

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0668.01 Jason Gelender x4330

HOUSE BILL 17-1009

HOUSE SPONSORSHIP

Van Winkle, Becker J., Leonard, Liston, McKean, Navarro, Neville P., Saine, Landgraf

SENATE SPONSORSHIP

(None),

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REINSTATEMENT OF THE EXEMPTIONS FROM STATE
102 SALES AND USE TAXES FOR NONESSENTIAL ARTICLES SOLD TO
103 SELLERS OF ITEMS INTENDED FOR HUMAN CONSUMPTION THAT
104 ARE FURNISHED BY THE SELLERS TO THEIR CUSTOMERS WITH
105 THE ITEMS WITHOUT THE ADDITION OF A SEPARATE CHARGE
106 THAT WERE ELIMINATED BY HOUSE BILL 10-1194.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Before March 1, 2010, state law exempted from state sales and use

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

taxes all articles sold to sellers of food, meal, or beverage items that sellers furnish to their customers along with the items without adding a separate charge. Effective March 1, 2010, House Bill 10-1194 narrowed the exemptions by subjecting to state sales and use taxes any such articles that the department of revenue determined to be nonessential to the customer. Effective January 1, 2018, the bill reinstates the exemptions from state sales and use taxes for nonessential articles.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-26-707, **amend**
3 (1) introductory portion, (1)(c), (1)(d), (2) introductory portion, (2)(b),
4 and (2)(c); and **repeal** (4) as follows:

5 **39-26-707. Food, meals, beverages, and packaging -**
6 **definitions.** (1) The following ~~shall be~~ ARE exempt from taxation under
7 the provisions of part 1 of this ~~article~~ ARTICLE 26:

8 (c) Any sale of any article to a retailer or vendor of food, meals,
9 or beverages, which article is to be furnished to a consumer or user for
10 use with articles of tangible personal property purchased at retail, if a
11 separate charge is not made for the article to the consumer or user, if such
12 article becomes the property of the consumer or user, together with the
13 food, meals, or beverages purchased, and if a tax is paid on the retail sale
14 as required by section 39-26-104 (1)(a) or (1)(e); except that, on or after
15 March 1, 2010, BUT BEFORE JANUARY 1, 2018, any such article that is
16 nonessential to the consumer or user, as determined by rules of the
17 department of revenue promulgated in accordance with article 4 of title
18 24, ~~C.R.S., shall be~~ IS subject to state sales taxation;

19 (d) Any sale of any container or bag to a retailer or vendor of
20 food, meals, or beverages, which container or bag is to be furnished to a
21 consumer or user for the purpose of packaging or bagging articles of
22 tangible personal property purchased at retail, if a separate charge is not

1 made for the container or bag to the consumer or user, if such container
2 or bag becomes the property of the consumer or user, together with the
3 food, meals, or beverages purchased, and if a tax is paid on the retail sale
4 as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after
5 March 1, 2010, BUT BEFORE JANUARY 1, 2018, any such container or bag
6 that is nonessential to the consumer or user, as determined by rules of the
7 department of revenue promulgated in accordance with article 4 of title
8 24, ~~C.R.S., shall be~~ IS subject to state sales taxation;

9 (2) The following ~~shall be~~ ARE exempt from taxation under the
10 provisions of part 2 of this ~~article~~ ARTICLE 26:

11 (b) The storage, use, or consumption of any article by a retailer or
12 vendor of food, meals, or beverages, which article is to be furnished to a
13 consumer or user for use with articles of tangible personal property
14 purchased at retail, if a separate charge is not made for the article to the
15 consumer or user, if the article becomes the property of the consumer or
16 user, together with the food, meals, or beverages purchased, and if a tax
17 is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e);
18 except that, on and after March 1, 2010, BUT BEFORE JANUARY 1, 2018,
19 any such article stored, used, or consumed that is nonessential to the end
20 consumer or user, as determined by rules of the department of revenue
21 promulgated in accordance with article 4 of title 24, ~~C.R.S., shall be~~ IS
22 subject to state use taxation;

23 (c) The storage, use, or consumption of any container or bag by
24 a retailer or vendor of food, meals, or beverages, which container or bag
25 is to be furnished to a consumer or user for the purpose of packaging or
26 bagging articles of tangible personal property purchased at retail, if a
27 separate charge is not made for the container or bag to the consumer or

1 user, if the container or bag becomes the property of the consumer or
2 user, together with the food, meals, or beverages purchased, and if a tax
3 is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e);
4 except that, on and after March 1, 2010, BUT BEFORE JANUARY 1, 2018,
5 any such container or bag stored, used, or consumed that is nonessential
6 to the end consumer or user, as determined by rules of the department of
7 revenue promulgated in accordance with article 4 of title 24, C.R.S., shall
8 be IS subject to state use taxation;

9 (4) ~~For any return made prior to June 1, 2010, a person who sells~~
10 ~~or stores, uses, or consumes items described in paragraphs (c) and (d) of~~
11 ~~subsection (1) and paragraphs (b) and (c) of subsection (2) of this section~~
12 ~~that are nonessential to the end consumer or user shall not be liable for~~
13 ~~any interest or other penalty imposed as a result of an error made in~~
14 ~~connection with the elimination of the exemption for such nonessential~~
15 ~~items from state sales and use tax by House Bill 10-1194, enacted in~~
16 ~~2010.~~

17 **SECTION 2.** In Colorado Revised Statutes, 24-75-113, **repeal** (5)
18 as follows:

19 **24-75-113. 2010 bills to increase state revenue - prohibition on**
20 **hiring of new state employees.** (5) ~~No moneys derived from the~~
21 ~~increase in state revenues resulting from the passage of House Bill~~
22 ~~10-1194, enacted in 2010, shall be appropriated for the purpose of~~
23 ~~funding additional full-time equivalent state employees.~~

24 **SECTION 3. Act subject to petition - effective date.** Section 2
25 of this act takes effect January 1, 2018, and the remainder of this act takes
26 effect at 12:01 a.m. on the day following the expiration of the ninety-day
27 period after final adjournment of the general assembly (August 9, 2017,

1 if adjournment sine die is on May 10, 2017); except that, if a referendum
2 petition is filed pursuant to section 1 (3) of article V of the state
3 constitution against this act or an item, section, or part of this act within
4 such period, then the act, item, section, or part will not take effect unless
5 approved by the people at the general election to be held in November
6 2018 and, in such case, will take effect on the date of the official
7 declaration of the vote thereon by the governor.