

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**

Finance  
Appropriations

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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.*

HOUSE  
3rd Reading Unamended  
February 1, 2010

HOUSE  
Amended 2nd Reading  
January 29, 2010

- ! 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), Colorado Revised Statutes, is  
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **39-26-707. Food, meals, and beverages - definitions.** (1) The  
5 following shall be exempt from taxation under the provisions of part 1 of  
6 this article:

7 (f) (I) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (e) OF  
8 THIS SUBSECTION (1), FOR THE PERIOD COMMENCING MAY 1, 2010, AND  
9 ENDING JUNE 30, 2013, SALES OF CANDY AND SOFT DRINKS SHALL BE  
10 SUBJECT TO STATE SALES TAXATION.

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

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

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 SECTION 2. 39-26-707 (2) (d), Colorado Revised Statutes, is  
5 amended, and the said 39-26-707 is further amended BY THE  
6 ADDITION OF A NEW SUBSECTION, to read:

7 39-26-707. Food, meals, and beverages - definitions. (2) The  
8 following shall be exempt from taxation under the provisions of part 2 of  
9 this article:

10 (d) (I) Effective January 1, 1980, the storage, use, or consumption  
11 of food as defined in section 39-26-102 (4.5); EXCEPT THAT, FOR THE  
12 PERIOD COMMENCING MAY 1, 2010, AND ENDING JUNE 30, 2013, THE  
13 STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS SHALL BE  
14 SUBJECT TO STATE USE TAXATION.

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

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

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

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1           (3) THE DEPARTMENT OF REVENUE MAY PROMULGATE RULES, IN  
2 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS  
3 BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL MAY,  
4 IF NECESSARY, REASONABLY ESTIMATE THE AMOUNT OF SALES TAXES DUE  
5 ON SUCH CANDY AND SOFT DRINKS. FOR ANY RETURN MADE PRIOR TO  
6 AUGUST 1, 2010, A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL  
7 SHALL NOT BE LIABLE FOR ANY INTEREST OR OTHER PENALTY IMPOSED AS  
8 A RESULT OF AN ERROR MADE IN CONNECTION WITH THE ELIMINATION OF  
9 THE EXEMPTION FROM STATE SALES TAX FOR SALES OF CANDY AND SOFT  
10 DRINKS, AS DEFINED IN PARAGRAPH (f) OF SUBSECTION (1) OF THIS  
11 SECTION, BY HOUSE BILL 10-1191, ENACTED IN 2010.

12           **SECTION 3.** 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, ==  
19 FOR THE PERIOD COMMENCING MAY 1, 2010, AND ENDING JUNE 30, 2013,  
20 SALES AND PURCHASES OF CANDY AND SOFT DRINKS BY OR THROUGH  
21 VENDING MACHINES SHALL BE SUBJECT TO STATE SALES TAXATION.  
22 ABSENT AN EXPRESS PROVISION IN THE CONTRACT TO THE CONTRARY, ANY  
23 VENDING MACHINE CONTRACT THAT REFERENCES THE PRICE AT WHICH  
24 PRODUCTS SHALL BE SOLD FROM A VENDING MACHINE SHALL BE  
25 INTERPRETED TO INCLUDE ANY APPLICABLE SALES TAX AS AN ADDITION TO  
26 THE REFERENCED PRICE.

27           (3) On and after January 1, 2000, the storage, use, or consumption

1 of food, as defined in section 39-26-102 (4.5), purchased by or through  
2 vending machines shall be exempt from taxation under the provisions of  
3 part 2 of this article; EXCEPT THAT, FOR THE PERIOD COMMENCING MAY  
4 1, 2010, AND ENDING JUNE 30, 2013, THE STORAGE, USE, OR CONSUMPTION  
5 OF CANDY AND SOFT DRINKS PURCHASED BY OR THROUGH VENDING  
6 MACHINES SHALL BE SUBJECT TO STATE USE TAXATION.

7 (4) FOR THE PURPOSES OF THIS SECTION:

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

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

19 (5) THE DEPARTMENT OF REVENUE SHALL PROMULGATE RULES, IN  
20 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS  
21 BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS PURCHASED BY  
22 AND THROUGH VENDING MACHINES MAY, IF NECESSARY, REASONABLY  
23 ESTIMATE THE AMOUNT OF SALES TAXES DUE ON SUCH CANDY AND SOFT  
24 DRINKS. FOR ANY RETURN MADE PRIOR TO AUGUST 1, 2010, A PERSON  
25 WHO SELLS CANDY OR SOFT DRINKS AT RETAIL SHALL NOT BE LIABLE FOR  
26 ANY INTEREST OR OTHER PENALTY IMPOSED AS A RESULT OF AN ERROR  
27 MADE IN CONNECTION WITH THE ELIMINATION OF THE EXEMPTION FROM

1 STATE SALES TAX FOR SALES OF CANDY AND SOFT DRINKS, AS DEFINED IN  
2 SUBSECTION (4) OF THIS SECTION, BY HOUSE BILL 10-1191, ENACTED IN  
3 2010.

