

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0740.01 Jason Gelender

HOUSE BILL 10-1194

HOUSE SPONSORSHIP

Ferrandino,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE NARROWING OF THE EXISTING EXEMPTIONS FROM**
102 **THE STATE SALES AND USE TAXES FOR ARTICLES SOLD TO**
103 **SELLERS OF ITEMS INTENDED FOR HUMAN CONSUMPTION THAT**
104 **ARE FURNISHED BY THE SELLERS TO THEIR CUSTOMERS WITH**
105 **SUCH ITEMS WITHOUT THE ADDITION OF A SEPARATE CHARGE,**
106 **AND MAKING AN APPROPRIATION THEREFOR.**

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>.)

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.

Effective March 1, 2010, the bill narrows the existing state sales and use tax exemptions for sales to retailers or vendors of food, meals, or beverages of articles, containers, and bags that are to be furnished without separate charge to consumers or users for use with articles of tangible personal property purchased at retail upon which state sales tax is paid so that articles, containers, and bags that are nonessential to the consumer or user are no longer exempt from the state sales and use taxes and makes conforming amendments to prevent the narrowing of the exemption from affecting county, municipal, and other local government or political subdivision sales and use taxes.

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

2 **SECTION 1.** 39-26-707 (1) (c), (1) (d), (2) (b), and (2) (c),
3 Colorado Revised Statutes, are amended, and the said 39-26-707 is
4 further amended BY THE ADDITION OF A NEW SUBSECTION, to
5 read:

6 **39-26-707. Food, meals, and beverages.** (1) The following shall
7 be exempt from taxation under the provisions of part 1 of this article:

8 (c) Any sale of any article to a retailer or vendor of food, meals,
9 or beverages, which article is to be furnished to a consumer or user for
10 use with articles of tangible personal property purchased at retail, if a
11 separate charge is not made for the article to the consumer or user, if such
12 article becomes the property of the consumer or user, together with the
13 food, meals, or beverages purchased, and if a tax is paid on the retail sale
14 as required by section 39-26-104 (1) (a) or (1) (e); EXCEPT THAT, ON OR
15 AFTER MARCH 1, 2010, ANY SUCH ARTICLE THAT IS NONESSENTIAL TO THE
16 CONSUMER OR USER, AS DETERMINED BY RULES OF THE DEPARTMENT OF
17 REVENUE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24,
18 C.R.S., SHALL BE SUBJECT TO SUCH TAXATION;

19 (d) Any sale of any container or bag to a retailer or vendor of
20 food, meals, or beverages, which container or bag is to be furnished to a

1 consumer or user for the purpose of packaging or bagging articles of
2 tangible personal property purchased at retail, if a separate charge is not
3 made for the container or bag to the consumer or user, if such container
4 or bag becomes the property of the consumer or user, together with the
5 food, meals, or beverages purchased, and if a tax is paid on the retail sale
6 as required by section 39-26-104 (1) (a) or (1) (e); EXCEPT THAT, ON AND
7 AFTER MARCH 1, 2010, ANY SUCH CONTAINER OR BAG THAT IS
8 NONESSENTIAL TO THE CONSUMER OR USER, AS DETERMINED BY RULES OF
9 THE DEPARTMENT OF REVENUE PROMULGATED IN ACCORDANCE WITH
10 ARTICLE 4 OF TITLE 24, C.R.S., SHALL BE SUBJECT TO SUCH TAXATION; and

11 (2) The following shall be exempt from taxation under the
12 provisions of part 2 of this article:

13 (b) The storage, use, or consumption of any article by a retailer or
14 vendor of food, meals, or beverages, which article is to be furnished to a
15 consumer or user for use with articles of tangible personal property
16 purchased at retail, if a separate charge is not made for the article to the
17 consumer or user, if the article becomes the property of the consumer or
18 user, together with the food, meals, or beverages purchased, and if a tax
19 is paid on the retail sale as required by section 39-26-104 (1) (a) or (1)
20 (e); EXCEPT THAT, ON AND AFTER MARCH 1, 2010, ANY SUCH ARTICLE
21 STORED, USED, OR CONSUMED THAT IS NONESSENTIAL TO THE END
22 CONSUMER OR USER, AS DETERMINED BY RULES OF THE DEPARTMENT OF
23 REVENUE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24,
24 C.R.S., SHALL BE SUBJECT TO SUCH TAXATION;

25 (c) The storage, use, or consumption of any container or bag by
26 a retailer or vendor of food, meals, or beverages, which container or bag
27 is to be furnished to a consumer or user for the purpose of packaging or

1 bagging articles of tangible personal property purchased at retail, if a
2 separate charge is not made for the container or bag to the consumer or
3 user, if the container or bag becomes the property of the consumer or
4 user, together with the food, meals, or beverages purchased, and if a tax
5 is paid on the retail sale as required by section 39-26-104 (1) (a) or (1)
6 (e); EXCEPT THAT, ON AND AFTER MARCH 1, 2010, ANY SUCH CONTAINER
7 OR BAG STORED, USED, OR CONSUMED THAT IS NONESSENTIAL TO THE END
8 CONSUMER OR USER, AS DETERMINED BY RULES OF THE DEPARTMENT OF
9 REVENUE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24,
10 C.R.S., SHALL BE SUBJECT TO SUCH TAXATION; and

11 (3) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
12 CONTRARY, FOR ANY LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF
13 THE STATE THAT LEVIES A SALES OR USE TAX BASED ON THE SALES OR USE
14 TAX LEVIED BY THE STATE PURSUANT TO THIS ARTICLE, THE SALE OR
15 STORAGE, USE, OR CONSUMPTION OF ANY ARTICLE, CONTAINER, OR BAG
16 DESCRIBED IN EITHER PARAGRAPHS (c) OF SUBSECTION (1) AND (b) OF
17 SUBSECTION (2) OF THIS SECTION OR PARAGRAPHS (d) OF SUBSECTION (1)
18 AND (c) OF SUBSECTION (2) OF THIS SECTION THAT IS NONESSENTIAL TO
19 THE END CONSUMER OR USER AND THEREFORE SUBJECT TO STATE SALES
20 AND USE TAXES ON AND AFTER MARCH 1, 2010, SHALL BE EXEMPT FROM
21 THE SALES OR USE TAX OF THE LOCAL GOVERNMENT OR POLITICAL
22 SUBDIVISION UNLESS THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION
23 EXPRESSLY SUBJECTS SUCH SALES OR STORAGE, USE, OR CONSUMPTION TO
24 ITS SALES OR USE TAX AT THE TIME OF ADOPTION OF ITS INITIAL SALES OR
25 USE TAX ORDINANCE OR RESOLUTION OR BY SUBSEQUENT AMENDMENT
26 THERETO.

27 **SECTION 2. Appropriation.** In addition to any other

1 appropriation, there is hereby appropriated, out of any moneys in the
2 general fund not otherwise appropriated, to the department of revenue, for
3 allocation to the taxation business group, taxation and compliance
4 division, for the fiscal year beginning July 1, 2009, the sum of ninety-four
5 thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so
6 much thereof as may be necessary, for the implementation of this act.

7 **SECTION 3. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.