

**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**

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**HOUSE SPONSORSHIP**

**Ferrandino,**

**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 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.**

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**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.

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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, FOR  
15 THE PERIOD COMMENCING MARCH 1, 2010, AND ENDING JUNE 30, 2013,  
16 ANY SUCH ARTICLE THAT IS NONESSENTIAL TO THE CONSUMER OR USER,  
17 AS DETERMINED BY RULES OF THE DEPARTMENT OF REVENUE  
18 PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.,  
19 SHALL BE SUBJECT TO STATE SALES TAXATION;

20           (d) Any sale of any container or bag to a retailer or vendor of

1 food, meals, or beverages, which container or bag is to be furnished to a  
2 consumer or user for the purpose of packaging or bagging articles of  
3 tangible personal property purchased at retail, if a separate charge is not  
4 made for the container or bag to the consumer or user, if such container  
5 or bag becomes the property of the consumer or user, together with the  
6 food, meals, or beverages purchased, and if a tax is paid on the retail sale  
7 as required by section 39-26-104 (1) (a) or (1) (e); EXCEPT THAT, FOR  
8 THE PERIOD COMMENCING MARCH 1, 2010, AND ENDING JUNE 30, 2013,  
9 ANY SUCH CONTAINER OR BAG THAT IS NONESSENTIAL TO THE CONSUMER  
10 OR USER, AS DETERMINED BY RULES OF THE DEPARTMENT OF REVENUE  
11 PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.,  
12 SHALL BE SUBJECT TO STATE SALES TAXATION; and

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

15 (b) The storage, use, or consumption of any article by a retailer or  
16 vendor of food, meals, or beverages, which article is to be furnished to a  
17 consumer or user for use with articles of tangible personal property  
18 purchased at retail, if a separate charge is not made for the article to the  
19 consumer or user, if the article becomes the property of the consumer or  
20 user, together with the food, meals, or beverages purchased, and if a tax  
21 is paid on the retail sale as required by section 39-26-104 (1) (a) or (1)  
22 (e); EXCEPT THAT, FOR THE PERIOD COMMENCING MARCH 1, 2010, AND  
23 ENDING JUNE 30, 2013, ANY SUCH ARTICLE STORED, USED, OR CONSUMED  
24 THAT IS NONESSENTIAL TO THE END CONSUMER OR USER, AS DETERMINED  
25 BY RULES OF THE DEPARTMENT OF REVENUE PROMULGATED IN  
26 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., SHALL BE SUBJECT TO  
27 STATE USE TAXATION;

1 (c) The storage, use, or consumption of any container or bag by  
2 a retailer or vendor of food, meals, or beverages, which container or bag  
3 is to be furnished to a consumer or user for the purpose of packaging or  
4 bagging articles of tangible personal property purchased at retail, if a  
5 separate charge is not made for the container or bag to the consumer or  
6 user, if the container or bag becomes the property of the consumer or  
7 user, together with the food, meals, or beverages purchased, and if a tax  
8 is paid on the retail sale as required by section 39-26-104 (1) (a) or (1)  
9 (e); EXCEPT THAT, FOR THE PERIOD COMMENCING MARCH 1, 2010, AND  
10 ENDING JUNE 30, 2013, ANY SUCH CONTAINER OR BAG STORED, USED, OR  
11 CONSUMED THAT IS NONESSENTIAL TO THE END CONSUMER OR USER, AS  
12 DETERMINED BY RULES OF THE DEPARTMENT OF REVENUE PROMULGATED  
13 IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., SHALL BE SUBJECT  
14 TO STATE USE TAXATION; and

15 (3) FOR ANY RETURN MADE PRIOR TO JUNE 1, 2010, A PERSON WHO  
16 SELLS OR STORES, USES, OR CONSUMES ITEMS DESCRIBED IN PARAGRAPHS  
17 (c) AND (d) OF SUBSECTION (1) AND PARAGRAPHS (b) AND (c) OF  
18 SUBSECTION (2) OF THIS SECTION THAT ARE NONESSENTIAL TO THE END  
19 CONSUMER OR USER SHALL NOT BE LIABLE FOR ANY INTEREST OR OTHER  
20 PENALTY IMPOSED AS A RESULT OF AN ERROR MADE IN CONNECTION WITH  
21 THE ELIMINATION OF THE EXEMPTION FOR SUCH NONESSENTIAL ITEMS  
22 FROM STATE SALES AND USE TAX BY HOUSE BILL 10-1194, ENACTED IN  
23 2010.

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

27 **39-21-122. Revenue impact of 2010 tax legislation - tracking**

1 **by department.** THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL  
2 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1194,  
3 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS  
4 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY  
5 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE  
6 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

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

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

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

25 (2) THIS SECTION DOES NOT CREATE OR EXPAND, AND SHALL NOT  
26 BE CONSTRUED TO CREATE OR EXPAND, ANY AUTHORITY OF ANY COUNTY,  
27 MUNICIPALITY, SPECIAL DISTRICT, AUTHORITY, OR OTHER LOCAL

1 GOVERNMENT OR POLITICAL SUBDIVISION OF THE STATE TO LEVY SALES  
2 TAX.

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

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

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

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

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

1           **24-75-113. 2010 bills to increase state revenue - prohibition on**  
2 **hiring of new state employees.** NO MONEYS DERIVED FROM THE  
3 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE  
4 BILL 10-1194, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE  
5 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE  
6 EMPLOYEES.

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

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