

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REREVISED

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

LLS NO. 09-0298.01 Richard Sweetman

HOUSE BILL 09-1035

HOUSE SPONSORSHIP

Riesberg,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

Finance
Appropriations

A BILL FOR AN ACT

101 **CONCERNING SALES AND USE TAX REFUNDS FOR CERTAIN**
102 **COLORADO-BASED TECHNOLOGY COMPANIES.**

Bill Summary

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

Allows clean technology companies and medical device companies that are headquartered in Colorado and that employ 50 or fewer employees (clean technology and medical device companies) to receive refunds of state sales and use taxes paid on the sale, storage, use, or consumption of tangible personal property used in Colorado directly and predominately in research and development of clean technology or medical devices during a calendar year (tax refunds). Limits the amount

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.*

SENATE
Am ended 3rd Reading
April 29, 2009

SENATE
2nd Reading Unam ended
April 28, 2009

HOUSE
3rd Reading Unam ended
April 7, 2009

HOUSE
Am ended 2nd Reading
April 6, 2009

of the tax refunds that may be claimed by clean technology and medical device companies to \$50,000 per company per year.

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

2 **SECTION 1.** Part 4 of article 26 of title 39, Colorado Revised
3 Statutes, is amended to read:

4 **PART 4**

5 **SALES AND USE TAX REFUND FOR BIOTECHNOLOGY,**
6 **CLEAN TECHNOLOGY, AND MEDICAL DEVICES**

7 **39-26-401. Definitions.** As used in this part 4, unless the context
8 otherwise requires:

9 (1) "Biotechnology" means:

10 (a) The application of technologies to produce or modify products,
11 to develop microorganisms for specific uses, to identify targets for small
12 pharmaceutical development, or to transform biological systems into
13 useful processes or products; and

14 (b) The potential endpoints of the resulting products, processes,
15 microorganisms, or targets are for improving human or animal health care
16 outcomes.

17 (2) "CLEAN TECHNOLOGY" MEANS:

18 (a) RENEWABLE ENERGY GENERATION TECHNOLOGIES, INCLUDING
19 BUT NOT LIMITED TO SOLAR, WIND, BIOFUEL, AND GEOTHERMAL ENERGY
20 GENERATION TECHNOLOGIES;

21 (b) PRODUCTS AND TECHNOLOGIES USED IN RENEWABLE ENERGY
22 DEVELOPMENT AND GENERATION ON A COMMERCIAL SCALE;

23 (c) PRODUCTS AND TECHNOLOGIES THAT ENHANCE THE EFFICIENT
24 STORAGE, DISTRIBUTION, AND CONSUMPTION OF ENERGY; AND

25 (d) PRODUCTS AND TECHNOLOGIES THAT MITIGATE HUMAN IMPACT

1 ON THE ENVIRONMENT, INCLUDING BUT NOT LIMITED TO PRODUCTS AND
2 TECHNOLOGIES THAT FACILITATE THE MANAGEMENT OF GREENHOUSE
3 GASES, WATER, AND WASTE.

4 (3) "MEDICAL DEVICE" MEANS A THERAPEUTIC OR DIAGNOSTIC
5 MACHINE OR TOOL USED TO IMPROVE HUMAN OR ANIMAL HEALTH.

6 ~~(2)~~ (4) "Qualified BIOTECHNOLOGY taxpayer" means a C
7 corporation, as defined in section 39-22-103 (2.5), a partnership, as
8 defined in section 39-22-103 (5.6), a limited liability company that is not
9 a C corporation, an S corporation, as defined in section 39-22-103 (10.5),
10 or a sole proprietorship that purchases, stores, uses, or consumes tangible
11 personal property to be used in Colorado directly and predominately in
12 research and development of biotechnology.

13 (5) "QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE
14 TAXPAYER" MEANS A C CORPORATION, AS DEFINED IN SECTION 39-22-103
15 (2.5), A PARTNERSHIP, AS DEFINED IN SECTION 39-22-103 (5.6), A LIMITED
16 LIABILITY COMPANY THAT IS NOT A C CORPORATION, AN S CORPORATION,
17 AS DEFINED IN SECTION 39-22-103 (10.5), OR A SOLE PROPRIETORSHIP
18 THAT EMPLOYS FIFTY OR FEWER FULL-TIME EMPLOYEES IN COLORADO,
19 WHICH TAXPAYER PURCHASES, STORES, USES, OR CONSUMES TANGIBLE
20 PERSONAL PROPERTY TO BE USED IN COLORADO DIRECTLY AND
21 PREDOMINATELY IN RESEARCH AND DEVELOPMENT OF CLEAN
22 TECHNOLOGY OR MEDICAL DEVICES.

