

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0737.01 Jason Gelender

**HOUSE BILL 10-1191**

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**HOUSE SPONSORSHIP**

**Pommer,**

**SENATE SPONSORSHIP**

**Heath,**

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**House Committees**

Finance  
Appropriations

**Senate Committees**

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**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, AND MAKING AN**  
105            **APPROPRIATION THEREFOR.**

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**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:

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.*

- ! Narrow the existing state sales and use tax exemptions for 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.

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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

1       CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT  
2       INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE,  
3       OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF  
4       VEGETABLE OR FRUIT JUICE BY VOLUME.

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

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

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

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

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

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

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

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

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

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

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

1 BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO SUCH  
2 TAXATION.

3 (4) FOR THE PURPOSES OF THIS SECTION:

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

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

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

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

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

7 **SECTION 3. Appropriation.** In addition to any other  
8 appropriation, there is hereby appropriated, out of any moneys in the  
9 general fund not otherwise appropriated, to the department of revenue, for  
10 allocation to the taxation business group, taxation and compliance  
11 division, for the fiscal year beginning July 1, 2009, the sum of ninety-four  
12 thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so  
13 much thereof as may be necessary, for the implementation of this act.

14 **SECTION 4. Safety clause.** The general assembly hereby finds,  
15 determines, and declares that this act is necessary for the immediate  
16 preservation of the public peace, health, and safety.