

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 11-086

BY SENATOR(S) Foster, King K., Nicholson, Aguilar;
also REPRESENTATIVE(S) Murray, Barker, Holbert, Summers.

CONCERNING PERIODS GOVERNING THE APPEAL BY TAXPAYERS IN TAX
DISPUTES WITH LOCAL GOVERNMENTS IN CONNECTION WITH THE
IMPOSITION OF SALES OR USE TAX BY SUCH GOVERNMENTS.

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

SECTION 1. 29-2-106.1 (2) (c), (3) (a), and (8), Colorado Revised Statutes, are amended, and the said 29-2-106.1 (2) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

29-2-106.1. Deficiency notice - dispute resolution. (2) (c) The taxpayer shall request the hearing pursuant to subsection (3) of this section within thirty days after the taxpayer's exhaustion of local remedies. ~~The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this subsection (2).~~ For purposes of this subsection (2) (c) PARAGRAPH (c), "exhaustion of local remedies" means THAT ONE OF THE FOLLOWING EVENTS HAS OCCURRED:

(I) The taxpayer has timely requested in writing a hearing before the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

local government, and such local government has held such hearing and issued a final decision thereon. ~~Such hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the local government may submit a brief.~~ Such hearing, IF ANY, shall be held and ~~the final decision thereon issued within ninety days after the local government's receipt of the taxpayer's written request therefor, except the period may be extended if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, such hearing shall be held and the~~ ANY decision thereon issued within one hundred eighty days ~~of~~ AFTER the taxpayer's request in writing therefor OR WITHIN SUCH FURTHER TIME AS THE TAXPAYER AND LOCAL GOVERNMENT MAY AGREE UPON IN WRITING.

(II) The taxpayer ~~has timely requested~~ AND LOCAL GOVERNMENT AGREE in writing a THAT NO hearing before the local government ~~and such local government has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in subparagraph (I) above~~ WILL BE HELD, OR THAT NO FINAL DECISION WILL ISSUE FROM THE LOCAL GOVERNMENT. SUCH WRITTEN AGREEMENT SHALL STATE THAT THE TAXPAYER EXHAUSTED LOCAL REMEDIES IN ACCORDANCE WITH THIS SECTION, SHALL IDENTIFY THE DATE OF SUCH EXHAUSTION, AND SHALL ADVISE THE TAXPAYER OF THE RIGHT TO PURSUE FURTHER REVIEW PURSUANT TO SUBSECTION (3) OR (8) OF THIS SECTION WITHIN THIRTY DAYS AFTER SUCH EXHAUSTION.

(III) ONE HUNDRED EIGHTY DAYS OR MORE AFTER THE DATE OF THE TAXPAYER'S REQUEST FOR A HEARING, THE LOCAL GOVERNMENT NOTIFIES THE TAXPAYER IN WRITING THAT THE LOCAL GOVERNMENT DOES NOT INTEND TO CONDUCT A HEARING. IN SUCH INSTANCE, THE WRITTEN NOTIFICATION SHALL ALSO STATE THAT THE TAXPAYER EXHAUSTED LOCAL REMEDIES IN ACCORDANCE WITH THIS SECTION, THAT SUCH EXHAUSTION OCCURRED ON THE DATE OF THE WRITTEN NOTIFICATION, AND THAT THE TAXPAYER MAY PURSUE FURTHER REVIEW PURSUANT TO SUBSECTION (3) OR (8) OF THIS SECTION WITHIN THIRTY DAYS AFTER SUCH EXHAUSTION.

(d) IN THE EVENT THE TAXPAYER HAS TIMELY REQUESTED IN WRITING A HEARING BEFORE THE LOCAL GOVERNMENT AND NONE OF THE EVENTS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (2) HAVE OCCURRED, THE TAXPAYER MAY REQUEST A HEARING PURSUANT TO

SUBSECTION (3) OF THIS SECTION AT ANY TIME AFTER THE PERIOD PRESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (c) OF THIS SUBSECTION (2).

(e) ANY HEARING BEFORE A LOCAL GOVERNMENT SHALL BE INFORMAL AND NO TRANSCRIPT, RULES OF EVIDENCE, OR FILING OF BRIEFS SHALL BE REQUIRED; BUT THE TAXPAYER MAY ELECT TO SUBMIT A BRIEF, IN WHICH CASE THE LOCAL GOVERNMENT MAY SUBMIT A BRIEF.

