department of revenue shall promulgate rules and regulations for the implementation of sections 39-30-103.5 to 39-30-107.5.
(2) In accordance with article 4 of title 24, C.R.S., the commissioner of insurance shall promulgate rules and regulations for the implementation of section 39-30-107.6.

**Source: L. 86:** Entire article added, p. 1142, § 1, effective July 1. **L. 89:** Entire section amended, p. 1523, § 9, effective June 7.

**39-30-109. Repeal of article. (Repealed)**

**Source: L. 86:** Entire article added, p. 1142, § 1, effective July 1. **L. 87:** Entire section amended, p. 1472, § 5, effective May 28. **L. 89:** Entire section amended, p. 1523, § 10, effective June 7. **L. 90:** Entire section amended, p. 1753, § 2, effective May 24. **L. 91, 1st Ex. Sess.:** Entire section repealed, p. 13, § 4, effective July 5.

**39-30-110. Electronic submissions.** (1) The Colorado office of economic development shall collaborate with the Colorado economic development commission and the department of revenue to develop the capability to allow taxpayers that intend to claim one or more income tax credits pursuant to this article to obtain any necessary certification, including pre-certification requirements, from the enterprise zone administrator in an electronic format. The Colorado office of economic development shall implement the electronic submission system by January 1, 2013. If the Colorado office of economic development is unable to implement an electronic

submission system by January 1, 2013, the office shall submit a report to the Colorado economic development commission and the general assembly that explains the reasons that the implementation of such system has not been accomplished.

(2) Nothing in subsection (1) of this section shall be construed to prohibit a taxpayer that intends to claim one or more income tax credits pursuant to this article from submitting printed copies of certification forms, including precertification requirements.

**Source: L. 2010:** Entire section added, (SB 10-162), ch. 395, p. 1878, § 3, effective January 1, 2012.

**39-30-111. Department of revenue - enterprise zone data - electronic filing - submission of carryforward schedule.** (1) For the 2012 income tax year and each income tax year thereafter, any taxpayer that claims one or more income tax credits pursuant to this article shall file a state income tax return with the department of revenue in an electronic format, unless filing in an electronic format would cause undue hardship to the taxpayer because the taxpayer does not have access to a computer, or does not have sufficient internet access, internet capability, or computer knowledge to file income taxes electronically.

(2) For the 2012 income tax year and each income tax year thereafter, any taxpayer that claims one or more income tax credits pursuant to this article shall submit to the department of revenue, along with the taxpayer's state income tax return, a full carryforward schedule for each income tax credit claimed pursuant to this article.

(3) For the 2012 income tax year and each income tax year thereafter, the department of revenue shall aggregate and report data on all of the income tax credits that are claimed pursuant to this article for each income tax year. The department shall categorize such aggregated data by the date that the income tax credit was certified by an enterprise zone administrator, the specific income tax credit allowed pursuant to this article that each taxpayer was authorized to claim, and the total amount of the income tax credits claimed for each income tax credit allowed pursuant to this article.

(4) The department of revenue shall submit the data collected pursuant to subsection (2) of this section and aggregated pursuant to subsection (3) of this section to the Colorado office of economic development on August 1, 2013, and on August 1 each year thereafter.

**Source: L. 2010:** Entire section added, (SB 10-162), ch. 395, p. 1878, § 3, effective January 1, 2012. **L. 2011:** (4) amended, (HB 11-1303), ch. 264, p. 1177, § 97, effective January 1, 2012.

**39-30-112. Data provided to department of revenue.** (1) On or before September 30 of each calendar year, the director of the Colorado office of economic development or the director's designee shall transmit to the department of revenue the data regarding income tax credits allowed pursuant to this article that are certified by enterprise zone administrators from January 1 through June 30 of the same calendar year.

(2) On or before March 31 of each calendar year, the director of the Colorado office of economic development or the director's designee shall transmit to the department of revenue the data regarding income tax credits allowed pursuant to this article that are certified by enterprise zone administrators from July 1 through December 31 of the previous calendar year.

**Source: L. 2010:** Entire section added, (SB 10-162), ch. 395, p. 1879, § 3, effective January 1, 2012.

## ARTICLE 30.5

Rural Jump-start Zone Act

**39-30.5-101. Short title.** This article shall be known and may be cited as the "Rural Jump-start Zone Act".

**Source: L. 2015:** Entire article added, (SB 15-282), ch. 186, p. 607, § 1, effective May 13.

**39-30.5-102. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) While overall there are improvements to the Colorado economy, there still exists a significant contraction of local economies in certain areas of the state;

(b) Importantly, those areas are experiencing increased economic downturn as measured by changes in such factors as population, employment, weekly wage, assessed value of all property, and concentration of pupils eligible for free lunch; and

(c) Colorado's many diverse aspects are what make it such a unique and wonderful state, with varying economic sectors and regions making its strength greater than the sum of its parts. It is imperative that all sectors of the state be kept independently strong and be given the chance to improve, prosper, and contribute to the whole, from which all benefit. The general assembly is committed to reaching out to all such areas to ensure this goal is met.

(2) The general assembly further finds and declares that establishing certain rural jump-start zones is best suited to bring about the economic vitality so critically needed in those regions.

(3) The general assembly finds that, by attracting businesses that are completely new to Colorado, economic growth will occur in distressed counties without negatively impacting other areas of the state and, while certain taxes, such as business personal property taxes, will not be collected within the rural jump-start zone, the net impact of those uncollected taxes will result in a net positive impact to the state, the distressed county, and the interested municipality.

**Source: L. 2015:** Entire article added, (SB 15-282), ch. 186, p. 607, § 1, effective May 13.

**39-30.5-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Colorado economic development commission" or "commission" means the Colorado economic development commission created in section 24-46-102, C.R.S.

(2) "Credit certificate" means a statement issued by the commission certifying that the new business or new hire qualifies for an income tax credit allowed in section 39-30.5-105. The credit certificate shall not specify the amount of the credit, but must specify that the new business or new hire is eligible for the credit.

(3) "Department" means the department of revenue.

(4) "Distressed county" means a county with a population of less than two hundred fifty thousand and that reflects indicators of economic distress such as:

(a) Per capita income that is substantially below the statewide average;

(b) Local gross domestic product or similar performance measures that are substantially below the statewide average over the preceding five-year period;

(c) Unemployment levels that are substantially above the statewide average over the preceding five-year period;

(d) A net loss of people of workforce age measured over the preceding five-year period, or a failure to recover from a loss over the preceding ten-year period; or

(e) A countywide concentration of pupils eligible for free lunch pursuant to the federal "Richard B. Russell National School Lunch Act", 42 U.S.C. sec. 1751 et seq., greater than the statewide average concentration of pupils eligible for free lunch.

(5) "Guidelines" means the guidelines developed by the commission as specified in section 39-30.5-104 (1).

(6) "Municipality" means a municipality as defined in section 31-1-101 (6), C.R.S., with boundaries wholly or partly within the distressed county's boundaries.

(7) "New business" means a business that:

(a) Is not operating in the state at the time it submits its application to a state institution of higher education to participate in the rural jump-start zone program;

(b) Is not moving existing jobs into the rural jump-start zone from another area in the state;

(c) Hires at least five new hires;

(d) Is not substantially similar in operation to and does not directly compete with the core function of a business that is operating in the state at the time the new business submits its application to a state institution of higher education to participate in the rural jump-start zone program; and

(e) Adds to the economic base and exports goods and services outside the distressed county.

(8) "New hire" means an individual who has performed labor or services in the rural jump-start zone for the new business for more than six months from the date hired and for which such individual receives a federal form W-2 and where the job performed by the individual:

(a) Is either a full-time, wage-paying job or is equivalent to a full-time, wage-paying job requiring at least thirty-five hours per week; and

(b) Has a salary or compensation equal to or greater than the county average annual wage.

