

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-1069.01 Esther van Mourik x4215

SENATE BILL 15-279

SENATE SPONSORSHIP

Neville T. and Jahn,

HOUSE SPONSORSHIP

Kraft-Tharp and Keyser,

Senate Committees

Local Government

House Committees

A BILL FOR AN ACT

101 CONCERNING SURETY REQUIREMENTS WHEN A TAXPAYER APPEALS A
102 TAX BILL THAT THE STATE OR A LOCAL GOVERNMENT CLAIMS IS
103 DUE.

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>.)

Current law requires a taxpayer wishing to appeal a final determination of the executive director of the department of revenue or a final determination of a local government, within a specified time after filing a notice of appeal, to either:

! Set aside twice the amount of the taxes, interest, and other

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.

charges stated in the final determination by filing a surety bond in such amount with the district court;

! Set aside twice the amount of the taxes, interest, and other charges stated in the final determination by establishing a savings account, deposit account, or certificate of deposit for such amount at a state or national bank or a state or federal savings and loan association doing business in this state; or

! Deposit the disputed amount with the executive director of the department of revenue. If the taxpayer chooses this option the interest accrual is tolled.

Current law also requires home rule jurisdictions and statutory local governments to follow the same requirements for appeals related to the sales and use taxes they impose.

The bill specifies that only within a specified number of days after a district court ruling that is adverse to the taxpayer in part or in whole, as opposed to within a specified number of days after the filing of the notice of appeal, may a taxpayer be required by the state or a local government to set aside money as described in current law. Until that time, the bill allows the taxpayer to decide when to set aside money claimed to be owed by the state or a local government.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-21-105, **amend**
3 (4) as follows:

4 **39-21-105. Appeals.** (4) (a) (I) IF THE TAXPAYER APPEALS THE
5 EXECUTIVE DIRECTOR'S FINAL DETERMINATION TO THE DISTRICT COURT
6 PURSUANT TO THIS SECTION, THEN THE TAXPAYER HAS THE OPTION, BUT
7 MAY NOT BE REQUIRED, TO:

8 (A) FILE A SURETY BOND IN TWICE THE AMOUNT OF THE TAXES,
9 INTEREST, AND OTHER CHARGES STATED IN THE EXECUTIVE DIRECTOR'S
10 FINAL DETERMINATION, WHICH ARE CONTESTED ON APPEAL;

11 (B) DEPOSIT IN A SAVINGS ACCOUNT OR DEPOSIT ACCOUNT HELD
12 IN OR PURCHASE A CERTIFICATE OF DEPOSIT ISSUED BY A STATE OR
13 NATIONAL BANK OR BY A STATE OR FEDERAL SAVINGS AND LOAN

1 ASSOCIATION, IN ACCORDANCE WITH THE PROVISIONS OF SECTION
2 11-35-101 (1), C.R.S., AN AMOUNT EQUAL TO TWICE THE AMOUNT OF THE
3 TAXES, INTEREST, AND OTHER CHARGES STATED IN THE FINAL
4 DETERMINATION BY THE EXECUTIVE DIRECTOR; OR

5 (C) DEPOSIT THE DISPUTED AMOUNT WITH THE EXECUTIVE
6 DIRECTOR.

7 (II) IF THE TAXPAYER CHOOSES TO DEPOSIT THE DISPUTED AMOUNT
8 WITH THE EXECUTIVE DIRECTOR AS ALLOWED IN SUB-SUBPARAGRAPH (C)
9 OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), NO FURTHER INTEREST
10 SHALL ACCRUE ON THE DEFICIENCY CONTESTED DURING THE PENDENCY OF
11 THE ACTION. AT THE CONCLUSION OF THE ACTION, AFTER APPEAL TO THE
12 SUPREME COURT OR THE COURT OF APPEALS OR AFTER THE TIME FOR SUCH
13 APPEAL HAS EXPIRED, THE FUNDS DEPOSITED MUST BE, AT THE DIRECTION
14 OF THE COURT, EITHER RETAINED BY THE EXECUTIVE DIRECTOR AND
15 APPLIED AGAINST THE DEFICIENCY OR RETURNED IN WHOLE OR IN PART TO
16 THE TAXPAYER WITH INTEREST AT THE RATE IMPOSED UNDER SECTION
17 39-21-110.5. NO CLAIM FOR REFUND OF AMOUNTS DEPOSITED WITH THE
18 EXECUTIVE DIRECTOR NEED BE MADE BY THE TAXPAYER IN ORDER FOR
19 SUCH AMOUNTS TO BE REPAID IN ACCORDANCE WITH THE DIRECTION OF
20 THE COURT.