(3) (a) If a taxpayer ~~has exhausted his local remedies as provided in~~ SATISFIES THE REQUIREMENTS OF paragraph (c) of subsection (2) of this section, the taxpayer may request the executive director of the department of revenue to conduct a hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in section 39-21-103, C.R.S. Any local government to which the deficiency notice being appealed claims taxes are due, or, in the case of a claim for refund, the local government ~~which~~ THAT denied such claim, shall be notified by the executive director that a hearing is scheduled and shall be allowed to participate in the hearing as a party.

(8) (a) If a deficiency notice or claim for refund involves only one local government, in lieu of requesting a hearing pursuant to subsection (3) of this section, the taxpayer may appeal such deficiency or denial of a claim for refund to the district court.

(b) The taxpayer shall appeal to the district court pursuant to this subsection (8) within thirty days after the taxpayer's exhaustion of local remedies. ~~The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this subsection (8).~~ For purposes of this subsection (8), "exhaustion of local remedies" means THAT ONE OF THE FOLLOWING EVENTS HAS OCCURRED:

(I) The taxpayer has timely requested in writing a hearing before the local government, and such local government has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the local government may submit a brief. Such hearing, IF ANY, shall be held and ~~the final decision thereon issued within ninety days after the local government's~~

~~receipt of the taxpayer's written request therefor, except the period may be extended if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, such hearing shall be held and the ANY decision thereon issued within one hundred eighty days of the taxpayer's request in writing therefor OR WITHIN SUCH FURTHER TIME AS THE TAXPAYER AND LOCAL GOVERNMENT MAY AGREE UPON IN WRITING.~~

(II) The taxpayer ~~has timely requested~~ AND LOCAL GOVERNMENT AGREE in writing a THAT NO hearing before the local government ~~and such local government has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in subparagraph (f) of this paragraph (b)~~ WILL BE HELD, OR THAT NO FINAL DECISION WILL ISSUE FROM THE LOCAL GOVERNMENT. SUCH WRITTEN AGREEMENT SHALL STATE THAT THE TAXPAYER EXHAUSTED LOCAL REMEDIES IN ACCORDANCE WITH THIS SECTION, SHALL IDENTIFY THE DATE OF SUCH EXHAUSTION, AND SHALL ADVISE THE TAXPAYER OF THE RIGHT TO PURSUE FURTHER REVIEW PURSUANT TO SUBSECTION (3) OF THIS SECTION OR THIS SUBSECTION (8) WITHIN THIRTY DAYS AFTER SUCH EXHAUSTION.

(III) ONE HUNDRED EIGHTY DAYS OR MORE AFTER THE DATE OF THE TAXPAYER'S REQUEST FOR A HEARING, THE LOCAL GOVERNMENT NOTIFIES THE TAXPAYER IN WRITING THAT THE LOCAL GOVERNMENT DOES NOT INTEND TO CONDUCT A HEARING. IN SUCH INSTANCE, THE WRITTEN NOTIFICATION SHALL ALSO STATE THAT THE TAXPAYER EXHAUSTED LOCAL REMEDIES IN ACCORDANCE WITH THIS SECTION, THAT SUCH EXHAUSTION OCCURRED ON THE DATE OF THE WRITTEN NOTIFICATION, AND THAT THE TAXPAYER MAY PURSUE FURTHER REVIEW PURSUANT TO SUBSECTION (3) OF THIS SECTION OR THIS SUBSECTION (8) WITHIN THIRTY DAYS AFTER SUCH EXHAUSTION.

(c) IN THE EVENT THE TAXPAYER HAS TIMELY REQUESTED IN WRITING A HEARING BEFORE THE LOCAL GOVERNMENT AND NONE OF THE EVENTS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (8) HAVE OCCURRED, THE TAXPAYER MAY APPEAL SUCH DEFICIENCY OR DENIAL OF A CLAIM FOR REFUND TO THE DISTRICT COURT AT ANY TIME AFTER THE PERIOD PRESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (8).

~~(c)~~ (d) ~~Such~~ AN appeal PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (8) shall be conducted in the same manner as provided in

section 39-21-105, C.R.S.; except that venue shall be in the district court of the county wherein the local government whose decision is being appealed is located.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2011, and shall apply to deficiency notices and refund claim denials mailed by a local government on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO