Second Regular Session

Sixty-second General Assembly
LLS NO. 00-0206.01 Christy Chase HOUSE BILL 00-1082

STATE OF COLORADO

BY REPRESENTATIVE King

A BILL FOR AN ACT

CONCERNING THE EXEMPTION OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT FROM THE STATE SALES AND USE TAX.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Exempts from the state sales and use tax the sale, purchase, use, storage, or consumption of tangible personal property, including machinery, used in Colorado directly and predominantly for research and development or in a combined activity of research and development and manufacturing that is exempt from the state sales and use tax. Defines "research and development" as qualified research under the federal internal revenue code or research that has one of the following as its ultimate goal:

- Basic research in a scientific field of endeavor; or
- Advancing knowledge or technology in a scientific or technical field of endeavor.

Excludes from the definition of "research and development" the ordinary testing or inspection of materials or products used for quality control, market research, efficiency surveys, consumer surveys, advertising and promotions, management studies, or research in connection with literary, historical, social science, psychological, or other nontechnical activities.

Authorizes counties, statutory municipalities, county local improvement districts, the regional transportation district, the scientific and cultural facilities district, the Denver metropolitan major league baseball stadium district, and the metropolitan football stadium district to continue to collect local sales tax on the sale or purchase of tangible

personal property used for research and development.

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

SECTION 1. 39-26-114, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-26-114. Exemptions - disputes - credits or refunds - definitions - creation of fund. (24) (a) ALL SALES AND PURCHASES OF TANGIBLE PERSONAL PROPERTY, INCLUDING MACHINERY, AS DEFINED IN SUBPARAGRAPH (I) OF PARAGRAPH (c) OF SUBSECTION (11) OF THIS SECTION, TO BE USED IN COLORADO DIRECTLY AND PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT OR IN A COMBINED ACTIVITY OF RESEARCH AND DEVELOPMENT AND MANUFACTURING THAT IS EXEMPT UNDER SUBSECTION (11) OF THIS SECTION SHALL BE EXEMPT FROM TAXATION UNDER THIS PART 1.

(b) FOR PURPOSES OF THIS SUBSECTION (24), "RESEARCH AND DEVELOPMENT" MEANS QUALIFIED RESEARCH AS DEFINED IN 26 U.S.C. SEC. 41 (d) OR RESEARCH THAT HAS ONE OF THE FOLLOWING AS ITS ULTIMATE GOAL:

(I) BASIC RESEARCH IN A SCIENTIFIC FIELD OF ENDEAVOR, INCLUDING, BUT NOT LIMITED TO, HEALTH SCIENCES, BIOSCIENCES, OR PHARMACEUTICALS; OR

(II) ADVANCING KNOWLEDGE OR TECHNOLOGY IN A SCIENTIFIC OR TECHNICAL FIELD OF ENDEAVOR, INCLUDING, BUT NOT LIMITED TO, HEALTH SCIENCES, BIOSCIENCES, PHARMACEUTICALS, COMPUTER TECHNOLOGY, ELECTRONICS, OR ENVIRONMENTAL TECHNOLOGY.

(c) FOR PURPOSES OF THIS SUBSECTION (24), "RESEARCH AND DEVELOPMENT" DOES NOT INCLUDE THE ORDINARY TESTING OR INSPECTION OF MATERIALS OR PRODUCTS USED FOR QUALITY CONTROL, MARKET RESEARCH, EFFICIENCY SURVEYS, CONSUMER SURVEYS, ADVERTISING AND PROMOTIONS, MANAGEMENT STUDIES, OR RESEARCH IN CONNECTION WITH LITERARY, HISTORICAL, SOCIAL SCIENCE, PSYCHOLOGICAL, OR OTHER NONTECHNICAL ACTIVITIES.

SECTION 2. 39-26-203 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

39-26-203. Exemptions - definitions. (1) This part 2 is declared to be supplementary to the "Emergency Retail Sales Tax Law of 1935", part 1 of this article, and shall not apply:

(nn) (I) TO THE STORAGE, USE, OR CONSUMPTION OF ANY TANGIBLE PERSONAL PROPERTY, INCLUDING MACHINERY, AS DEFINED IN SECTION 39-26-114 (11) (c) (I) THAT IS USED IN COLORADO DIRECTLY AND PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT OR IN A COMBINED ACTIVITY OF RESEARCH AND DEVELOPMENT AND MANUFACTURING THAT IS EXEMPT UNDER SECTION 39-26-114 (11).