(9) "Rural jump-start zone" means an area within the boundaries of a distressed county that is either:

(a) In one or more incorporated portions of the distressed county if the municipality provides the commission with a general resolution as described in section 39-30.5-106 agreeing to provide incentive payments, exemptions, or credits to offset the imposition of business personal property tax on and, if the municipality wishes, to offset the imposition of any other municipal tax on all new businesses in order to be a participant in the rural jump-start zone program;

(b) In one or more incorporated portions of the distressed county if the municipality provides the commission with a limited resolution as described in section 39-30.5-106 that

indicates the municipality agrees to only provide incentive payments, exemptions, or credits to offset the imposition of business personal property tax on and, if the municipality wishes, to offset the imposition of any other municipal tax on a specific new business in order to be a limited participant in the rural jump-start zone program; or

(c) In the unincorporated portions of the distressed county.

(10) "Rural jump-start zone program" means the rural jump-start zone program created in this article.

(11) "State institution of higher education" means a state institution of higher education as defined in section 23-18-102 (10), C.R.S., a local district college, or an area technical college that:

(a) Has a campus located in the distressed county; or

(b) Includes a distressed county in the community college's service area or the regional education provider's service area.

**Source: L. 2015:** Entire article added, (SB 15-282), ch. 186, p. 608, § 1, effective May 13. **L. 2016:** IP(11) amended, (HB 16-1082), ch. 58, p. 153, § 45, effective August 10.

**39-30.5-104. Rural jump-start zone program requirements - commission guidelines - definitions.** (1) (a) The commission shall develop guidelines for the administration of the rural jump-start zone program created in this article, including, but not limited to:

(I) Application requirements;

(II) Guidelines regarding the issuing of credit certificates; and

(III) Guidelines concerning the process by which the commission will determine whether a new business is not substantially similar in operation to and does not directly compete with the core function of a business that is operating in the state at the time the new business submits its application to a state institution of higher education to participate in the rural jump-start zone program.

(b) The guidelines must be posted on the Colorado office of economic development's website no later than December 1, 2015.

(c) In developing the guidelines, the commission shall follow the policies of the Colorado commission on higher education regarding service areas and regional education providers.

(2) No later than December 1, 2015, the commission shall determine which of the state's counties are distressed counties. If a distressed county is interested in participating in the rural jump-start zone program, the distressed county shall provide the commission with a resolution described in section 39-30.5-106.

(3) Each distressed county shall retain its designation as a distressed county for three years from the date of the designation. After the three-year period, the commission shall review the designation. If the commission determines that the county is no longer distressed, the new business and the new hires retain the benefits specified in section 39-30.5-105 for the remaining portion of the four-year period outlined in that section, or the remaining extended period if the commission grants an extension of the period pursuant to section 39-30.5-105 (1)(a)(II), (2)(a)(II), or (3)(b).

(4) (a) A state institution of higher education intending to participate in the rural jump-start zone program shall adopt a conflict of interest policy. The conflict of interest policy must provide that:

(I) A representative of the state institution of higher education may not use the relationship between the state institution of higher education and the new business as a means for inurement or private benefit to the representative of the state institution of higher education, any relative of such representative, or any business interests of such representative;

(II) A person who engages in the business of selling goods or services to a state institution of higher education, an employee of such person, or a person with a business interest in such person's business shall not vote on or participate in the administration by the state institution of higher education of any transaction with such business; and

(III) (A) Upon becoming aware of an actual or potential conflict of interest, a representative of the state institution of higher education shall advise the chief academic officers or executive director of the institution of the conflict.

(B) Each state institution of higher education shall maintain a written record of all disclosures made pursuant to sub-subparagraph (A) of this subparagraph (III).

(C) By January 31, 2016, and by January 31 of each year thereafter, a state institution of higher education shall provide the record maintained under sub-subparagraph (B) of this subparagraph (III) to the commission.

(b) For the purposes of a conflict-of-interest policy developed under paragraph (a) of this subsection (4):

(I) "Business interest" means that a representative:

(A) Owns or controls ten percent or more of the stock of the entity; or

(B) Serves as an officer, director, or partner of the entity.

(II) "Relative" means any person living in the same household as the representative of the state institution of higher education, any person who is a direct descendant of the representative's grandparents, or the spouse of such representative.

(III) "Representative of the state institution of higher education" means any employee with decision-making authority over the rural jump-start zone program.

(5) A new business shall apply to a state institution of higher education to participate in a rural jump-start zone program. The state institution of higher education shall require the new business to provide documentation that the new business meets the definition of new business as specified in section 39-30.5-103 (7) and that the new hires will meet the definition of new hire as specified in section 39-30.5-103 (8). If the state institution of higher education approves the new business, then the state institution of higher education shall apply to the commission for the approval of a rural jump-start zone as specified in subsection (6) of this section and approval of the new business for the rural jump-start zone program benefits as specified in subsection (7) of this section.

(6) (a) Upon approving a new business as specified in subsection (5) of this section, the state institution of higher education shall submit a complete written application for approval for a rural jump-start zone to the commission by the deadline established in the commission's guidelines. The application must include:

(I) Identification of the state institution of higher education and identification of either the distressed county in which a campus is located or the distressed county that is included in the community college's service area or the regional education provider's service area;

(II) Identification of the new business and documentation indicating that requirements for the new business have been met, including an estimate of the number of new hires that the new business anticipates it will hire;

(III) Satisfactory documentation that there exists a relationship between the new business and the state institution of higher education. Such documentation must show that:

(A) The relationship will result in positive benefits to the community and the local economy; and

(B) The mission and activities of the new business align with or further the academic mission of the state institution of higher education.

(IV) Identification of the municipalities with boundaries wholly or partly within the distressed county's boundaries;

(V) A resolution as described in section 39-30.5-106 from each interested municipality;

(VI) A description of the rural jump-start zone boundaries; and

(VII) Any other information that the commission deems necessary as specified in the commission's guidelines.

(b) A state institution of higher education may also submit a complete written application for approval for a rural jump-start zone to the commission by the deadlines established in the commission's guidelines when such state institution of higher education has not yet approved a new business as specified in subsection (5) of this section. In this case, the application must include:

(I) Identification of the state institution of higher education and identification of either the distressed county in which a campus is located or the distressed county that is included in the community college's service area or the regional education provider's service area;

(II) Identification of the municipalities with boundaries wholly or partly within the distressed county's boundaries;

(III) A resolution as described in section 39-30.5-106 from each interested municipality;

(IV) A description of the rural jump-start zone boundaries; and

(V) Any other information that the commission deems necessary as specified in the commission's guidelines.

(7) (a) The commission shall, at a public meeting properly noticed, review each application for a rural jump-start zone submitted by a state institution of higher education. Based on the application submitted and the commission's guidelines, the commission may approve the rural jump-start zone and may approve the new business for the rural jump-start zone program benefits specified in section 39-30.5-105; except that the commission may not approve more than three rural jump-start zones for the 2016 calendar year and may not approve any rural jump-start zones or approve any new businesses for the rural jump-start zone program benefits on and after January 1, 2021. The commission may only approve a new business for the rural jump-start zone program benefits if the commission is satisfied that the new business meets the definition of new business as specified in section 39-30.5-103 (7), that the new hires will meet the definition of new hire as specified in section 39-30.5-103 (8), and that the new business will be located in the rural jump-start zone for which the state institution of higher education sought approval.

(b) (I) A new business that receives approval as specified in paragraph (a) of this subsection (7) for the rural jump-start zone program benefits must submit a request for the issuance of a credit certificate by the deadlines established in the commission's guidelines. The request must include an estimated amount, as calculated by the new business, of the income tax

credits for the new business and any new hires and the sales and use tax refunds allowed in section 39-30.5-105 and an estimated amount, as calculated by the new business, of incentive payments, exemptions, or refunds provided by local governments as specified in section 39-30.5-106.

