

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 10-0737.01 Jason Gelender

HOUSE BILL 10-1191

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

Heath,

House Committees

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

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
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.

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 MAY 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 MAY 1, 2010, THE STORAGE, USE, OR CONSUMPTION OF CANDY AND
10 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 MAY 1, 2010, SHALL BE EXEMPT FROM THE SALES
3 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 IF THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION EXPRESSLY
9 SUBJECTS SUCH SALES OR STORAGE, USE, OR CONSUMPTION TO ITS SALES
10 OR USE TAX, THE EFFECTIVE DATE SHALL BE EITHER JANUARY 1 OR JULY
11 1, AND THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION SHALL
12 PROVIDE NOTICE TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
13 REVENUE AT LEAST FORTY-FIVE DAYS PRIOR TO THE EFFECTIVE DATE OF
14 THE SALES OR USE TAX.

15 (4) THE DEPARTMENT OF REVENUE MAY 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 AT RETAIL MAY,
18 IF NECESSARY, REASONABLY ESTIMATE THE AMOUNT OF SALES TAXES DUE
19 ON SUCH CANDY AND SOFT DRINKS. FOR ANY RETURN MADE PRIOR TO
20 AUGUST 1, 2010, A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL
21 SHALL NOT BE LIABLE FOR ANY INTEREST OR OTHER PENALTY IMPOSED AS
22 A RESULT OF AN ERROR MADE IN CONNECTION WITH THE ELIMINATION OF
23 THE EXEMPTION FROM STATE SALES TAX FOR SALES OF CANDY AND SOFT
24 DRINKS, AS DEFINED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS
25 SECTION, BY HOUSE BILL 10-1191, ENACTED IN 2010.

26 SECTION 2. 39-26-714 (2) and (3), Colorado Revised Statutes,
27 are amended, and the said 39-26-714 is further amended BY THE

1 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

2 **39-26-714. Vending machines - definitions.** (2) On and after
3 January 1, 2000, all sales and purchases of food, as defined in section
4 39-26-102 (4.5), by or through vending machines shall be exempt from
5 taxation under the provisions of part 1 of this article; EXCEPT THAT, ON
6 AND AFTER MAY 1, 2010, SALES AND PURCHASES OF CANDY AND SOFT
7 DRINKS BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO SUCH
8 TAXATION. **ABSENT AN EXPRESS PROVISION IN THE CONTRACT TO THE
9 CONTRARY, ANY VENDING MACHINE CONTRACT THAT REFERENCES THE
10 PRICE AT WHICH PRODUCTS SHALL BE SOLD FROM A VENDING MACHINE
11 SHALL BE INTERPRETED TO INCLUDE ANY APPLICABLE SALES TAX AS AN
12 ADDITION TO THE REFERENCED PRICE.**

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

20 (4) FOR THE PURPOSES OF THIS SECTION:

21 (a) "CANDY" MEANS A PREPARATION OF SUGAR, HONEY, OR OTHER
22 NATURAL OR ARTIFICIAL SWEETENERS IN COMBINATION WITH CHOCOLATE,
23 FRUIT, NUTS, OR OTHER INGREDIENTS OR FLAVORINGS IN THE FORM OF
24 BARS, DROPS, OR PIECES. "CANDY" SHALL NOT INCLUDE ANY
25 PREPARATION CONTAINING FLOUR AND SHALL REQUIRE NO
26 REFRIGERATION.

27 (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 (5) THE DEPARTMENT OF REVENUE SHALL PROMULGATE RULES, IN
6 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS
7 BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS PURCHASED BY
8 AND THROUGH VENDING MACHINES MAY, IF NECESSARY, REASONABLY
9 ESTIMATE THE AMOUNT OF SALES TAXES DUE ON SUCH CANDY AND SOFT
10 DRINKS. FOR ANY RETURN MADE PRIOR TO AUGUST 1, 2010, A PERSON
11 WHO SELLS CANDY OR SOFT DRINKS AT RETAIL SHALL NOT BE LIABLE FOR
12 ANY INTEREST OR OTHER PENALTY IMPOSED AS A RESULT OF AN ERROR
13 MADE IN CONNECTION WITH THE ELIMINATION OF THE EXEMPTION FROM
14 STATE SALES TAX FOR SALES OF CANDY AND SOFT DRINKS, AS DEFINED IN
15 SUBSECTION (4) OF THIS SECTION, BY HOUSE BILL 10-1191, ENACTED IN
16 2010.

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

1 USE TAX ORDINANCE OR RESOLUTION OR BY SUBSEQUENT AMENDMENT
2 THERETO. IF THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION
3 EXPRESSLY SUBJECTS SUCH SALES OR STORAGE, USE, OR CONSUMPTION TO
4 ITS SALES OR USE TAX, THE EFFECTIVE DATE SHALL BE EITHER JANUARY
5 1 OR JULY 1, AND THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION
6 SHALL PROVIDE NOTICE TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT
7 OF REVENUE AT LEAST FORTY-FIVE DAYS PRIOR TO THE EFFECTIVE DATE
8 OF THE SALES OR USE TAX.

9 SECTION 3. Part 1 of article 21 of title 39, Colorado Revised
10 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
11 read:

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

19 SECTION 4. Part 1 of article 75 of title 24, Colorado Revised
20 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
21 read:

22 24-75-113. 2010 bills to increase state revenue - prohibition on
23 hiring of new state employees. NO MONEYS DERIVED FROM THE
24 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE
25 BILL 10-1191, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE
26 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE
27 EMPLOYEES.

1 **SECTION 5. Appropriation.** In addition to any other
2 appropriation, there is hereby appropriated, out of any moneys in the
3 general fund not otherwise appropriated, to the department of revenue, for
4 allocation to the taxation business group, taxation and compliance
5 division, for the fiscal year beginning July 1, 2009, the sum of ninety-four
6 thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so
7 much thereof as may be necessary, for the implementation of this act.

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