

**NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

# An Act

HOUSE BILL 10-1194

BY REPRESENTATIVE(S) Ferrandino, Benefield, Frangas, Judd, Labuda, Kagan;  
also SENATOR(S) Heath.

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

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

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

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

(c) Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1) (e); EXCEPT THAT, ON OR AFTER MARCH 1, 2010, ANY SUCH ARTICLE THAT IS NONESSENTIAL TO THE CONSUMER OR USER, AS DETERMINED BY RULES OF THE DEPARTMENT OF REVENUE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., SHALL BE SUBJECT TO STATE SALES TAXATION;

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

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

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

(c) The storage, use, or consumption of any container or bag by a

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

(3) FOR ANY RETURN MADE PRIOR TO JUNE 1, 2010, A PERSON WHO SELLS OR STORES, USES, OR CONSUMES ITEMS DESCRIBED IN PARAGRAPHS (c) AND (d) OF SUBSECTION (1) AND PARAGRAPHS (b) AND (c) OF SUBSECTION (2) OF THIS SECTION THAT ARE NONESSENTIAL TO THE END CONSUMER OR USER SHALL NOT BE LIABLE FOR ANY INTEREST OR OTHER PENALTY IMPOSED AS A RESULT OF AN ERROR MADE IN CONNECTION WITH THE ELIMINATION OF THE EXEMPTION FOR SUCH NONESSENTIAL ITEMS FROM STATE SALES AND USE TAX BY HOUSE BILL 10-1194, ENACTED IN 2010.

**SECTION 2.** Part 1 of article 21 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**39-21-122. Revenue impact of 2010 tax legislation - tracking by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1194, ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

**SECTION 3.** Part 1 of article 26 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**39-26-127. Legislation modifying the state sales tax base - no impact on local government sales tax bases - no expansion of local authority to levy sales tax.** (1) NOTWITHSTANDING THE PROVISIONS OF SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR

ANY OTHER PROVISION OF LAW, THE LEVYING OF SALES TAX ON, EXEMPTION FROM SALES TAX FOR, OR LOCAL OPTION TO LEVY SALES TAX ON OR PROVIDE AN EXEMPTION FROM SALES TAX FOR ANY TANGIBLE PERSONAL PROPERTY OR SERVICES UNDER THE SALES TAX ORDINANCE OR RESOLUTION OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE AFFECTED IN ANY WAY BY THE ELIMINATION, SUSPENSION, OR MODIFICATION OF ANY SALES TAX EXEMPTION OR ANY OTHER LEGISLATIVE MODIFICATION OF THE STATE SALES TAX BASE RESULTING FROM THE ENACTMENT OF ANY OF THE FOLLOWING BILLS:

(a) HOUSE BILL 10-1194, ENACTED IN 2010.

(2) THIS SECTION DOES NOT CREATE OR EXPAND, AND SHALL NOT BE CONSTRUED TO CREATE OR EXPAND, ANY AUTHORITY OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE TO LEVY SALES TAX.

**SECTION 4.** Part 2 of article 26 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**39-26-212. Legislation modifying the state use tax base - no impact on local government use tax bases - no expansion of local authority to levy use tax.** (1) NOTWITHSTANDING THE PROVISIONS OF SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR ANY OTHER PROVISION OF LAW, THE LEVYING OF USE TAX ON, EXEMPTION FROM USE TAX FOR, OR LOCAL OPTION TO LEVY USE TAX ON OR PROVIDE AN EXEMPTION FROM USE TAX FOR ANY TANGIBLE PERSONAL PROPERTY OR SERVICES UNDER THE USE TAX ORDINANCE OR RESOLUTION OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE AFFECTED IN ANY WAY BY THE ELIMINATION, SUSPENSION, OR MODIFICATION OF ANY USE TAX EXEMPTION OR ANY OTHER LEGISLATIVE MODIFICATION OF THE STATE USE TAX BASE RESULTING FROM THE ENACTMENT OF ANY OF THE FOLLOWING BILLS:

(a) HOUSE BILL 10-1194, ENACTED IN 2010.

(2) THIS SECTION DOES NOT CREATE OR EXPAND, AND SHALL NOT BE CONSTRUED TO CREATE OR EXPAND, ANY AUTHORITY OF ANY COUNTY,

MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE TO LEVY USE TAX.

**SECTION 5.** Part 1 of article 75 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**24-75-113. 2010 bills to increase state revenue - prohibition on hiring of new state employees.** NO MONEYS DERIVED FROM THE INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE BILL 10-1194, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE PURPOSE OF FUNDING ADDITIONAL FULL-TIME EQUIVALENT STATE EMPLOYEES.

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

**SECTION 7. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Terrance D. Carroll  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Karen Goldman  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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Bill Ritter, Jr.  
GOVERNOR OF THE STATE OF COLORADO