(II) The commission shall not issue more than a total of two hundred credit certificates in one income tax year for all new hires employed by all new businesses in each rural jump-start zone that receive approval as specified in paragraph (a) of this subsection (7); except that the commission has the discretion to increase this limit to three hundred credit certificates if the new business is in one of the fourteen industries that the commission targets for economic development in the state.

(III) If the benefit is for new hires, the commission shall provide the credit certificates for such new hires directly to the new business, and the new business shall provide a copy of the credit certificate to the new hire with their federal form W-2.

(IV) If the commission determines the new business or new hire no longer meets the requirements set forth in this article, the commission shall not issue credit certificates for the income tax credits allowed in section 39-30.5-105 (1) and (2) and shall not notify the department that the new business is eligible for the sales and use tax refund allowed in section 39-30.5-105 (3).

(8) The commission may review a new business or new hire up to twelve months following the issuance of any credit certificates to ensure the requirements in this article are being met.

(9) The Colorado office of economic development created in section 24-48.5-101, C.R.S., may make recommendations to the commission regarding any of the commission's duties and responsibilities outlined in this article, may provide staff assistance to the commission, and may assist the commission in administering the provisions of this article.

**Source: L. 2015:** Entire article added, (SB 15-282), ch. 186, p. 610, § 1, effective May 13.

**39-30.5-105. Rural jump-start zone program benefits.** (1) **New business income tax credit.** (a) (I) If a new business locates in a rural jump-start zone during the income tax years commencing on or after January 1, 2016, but before January 1, 2021, and the commission has approved the new business for the rural jump-start zone program benefits as specified in section 39-30.5-104 (7)(a), then except as provided in subparagraph (II) of this paragraph (a), the new business is entitled to receive an annual income tax credit in an amount equal to one hundred percent of the income taxes imposed by article 22 of this title on the income derived from its activities in the rural jump-start zone for four consecutive income tax years beginning with the first income tax year designated by the commission in the first credit certificate. The commission shall conduct an annual review to verify that the new business continues to meet the requirements set forth in this article and shall issue a credit certificate to the new business for every income tax year during the four-year period only if the commission is satisfied the requirements are being met.

(II) A new business may seek an extension of the four-year benefits period specified in subparagraph (I) of this paragraph (a) by completing a written application to the commission. The extension may not exceed an additional four years. The application for extension must

include an explanation of the new business' need for the extension and any other information the commission deems necessary. In deciding whether to grant the extension, the commission must consider the state of the economy in the rural jump-start zone, the estimated demand for tax credits allowed in this section for other new businesses, and the importance of these credits in incentivizing the new business. The extension application must be considered at a regularly scheduled meeting of the commission where the public is allowed to comment.

(b) To claim the income tax credit allowed in this section, the new business shall attach a copy of the credit certificate to its state income tax return. No tax credit is allowed under this section unless the new business provides the copy of the credit certificate with its filed state income tax return.

(c) If a new business has income both from operations within the rural jump-start zone and operations outside of the rural jump-start zone, the new business shall apportion its income between the operations within and outside the rural jump-start zone in accordance with rules promulgated by the department in order to calculate the amount of income tax credit. Such rules shall calculate the value of the credit, as nearly as practicable, to be equal to the tax due on the income generated by the new business that relates to its activities in the rural jump-start zone on the basis of the new business' property and payroll in the rural jump-start zone relative to its property and payroll everywhere.

(d) The commission shall, in a sufficiently timely manner to allow the department to process returns claiming the income tax credits allowed by this section, provide the department with an electronic report of each new business that the commission approved for the rural jump-start zone program benefits as specified in section 39-30.5-104 (7)(a) for the preceding calendar year that includes the following information:

(I) The taxpayer's name; and

(II) The taxpayer's social security number or the taxpayer's Colorado account number and federal employer identification number.

(e) If a new business receiving an income tax credit allowed in this subsection (1) is a partnership, limited liability company, S corporation, or similar pass-through entity, the commission shall issue credit certificates that allocate the credit among the new business' partners, shareholders, members, or other constituent entities in accordance with their ownership interests. The new business shall certify to the commission, and the commission shall provide to the department no later than the January 15 following each income tax year for which the new business is claiming a credit, the identity and ownership percentage, including such identifying information as the department may require, of each partner, shareholder, member, or other constituent entity of the new business.

(2) **New hire income tax credit.** (a) (I) Except as provided in section 39-30.5-104 (7)(b)(II) and subparagraph (II) of this paragraph (a), if a new hire is employed by a new business, and the commission has approved the new business for the rural jump-start zone program benefits as specified in section 39-30.5-104 (7)(a), for income tax years commencing on or after January 1, 2016, but before January 1, 2021, new hires are entitled to receive an income tax credit in an amount equal to one hundred percent of the income taxes imposed by article 22 of this title on the new hire's wages paid by the new business for work performed in the rural jump-start zone for four consecutive income tax years beginning with the first income tax year in which the new hire is employed by the new business. The commission shall conduct an annual review to verify that the new hire and the new business continue to meet the requirements set

forth in this article and shall issue a credit certificate to the new business for each new hire for every income tax year during the four-year period only if the commission is satisfied the requirements are being met.

(II) A new business may seek an extension of the four-year benefits period specified in subparagraph (I) of this paragraph (a) by completing a written application to the commission. The extension may not exceed an additional four years. The application for extension must include an explanation of the new business' need for the extension and any other information the commission deems necessary. In deciding whether to grant the extension, the commission must consider the state of the economy in the rural jump-start zone, the estimated demand for tax credits allowed in this section for other new businesses, and the importance of these credits in incentivizing the new business. The extension application must be considered at a regularly scheduled meeting of the commission where the public is allowed to comment.

(b) To claim the income tax credit allowed in this section, the new hire shall attach a copy of the credit certificate to the new hire's state income tax return. No tax credit is allowed under this section unless the new hire provides the copy of the credit certificate with his or her filed state income tax return.

(c) The commission shall, in a sufficiently timely manner to allow the department to process returns claiming the credit allowed by this section, provide the department with an electronic report of each new hire receiving a credit certificate as allowed in this section for the preceding calendar year that includes the following information:

(I) The new hire's name; and

(II) The new hire's social security number.

(3) **New business sales and use tax refund.** (a) Each new business is eligible for a refund for all sales and use taxes imposed under parts 1 and 2 of article 26 of this title on the purchase of all tangible personal property acquired by the new business and used exclusively within the rural jump-start zone. Except as provided in paragraph (b) of this subsection (3), the new business is eligible for the refund allowed in this paragraph (a) for four consecutive years beginning with the date the commission approved the new business for the rural jump-start zone program benefits as specified in section 39-30.5-104 (7)(a).

(b) A new business may seek an extension of the four-year period specified in paragraph (a) of this subsection (3) by completing a written application to the commission. The extension may not exceed an additional four years. The application for extension must include an explanation of the new business' need for the extension and any other information the commission deems necessary. In deciding whether to grant the extension, the commission must consider the state of the economy in the rural jump-start zone, the estimated demand for sales and use tax refunds allowed in this section for other new businesses, and the importance of the refund in incentivizing the new business. The extension application must be considered at a regularly scheduled meeting of the commission where the public is allowed to comment.

(c) The commission shall provide the department with a list of every new business eligible for the sales and use tax refund allowed in this subsection (3).

(4) **Restrictions on other credits.** Notwithstanding any law to the contrary, if a new business claims the rural jump-start zone program benefits allowed in this section, the new business may not claim any other tax incentive that the new business is eligible for in this title as a result of establishing the new business in the state, including tax incentives for the new hires hired by the new business.

