

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT
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LLS NO. 20-0828.01 Esther van Mourik x4215

COMMITTEE BILL

Statutory Revision Committee

BILL TOPIC: "Sales Tax Statute Modifications To Address Defects"

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE SALES TAX STATUTES IN ORDER**
102 **TO ADDRESS CERTAIN DEFECTS AND ANACHRONISMS.**

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://leg.colorado.gov/>.)

Statutory Revision Committee. Section 1 of the bill makes corrections to the penalty for a taxpayer's failure to pay the correct amount of sales taxes due or for a taxpayer's failure to account for sales taxes correctly so that the statute reads the way the department of revenue applies the law.

Section 2 changes the penalty section for use tax collections so

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

that it is the same as for sales tax collections. Legislative history makes clear that the legislature has intended these sections to be the same, but over the years bills revising these sections did not successfully align the 2 sections.

Section 3 repeals a temporary partial sales tax rate reduction for a new or used commercial truck, truck tractor, tractor, semitrailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of 26,000 pounds. While the rate reduction could still be used, it is preempted by a full rate reduction for low-emitting vehicles in another statutory section. Any vehicle that could qualify for the temporary partial rate reduction in a TABOR refund year already qualifies for the full exemption from sales or use tax under the other section, so the partial rate reduction is not used.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-26-118, **amend**
3 (2)(a) as follows:

4 **39-26-118. Recovery of taxes, penalty, and interest.**

5 (2) (a) (I) If a person neglects or refuses to make a timely return in
6 payment of the tax or to pay or correctly account for any tax as required
7 by this ~~article~~ ARTICLE 26, the executive director of the department of
8 revenue shall make an estimate, based upon the information that may be
9 available, of the amount of taxes due or not accounted for or incorrectly
10 accounted for on a return for the period for which the taxpayer is
11 delinquent. ~~and~~ THE EXECUTIVE DIRECTOR shall add ~~thereto~~ TO THE
12 ESTIMATED AMOUNT OF TAXES DUE OR NOT ACCOUNTED FOR INTEREST IF
13 APPLICABLE UNDER SECTION 39-21-110.5, AND a penalty equal to THE
14 GREATER OF:

15 (A) The sum of fifteen dollars; ~~for the failure or~~

16 (B) Ten percent of such unpaid, unaccounted, or incorrectly
17 accounted amount, plus one-half percent per month from the date when
18 due, not exceeding eighteen percent in the aggregate. ~~and interest if~~

1 ~~applicable on the delinquent taxes at the rate imposed under section~~
2 ~~39-21-110.5.~~

3 (II) ~~Promptly thereafter,~~ The executive director shall ~~give to~~
4 PROVIDE the delinquent taxpayer written notice of the estimated taxes,
5 penalty, and interest ~~which notice shall be sent~~ by first-class mail as set
6 forth in section 39-21-105.5.

7 **SECTION 2.** In Colorado Revised Statutes, 39-26-204, **amend**
8 (5)(a) as follows:

9 **39-26-204. Periodic return - collection - repeal.** (5) (a) (I) If a
10 person neglects or refuses to make a TIMELY return in payment of the tax
11 or to pay OR CORRECTLY ACCOUNT FOR any tax as required by this ~~article~~
12 ARTICLE 26, the executive director of the department of revenue shall
13 make an estimate, based upon the information that may be available, of
14 the amount of taxes due OR NOT ACCOUNTED FOR OR INCORRECTLY
15 ACCOUNTED FOR ON A RETURN for the period for which the taxpayer is
16 delinquent. ~~and~~ THE EXECUTIVE DIRECTOR shall add ~~thereto~~ TO THE
17 ESTIMATED AMOUNT OF TAXES DUE OR NOT ACCOUNTED FOR INTEREST IF
18 APPLICABLE UNDER SECTION 39-21-110.5, AND a penalty equal to ~~ten~~
19 ~~percent thereof and interest on the delinquent taxes at the rate imposed~~
20 ~~under section 39-21-110.5, plus one-half of one percent per month from~~
21 ~~the date when due.~~ THE GREATER OF:

22 (A) THE SUM OF FIFTEEN DOLLARS; OR

23 (B) TEN PERCENT OF SUCH UNPAID, UNACCOUNTED, OR
24 INCORRECTLY ACCOUNTED AMOUNT, PLUS ONE-HALF PERCENT PER MONTH
25 FROM THE DATE WHEN DUE, NOT EXCEEDING EIGHTEEN PERCENT IN THE
26 AGGREGATE.