(II) FOR PURPOSES OF THIS PARAGRAPH (nn), "RESEARCH AND DEVELOPMENT" MEANS QUALIFIED RESEARCH AS DEFINED IN 26 U.S.C. SEC. 41 (d) OR RESEARCH THAT HAS ONE OF THE FOLLOWING AS ITS ULTIMATE GOAL:

(A) BASIC RESEARCH IN A SCIENTIFIC FIELD OF ENDEAVOR, INCLUDING, BUT NOT LIMITED TO, HEALTH SCIENCES, BIOSCIENCES, OR PHARMACEUTICALS; OR

(B) ADVANCING KNOWLEDGE OR TECHNOLOGY IN A SCIENTIFIC OR

TECHNICAL FIELD OF ENDEAVOR, INCLUDING, BUT NOT LIMITED TO, HEALTH SCIENCES, BIOSCIENCES, PHARMACEUTICALS, COMPUTER TECHNOLOGY, ELECTRONICS, OR ENVIRONMENTAL TECHNOLOGY.

(III) FOR PURPOSES OF THIS PARAGRAPH (nn), "RESEARCH AND DEVELOPMENT" DOES NOT INCLUDE THE ORDINARY TESTING OR INSPECTION OF MATERIALS OR PRODUCTS USED FOR QUALITY CONTROL, MARKET RESEARCH, EFFICIENCY SURVEYS, CONSUMER SURVEYS, ADVERTISING AND PROMOTIONS, MANAGEMENT STUDIES, OR RESEARCH IN CONNECTION WITH LITERARY, HISTORICAL, SOCIAL SCIENCE, PSYCHOLOGICAL, OR OTHER NONTECHNICAL ACTIVITIES.

SECTION 3. 29-2-105 (1) (d), Colorado Revised Statutes, is amended to read:

29-2-105. Contents of sales tax ordinances and proposals. (1) The sales tax ordinance or proposal of any incorporated town, city, or county adopted pursuant to this article shall be imposed on the sale of tangible personal property at retail or the furnishing of services, as provided in paragraph (d) of this subsection (1). Any countywide or incorporated town or city sales tax ordinance or proposal shall include the following provisions:

(d) A provision that the tangible personal property and services taxable pursuant to this article shall be the same as the tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., except as otherwise provided in this paragraph (d). The tangible personal property and services taxable pursuant to this article are subject to the same exemptions as those specified in section 39-26-114, C.R.S., except the exemption allowed by section 39-26-114 (11), C.R.S., for purchases

of machinery or machine tools, the exemption of sales and purchases of those items in section 39-26-114 (1) (a) (XXI), C.R.S., the exemption for sales of food specified in section 39-26-114 (1) (a) (XX), C.R.S., the exemption for vending machine sales of food set forth in section 39-26-114 (7.5), C.R.S., the exemption for occasional sales by a charitable organization set forth in section 39-26-114 (18), C.R.S., the exemption for sales and purchases of farm equipment and farm equipment under lease or contract specified in section 39-26-114 (20), C.R.S., ~~and~~ the exemption for sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), C.R.S., AND THE EXEMPTION FOR SALES AND PURCHASES OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT SPECIFIED IN SECTION 39-26-114 (24), C.R.S. Sales of food, as defined in section 39-26-102 (4.5), C.R.S., exempted from the state sales tax pursuant to section 39-26-114 (1) (a) (XX), C.R.S., vending machine sales of food as described in section 39-26-114 (7.5), C.R.S., sales and purchases of those items exempted from the state sales tax pursuant to section 39-26-114 (1) (a) (XXI), C.R.S., purchases of machinery or machine tools as provided in section 39-26-114 (11), C.R.S., occasional sales by a charitable organization as provided in section 39-26-114 (18), C.R.S., sales and purchases of farm equipment or farm equipment under lease or contract exempted from the state sales tax pursuant to section 39-26-114 (20), C.R.S., ~~or~~ sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), C.R.S., OR SALES AND PURCHASES OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND

DEVELOPMENT EXEMPTED FROM THE STATE SALES TAX PURSUANT TO SECTION 39-26-114 (24), C.R.S., may be exempted from said town, city, or county sales tax only by the express inclusion of such exemption either at the time of adoption of the initial sales tax ordinance or resolution or by amendment thereto. Any such amendment shall be adopted in the same manner as the initial ordinance or resolution. In the absence of an express provision for the exemption for sales of food, as defined in section 39-26-102 (4.5), C.R.S., or for the exemption of vending machine sales of food as provided in section 39-26-114 (7.5), C.R.S., or for the exemption of purchases of machinery or machine tools as provided in section 39-26-114 (11), C.R.S., or for the exemption of sales and purchases of those items in section 39-26-114 (1) (a) (XXI), C.R.S., or for the exemption of occasional sales by a charitable organization as provided in section 39-26-114 (18), C.R.S., or exemption of sales and purchases of farm equipment or farm equipment under lease or contract as provided in section 39-26-114 (20), C.R.S., or exemption of sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), C.R.S., OR FOR THE EXEMPTION OF SALES AND PURCHASES OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT AS PROVIDED IN SECTION 39-26-114 (24), C.R.S., all sales tax ordinances or resolutions, whether adopted prior to, on, or subsequent to July 1, 1979, ~~which~~ THAT provide in substance that the tangible personal property and services taxed shall be the same as the tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., or any predecessor statute, except as otherwise provided in this paragraph (d), and subject to the

same exemptions as those specified in section 39-26-114, C.R.S., or any predecessor statute, shall be construed as imposing or continuing to impose the town, city, or county sales tax on food, as defined in section 39-26-102 (4.5), C.R.S., vending machine sales of food as described in section 39-26-114 (7.5), C.R.S., purchases of machinery and machine tools as described in section 39-26-114 (11), C.R.S., sales or purchases of those items described in section 39-26-114 (1) (a) (XXI), C.R.S., occasional sales by a charitable organization as described in section 39-26-114 (18), C.R.S., sales and purchases of farm equipment and farm equipment under lease or contract as described in section 39-26-114 (20), C.R.S., ~~and~~ sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), C.R.S., AND SALES AND PURCHASES OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT AS DESCRIBED IN SECTION 39-26-114 (24), C.R.S. Any incorporated town, city, or county that adopts or has adopted a sales tax ordinance or resolution pursuant to this article shall levy a sales tax on pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S., notwithstanding the removal of such pesticides from the state sales tax base pursuant to House Bill 99-1381, enacted at the first regular session of the sixty-second general assembly, unless exempted by local ordinance or resolution. The regional transportation district may, in its discretion, continue to levy a sales tax on vending machine sales of food as described in section

39-26-114 (7.5), C.R.S., and on purchases of machinery or machine tools, as provided in section 39-26-114 (11), C.R.S.

SECTION 4. 29-2-106 (4) (a), Colorado Revised Statutes, is amended to read:

29-2-106. Collection - administration - enforcement. (4) (a) The executive director of the department of revenue shall, at no charge, administer, collect, and distribute the sales tax of any home rule municipality, upon request of the governing body of such municipality, if the provisions of the sales tax ordinance of said municipality, other than those provisions relating to local procedures followed in adopting the ordinance and whether or not the ordinance applies the sales tax to the sale of food, as defined in section 39-26-102 (4.5), C.R.S., or purchases of machinery or machine tools as provided in section 39-26-114 (11), C.R.S., or sales or purchases of electricity, coal, wood, gas, fuel oil, or coke as provided in section 39-26-114 (1) (a) (XXI), C.R.S., or vending machine sales of food as described in section 39-26-114 (7.5), C.R.S., or sales or purchases of farm equipment or farm equipment under lease or contract as provided in section 39-26-114 (20), C.R.S., or sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), C.R.S., OR SALES OR PURCHASES OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT AS PROVIDED IN SECTION 39-26-114 (24), C.R.S., or to pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides

pursuant to section 35-9-115, C.R.S., as provided in section 29-2-105 (1) (d), correspond to the requirements of this article for sales taxes imposed by counties, towns, and cities and if no use tax is to be collected by the department except as provided in section 39-26-208, C.R.S. At the time of making such request, said governing body shall certify to the executive director of the department of revenue a true copy of said sales tax ordinance.