**Source: L. 2015:** Entire article added, (SB 15-282), ch. 186, p. 614, § 1, effective May 13.

**39-30.5-106. Rural jump-start zone - local government requirements.** (1) Before the commission may approve a rural jump-start zone as specified in section 39-30.5-104, the following must occur:

(a) An interested distressed county must adopt a resolution affirming that it will provide incentive payments, exemptions, or refunds, as appropriate, to new businesses to eliminate the business personal property tax imposed on all new businesses by the distressed county. The distressed county may adopt an additional resolution affirming that it chooses to provide incentive payments, exemptions, or refunds, as appropriate, to all new businesses to eliminate any other tax imposed on or paid by such new businesses in the distressed county.

(b) Interested municipalities within an interested distressed county must adopt either:

(I) A general resolution affirming that it will provide incentive payments, exemptions, or refunds, as appropriate, to all new businesses to eliminate the business personal property tax imposed on new businesses by the interested municipality. The interested municipality may adopt an additional resolution affirming that it chooses to provide incentive payments, exemptions, or refunds, as appropriate, to all new businesses to eliminate any other tax imposed on or paid by such new businesses in the interested municipality.

(II) A limited resolution affirming that it will provide incentive payments, exemptions, or refunds, as appropriate, to a specific new business to eliminate the business personal property tax imposed on the specific new business by the interested municipality. The interested municipality may adopt an additional resolution affirming that it chooses to provide incentive payments, exemptions, or refunds, as appropriate, to the specific business to eliminate any other tax imposed on or paid by the specific business in the interested municipality.

**Source: L. 2015:** Entire article added, (SB 15-282), ch. 186, p. 617, § 1, effective May 13.

**39-30.5-107. Rural jump-start zone reporting requirements.** (1) The commission shall annually post on the Colorado office of economic development's website, and include in the commission's annual report required to be presented to the general assembly pursuant to section 24-46-104 (2), C.R.S., the following information regarding any rural jump-start zone program benefits allowed under this article:

(a) The distressed county and interested municipalities that make up the rural jump-start zone;

(b) The state institution of higher education that submitted the application;

(c) The name of the new business;

(d) The type of new business;

(e) The tax year for which the first credit certificate is issued or the date the sales and use tax refund is authorized;

(f) The number of new hires hired;

(g) The average salary or hourly wage of each new hire;

(h) An estimated amount, as calculated by the new business, of the income tax credits for the new business and any new hires and the sales and use tax refunds allowed in section 39-

30.5-105, and an estimated amount, as calculated by the new business, of incentive payments, exemptions, or refunds provided by local governments as allowed in section 39-30.5-106; and

(i) Any other economic benefits resulting from the rural jump-start zone program.

(2) Any new business located in a rural jump-start zone must submit an annual report to the commission in a form and at such time and with such information as prescribed by the commission in its guidelines. Such information shall be sufficient for the commission to monitor the continued eligibility of the new business and the new hires to continue to participate in the rural jump-start zone program and to receive the rural jump-start zone program benefits.

**Source: L. 2015:** Entire article added, (SB 15-282), ch. 186, p. 618, § 1, effective May 13.

**39-30.5-108. Severability.** If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

**Source: L. 2015:** Entire article added, (SB 15-282), ch. 186, p. 619, § 1, effective May 13.

## Assistance for the Elderly or Disabled

## ARTICLE 31

Property Tax - Rent - Heat or Fuel -
Assistance for the Elderly or Disabled

**39-31-101. Real property tax assistance - eligibility - applicability - definitions.** (1) (a) Individuals having resided within this state for the entire taxable year who are sixty-five years of age or older during the taxable year shall be eligible for a grant to be determined with respect to the income taxes imposed by article 22 of this title based upon the payment by such persons of real estate taxes, including taxes on mobile homes, or trailer coach specific ownership tax on, or tax-equivalent payments with respect to, such residences occupied by such persons, subject to the additional qualification requirements of this section.

(b) (I) Spouses are treated as jointly qualifying for the grant under paragraph (a) of this subsection (1) if either spouse meets the age requirement and they jointly meet all the limitations of subsection (3) of this section. In all cases spouses must file one joint claim.

(II) A surviving spouse fifty-eight years of age or older shall be treated as qualifying for the grant under paragraph (a) of this subsection (1) if such surviving spouse meets all the limitations imposed by subsection (3) of this section.

(c) (I) The grant authorized by this section shall also be allowed to individuals having resided in this state for the entire taxable year and coming within the limitations imposed by subsection (3) of this section who, regardless of age, have a disability during the entire taxable year to a degree sufficient to qualify for the payment to them of full benefits from any bona fide public or private plan or source based solely upon such disability.

(II) An individual has a disability for the purposes of subparagraph (I) of this paragraph (c) if such individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted for a continuous period of not less than twelve months.

(d) Eligibility under more than one provision of this subsection (1) shall not operate to increase the amount of any grant available to an individual or spouses under subsection (2) of this section.

(2) A grant is the amount of the general property taxes actually paid on the residence or the amount of taxes actually paid on a mobile home, plus any tax-equivalent payments computed pursuant to subsection (4) of this section, with respect to the rent of a trailer space during the year for which the grant is claimed, the amount of the specific ownership tax actually paid on a trailer coach, or the amount of the tax-equivalent payments, computed pursuant to subsection (4) of this section, actually made during the year for which such grant is claimed, but in no event may it exceed:

(a) In the case of an individual:

(I) and (II) (Deleted by amendment, L. 2014.)

(III) For grants claimed for years commencing on or after January 1, 2008, but before January 1, 2014, six hundred dollars reduced by ten percent of the amount by which the individual's income exceeds six thousand dollars in 2008, and, each year thereafter, the amount for the prior year adjusted for inflation.

(a.5) Except as set forth in subsection (2.3) of this section, for grants claimed for years commencing on or after January 1, 2014, in the case of an individual whose income is less than or equal to twelve thousand seven hundred twenty dollars, seven hundred dollars reduced by ten percent of the amount by which the individual's income exceeds six thousand six hundred thirty-nine dollars or two hundred twenty-seven dollars, whichever amount is greater.

(b) In the case of spouses:

(I) and (II) (Deleted by amendment, L. 2014.)

(III) For grants claimed for years commencing on or after January 1, 2008, but before January 1, 2014, six hundred dollars reduced by ten percent of their income over nine thousand seven hundred dollars in 2008, and, each year thereafter, the amount for the prior year adjusted for inflation.

(c) Except as set forth in subsection (2.3) of this section, for grants claimed for years commencing on or after January 1, 2014, in the case of spouses whose income is less than or equal to seventeen thousand one hundred forty-six dollars, seven hundred dollars reduced by ten percent of their income over ten thousand seven hundred thirty-one dollars, or two hundred twenty-seven dollars, whichever amount is greater.

(2.3) For grants claimed for years commencing on or after January 1, 2015, the income thresholds used to determine the eligibility for and amount of a grant pursuant to subsection (2) of this section are equal to the income thresholds for the prior year adjusted for inflation.

(2.5) In 2000 and in every even-numbered year thereafter, the finance committees of the senate and the house of representatives shall examine the grant amounts and reduction percentages set forth in subsection (2) of this section, considering the level of the federal poverty index and such other information as is available to the committees, and shall determine whether said amounts and percentages should be modified.

(3) Such grant shall be allowed to such persons as described in subsection (1) of this section who meet the following requirements:

(a) Are not claimed as an exemption for purposes of Colorado income tax by any other person for the taxable year;

(b) Have income from all sources for the taxable year of less than the maximum amount for which such persons are eligible to receive a grant based on the operation of paragraphs (a), (a.5), (b), and (c) of subsection (2) of this section, including, but not limited to, for this purpose, alimony, support money, cash public assistance and relief, pension or annuity benefits, federal social security benefits, veterans' benefits, nontaxable interest, workers' compensation, and unemployment compensation benefits. For the purposes of this paragraph (b), the following shall not be considered income:

(I) Outright gifts;

(II) Medicaid payments specifically provided for the payment of medicare premiums;

(II.5) Payments from or income received by a special needs trust; and

(III) Those specific veterans' benefits that are service-connected disability compensation payments. For the purposes of this subparagraph (III), "service-connected disability compensation payments" means those payments made for permanent disability, which disability shall be limited to loss of or loss of use of both lower extremities so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; loss of use of both hands; blindness in both eyes, including such blindness with only light perception; or loss of one lower extremity together with residuals or organic disease or injury that so affects the functions of balance or propulsion as to preclude locomotion without the use of a wheelchair.

