

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

**REREVISED**

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

LLS NO. 10-0737.01 Jason Gelender

**HOUSE BILL 10-1191**

**HOUSE SPONSORSHIP**

**Pommer,**

**SENATE SPONSORSHIP**

**Heath,**

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**House Committees**

Finance  
Appropriations

**Senate Committees**

Finance  
Appropriations

SENATE  
Am ended 3rd Reading  
February 10, 2010

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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.**

SENATE  
Am ended 2nd Reading  
February 8, 2010

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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>.)*

HOUSE  
3rd Reading Unam ended  
February 1, 2010

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  
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.

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

2 **SECTION 1. 39-26-707, Colorado Revised Statutes, is amended**  
 3 **BY THE ADDITION OF A NEW SUBSECTION to read:**

4 **39-26-707. Food, meals, and beverages - definitions. == ==**  
 5 **(1.5) (a) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (e)**  
 6 **OF SUBSECTION (1) OF THIS SECTION, ON AND AFTER MAY 1, 2010, SALES**  
 7 **OF CANDY AND SOFT DRINKS SHALL BE SUBJECT TO STATE SALES**  
 8 **TAXATION.**

9 **(b) FOR THE PURPOSES OF THIS SUBSECTION (1.5):**

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

16 **(II) "SOFT DRINKS" MEANS NONALCOHOLIC BEVERAGES THAT**  
 17 **CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT**  
 18 **INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE,**  
 19 **OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF**

1 VEGETABLE OR FRUIT JUICE BY VOLUME.

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

5 39-26-707. Food, meals, and beverages - definitions. (2) The  
6 following shall be exempt from taxation under the provisions of part 2 of  
7 this article:

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

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

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  
21 INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE,  
22 OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF  
23 VEGETABLE OR FRUIT JUICE BY VOLUME.

24 == ==

25 (3) THE DEPARTMENT OF REVENUE MAY PROMULGATE RULES, IN  
26 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS  
27 BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL MAY,

1 IF NECESSARY, REASONABLY ESTIMATE THE AMOUNT OF SALES TAXES DUE  
2 ON SUCH CANDY AND SOFT DRINKS. FOR ANY RETURN MADE PRIOR TO  
3 AUGUST 1, 2010, A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL  
4 SHALL NOT BE LIABLE FOR ANY INTEREST OR OTHER PENALTY IMPOSED AS  
5 A RESULT OF AN ERROR MADE IN CONNECTION WITH THE ELIMINATION OF  
6 THE EXEMPTION FROM STATE SALES TAX FOR SALES OF CANDY AND SOFT  
7 DRINKS, AS DEFINED IN PARAGRAPH (b) OF SUBSECTION (1.5) OF THIS  
8 SECTION, BY HOUSE BILL 10-1191, ENACTED IN 2010.

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

12 **39-26-714. Vending machines - definitions.** (2) On and after  
13 January 1, 2000, all sales and purchases of food, as defined in section  
14 39-26-102 (4.5), by or through vending machines shall be exempt from  
15 taxation under the provisions of part 1 of this article; EXCEPT THAT, ON  
16 AND AFTER MAY 1, 2010, SALES AND PURCHASES OF CANDY AND SOFT  
17 DRINKS BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO STATE  
18 SALES TAXATION. ABSENT AN EXPRESS PROVISION IN THE CONTRACT TO  
19 THE CONTRARY, ANY VENDING MACHINE CONTRACT THAT REFERENCES  
20 THE PRICE AT WHICH PRODUCTS SHALL BE SOLD FROM A VENDING MACHINE  
21 SHALL BE INTERPRETED TO INCLUDE ANY APPLICABLE SALES TAX AS AN  
22 ADDITION TO THE REFERENCED PRICE.

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 MAY 1, 2010, THE  
27 STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS PURCHASED

1 BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO STATE USE  
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. FOR ANY RETURN MADE PRIOR TO AUGUST 1, 2010, A PERSON  
21 WHO SELLS CANDY OR SOFT DRINKS AT RETAIL SHALL NOT BE LIABLE FOR  
22 ANY INTEREST OR OTHER PENALTY IMPOSED AS A RESULT OF AN ERROR  
23 MADE IN CONNECTION WITH THE ELIMINATION OF THE EXEMPTION FROM  
24 STATE SALES TAX FOR SALES OF CANDY AND SOFT DRINKS, AS DEFINED IN  
25 SUBSECTION (4) OF THIS SECTION, BY HOUSE BILL 10-1191, ENACTED IN  
26 2010.

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

4           **39-21-122. Revenue impact of 2010 tax legislation - tracking**  
5 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL  
6 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1191,  
7 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS  
8 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY  
9 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE  
10 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

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

14           **39-26-127. Legislation modifying the state sales tax base - no**  
15 **impact on local government sales tax bases - no expansion of local**  
16 **authority to levy sales 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 SALES TAX ON,  
19 EXEMPTION FROM SALES TAX FOR, OR LOCAL OPTION TO LEVY SALES TAX  
20 ON OR PROVIDE AN EXEMPTION FROM SALES TAX FOR ANY TANGIBLE  
21 PERSONAL PROPERTY OR SERVICES UNDER THE SALES TAX ORDINANCE OR  
22 RESOLUTION OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT,  
23 AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION  
24 OF THE STATE SHALL NOT BE AFFECTED IN ANY WAY BY THE ELIMINATION,  
25 SUSPENSION, OR MODIFICATION OF ANY SALES TAX EXEMPTION OR ANY  
26 OTHER LEGISLATIVE MODIFICATION OF THE STATE SALES TAX BASE  
27 RESULTING FROM THE 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 SALES  
6 TAX.

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

10           39-26-212. Legislation modifying the state use tax base - no  
11 impact on local government use tax bases - no expansion of local  
12 authority to levy use tax. (1) NOTWITHSTANDING THE PROVISIONS OF  
13 SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR  
14 ANY OTHER PROVISION OF LAW, THE LEVYING OF USE TAX ON, EXEMPTION  
15 FROM USE TAX FOR, OR LOCAL OPTION TO LEVY USE TAX ON OR PROVIDE  
16 AN EXEMPTION FROM USE TAX FOR ANY TANGIBLE PERSONAL PROPERTY OR  
17 SERVICES UNDER THE USE TAX ORDINANCE OR RESOLUTION OF ANY  
18 COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL  
19 GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE  
20 AFFECTED IN ANY WAY BY THE ELIMINATION, SUSPENSION, OR  
21 MODIFICATION OF ANY USE TAX EXEMPTION OR ANY OTHER LEGISLATIVE  
22 MODIFICATION OF THE STATE USE TAX BASE RESULTING FROM THE  
23 ENACTMENT OF ANY OF THE FOLLOWING BILLS:

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

25           (2) THIS SECTION DOES NOT CREATE OR EXPAND, AND SHALL NOT  
26 BE CONSTRUED TO CREATE OR EXPAND, ANY AUTHORITY OF ANY COUNTY,  
27 MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL

1 GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE TO LEVY USE TAX.

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

5 **24-75-113. 2010 bills to increase state revenue - prohibition on**  
6 **hiring of new state employees.** NO MONEYS DERIVED FROM THE  
7 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE  
8 BILL 10-1191, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE  
9 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE  
10 EMPLOYEES.

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

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