SECTION 5. 30-20-604.5 (1), Colorado Revised Statutes, is amended to read:

30-20-604.5. District sales tax. (1) The board of any county having a population greater than one hundred thousand, for the purpose of funding all or a portion of the cost of any improvements constructed pursuant to section 30-20-603 (1) (a) and (1) (c), may levy a sales tax throughout the district upon every transaction or other incident with respect to which a sales tax is authorized pursuant to section 29-2-105, C.R.S.; except that such tax may be levied only upon those transactions specified in section 39-26-104 (1) (a), (1) (b), (1) (e), and (1) (f), C.R.S. The board may, in its discretion, levy or continue to levy a sales tax on the sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-114 (22), C.R.S., OR ON THE SALE OR PURCHASE OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT AS SPECIFIED IN SECTION 39-26-114 (24), C.R.S.

SECTION 6. 32-9-119 (2) (a) (I), Colorado Revised Statutes, is amended to read:

32-9-119. Additional powers of district. (2) (a) To provide

revenue to finance the operations of the district, to defray the cost of construction of capital improvements and acquisition of capital equipment, and to pay the interest and principal on securities of the district, the board, for and on behalf of the district after approval by election held pursuant to articles 1 to 13 of title 1, C.R.S., shall have the power to levy uniformly throughout the district a sales tax at the rate of six-tenths of one percent upon every transaction or other incident with respect to which a sales tax is now levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that:

(I) Such sales tax may be levied on vending machine sales of food that are otherwise exempt pursuant to section 39-26-114 (7.5), C.R.S., ~~and~~ on purchases of machinery or machine tools that are otherwise exempt pursuant to section 39-26-114 (11), C.R.S., AND ON SALES OR PURCHASES OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT THAT ARE OTHERWISE EXEMPT PURSUANT TO SECTION 39-26-114 (24), C.R.S.;

SECTION 7. 32-13-107 (1) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

32-13-107. Sales and use tax imposed - collection - administration of tax - use. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), upon the approval of the registered electors pursuant to the provisions of section 32-13-105, the board shall have the power to levy such uniform sales and use taxes throughout the district created in section 32-13-104 upon every transaction or other incident with respect to which a sales and use tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that

such sales and use tax shall be levied on:

(IV) SALES AND PURCHASES OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT THAT ARE OTHERWISE EXEMPT PURSUANT TO SECTION 39-26-114 (24), C.R.S.

SECTION 8. 32-14-114 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

32-14-114. Sales tax imposed - collection - administration of tax - discontinuance. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-14-105 and upon the granting of a major league baseball franchise by major league baseball to be located in the district, the board shall have the power to levy such uniform sales tax for a period not to exceed twenty years throughout the district created in section 32-14-104 upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall be levied on:

(d) SALES AND PURCHASES OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT THAT ARE OTHERWISE EXEMPT PURSUANT TO SECTION 39-26-114 (24), C.R.S.

SECTION 9. 32-15-110 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

32-15-110. Sales tax imposed - collection - administration of tax - discontinuance. (1) Upon the approval of the registered electors pursuant to the provisions of section 32-15-107, the board shall have the power to levy such uniform sales tax upon the adoption of a resolution for a period commencing after the termination of the sales tax levied and collected by the Denver metropolitan major league baseball stadium

district pursuant to section 32-14-105 and continuing for a period not to extend beyond January 1, 2012, throughout the district created in section 32-15-104 upon every transaction or other incident with respect to which a sales tax is levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.; except that such sales tax shall be levied on:

(d) SALES AND PURCHASES OF TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT THAT ARE OTHERWISE EXEMPT PURSUANT TO SECTION 39-26-114 (24), C.R.S.

SECTION 10. Effective date. This act shall take effect October 1, 2000, unless a referendum petition is filed during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution. If such a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on April 1, 2001.