(4) (a) The tax-equivalent amount for persons otherwise qualified who paid rent for the right to occupy premises, upon which ad valorem taxes were levied, as a residence during the taxable year shall be considered as twenty percent of the actual rent paid during the taxable year, not including any charge for utilities or food.

(b) To qualify as a tax-equivalent payment, rent must have been paid as a part of a bona fide tenancy or leasing agreement and shall not include any portion of payments made to institutions or facilities commonly known as nursing homes but shall include rent paid to a public housing authority and rent paid for the use of a mobile home or paid on trailer space if paid as a part of a bona fide tenancy.

(5) As used in this section, "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index.

**Source: L. 87:** Entire article added, p. 1453, § 30, effective June 22. **L. 90:** (3)(b) amended, p. 574, § 73, effective July 1. **L. 98:** (2)(a), (2)(b), and (3)(b) amended and (2.5) added, p. 513, § 1, effective August 5. **L. 2000:** (3)(b) amended, p. 1110, § 1, effective May 26. **L. 2007:** (2) and IP(3)(b) amended and (5) added, p. 1388, § 1, effective August 3. **L. 2014:** (1)(b)(I), (1)(c), (1)(d), (2), IP(3)(b), and (3)(b)(II) amended and (2.3) and (3)(b)(II.5) added, (SB 14-014), ch. 249, p. 965, § 2, effective July 1.

**Cross references:** For the legislative declaration in SB 14-014, see section 1 of chapter 249, Session Laws of Colorado 2014.

**39-31-102. Procedures to obtain grant - department of revenue - responsibilities.** (1) (a) A grant authorized by section 39-31-101 or 39-31-104 shall be paid from the reserve for refunds created by section 39-22-622. Payments shall be made on a quarterly basis, with the amount of each payment equal to the total amount of the grant divided by the number of quarters remaining in the calendar year in which the grant is awarded, with the calculation including the quarter in which the grant is awarded. Claimants meeting all qualification requirements for an entire taxable year shall be entitled to a grant allowable pursuant to section 39-31-101 or 39-31-104. Grants paid pursuant to this subsection (1) shall be included for informational purposes in the general appropriation bill or in supplemental appropriation bills for the purpose of complying with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103, C.R.S.

(b) The department of revenue shall update its database on a periodic basis as necessary to ensure that all eligible claimants are receiving the grants.

(2) The executive director shall prescribe the forms to be used for the grants authorized by section 39-31-101 or 39-31-104 and prepare any instructions related to the forms. The executive director may create an electronic form to be used in addition to the paper form. If a sales tax refund is allowed for any given income tax year in accordance with section 39-22-2002, the executive director shall include provisions on the forms to allow qualified individuals to apply for the refund pursuant to section 39-22-2003 (5)(c). To receive a grant, an individual must claim the grant on the executive director's form.

(3) (a) If two or more persons, other than spouses, are entitled to a grant authorized by section 39-31-101 or 39-31-104, it may be claimed by either or any of such persons meeting the qualifications therefor. When two or more persons claim the grant for the same residence, the executive director is authorized to determine the proper allocation of such grant.

(b) No grant received pursuant to this section shall be treated as income for purposes of determining the eligibility of any person for old age pension benefits under article 2 of title 26, C.R.S.

(4) The property tax assistance grant shall in no case exceed the amount of the general property taxes actually paid. A grant for property taxes or tax-equivalent amounts paid under section 39-31-101 shall not be made unless properly claimed on or before the expiration of twenty-four months after the end of the income tax year during which such taxes or tax-equivalent amounts were actually paid.

(5) Any person who is claimed as an exemption for purposes of the Colorado income tax by any other person for the taxable year shall be ineligible for the grant authorized by this section.

(6) The grant for heat or fuel expenses shall in no case exceed the amount of the heat or fuel expenses actually paid and shall not be made unless the appropriate form claiming the same is filed with the department of revenue on or before the expiration of twenty-four months after the end of the taxable year for which such credit or refund is claimed.

**Source: L. 87:** Entire article added, p. 1454, § 30, effective June 22. **L. 93:** (1) amended, p. 1510, § 11, effective June 6. **L. 94:** (1) amended, p. 1805, § 3, effective May 31. **L. 98, 2nd Ex. Sess.:** (2) amended, p. 7, § 2, effective September 16. **L. 99:** (2) amended, p. 1317, § 3, effective August 4. **L. 2004:** (1) amended, p. 689, § 1, effective April 28. **L. 2014:** (1), (2), and (3)(a) amended, (SB 14-014), ch. 249, p. 967, § 3, effective July 1.

**Cross references:** For the legislative declaration in SB 14-014, see section 1 of chapter 249, Session Laws of Colorado 2014.

**39-31-103. Department of human services - outreach - departmental information sharing.** (1) The department of human services shall conduct outreach for the grants available under this article. As part of this duty, the department shall:

(a) Target the outreach to participants in other state benefit programs;

(b) Incorporate the outreach into existing media campaigns;

(c) Work with county departments of human or social services;

(d) Collaborate with interested community-based organizations, including sharing of outreach expenses; and

(e) Undertake any other measures that it deems necessary to ensure collaboration and cost-effective outreach that improves program participation.

(2) The department of human services may solicit, receive, and expend gifts, grants, or donations from any person, including community-based organizations, for the purpose of paying any part of the outreach.

(3) (a) On or before July 1, 2015, and July 1 of every odd-numbered year thereafter, the department of human services shall report to the public health care and human services committee of the house of representatives and the health and human services committee of the senate, or any successor committees, about its outreach conducted pursuant to this section. In the report, the department shall include a description of:

(I) The types of outreach undertaken by the department;

(II) The success of the outreach as measured by public participation, including the participation by eligible members of racial and ethnic minority populations, or other indicators that the department can evaluate;

(III) Any recommendations for statutory changes that would help improve program participation; and

(IV) Any other recommendations related to the grants made under this article.

(b) This subsection (3) is exempt from the provisions of section 24-1-136 (11), C.R.S., and the periodic reporting requirements of this section are effective until changed by the general assembly acting by bill.

(4) Nothing in this section changes the department of revenue's responsibility to create the grant forms and to pay the grants under this article.

(5) The department of revenue and the department of human services shall share information and collaborate as is necessary for each department to efficiently administer this article.

**Source: L. 87:** Entire article added, p. 1455, § 30, effective June 22. **L. 2014:** Entire section R&RE, (SB 14-014), ch. 249, p. 968, § 4, effective July 1.

**Cross references:** For the legislative declaration in SB 14-014, see section 1 of chapter 249, Session Laws of Colorado 2014.

**39-31-104. Heat or fuel expenses assistance - eligibility - applicability - definitions.** (1) (a) (I) Individuals having resided within this state for the entire taxable year who are sixty-

five years of age or older during the taxable year shall be eligible for a grant to be determined with respect to the income taxes imposed by article 22 of this title to aid in the payment by such persons of heat or fuel expenses for residences occupied by such persons, subject to the additional qualification requirements of this section.

(II) For persons otherwise qualified who paid heat or fuel expenses indirectly as part of their rental payments, it shall be presumed that ten percent of the actual rent paid during the taxable year was for heat or fuel expenses. For rental payments to qualify under this subparagraph (II), they must have been paid as a part of a bona fide tenancy or lease agreement. Rental payments made to institutions or facilities commonly known as nursing homes shall not qualify, but rental payments made to a public housing authority or for the use of a mobile home shall qualify if paid as a part of a bona fide tenancy or lease agreement.

