

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

REVISED

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

LLS NO. 10-0737.01 Jason Gelender

HOUSE BILL 10-1191

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

Heath,

House Committees

Finance  
Appropriations

Senate Committees

Finance  
Appropriations

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.*

SENATE  
Am ended 2nd Reading  
February 8, 2010

HOUSE  
3rd Reading Unam ended  
February 1, 2010

HOUSE  
Am ended 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), 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), ON AND AFTER MAY 1, 2010, SALES OF CANDY AND**  
9 **SOFT DRINKS SHALL BE SUBJECT TO STATE SALES TAXATION.**

10 (II) FOR THE PURPOSES OF THIS PARAGRAPH **(f)**:

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,

1 OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF  
2 VEGETABLE OR FRUIT JUICE BY VOLUME.

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

6 **39-26-707. Food, meals, and beverages - definitions. (2) The**  
7 following shall be exempt from taxation under the provisions of part 2 of  
8 this article:

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

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

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

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

25 == ==

26 (3) THE DEPARTMENT OF REVENUE MAY PROMULGATE RULES, IN  
27 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS

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

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

13 **39-26-714. Vending machines - definitions.** (2) On and after  
14 January 1, 2000, all sales and purchases of food, as defined in section  
15 39-26-102 (4.5), by or through vending machines shall be exempt from  
16 taxation under the provisions of part 1 of this article; EXCEPT THAT, ON  
17 AND AFTER MAY 1, 2010, SALES AND PURCHASES OF CANDY AND SOFT  
18 DRINKS BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO STATE  
19 SALES TAXATION. ABSENT AN EXPRESS PROVISION IN THE CONTRACT TO  
20 THE CONTRARY, ANY VENDING MACHINE CONTRACT THAT REFERENCES  
21 THE PRICE AT WHICH PRODUCTS SHALL BE SOLD FROM A VENDING MACHINE  
22 SHALL BE INTERPRETED TO INCLUDE ANY APPLICABLE SALES TAX AS AN  
23 ADDITION TO THE REFERENCED PRICE.

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

1 STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS PURCHASED  
2 BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO STATE USE  
3 TAXATION.

4 (4) FOR THE PURPOSES OF THIS SECTION:

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

== ==

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

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

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

**39-26-127. Legislation modifying the state sales tax base - no impact on local government sales tax bases - no expansion of local authority to levy sales tax.** (1) NOTWITHSTANDING THE PROVISIONS OF SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR ANY OTHER PROVISION OF LAW, THE LEVYING OF SALES TAX ON, EXEMPTION FROM SALES TAX FOR, OR LOCAL OPTION TO LEVY SALES TAX ON OR PROVIDE AN EXEMPTION FROM SALES TAX FOR ANY TANGIBLE PERSONAL PROPERTY OR SERVICES UNDER THE SALES TAX ORDINANCE OR RESOLUTION OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE AFFECTED IN ANY WAY BY THE ELIMINATION, SUSPENSION, OR MODIFICATION OF ANY SALES TAX EXEMPTION OR ANY OTHER LEGISLATIVE MODIFICATION OF THE STATE SALES TAX BASE

1 RESULTING FROM THE ENACTMENT OF ANY OF THE FOLLOWING BILLS:

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

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

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

11 **39-26-212. Legislation modifying the state use tax base - no**  
12 **impact on local government use tax bases - no expansion of local**  
13 **authority to levy use tax.** (1) NOTWITHSTANDING THE PROVISIONS OF  
14 SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR  
15 ANY OTHER PROVISION OF LAW, THE LEVYING OF USE TAX ON, EXEMPTION  
16 FROM USE TAX FOR, OR LOCAL OPTION TO LEVY USE TAX ON OR PROVIDE  
17 AN EXEMPTION FROM USE TAX FOR ANY TANGIBLE PERSONAL PROPERTY OR  
18 SERVICES UNDER THE USE TAX ORDINANCE OR RESOLUTION OF ANY  
19 COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL  
20 GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE  
21 AFFECTED IN ANY WAY BY THE ELIMINATION, SUSPENSION, OR  
22 MODIFICATION OF ANY USE TAX EXEMPTION OR ANY OTHER LEGISLATIVE  
23 MODIFICATION OF THE STATE USE TAX BASE RESULTING FROM THE  
24 ENACTMENT OF ANY OF THE FOLLOWING BILLS:

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

26 (2) THIS SECTION DOES NOT CREATE OR EXPAND, AND SHALL NOT  
27 BE CONSTRUED TO CREATE OR EXPAND, ANY AUTHORITY OF ANY COUNTY,

1 MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL  
2 GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE TO LEVY USE TAX.

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

6 **24-75-113. 2010 bills to increase state revenue - prohibition on**  
7 **hiring of new state employees.** NO MONEYS DERIVED FROM THE  
8 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE  
9 BILL 10-1191, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE  
10 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE  
11 EMPLOYEES.

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

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