21 (a) (b) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
22 PARAGRAPH (b), within ~~fifteen~~ FOURTEEN days after ~~filing the notice of~~
23 ~~appeal~~ A DISTRICT COURT RULING THAT IS ADVERSE TO THE TAXPAYER IN
24 PART OR IN WHOLE, the taxpayer shall:

25 (A) File with the district court a surety bond in twice the amount
26 of the taxes, interest, and other charges stated ~~in the final determination~~
27 ~~by the executive director~~ AS DUE IN THE DISTRICT COURT RULING, which

1 are contested on appeal;

2 (B) ~~The taxpayer may, at his option, satisfy the surety bond~~
3 ~~requirement by DEPOSIT IN a savings account or deposit ACCOUNT HELD~~
4 ~~in, or PURCHASE a certificate of deposit issued by, a state or national bank~~
5 ~~or by a state or federal savings and loan association, in accordance with~~
6 ~~the provisions of section 11-35-101 (1), C.R.S., AN AMOUNT equal to~~
7 ~~twice the amount of the taxes, interest, and other charges stated in the~~
8 ~~final determination by the executive director DISTRICT COURT RULING; OR~~

9 (b) (C) ~~The taxpayer may, at his option, Deposit the disputed~~
10 ~~amount STATED AS DUE IN THE DISTRICT COURT RULING with the executive~~
11 ~~director. of the department of revenue in lieu of posting a surety bond~~

12 (II) ~~If such amount is so deposited~~ THE TAXPAYER DEPOSITS THE
13 AMOUNT STATED AS DUE IN THE DISTRICT COURT RULING WITH THE
14 EXECUTIVE DIRECTOR AS SPECIFIED IN SUB-SUBPARAGRAPH (C) OF
15 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), no further interest shall
16 accrue on the ~~deficiency contested~~ AMOUNT DEPOSITED during the
17 pendency of the action. At the conclusion of the action, after appeal to the
18 supreme court or the court of appeals or after the time for such appeal has
19 expired, the funds deposited ~~shall~~ MUST be, at the direction of the court,
20 either retained by the executive director and applied against the
21 deficiency or returned in whole or in part to the taxpayer with interest at
22 the rate imposed under section 39-21-110.5. No claim for refund of
23 amounts deposited with the executive director ~~of the department of~~
24 ~~revenue~~ need be made by the taxpayer in order for such amounts to be
25 repaid in accordance with the direction of the court.

26 (III) IF THE TAXPAYER HAS OPTED TO POST A BOND, MAKE A
27 DEPOSIT, OR PAY THE AMOUNT STATED AS DUE IN THE DISTRICT COURT

1 RULING TO THE EXECUTIVE DIRECTOR AS ALLOWED IN PARAGRAPH (a) OF
2 THIS SUBSECTION (4), SUCH PREVIOUS PAYMENT OR POSTING SHALL
3 CONTINUE IN EFFECT AND NO FURTHER PAYMENT OR POSTING MAY BE
4 REQUIRED.

5 **SECTION 2.** In Colorado Revised Statutes, 29-2-106.1, **amend**
6 (3) (b) and (3) (c) as follows:

7 **29-2-106.1. Deficiency notice - dispute resolution.** (3) (b) If the
8 taxpayer requests a hearing before the executive director, then the local
9 government whose decision is being appealed may not require a bond or
10 payment of tax in lieu thereof; ~~until thirty days after the final decision of~~
11 ~~the executive director or his delegate~~ but such local government may
12 require a bond or payment of tax in lieu thereof FILED WITH AND PAYABLE
13 TO THE LOCAL GOVERNMENT in the manner provided in section
14 39-21-111, C.R.S., prior to the hearing before such local government or
15 the executive director if either such local government OR THE EXECUTIVE
16 DIRECTOR reasonably finds that collection of the tax will be jeopardized
17 by delay or the taxpayer requests a postponement of the hearing before
18 such local government or the executive director, other than on account of
19 a death, physical illness or injury, or catastrophe, which substantially
20 impairs the taxpayer's ability to present his case. ~~Any such bond or~~
21 ~~payment of tax in lieu thereof shall be filed with and payable to the local~~
22 ~~government whose decision is being appealed, and such bond shall be~~
23 ~~filed or such tax shall be paid in the manner provided in section~~
24 ~~39-21-105, C.R.S.~~ In the event that payment of the tax or posting of a
25 bond is required by the local government, the taxpayer, after payment of
26 the tax or posting of the bond, may appeal such decision of the local
27 government to the executive director and shall be granted an expedited

1 hearing on such appeal pursuant to section 39-21-103 (6), C.R.S., and the
2 executive director may affirm, reverse, or modify such decision.

3 (c) If the taxpayer appeals the decision of the executive director
4 ~~on the hearing~~ ISSUED pursuant to this subsection (3) TO the district court
5 in the manner provided in section 39-21-105, C.R.S., then the ~~tax~~
6 TAXPAYER shall be ~~paid~~ REQUIRED TO PAY THE TAX to or POST a bond
7 ~~shall be posted~~ with the local government whose decision is being
8 appealed in the manner provided in that section WITHIN FOURTEEN DAYS
9 AFTER A DISTRICT COURT RULING THAT IS ADVERSE TO THE TAXPAYER IN
10 PART OR IN WHOLE, unless ~~payment of~~ THE TAXPAYER PREVIOUSLY PAID
11 THE tax or ~~posting of~~ POSTED A bond, ~~was previously required~~ in which
12 case such previous payment or posting shall continue in effect.

13 **SECTION 3. Applicability.** This act applies to appeals filed on
14 or after the effective date of this act.

15 **SECTION 4. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.