27 (II) ~~Promptly thereafter,~~ The executive director shall ~~give to~~

1 PROVIDE the delinquent taxpayer written notice of the estimated taxes,
2 penalty, and interest ~~which notice shall be sent~~ by first-class mail as set
3 forth in section 39-21-105.5.

4 **SECTION 3.** In Colorado Revised Statutes, 39-26-202, **amend**
5 (1)(a); and **repeal** (3) as follows:

6 **39-26-202. Authorization of tax.** (1) (a) Except as otherwise
7 provided in ~~paragraph (b) of this subsection (1) and in subsection (3)~~
8 SUBSECTION (1)(b) of this section, there is imposed and shall be collected
9 from every person in this state a tax or excise at the rate of three percent
10 of storage or acquisition charges or costs for the privilege of storing,
11 using, or consuming in this state any articles of tangible personal property
12 purchased at retail.

13 (3) (a) ~~Notwithstanding the rate provisions of paragraphs (a) and~~
14 ~~(b) of subsection (1) of this section, for any fiscal year commencing on~~
15 ~~or after July 1, 2000, if the revenue estimate prepared by the staff of the~~
16 ~~legislative council in June of the calendar year in which that fiscal year~~
17 ~~ends indicates that the aggregate amount of state revenues will exceed the~~
18 ~~limitation on state fiscal year spending imposed by section 20 (7)(a) of~~
19 ~~article X of the state constitution for that fiscal year by three hundred fifty~~
20 ~~million dollars or more, as adjusted pursuant to paragraph (b) of this~~
21 ~~subsection (3), and voters statewide either have not authorized the state~~
22 ~~to retain and spend all of the excess state revenues or have authorized the~~
23 ~~state to retain and spend only a portion of the excess state revenues for~~
24 ~~that fiscal year, the tax imposed pursuant to subsection (1) of this section~~
25 ~~shall be imposed upon any sale of a new or used commercial truck, truck~~
26 ~~tractor, tractor, semitrailer, or vehicle used in combination therewith that~~
27 ~~has a gross vehicle weight rating in excess of twenty-six thousand pounds~~

1 for the period commencing on July 1 of the calendar year in which that
2 fiscal year ends through June 30 of the immediately subsequent calendar
3 year, at a rate of one one-hundredth of one percent.

4 (b) (I) ~~No later than October 1 of any given calendar year~~
5 ~~commencing on or after January 1, 2001, the executive director shall~~
6 ~~annually adjust the dollar amount specified in paragraph (a) of this~~
7 ~~subsection (3) to reflect the rate of growth of Colorado personal income~~
8 ~~for the calendar year immediately preceding the calendar year in which~~
9 ~~such adjustment is made. For purposes of this subparagraph (I), "the rate~~
10 ~~of growth of Colorado personal income" means the percentage change~~
11 ~~between the most recent published annual estimate of total personal~~
12 ~~income for Colorado, as defined and officially reported by the bureau of~~
13 ~~economic analysis in the United States department of commerce for the~~
14 ~~calendar year immediately preceding the calendar year in which the~~
15 ~~adjustment is made and the most recent published annual estimate of total~~
16 ~~personal income for Colorado, as defined and officially reported by the~~
17 ~~bureau of economic analysis in the United States department of~~
18 ~~commerce for the calendar year prior to the calendar year immediately~~
19 ~~preceding the calendar year in which the adjustment is made.~~

20 (II) ~~Upon calculating the adjustment of said dollar amount in~~
21 ~~accordance with subparagraph (I) of this paragraph (b), the executive~~
22 ~~director shall notify in writing the executive committee of the legislative~~
23 ~~council created pursuant to section 2-3-301 (1), C.R.S., of the adjusted~~
24 ~~dollar amount and the basis for the adjustment. Such written notification~~
25 ~~shall be given within five working days after such calculation is~~
26 ~~completed, but such written notification shall be given no later than~~
27 ~~October 1 of the calendar year.~~

