

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0737.01 Jason Gelender

HOUSE BILL 10-1191

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

Heath,

House Committees
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE NARROWING OF THE EXISTING EXEMPTION FROM
102 THE STATE SALES AND USE TAXES FOR FOOD, AND, IN
103 CONNECTION THEREWITH, SUBJECTING CANDY AND SOFT DRINKS
104 TO THE STATE SALES AND USE TAXES.

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://www.leg.state.co.us/billsummaries>.)

Effective March 1, 2010, **sections 1 and 2** of the bill:

! Narrow the existing state sales and use tax exemptions for

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.

- food so that candy and soft drinks are no longer exempt from the state sales tax and use taxes;
- ! Authorize the department of revenue to promulgate rules that allow sellers of candy and soft drinks to, if necessary, reasonably estimate the amount of sales taxes due on their sales; and
- ! Make conforming amendments to prevent the narrowing of the exemption from affecting county, municipal, and other local government or political subdivision sales and use taxes.

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

2 **SECTION 1.** 39-26-707 (1) (e) and (2) (d), Colorado Revised
3 Statutes, are amended, and the said 39-26-707 is further amended BY
4 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
5 read:

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

9 (e) (I) Commencing January 1, 1980, all sales of food; EXCEPT
10 THAT, ON AND AFTER MARCH 1, 2010, SALES OF CANDY AND SOFT DRINKS
11 SHALL BE SUBJECT TO SUCH TAXATION.

12 (II) FOR THE PURPOSES OF THIS PARAGRAPH (e):

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

19 (B) "SOFT DRINKS" MEANS NONALCOHOLIC BEVERAGES THAT
20 CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT

1 INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE,
2 OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF
3 VEGETABLE OR FRUIT JUICE BY VOLUME.

4 (2) The following shall be exempt from taxation under the
5 provisions of part 2 of this article:

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

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

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

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

22 (3) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
23 CONTRARY, FOR ANY LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF
24 THE STATE THAT LEVIES A SALES OR USE TAX BASED ON THE SALES OR USE
25 TAX LEVIED BY THE STATE PURSUANT TO THIS ARTICLE, THE SALE OR
26 STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS, AS DEFINED
27 IN PARAGRAPHS (e) OF SUBSECTION (1) AND (d) OF SUBSECTION (2) OF THIS

1 SECTION, ON AND AFTER MARCH 1, 2010, SHALL BE EXEMPT FROM THE
2 SALES OR USE TAX OF THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION
3 UNLESS THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION EXPRESSLY
4 SUBJECTS SUCH SALES OR STORAGE, USE, OR CONSUMPTION TO ITS SALES
5 OR USE TAX AT THE TIME OF ADOPTION OF ITS INITIAL SALES OR USE TAX
6 ORDINANCE OR RESOLUTION OR BY SUBSEQUENT AMENDMENT THERETO.

7 (4) THE DEPARTMENT OF REVENUE MAY PROMULGATE RULES, IN
8 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS
9 BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL MAY,
10 IF NECESSARY, REASONABLY ESTIMATE THE AMOUNT OF SALES TAXES DUE
11 ON SUCH CANDY AND SOFT DRINKS.

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

15 **39-26-714. Vending machines - definitions.** (2) On and after
16 January 1, 2000, all sales and purchases of food, as defined in section
17 39-26-102 (4.5), by or through vending machines shall be exempt from
18 taxation under the provisions of part 1 of this article; EXCEPT THAT, ON
19 AND AFTER MARCH 1, 2010, SALES AND PURCHASES OF CANDY AND SOFT
20 DRINKS BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO SUCH
21 TAXATION.

22 (3) On and after January 1, 2000, the storage, use, or consumption
23 of food, as defined in section 39-26-102 (4.5), purchased by or through
24 vending machines shall be exempt from taxation under the provisions of
25 part 2 of this article; EXCEPT THAT, ON AND AFTER MARCH 1, 2010, THE
26 STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS PURCHASED
27 BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO SUCH

1 TAXATION.

2 (4) FOR THE PURPOSES OF THIS SECTION:

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

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

14 (5) THE DEPARTMENT OF REVENUE SHALL PROMULGATE RULES, IN
15 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS
16 BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS PURCHASED BY
17 AND THROUGH VENDING MACHINES MAY, IF NECESSARY, REASONABLY
18 ESTIMATE THE AMOUNT OF SALES TAXES DUE ON SUCH CANDY AND SOFT
19 DRINKS.

20 (6) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
21 CONTRARY, FOR ANY LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF
22 THE STATE THAT LEVIES A SALES OR USE TAX BASED ON THE SALES OR USE
23 TAX LEVIED BY THE STATE PURSUANT TO THIS ARTICLE, THE SALE OR
24 STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS, AS DEFINED
25 IN SUBSECTION (4) OF THIS SECTION, PURCHASED BY OR THROUGH
26 VENDING MACHINES ON AND AFTER MARCH 1, 2010, SHALL BE EXEMPT
27 FROM THE SALES OR USE TAX OF THE LOCAL GOVERNMENT OR POLITICAL

1 SUBDIVISION UNLESS THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION
2 EXPRESSLY SUBJECTS SUCH SALES OR STORAGE, USE, OR CONSUMPTION TO
3 ITS SALES OR USE TAX AT THE TIME OF ADOPTION OF ITS INITIAL SALES OR
4 USE TAX ORDINANCE OR RESOLUTION OR BY SUBSEQUENT AMENDMENT
5 THERETO.

6 **SECTION 3. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.