

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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.*

HOUSE
3rd Reading Unamended
February 1, 2010

HOUSE
Amended 2nd Reading
January 29, 2010

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 to read:

4 **39-26-707. Food, meals, and beverages.** (1) The following shall
5 be exempt from taxation under the provisions of part 1 of this article:

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

17 (d) Any sale of any container or bag to a retailer or vendor of
18 food, meals, or beverages, which container or bag is to be furnished to a
19 consumer or user for the purpose of packaging or bagging articles of
20 tangible personal property purchased at retail, if a separate charge is not

1 made for the container or bag to the consumer or user, if such container
2 or bag becomes the property of the consumer or user, together with the
3 food, meals, or beverages purchased, and if a tax is paid on the retail sale
4 as required by section 39-26-104 (1) (a) or (1) (e); EXCEPT THAT, ON AND
5 AFTER MARCH 1, 2010, ANY SUCH CONTAINER OR BAG THAT IS
6 NONESSENTIAL TO THE CONSUMER OR USER, AS DETERMINED BY RULES OF
7 THE DEPARTMENT OF REVENUE PROMULGATED IN ACCORDANCE WITH
8 ARTICLE 4 OF TITLE 24, C.R.S., SHALL BE SUBJECT TO STATE SALES
9 TAXATION; and

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

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

24 (c) The storage, use, or consumption of any container or bag by
25 a retailer or vendor of food, meals, or beverages, which container or bag
26 is to be furnished to a consumer or user for the purpose of packaging or
27 bagging articles of tangible personal property purchased at retail, if a

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

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

13 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
14 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL
15 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1194,
16 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS
17 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY
18 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE
19 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

20 **SECTION 3.** Part 1 of article 75 of title 24, Colorado Revised
21 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
22 read:

23 **24-75-113. 2010 bills to increase state revenue - prohibition on**
24 **hiring of new state employees.** NO MONEYS DERIVED FROM THE
25 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE
26 BILL 10-1194, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE
27 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE

1 EMPLOYEES.

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

9 **SECTION 5. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.