1 ~~(HH) It is the function of the executive committee of the legislative~~
2 ~~council to review and approve or disapprove such adjustment of said~~
3 ~~dollar amount within twenty days after receipt of such written notification~~
4 ~~from the executive director. Any adjustment that is not approved or~~
5 ~~disapproved by the executive committee within said twenty days shall be~~
6 ~~automatically approved; except that, if within said twenty days the~~
7 ~~executive committee schedules a hearing on such adjustment, such~~
8 ~~automatic approval shall not occur unless the executive committee does~~
9 ~~not approve or disapprove such adjustment after the conclusion of such~~
10 ~~hearing. Any hearing conducted by the executive committee pursuant to~~
11 ~~this subparagraph (HH) shall be concluded no later than twenty-five days~~
12 ~~after receipt of such written notification from the executive director.~~

13 ~~(IV) (A) If the executive committee of the legislative council~~
14 ~~disapproves any adjustment of said dollar amount calculated by the~~
15 ~~executive director pursuant to this paragraph (b), the executive committee~~
16 ~~shall specify such adjusted dollar amount to be utilized by the executive~~
17 ~~director. Any adjusted dollar amount specified by the executive~~
18 ~~committee pursuant to this sub-subparagraph (A) shall be calculated in~~
19 ~~accordance with the provisions of this paragraph (b).~~

20 ~~(B) For the purpose of determining whether the use tax rate~~
21 ~~reduction authorized by paragraph (a) of this subsection (3) is to be~~
22 ~~allowed for any given income tax year, the executive director shall not~~
23 ~~utilize any adjusted dollar amount that has not been approved pursuant to~~
24 ~~subparagraph (HH) of this paragraph (b) or otherwise specified pursuant~~
25 ~~to sub-subparagraph (A) of this subparagraph (IV).~~

26 ~~(V) If one or more ballot questions are submitted to the voters at~~
27 ~~a statewide election to be held in November of any calendar year~~

1 ~~commencing on or after January 1, 2001, that seek authorization for the~~
2 ~~state to retain and spend all or any portion of the amount of excess state~~
3 ~~revenues for the state fiscal year ending during said calendar year, the~~
4 ~~executive director shall not determine whether the use tax rate reduction~~
5 ~~authorized by paragraph (a) of this subsection (3) shall be allowed and~~
6 ~~shall not promulgate rules containing said use tax rate reduction until the~~
7 ~~impact of the results of said election on the amount of the excess state~~
8 ~~revenues to be refunded is ascertained.~~

9 (c) ~~The general assembly finds and declares that reducing the rate~~
10 ~~of the use tax imposed on the storage, use, or consumption of a new or~~
11 ~~used commercial truck, truck tractor, tractor, semitrailer, or vehicle used~~
12 ~~in combination therewith that has a gross vehicle weight rating in excess~~
13 ~~of twenty-six thousand pounds is a reasonable method of refunding~~
14 ~~excess state revenues required to be refunded in accordance with section~~
15 ~~20 (7)(d) of article X of the state constitution.~~

16 (d) ~~Any state use tax rate reduction allowed pursuant to this~~
17 ~~section shall be published in rules promulgated by the executive director~~
18 ~~of the department of revenue in accordance with article 4 of title 24,~~
19 ~~C.R.S., and shall be included in such notices and publications as are~~
20 ~~customarily issued by the department of revenue on at least a quarterly~~
21 ~~basis concerning exemptions from the state sales and use tax. <{There is~~
22 ~~a possibility to not show this full repeal and instead do a straight repeal~~
23 ~~of this subsection (3).>~~

24 **SECTION 4. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day
26 following the expiration of the ninety-day period after final adjournment
27 of the general assembly (August 5, 2020, if adjournment sine die is on

1 May 6, 2020); except that, if a referendum petition is filed pursuant to
2 section 1 (3) of article V of the state constitution against this act or an
3 item, section, or part of this act within such period, then the act, item,
4 section, or part will not take effect unless approved by the people at the
5 general election to be held in November 2020 and, in such case, will take
6 effect on the date of the official declaration of the vote thereon by the
7 governor.

8 (2) This act applies to sales and use tax periods commencing on
9 or after the applicable effective date of this act.