

SB036_L.003

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Finance.SB16-036 be amended as follows:

1 Amend printed bill, page 2, strike lines 2 through 14 and substitute:

2 "SECTION 1. In Colorado Revised Statutes, **amend** 39-21-105
3 as follows:

4 **39-21-105. Appeals.** (1) The taxpayer may appeal the final
5 determination of the executive director issued pursuant to section
6 39-21-103, 39-21-104, or 39-21-104.5 within thirty days after the mailing
7 of such determination. JURISDICTION TO HEAR AND DETERMINE SUCH
8 APPEALS IS IN THE DISTRICT COURTS OF THIS STATE.

9 (2) (a) Venue ~~shall be~~ IS in the district court of the county wherein
10 WHERE the taxpayer resides or has his OR HER principal place of business.
11 If the taxpayer has neither a residence nor a principal place of business
12 within the state, venue ~~shall be~~ IS in the DENVER district court. ~~in and for~~
13 ~~the city and county of Denver.~~

14 (b) ~~Jurisdiction to hear and determine appeals is conferred upon~~
15 ~~the district courts of this state. Trial may be had or any order made in term~~
16 ~~or in vacation. The district court shall try the case de novo, reviewing all~~
17 ~~questions of law and fact, such review being conducted in accordance~~
18 ~~with the Colorado rules of civil procedure. The taxpayer shall present his~~
19 ~~OR HER case in the same manner as the plaintiff in other civil actions and~~
20 ~~the normal rules of evidence shall apply. The taxpayer shall have~~ HAS the
21 ~~burden of proof with respect to the issues raised in the WRITTEN notice of~~
22 ~~appeal DESCRIBED IN SUBSECTION (3) OF THIS SECTION except as to the~~
23 ~~issue of whether the taxpayer has been guilty of fraud with intent to evade~~
24 ~~tax. The burden of proof shall be upon~~ IS ON the executive director of the
25 ~~department of revenue or his OR HER delegate to show that a petitioner is~~
26 ~~liable as a transferee of property of a taxpayer but not to show that the~~
27 ~~taxpayer was liable for the tax. The district court may affirm, modify, or~~
28 ~~reverse the determination of the executive director and may enter~~
29 ~~judgment on its findings.~~

30 (3) ~~Appeal to the district court shall be taken~~ A TAXPAYER
31 ~~APPEALS A FINAL DETERMINATION OF THE EXECUTIVE DIRECTOR by filing,~~
32 ~~with the clerk of the district court of the proper county, a copy of the~~
33 ~~notice of final determination received by the taxpayer, together with a~~
34 ~~written notice stating that the taxpayer appeals to the district court and~~
35 ~~alleging the pertinent facts upon which such appeal is grounded.~~

36 (4) (a) ~~Within fifteen days after filing the notice of AN appeal TO~~
37 ~~THE DISTRICT COURT FROM A DECISION PURSUANT TO SECTION~~



1 39-21-104.5, the taxpayer shall file with the district court a surety bond
2 in twice the amount of the taxes, interest, and other charges stated AS DUE
3 in the final determination by the executive director which are contested
4 on appeal. The taxpayer may, at his OR HER option, satisfy the surety bond
5 requirement by DEPOSIT IN a savings account or deposit ACCOUNT HELD
6 in, or PURCHASE a certificate of deposit issued by, a state or national bank
7 or by a state or federal savings and loan association, in accordance with
8 the provisions of section 11-35-101 (1), C.R.S., AN AMOUNT equal to
9 twice the amount of the taxes, interest, and other charges stated AS DUE
10 in the final determination by the executive director.

11 ~~(b)~~ (5) The ANY taxpayer may, at his OR HER option, deposit the
12 disputed amount with the executive director of the department of revenue
13 ~~in lieu of posting a surety bond~~ WITHIN FIFTEEN DAYS AFTER FILING AN
14 APPEAL TO THE DISTRICT COURT. If such amount is so deposited, no
15 further interest ~~shall accrue~~ ACCRUES on the deficiency contested during
16 the pendency of the action. At the conclusion of the action, after appeal
17 to the supreme court or the court of appeals or after the time for such
18 appeal has expired, the funds deposited ~~shall~~ MUST be, at the direction of
19 the court, either retained by the executive director and applied against the
20 deficiency or returned in whole or in part to the taxpayer with interest at
21 the rate imposed under section 39-21-110.5. ~~No~~ THE TAXPAYER DOES NOT
22 NEED TO MAKE A claim for refund of amounts deposited with the
23 executive director of the department of revenue ~~need be made by the~~
24 taxpayer in order for such amounts to be repaid in accordance with the
25 direction of the court.

26 ~~(5)~~ (6) Upon filing of the WRITTEN notice of appeal DESCRIBED IN
27 SUBSECTION (3) OF THIS SECTION, the executive director of the department
28 of revenue ~~shall be~~ IS deemed to be a party to ~~such~~ THE appeal, and the
29 clerk of the district court shall docket the cause as a civil action. The
30 appellant shall cause summons to be issued and cause the same to be
31 served upon the executive director, in accordance with the manner
32 provided by law in civil cases. Notice of the date of trial ~~shall~~ MUST be
33 mailed to the taxpayer and to the executive director, at least twenty days
34 prior thereto BEFORE THE DATE OF THE TRIAL.

35 ~~(6)~~ (7) The final decision made in ~~such~~ AN appeal ~~shall~~ OF AN
36 EXECUTIVE DIRECTOR'S FINAL DETERMINATION MUST be entered as a
37 judgment, as in other civil cases, against the taxpayer or against the
38 executive director as the case may be.

39 ~~(7)~~ (8) (a) The decision of the district court ~~shall be~~ IS reviewable
40 by the supreme court or the court of appeals as is otherwise provided by
41 law; EXCEPT THAT C.R.C.P. 62 (d) AND C.R.C.P. 121 SECTION 1-23 SHALL

1 NOT APPLY. EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION
2 (8), IF THE TAXPAYER WISHES TO SEEK REVIEW OF A DISTRICT COURT
3 RULING THAT IS ADVERSE TO THE TAXPAYER IN PART OR IN WHOLE, NO
4 LATER THAN FIFTEEN DAYS AFTER THE RULING THE TAXPAYER SHALL:

5 (I) FILE WITH THE DISTRICT COURT A SURETY BOND IN TWICE THE
6 AMOUNT OF THE TAXES, INTEREST, AND OTHER CHARGES STATED AS DUE
7 IN THE DISTRICT COURT RULING, WHICH ARE CONTESTED ON APPEAL;

8 (II) DEPOSIT IN A SAVINGS ACCOUNT OR DEPOSIT ACCOUNT HELD
9 IN, OR PURCHASE A CERTIFICATE OF DEPOSIT ISSUED BY, A STATE OR
10 NATIONAL BANK OR BY A STATE OR FEDERAL SAVINGS AND LOAN
11 ASSOCIATION, IN ACCORDANCE WITH THE PROVISIONS OF SECTION
12 11-35-101 (1), C.R.S., AN AMOUNT EQUAL TO TWICE THE AMOUNT OF THE
13 TAXES, INTEREST, AND OTHER CHARGES STATED IN THE DISTRICT COURT
14 RULING; OR

15 (III) DEPOSIT THE AMOUNT STATED AS DUE IN THE DISTRICT COURT
16 RULING WITH THE EXECUTIVE DIRECTOR.

17 (b) IF THE TAXPAYER HAS POSTED A BOND, MADE A DEPOSIT, OR
18 DEPOSITED THE DISPUTED AMOUNT WITH THE EXECUTIVE DIRECTOR AS
19 SPECIFIED IN SUBSECTIONS (4) AND (5) OF THIS SECTION, SUCH PREVIOUS
20 PAYMENT OR POSTING IS CONTINUED IN EFFECT AND NO FURTHER
21 PAYMENT OR POSTING MAY BE REQUIRED.

22 (c) UPON THE TAXPAYER FULFILLING THE APPEAL REQUIREMENTS
23 SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (8), COLLECTION ON THE
24 JUDGMENT IS STAYED DURING THE PENDENCY OF THE ACTION.

25 (d) IF THE TAXPAYER DEPOSITS THE AMOUNT STATED AS DUE IN
26 THE DISTRICT COURT RULING WITH THE EXECUTIVE DIRECTOR AS SPECIFIED
27 IN SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (8), NO
28 FURTHER INTEREST SHALL ACCRUE ON THE AMOUNT DEPOSITED DURING
29 THE PENDENCY OF THE ACTION. AT THE CONCLUSION OF THE ACTION,
30 AFTER APPEAL TO THE SUPREME COURT OR AFTER THE TIME FOR SUCH
31 APPEAL HAS EXPIRED, THE FUNDS DEPOSITED MUST BE, AT THE DIRECTION
32 OF THE COURT, EITHER RETAINED BY THE EXECUTIVE DIRECTOR AND
33 APPLIED AGAINST THE DEFICIENCY OR RETURNED IN WHOLE OR IN PART TO
34 THE TAXPAYER WITH INTEREST AT THE RATE IMPOSED UNDER SECTION
35 39-21-110.5. THE TAXPAYER DOES NOT NEED TO MAKE A CLAIM FOR
36 REFUND OF AMOUNTS DEPOSITED WITH THE EXECUTIVE DIRECTOR IN
37 ORDER FOR SUCH AMOUNTS TO BE REPAID IN ACCORDANCE WITH THE
38 DIRECTION OF THE COURT."

39 Strike page 3.



- 1 Page 4, strike lines 1 through 8.
- 2 Page 5, line 15, strike "(3) (b) and (3) (c)" and substitute "(3) (b), (3) (c),
3 and (8) (d)".
- 4 Page 5, lines 24 and 25, strike "OR THE EXECUTIVE DIRECTOR".
- 5 Page 6, line 15, strike "be paid REQUIRED TO" and substitute "be paid".
- 6 Page 6, after line 19 insert:
 - 7 "(8) (d) An appeal pursuant to this subsection (8) shall MUST be
 - 8 conducted in the same manner as provided in section 39-21-105, C.R.S.;
 - 9 except that venue shall be IS in the district court of the county wherein
 - 10 WHERE the local government whose decision is being appealed is located,
 - 11 AND ANY DEPOSIT MADE PURSUANT TO SECTION 39-21-105 (4), (5), OR (8)
 - 12 (a) (III), C.R.S., MUST BE MADE WITH THE LOCAL GOVERNMENT WHOSE
 - 13 DECISION IS BEING APPEALED."

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