

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

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

LLS NO. 10-0740.01 Jason Gelender

HOUSE BILL 10-1194

HOUSE SPONSORSHIP

Ferrandino,

SENATE SPONSORSHIP

Heath,

House Committees

Finance
Appropriations

Senate Committees

Finance
Appropriations

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.*

SENATE
3rd Reading Unam ended
February 10, 2010

SENATE
Am ended 2nd Reading
February 8, 2010

HOUSE
3rd Reading Unam ended
February 1, 2010

HOUSE
Am ended 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, 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 STATE SALES 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 STATE SALES
11 TAXATION; and

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

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

26 (c) The storage, use, or consumption of any container or bag by
27 a retailer or vendor of food, meals, or beverages, which container or bag

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

12 (3) FOR ANY RETURN MADE PRIOR TO JUNE 1, 2010, A PERSON WHO
13 SELLS OR STORES, USES, OR CONSUMES ITEMS DESCRIBED IN PARAGRAPHS
14 (c) AND (d) OF SUBSECTION (1) AND PARAGRAPHS (b) AND (c) OF
15 SUBSECTION (2) OF THIS SECTION THAT ARE NONESSENTIAL TO THE END
16 CONSUMER OR USER SHALL NOT BE LIABLE FOR ANY INTEREST OR OTHER
17 PENALTY IMPOSED AS A RESULT OF AN ERROR MADE IN CONNECTION WITH
18 THE ELIMINATION OF THE EXEMPTION FOR SUCH NONESSENTIAL ITEMS
19 FROM STATE SALES AND USE TAX BY HOUSE BILL 10-1194, ENACTED IN
20 2010.

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

24 **39-21-122. Revenue impact of 2010 tax legislation - tracking**
25 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL
26 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1194,
27 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS

1 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY
2 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE
3 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

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

7 **39-26-127. Legislation modifying the state sales tax base - no**
8 **impact on local government sales tax bases - no expansion of local**
9 **authority to levy sales tax.** (1) NOTWITHSTANDING THE PROVISIONS OF
10 SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR
11 ANY OTHER PROVISION OF LAW, THE LEVYING OF SALES TAX ON,
12 EXEMPTION FROM SALES TAX FOR, OR LOCAL OPTION TO LEVY SALES TAX
13 ON OR PROVIDE AN EXEMPTION FROM SALES TAX FOR ANY TANGIBLE
14 PERSONAL PROPERTY OR SERVICES UNDER THE SALES TAX ORDINANCE OR
15 RESOLUTION OF ANY COUNTY, MUNICIPALITY, SPECIAL DISTRICT,
16 AUTHORITY, OR OTHER LOCAL GOVERNMENT OR POLITICAL SUBDIVISION
17 OF THE STATE SHALL NOT BE AFFECTED IN ANY WAY BY THE ELIMINATION,
18 SUSPENSION, OR MODIFICATION OF ANY SALES TAX EXEMPTION OR ANY
19 OTHER LEGISLATIVE MODIFICATION OF THE STATE SALES TAX BASE
20 RESULTING FROM THE ENACTMENT OF ANY OF THE FOLLOWING BILLS:

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

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

27 **SECTION 4.** Part 2 of article 26 of title 39, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
2 read:

3 **39-26-212. Legislation modifying the state use tax base - no**
4 **impact on local government use tax bases - no expansion of local**
5 **authority to levy use tax. (1) NOTWITHSTANDING THE PROVISIONS OF**
6 **SECTION 29-2-105 (1) (d), C.R.S., ANY PROVISION OF TITLE 32, C.R.S., OR**
7 **ANY OTHER PROVISION OF LAW, THE LEVYING OF USE TAX ON, EXEMPTION**
8 **FROM USE TAX FOR, OR LOCAL OPTION TO LEVY USE TAX ON OR PROVIDE**
9 **AN EXEMPTION FROM USE TAX FOR ANY TANGIBLE PERSONAL PROPERTY OR**
10 **SERVICES UNDER THE USE TAX ORDINANCE OR RESOLUTION OF ANY**
11 **COUNTY, MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL**
12 **GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE SHALL NOT BE**
13 **AFFECTED IN ANY WAY BY THE ELIMINATION, SUSPENSION, OR**
14 **MODIFICATION OF ANY USE TAX EXEMPTION OR ANY OTHER LEGISLATIVE**
15 **MODIFICATION OF THE STATE USE TAX BASE RESULTING FROM THE**
16 **ENACTMENT OF ANY OF THE FOLLOWING BILLS:**

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

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

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

25 **24-75-113. 2010 bills to increase state revenue - prohibition on**
26 **hiring of new state employees. NO MONEYS DERIVED FROM THE**
27 **INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE**

1 BILL 10-1194, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE
2 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE
3 EMPLOYEES.

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

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