23 ~~(3)~~ (6) "Research and development" means qualified research as
24 defined by 26 U.S.C. sec. 41 (d) (1).

25 ~~(4)~~ (7) "Tangible personal property" includes capital equipment,
26 instruments, apparatus, and supplies used in laboratories, including, but
27 not limited to, microscopes, machines, glassware, chemical reagents,

1 computers, computer software, and technical books and manuals.

2 **39-26-402. Refund of state sales and use tax for biotechnology**

3 **- application requirements and procedures.** (1) For the calendar

4 year commencing January 1, 1999, and for each calendar year thereafter,

5 each qualified BIOTECHNOLOGY taxpayer shall be allowed to claim a

6 refund of all state sales and use tax paid by the qualified BIOTECHNOLOGY

7 taxpayer, pursuant to parts 1 and 2 of this article, on the sale, storage, use,

8 or consumption of tangible personal property to be used in Colorado

9 directly and predominately in research and development of biotechnology

10 during that calendar year.

11

12 (2) To claim the refund allowed by subsection (1) of this section,

13 a qualified BIOTECHNOLOGY taxpayer shall submit a refund application to

14 the department of revenue on a form provided by the department. Such

15 application shall be submitted no earlier than January 1 and no later than

16 April 1 of the calendar year following the calendar year for which the

17 refund is claimed. The application shall be accompanied by proof of

18 payment of state sales and use taxes paid by the qualified

19 BIOTECHNOLOGY taxpayer in the immediately preceding calendar year.

20 The application shall also include any additional information that the

21 department of revenue may require by rule, which may include, without

22 limitation, a detailed list of all expenditures that support a claim for a

23 refund, the name and addresses of an individual who maintains records

24 of such expenditures, and a statement that the qualified BIOTECHNOLOGY

25 taxpayer agrees to furnish records of all such expenditures to the

26 department of revenue upon request. No refund shall be allowed if the

27 qualified BIOTECHNOLOGY taxpayer has not complied with this subsection

1 (2).

2

3 **39-26-403. Refund of state sales and use tax for clean**
4 **technology and medical devices - application requirements and**
5 **procedures - repeal.** (1) FOR THE CALENDAR YEAR COMMENCING
6 JANUARY 1, 2009, AND FOR EACH CALENDAR YEAR THEREAFTER, EACH
7 QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER SHALL BE
8 ALLOWED TO CLAIM A REFUND OF ALL STATE SALES AND USE TAX PAID BY
9 THE QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER,
10 PURSUANT TO PARTS 1 AND 2 OF THIS ARTICLE, ON THE SALE, STORAGE,
11 USE, OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY TO BE USED IN
12 COLORADO DIRECTLY AND PREDOMINATELY IN RESEARCH AND
13 DEVELOPMENT OF CLEAN TECHNOLOGY OR MEDICAL DEVICES DURING
14 THAT CALENDAR YEAR.

15 (2) TO CLAIM THE REFUND ALLOWED BY SUBSECTION (1) OF THIS
16 SECTION, A QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE
17 TAXPAYER SHALL SUBMIT A REFUND APPLICATION TO THE DEPARTMENT OF
18 REVENUE ON A FORM PROVIDED BY THE DEPARTMENT. THE APPLICATION
19 SHALL BE SUBMITTED NO EARLIER THAN JANUARY 1 AND NO LATER THAN
20 APRIL 1 OF THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR FOR
21 WHICH THE REFUND IS CLAIMED. THE APPLICATION SHALL BE
22 ACCOMPANIED BY PROOF OF PAYMENT OF STATE SALES AND USE TAXES
23 PAID BY THE QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE
24 TAXPAYER IN THE IMMEDIATELY PRECEDING CALENDAR YEAR. THE
25 APPLICATION SHALL ALSO INCLUDE ANY ADDITIONAL INFORMATION THAT
26 THE DEPARTMENT OF REVENUE MAY REQUIRE BY RULE, WHICH MAY
27 INCLUDE, WITHOUT LIMITATION, A DETAILED LIST OF ALL EXPENDITURES

1 THAT SUPPORT A CLAIM FOR A REFUND, THE NAME AND ADDRESSES OF AN
2 INDIVIDUAL WHO MAINTAINS RECORDS OF SUCH EXPENDITURES, A
3 STATEMENT THAT THE QUALIFIED CLEAN TECHNOLOGY OR MEDICAL
4 DEVICE TAXPAYER AGREES TO FURNISH RECORDS OF ALL SUCH
5 EXPENDITURES TO THE DEPARTMENT OF REVENUE UPON REQUEST, AND
6 THE NUMBER OF PERSONS WHO ARE EMPLOYED ON A FULL-TIME BASIS BY
7 THE QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER. THE
8 REFUND SHALL NOT BE ALLOWED IF THE QUALIFIED CLEAN TECHNOLOGY
9 OR MEDICAL DEVICE TAXPAYER HAS NOT COMPLIED WITH THIS SUBSECTION
10 (2).

