

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

**REVISED**

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

LLS NO. 09-0298.01 Richard Sweetman

**HOUSE BILL 09-1035**

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**HOUSE SPONSORSHIP**

**Riesberg,**

**SENATE SPONSORSHIP**

**Heath,**

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**House Committees**

Finance  
Appropriations

**Senate Committees**

Finance  
Appropriations

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**A BILL FOR AN ACT**

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

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**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  
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.

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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. Applicability.** This act shall apply to sales and use  
9 taxes paid on or after January 1, 2009.

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