(b) (I) Spouses are treated as jointly qualifying for the grant under paragraph (a) of this subsection (1) if either spouse meets the age requirement and they jointly meet all the limitations of subsection (3) of this section. In all cases, spouses must file one joint claim.

(II) A surviving spouse fifty-eight years of age or older shall be treated as qualifying for the grant under paragraph (a) of this subsection (1) if such surviving spouse meets all the limitations imposed by subsection (3) of this section.

(c) (I) The grant authorized by this section shall also be allowed to individuals having resided in this state for the entire taxable year and coming within the limitations imposed by subsection (3) of this section who, regardless of age, have a disability during the entire taxable year to a degree sufficient to qualify for the payment to them of full benefits from any bona fide public or private plan or source based solely upon such disability.

(II) An individual has a disability for the purposes of subparagraph (I) of this paragraph (c) if such individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted for a continuous period of not less than twelve months.

(d) Eligibility under more than one provision of this subsection (1) shall not operate to increase the amount of any grant available to an individual or spouses under subsection (2) of this section.

(e) The grant provided by this section shall apply to income tax years commencing on or after January 1, 1987.

(2) The grant shall be as follows:

(a) In the case of an individual:

(I) and (II) (Deleted by amendment, L. 2014.)

(III) For grants claimed for years commencing on or after January 1, 2008, but before January 1, 2014, one hundred ninety-two dollars reduced by three and two-tenths percent of the amount by which the individual's income exceeds six thousand dollars in 2008, and, each year thereafter, the amount for the prior year adjusted for inflation.

(a.5) Except as set forth in subsection (2.3) of this section, for grants claimed for years commencing on or after January 1, 2014, in the case of an individual whose income is less than or equal twelve thousand seven hundred twenty dollars, one hundred ninety-two dollars reduced by three and two-tenths percent of the amount by which the individual's income exceeds six thousand six hundred thirty-nine dollars or seventy-three dollars, whichever amount is greater.

(b) In the case of spouses:

(I) and (II) (Deleted by amendment, L. 2014.)

(III) For grants claimed for years commencing on or after January 1, 2008, but before January 1, 2014, one hundred ninety-two dollars reduced by three and two-tenths percent of their income over nine thousand seven hundred dollars in 2008, and, each year thereafter, the amount for the prior year adjusted for inflation.

(c) Except as set forth in subsection (2.3) of this section, for grants claimed for years commencing on or after January 1, 2014, in the case of spouses whose income is less than or equal to seventeen thousand one hundred forty-six dollars, one hundred ninety-two dollars reduced by three and two-tenths percent of their income over ten thousand seven hundred thirty-one dollars or seventy-three dollars, whichever amount is greater.

(2.3) For grants claimed for years commencing on or after January 1, 2015, the income thresholds used to determine the eligibility for and amount of a grant pursuant to subsection (2) of this section are equal to the income thresholds for the prior year adjusted for inflation.

(2.5) In 2000 and in every even-numbered year thereafter, the finance committees of the senate and the house of representatives shall examine the grant amounts and reduction percentages set forth in subsection (2) of this section, considering the level of federal poverty index and such other information as is available to the committees, and shall determine whether said amounts and percentages should be modified.

(3) Such grant shall be allowed to such persons as described in subsection (1) of this section who meet the following requirements:

(a) Are not claimed as an exemption for purposes of Colorado income tax by any other person for the taxable year;

(b) Have income from all sources for the taxable year of less than the maximum amount for which such persons are eligible to receive a grant based on the operation of paragraphs (a), (a.5), (b), and (c) of subsection (2) of this section, including, but not limited to, for this purpose, alimony, support money, cash public assistance and relief, pension or annuity benefits, federal social security benefits, veterans' benefits, nontaxable interest, workers' compensation, and unemployment compensation benefits. For the purposes of this paragraph (b), the following shall not be considered income:

(I) Outright gifts;

(II) Medicaid payments specifically provided for the payment of medicare premiums;

(II.5) Payments from or income received by a special needs trust; and

(III) Those specific veterans' benefits that are service-connected disability compensation payments. For the purposes of this subparagraph (III), "service-connected disability compensation payments", as used in this paragraph (b), means those payments made for permanent disability, which disability shall be limited to loss of or loss of use of both lower extremities so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; loss of use of both hands; blindness in both eyes, including such blindness with only light perception; or loss of one lower extremity together with residuals or organic disease or injury that so affects the functions of balance or propulsion as to preclude locomotion without the use of a wheelchair.

(4) As used in this section, "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index.

**Source: L. 87:** Entire article added, p. 1455, § 30, effective June 22. **L. 88:** (1)(a)(II) amended, p. 1317, § 16, effective May 29. **L. 90:** (3)(b) amended, p. 574, § 74, effective July 1. **L. 98:** (2)(a), (2)(b), and (3)(b) amended and (2.5) added, p. 514, § 2, effective August 5. **L. 2000:** (3)(b) amended, p. 1111, § 2, effective May 26. **L. 2007:** (2) and IP(3)(b) amended and (4) added, p. 1389, § 2, effective August 3. **L. 2014:** (1)(b)(I), (1)(c), (1)(d), (2), IP(3)(b), and (3)(b)(II) amended and (2.3) and (3)(b)(II.5) added, (SB 14-014), ch. 249, p. 969, § 5, effective July 1.

**Cross references:** For the legislative declaration in SB 14-014, see section 1 of chapter 249, Session Laws of Colorado 2014.

**39-31-105. Executive director - rule-making - collection of erroneous payments - waiver.** (1) The executive director of the department of revenue may promulgate rules necessary for the administration of this article. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(2) If the department of revenue incorrectly pays a grant under section 39-31-101 or 39-31-104 as a result of a departmental error, the executive director of the department may waive the reimbursement of the grant and any related interest or penalties that accrue.

**Source: L. 2004:** Entire section added, p. 399, § 2, effective August 4. **L. 2014:** Entire section amended, (SB 14-014), ch. 249, p. 971, § 6, effective July 1.

**Cross references:** For the legislative declaration in SB 14-014, see section 1 of chapter 249, Session Laws of Colorado 2014.

## Rural Technology Enterprise Zone Act

## ARTICLE 32

Rural Technology Enterprise Zone Act

**39-32-101. Short title.** This article shall be known and may be cited as the "Rural Technology Enterprise Zone Act".

**Source: L. 98:** Entire article added, p. 695, § 1, effective May 18.

**39-32-102. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) The ability of the people in all parts of this state to access the internet, also known as the information superhighway, is an important component in the ability of the state to remain competitive in the fields of business and education as well as the ability of government to provide services to these people both now and in the future; and

(b) A disparity currently exists in the state between the ability of people living in urban areas and people living in rural areas to access the internet because of a lack of adequate technology, infrastructure, and advance telecommunications service in rural areas.

(2) The general assembly further finds and declares that it is the policy of the state, in order to provide incentives for private businesses to invest in the infrastructure needed to improve the ability of the people living in rural areas to access the internet, to establish a program to provide a tax incentive to enterprises that provide such infrastructure in designated areas to be known as rural technology enterprise zones.

**Source: L. 98:** Entire article added, p. 695, § 1, effective May 18.

**39-32-103. Needs assessment and inventory - public hearing.** (1) In order to determine the extent to which the internet can be accessed in rural areas of the state, the public utilities commission shall conduct a technology infrastructure needs assessment and inventory in such areas to determine the status of internet access in rural areas. Such needs assessment and inventory shall specifically examine the following:

(a) The need and ability to provide or improve internet access in rural areas in the state;

(b) The existence and identification of any barriers that prevent or reduce internet access in rural areas; and

(c) The types of technology infrastructure, including advanced and emerging technologies, that would improve internet access in rural areas.