11 (3) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF
12 THIS SECTION:

13 (a) A SALES AND USE TAX REFUND DESCRIBED IN SUBSECTION (1)
14 OF THIS SECTION SHALL NOT EXCEED FIFTY THOUSAND DOLLARS FOR A
15 QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER IN A
16 CALENDAR YEAR.

17 (b) IF THE REVENUE ESTIMATE PREPARED BY THE STAFF OF THE
18 LEGISLATIVE COUNCIL IN DECEMBER 2009 AND EACH DECEMBER
19 THEREAFTER INDICATES THAT THE AMOUNT OF THE TOTAL GENERAL FUND
20 REVENUES FOR A PARTICULAR FISCAL YEAR WILL NOT BE SUFFICIENT TO
21 MAINTAIN THE LIMIT ON APPROPRIATIONS SPECIFIED IN SECTION
22 24-75-201.1 (1), C.R.S., THEN THE REFUND AUTHORIZED IN SUBSECTION
23 (1) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE NEXT CALENDAR
24 YEAR FOLLOWING THE YEAR IN WHICH THE ESTIMATE IS PREPARED. A
25 QUALIFIED CLEAN TECHNOLOGY OR MEDICAL DEVICE TAXPAYER WHO
26 WOULD HAVE BEEN ELIGIBLE TO CLAIM A REFUND PURSUANT TO THIS
27 SECTION IN A CALENDAR YEAR IN WHICH THE REFUND WAS NOT ALLOWED

1 MAY CLAIM SAID REFUND IN THE NEXT CALENDAR YEAR IN WHICH THE
2 REVENUE ESTIMATE ALLOWS THE REFUND. THE DEPARTMENT OF REVENUE
3 SHALL, THROUGH ITS WEB SITE, SPECIFY ON OR BEFORE JANUARY 1, 2010,
4 AND ON OR BEFORE EACH JANUARY 1 THEREAFTER, WHETHER THE REFUND
5 AUTHORIZED IN SUBSECTION (1) OF THIS SECTION SHALL BE ALLOWED FOR
6 A GIVEN CALENDAR YEAR.

7 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2014.

8 **SECTION 2.** 39-26-403 (3) (b), Colorado Revised Statutes, as
9 enacted by Section 1 of House Bill 09-1035, is amended to read:

10 (3) Notwithstanding the provisions of subsection (1) of this
11 section:

12 (b) If the revenue estimate prepared by the staff of the legislative
13 council in December 2009 and each December thereafter indicates that
14 the amount of the total general fund revenues for a particular fiscal year
15 will not be sufficient to maintain the limit on appropriations specified in
16 section 24-75-201.1 (1), C.R.S. INCREASE THE TOTAL STATE GENERAL
17 FUND APPROPRIATIONS BY SIX PERCENT OVER SUCH APPROPRIATIONS FOR
18 THE PREVIOUS FISCAL YEAR, then the refund authorized in subsection (1)
19 of this section shall not be allowed for the next calendar year following
20 the year in which the estimate is prepared. A qualified clean technology
21 or medical device taxpayer who would have been eligible to claim a
22 refund pursuant to this section in a calendar year in which the refund was
23 not allowed may claim said refund in the next calendar year in which the
24 revenue estimate allows the refund. The department of revenue shall,
25 through its web site, specify on or before January 1, 2010, and on or
26 before each January 1 thereafter, whether the refund authorized in
27 subsection (1) of this section shall be allowed for a given calendar year."

1 **SECTION 3. Act subject to petition - effective date -**
2 **applicability.** (1) Except as otherwise provided in subsection (3) of this
3 section, this act shall take effect at 12:01 a.m. on the day following the
4 expiration of the ninety-day period after final adjournment of the general
5 assembly that is allowed for submitting a referendum petition pursuant to
6 article V, section 1 (3) of the state constitution, (August 5, 2009, if
7 adjournment sine die is on May 6, 2009); except that, if a referendum
8 petition is filed against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part, if approved by the
10 people, shall take effect on the date of the official declaration of the vote
11 thereon by proclamation of the governor.

12 (2) This act shall apply to sales and use taxes paid on or after
13 January 1, 2009.

14 (3) Section 2 of this act shall take effect only if Senate Bill 09-228
15 is enacted and becomes law.