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5 **SECTION 4.** Part 1 of article 21 of title 39, Colorado Revised  
6 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
7 read:

8 **39-21-122. Revenue impact of 2010 tax legislation - tracking**  
9 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL  
10 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1191,  
11 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS  
12 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY  
13 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE  
14 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

15 **SECTION 5.** Part 1 of article 26 of title 39, Colorado Revised  
16 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
17 read:

18 **39-26-127. Legislation modifying the state sales tax base - no**  
19 **impact on local government sales tax bases - no expansion of local**  
20 **authority to levy sales tax.** (1) NOTWITHSTANDING THE PROVISIONS OF  
21 SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR  
22 ANY OTHER PROVISION OF LAW, THE LEVYING OF SALES TAX ON,  
23 EXEMPTION FROM SALES TAX FOR, OR LOCAL OPTION TO LEVY SALES TAX  
24 ON OR PROVIDE AN EXEMPTION FROM SALES TAX FOR ANY TANGIBLE  
25 PERSONAL PROPERTY OR SERVICES UNDER THE SALES TAX ORDINANCE OR  
26 RESOLUTION OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT,  
27 AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION

1 OF THE STATE SHALL NOT BE AFFECTED IN ANY WAY BY THE ELIMINATION,  
2 SUSPENSION, OR MODIFICATION OF ANY SALES TAX EXEMPTION OR ANY  
3 OTHER LEGISLATIVE MODIFICATION OF THE STATE SALES TAX BASE  
4 RESULTING FROM THE ENACTMENT OF ANY OF THE FOLLOWING BILLS:

5 (a) HOUSE BILL 10-1191, ENACTED IN 2010.

6 (2) THIS SECTION DOES NOT CREATE OR EXPAND, AND SHALL NOT  
7 BE CONSTRUED TO CREATE OR EXPAND, ANY AUTHORITY OF ANY COUNTY,  
8 MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL  
9 GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE TO LEVY SALES  
10 TAX.

11 SECTION 6. Part 2 of article 26 of title 39, Colorado Revised  
12 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
13 read:

14 **39-26-212. Legislation modifying the state use tax base - no**  
15 **impact on local government use tax bases - no expansion of local**  
16 **authority to levy use tax. (1) NOTWITHSTANDING THE PROVISIONS OF**  
17 **SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR**  
18 **ANY OTHER PROVISION OF LAW, THE LEVYING OF USE TAX ON, EXEMPTION**  
19 **FROM USE TAX FOR, OR LOCAL OPTION TO LEVY USE TAX ON OR PROVIDE**  
20 **AN EXEMPTION FROM USE TAX FOR ANY TANGIBLE PERSONAL PROPERTY OR**  
21 **SERVICES UNDER THE USE TAX ORDINANCE OR RESOLUTION OF ANY**  
22 **COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL**  
23 **GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE**  
24 **AFFECTED IN ANY WAY BY THE ELIMINATION, SUSPENSION, OR**  
25 **MODIFICATION OF ANY USE TAX EXEMPTION OR ANY OTHER LEGISLATIVE**  
26 **MODIFICATION OF THE STATE USE TAX BASE RESULTING FROM THE**  
27 **ENACTMENT OF ANY OF THE FOLLOWING BILLS:**

1           (a) HOUSE BILL 10-1191, ENACTED IN 2010.

2           (2) THIS SECTION DOES NOT CREATE OR EXPAND, AND SHALL NOT  
3 BE CONSTRUED TO CREATE OR EXPAND, ANY AUTHORITY OF ANY COUNTY,  
4 MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL  
5 GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE TO LEVY USE TAX.

6           **SECTION 7.** Part 1 of article 75 of title 24, Colorado Revised  
7 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
8 read:

9           **24-75-113. 2010 bills to increase state revenue - prohibition on**  
10 **hiring of new state employees.** NO MONEYS DERIVED FROM THE  
11 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE  
12 BILL 10-1191, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE  
13 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE  
14 EMPLOYEES.

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

22           **SECTION 9. Safety clause.** The general assembly hereby finds,  
23 determines, and declares that this act is necessary for the immediate  
24 preservation of the public peace, health, and safety.