(2) After conducting the needs and assessment inventory pursuant to subsection (1) of this section, the public utilities commission shall conduct a public hearing on the designation of rural technology enterprise zones pursuant to section 39-32-104. The commission shall provide public notice of such hearing to residents living within any proposed rural technology enterprise zone and to any other interested parties the commission may identify. The commission shall consider any testimony or other evidence presented at such hearing in designating any rural technology enterprise zone pursuant to section 39-32-104.

**Source: L. 98:** Entire article added, p. 696, § 1, effective May 18.

**39-32-104. Zones established.** (1) Based upon the needs and assessment inventory and the evidence received during the public hearing conducted pursuant to section 39-32-103, the public utilities commission may designate rural areas in the state as rural technology enterprise zones. In designating such zones, the commission shall specify by rule, based upon the needs and assessment inventory and the evidence received at the public hearing, the specific technology infrastructure needs of each rural technology enterprise zone and the types of investments that will meet those needs. For each rural technology enterprise zone designated pursuant to this section, the commission shall further specify the following:

(a) The boundaries of the rural technology enterprise zone;

(b) The potential for increasing internet access within the rural technology enterprise zone;

(c) The specific technology infrastructure required to provide adequate internet access within the zone and any unique needs or characteristics of the zone;

(d) The specific investments in technology infrastructure that will qualify for income tax credits in the zone pursuant to section 39-32-105; and

(e) Any other information the commission deems pertinent.

**Source: L. 98:** Entire article added, p. 696, § 1, effective May 18.

**39-32-105. Credit against tax - investment in technology infrastructure.** (1) There shall be allowed to any person as a credit against the tax imposed by article 22 of this title, for income tax years commencing on or after January 1, 1999, but prior to January 1, 2005, an amount equal to ten percent of the amount of the total investment made during such years in technology infrastructure required to provide internet access in rural technology enterprise zones. Such credit may be claimed only for specific capital investments in technology infrastructure that will qualify for income tax credits in such zone as specified by the public utilities commission pursuant to section 39-32-104 (1)(d). The credit claimed by a person pursuant to this section shall not exceed one hundred thousand dollars in any one tax year.

(2) If the credit allowed under this section exceeds the income taxes otherwise due on the claimant's income, the amount of the credit not used as an offset against income taxes may be carried forward as a tax credit against subsequent years' income tax liability for a period not to exceed ten years and shall be applied first to the earliest years possible.

**Source: L. 98:** Entire article added, p. 697, § 1, effective May 18.

**39-32-106. Report to the general assembly. (Repealed)**

**Source: L. 98:** Entire article added, p. 697, § 1, effective May 18. **L. 2008:** Entire section repealed, p. 1914, § 131, effective August 5.

**39-32-107. Rules.** The public utilities commission shall promulgate rules necessary for the administration of sections 39-32-103 and 39-32-104. The department of revenue shall promulgate rules necessary for the administration of section 39-32-105. Rules promulgated pursuant to this section shall be promulgated in accordance with article 4 of title 24, C.R.S.

**Source: L. 98:** Entire article added, p. 698, § 1, effective May 18. **L. 2008:** Entire section amended, p. 1914, § 132, effective August 5.

## Alternative Fuels Rebate

## ARTICLE 33

Alternative Fuels Rebate

**39-33-101. Definitions. (Repealed)**

**Source: L. 98:** Entire article added, p. 1303, § 3, effective June 1. **L. 2000:** (4) amended, p. 1447, § 2, effective August 2. **L. 2002:** (2) repealed, p. 1067, § 4, effective August 7. **L. 2009:** Entire section amended, (HB 09-1331), ch. 416, p. 2303, § 5, effective June 4. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

**39-33-102. Rebate for motor vehicles using alternative fuels. (Repealed)**

**Source: L. 98:** Entire article added, p. 1304, § 3, effective June 1. **L. 2000:** IP(1) amended, p. 1447, § 3, effective August 2. **L. 2009:** IP(1) amended and (2) added, (HB 09-1331), ch. 416, p. 2306, § 6, effective June 4. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

**39-33-103. Amount of rebate for costs incurred prior to July 1, 2009 - repeal. (Repealed)**

**Source: L. 98:** Entire article added, p. 1304, effective June 1. **L. 99:** (2)(f) repealed, p. 984, § 11, effective May 28. **L. 2000:** (2)(a)(I) and (3) amended, p. 1447, § 4, effective August 2. **L. 2002:** (2)(b) amended, p. 1067, § 5, effective August 7. **L. 2009:** IP(1), (2)(a)(I), and (3) amended and (4) added, (HB 09-1331), ch. 416, p. 2306, § 7, effective June 4.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective July 1, 2010. (See L. 2009, p. 2306.)

**39-33-103.5. Amount of rebate for costs incurred prior to July 1, 2015 - repeal. (Repealed)**

**Source: L. 2009:** Entire section added, (HB 09-1331), ch. 416, p. 2307, § 8, effective June 4. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

**39-33-104. Rules. (Repealed)**

**Source: L. 98:** Entire article added, p. 1306, § 3, effective June 1. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

**39-33-105. Alternative fuels rebate fund - repeal. (Repealed)**

**Source: L. 98:** Entire article added, p. 1306, § 3, effective June 1. **L. 2000:** (1)(c) added, p. 1448, § 5, effective August 2. **L. 2010:** (3) added, (HB 10-1388), ch. 362, p. 1717, § 4, effective June 7. **L. 2011:** IP(1), (2), and (3) amended and (4) added, (SB 11-163), ch. 13, p. 36, § 2, effective March 9.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective July 1, 2012. (See L. 2011, p. 36.)

**39-33-106. Repeal of article. (Repealed)**

**Source: L. 98:** Entire article added, p. 1307, § 3, effective June 1. **L. 2007:** Entire section amended, p. 2050, § 99, effective June 1. **L. 2009:** Entire section amended, (HB 09-1331), ch. 416, p. 2309, § 9, effective June 4. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

**Taxation Commission**

## ARTICLE 34

Colorado Commission on Taxation

**39-34-101 to 39-34-105. (Repealed)**

**Editor's note:** (1) This article was added in 2000. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-34-105 provided for the repeal of this article, effective January 1, 2003. (See L. 2001, p. 94.)

(3) Senate Bill 03-321 provided for the repeal of § 39-34-103 (2) and (4), effective August 6, 2003. However, due to the repeal of this article on January 1, 2003, the repeals made by Senate Bill 03-321 did not take effect.

## Aviation Development Zone Act

## ARTICLE 35

Aviation Development Zone Act

**39-35-101. Short title.** This article shall be known and may be cited as the "Aviation Development Zone Act".

**Source: L. 2005:** Entire article added, p. 1490, § 1, effective August 8.

**39-35-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Aircraft manufacturer" means a business involved in the production of aircraft parts specifically used in the manufacture of aircraft or a business involved in the development of a proof of concept or prototype aircraft, a test and evaluation aircraft, a certification aircraft, or a production aircraft. For income tax years commencing before January 1, 2013, "aircraft manufacturer" excludes a business or any portion of a business that is involved in the maintenance of aircraft. For income tax years commencing on or after January 1, 2013, "aircraft manufacturer" includes a business or any portion of a business that is involved in the maintenance and repair, completion, or modification of aircraft.

(2) "Airport" means any public-use facility so designated or licensed by the federal aviation administration and listed in the national plan of integrated airport systems in accordance with section 47103 of title 49 of the United States Code.

(3) "Facility" means any factory or other building in which an aircraft manufacturer conducts business and in which employees of the aircraft manufacturer work on a regular basis.

(4) "New employee" means a full-time employee hired by an aircraft manufacturer to work at a facility that is located in an aviation development zone in the state. For purposes of this subsection (4), an employee shall work for at least thirty-five hours per week on a regular basis

throughout the year performing duties at a facility in an aviation development zone in order to be considered a full-time employee.

(5) "Office" means the Colorado office of economic development created in section 24-48.5-101, C.R.S.

**Source: L. 2005:** Entire article added, p. 1490, § 1, effective August 8. **L. 2013:** (1) amended, (HB 13-1080), ch. 211, p. 886, § 2, effective August 7.

**Cross references:** For the legislative declaration in the 2013 act amending subsection (1), see section 1 of chapter 211, Session Laws of Colorado 2013.

**39-35-103. Zones established.** Any airport in the state may register with the office to become an aviation development zone. Only the area included within the boundaries of the airport shall be included in the aviation development zone. The office may establish procedures for the registration of airports as aviation development zones pursuant to this article.

**Source: L. 2005:** Entire article added, p. 1491, § 1, effective August 8.

**39-35-104. Aircraft manufacturer - credit for new employees.** (1) For any income tax year commencing on or after January 1, 2006, but before January 1, 2023, any aircraft manufacturer that is located in an aviation development zone in the state, that employs at least ten full-time employees within the zone, and that hires one or more new employees during the income tax year shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to one thousand two hundred dollars for each new employee who is working within the zone, prorated according to the number of months the new employee was employed by the aircraft manufacturer during the income tax year.

(2) An aircraft manufacturer that qualifies for the credit allowed pursuant to this section shall be allowed the credit for each subsequent tax year for each additional new employee. Any credit shall be allowed for a maximum of twelve consecutive months for each new employee employed by the aircraft manufacturer.

(3) (a) The number of new employees employed during any income tax year shall be determined by dividing by twelve the sum of the number of new employees on the last business day of each month of the income tax year. If the aircraft manufacturer is in operation for less than the entire income tax year, the number of new employees shall be determined by dividing the sum of the number of new employees on the last business day of each full calendar month during the portion of such income tax year during which the aircraft manufacturer was in operation by the number of full calendar months in such income tax year.

(b) For the purpose of determining the amount of the credit allowed pursuant to this section in the case of an aircraft manufacturer that already operates a facility in an aviation development zone on January 1, 2006, or that opens a facility in an aviation development zone to replace another facility in or outside of an aviation development zone at which the aircraft manufacturer discontinued operations before the close of the first income tax year in which the credit is allowed pursuant to this section, the number of new employees for which the credit is claimed shall not exceed the difference between the average number of employees employed during the income tax year less the average number of employees employed at the existing

facility or the replacement facility, as determined pursuant to paragraph (a) of this subsection (3), during the two income tax years preceding the income tax year in which the credit is claimed.

(4) If the total amount of the credits claimed by an aircraft manufacturer pursuant to the provisions of this section exceeds the amount of income taxes due on the income of the aircraft manufacturer in the income tax year for which the credits are being claimed, the amount of the credits not used as an offset against income taxes in said income tax year shall not be allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not to exceed five years and shall be applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period shall not be refundable to the aircraft manufacturer.

(5) For purposes of this section, a partnership, S corporation, limited liability company, or other entity electing not to be taxed as a corporation may pass through the credits earned under this section in any tax year to its participating partners, shareholders, or members, referred to in this section as the "investors", in any percentage the entity chooses, up to the amount of the credit earned in the tax year. Credits earned but unclaimed in a tax year for which the entity elects to be taxed as a corporation may not be distributed to investors in a later tax year for which the entity elects not to be taxed as a corporation. In any tax year for which the entity elects not to be taxed as a corporation, all credits passed through to investors may be carried forward at the investor level for the carryover periods specified in this section.

(6) For purposes of this section, an aircraft manufacturer may only claim the new employee credit for employees for whom:

(a) The aircraft manufacturer withholds social security, medicare, and income taxes under the aircraft manufacturer's own federal and state taxpayer identification numbers; or

(b) The aircraft manufacturer is the work-site employer, as defined in section 8-70-114 (2)(a)(VII), C.R.S., and an employee leasing company, as defined in section 8-70-114 (2)(a)(V), C.R.S., as the employing unit for, or co-employer with, the aircraft manufacturer, withholds social security, medicare, and income taxes under the employee leasing company's own federal and state taxpayer identification numbers.

(7) The executive director of the department of revenue shall promulgate rules necessary for the administration of this section in accordance with article 4 of title 24, C.R.S.

**Source: L. 2005:** Entire article added, p. 1491, § 1, effective August 8. **L. 2008:** (6) amended, p. 17, § 2, effective March 6. **L. 2009:** (6)(b) amended, (SB 09-292), ch. 369, p. 1981, § 118, effective August 5. **L. 2013:** (1) amended, (HB 13-1080), ch. 211, p. 886, § 3, effective August 7.

**Cross references:** For the legislative declaration in the 2013 act amending subsection (1), see section 1 of chapter 211, Session Laws of Colorado 2013.

**39-35-105. Reporting requirements.** (1) Any aircraft manufacturer that claims a new employee income tax credit pursuant to section 39-35-104 shall file an annual progress report with the office and the department of revenue within ninety days of the end of the manufacturer's income tax year.

(2) The annual progress report shall include, but shall not be limited to, the following:

(a) (I) If the aircraft manufacturer is a corporation, the corporate name of the aircraft manufacturer and the name of the chief officer of the aircraft manufacturer; or

(II) If the aircraft manufacturer is one or more individuals doing business as a partnership or other pass-through entity under a distinct business name, the business name used by the partnership or other pass-through entity.

(b) The business address and phone number of the aircraft manufacturer;

(c) A statement of the number of new employees for which the aircraft manufacturer claimed an income tax credit pursuant to section 39-35-104 and the total amount of the income tax credit claimed for the income tax year for which the report is prepared;

(d) Payroll or other data to verify the number of full-time employees employed by the aircraft manufacturer during the income tax year in which the aircraft manufacturer claimed an income tax credit pursuant to section 39-35-104 and data to verify the number of full-time employees employed by the aircraft manufacturer for the two income tax years immediately preceding such income tax year;

(e) The average annual compensation level, including benefits, of the full-time employees employed by the aircraft manufacturer;

(f) A statement of the total number of new employees retained during the income tax year for which the report is prepared if the aircraft manufacturer claimed an income tax credit pursuant to section 39-35-104 for the prior income tax year;

(g) A statement as to whether the aircraft manufacturer reduced employment at any other site in the state that is controlled by the aircraft manufacturer as a result of automation, merger, acquisition, corporate restructuring, or other business activity; and

(h) Any other information reasonably required by the office or the department of revenue to evaluate the progress and effectiveness of the incentives allowed to aircraft manufacturers pursuant to section 39-35-104.

(3) An annual progress report submitted to the office and the department of revenue shall include a signed certification as to the accuracy of the report by the chief officer of the aircraft manufacturer.

(4) The office shall include the annual progress reports submitted to the office pursuant to this section in an annual report to the general assembly.

(5) The department of revenue may review the annual progress reports submitted pursuant to this section and, on the basis of any information contained in such reports, conduct an audit of the taxpayer pursuant to section 24-35-108 (1)(c), C.R.S.

(6) The information submitted in the annual progress report to the office and the department of revenue shall be considered public records as defined in section 24-72-202 (6), C.R.S., and shall be preserved for at least five years by the office. The office shall be the custodian of the reports and shall make the reports available for inspection by any person at reasonable times. Nothing in this subsection (6) shall be construed to permit the disclosure to the public of any Colorado income tax return or of any information that reveals the amount of compensation paid to any individual employee.

**Source: L. 2005:** Entire article added, p. 1492, § 1, effective August 8.

**39-35-106. Repeal of article.** This article is repealed, effective January 1, 2024, unless it is continued or reestablished by the general assembly acting by bill prior to said date.

**Source: L. 2005:** Entire article added, p. 1494, § 1, effective August 8. **L. 2013:** Entire section amended, (HB 13-1080), ch. 211, p. 886, § 4, effective August 7.

**Cross references:** For the legislative declaration in the 2013 act amending this section, see section 1 of chapter 211, Session Laws of Colorado 2013.