

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 11-0636.02 Troy Bratton

HOUSE BILL 11-1265

HOUSE SPONSORSHIP

Stephens, Waller

SENATE SPONSORSHIP

Johnston,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE FILING OF CLAIMS FOR REFUNDS OF SALES OR USE**
102 **TAX.**

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>.)

Under current law, a claim for a refund of a sales tax that was disputed by the taxpayer at the point of purchase must be made by the taxpayer within 60 days of the date of purchase. All other claims for sales tax refunds must be made within 3 years of the date of purchase.

The bill increases the period during which a taxpayer may claim

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.*

a refund of a disputed sales tax from 60 days to 3 years to be in conformity with other sales tax refunds and allows a vendor to submit a claim on behalf of a purchaser.

The bill also adds a penalty provision for anyone who submits false information in regard to a claim for a sales or use tax refund.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) It has long been the intent of the general assembly to subject
5 claims for refunds of state sales and use tax to a three-year statute of
6 limitations; and

7 (b) Vendors should be allowed, but not compelled, to file claims
8 for refunds for sales and use tax on behalf of their customers.

9 (2) Therefore, it is the intent of the general assembly to clarify that
10 the three-year statute of limitations and the ability of vendors to file
11 claims for refunds on behalf of their customers shall apply to taxpayers.

12 **SECTION 2.** 39-21-118 (2), Colorado Revised Statutes, is
13 amended, and the said 39-21-118 is further amended BY THE
14 ADDITION OF A NEW SUBSECTION, to read:

15 **39-21-118. Criminal penalties.** (2) Any person required, OR
16 ANY PERSON WHO PURPORTS TO BE REQUIRED, under any title administered
17 by the department to collect, account for, or pay over any tax, who
18 willfully fails to collect or truthfully account for or pay over such tax,
19 INCLUDING, BUT NOT LIMITED TO, WILFULLY MAKING A FALSE STATEMENT
20 IN CONNECTION WITH AN APPLICATION FOR A REFUND OF ANY TAX,
21 WHETHER PAID OR CLAIMED AS PAID, in addition to other penalties
22 provided by law, is guilty of a class 5 felony and, upon conviction thereof,
23 shall be punished as provided in section 18-1.3-401, C.R.S., or shall be

1 punished by a fine of not more than one hundred thousand dollars, or five
2 hundred thousand dollars in the case of a corporation, or by both such fine
3 and imprisonment, together with the costs of prosecution.

4 (2.5) ANY PERSON WHO MAKES A FALSE STATEMENT IN APPLYING
5 FOR A REFUND PURSUANT TO SECTION 39-26-703 OR ANY OTHER PERSON
6 WHO MAKES A FALSE STATEMENT IN CONNECTION WITH AN APPLICATION
7 FOR A REFUND IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION,
8 SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE HUNDRED
9 DOLLARS, OR BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN
10 NINETY DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

11 **SECTION 3.** 39-26-703 (1), (2), and (3), Colorado Revised
12 Statutes, are amended, and the said 39-26-703 is further amended BY
13 THE ADDITION OF A NEW SUBSECTION, to read:

14 **39-26-703. Disputes and refunds.** (1) Should a dispute arise
15 between the purchaser and seller as to whether or not any sale, service, or
16 commodity is exempt from taxation pursuant to this part 7, nevertheless
17 the seller shall collect and the purchaser shall pay the tax, and the seller
18 shall thereupon issue to the purchaser a receipt ~~or certificate, on forms~~
19 ~~prescribed by the executive director of the department of revenue,~~
20 ~~showing the names of the seller and the purchaser, the items purchased,~~
21 ~~the date, price, and amount of tax paid, and a brief statement of the claim~~
22 ~~of exemption. The purchaser thereafter may apply to the executive~~
23 ~~director for a refund of the taxes, and it is then the duty of the executive~~
24 ~~director to determine the question of exemption. The purchaser may~~
25 ~~request a hearing pursuant to section 39-21-103, and the final~~
26 ~~determination of the executive director may be appealed to the district~~
27 ~~court pursuant to section 39-21-105~~ SHOWING THE TAX PAID.

1 (2) (a) ~~A refund shall be made, or a credit allowed, for the tax so~~
2 ~~paid under dispute by any purchaser who has an exemption as provided~~
3 ~~in this part 7. Such refund shall be made by the executive director of the~~
4 ~~department of revenue after compliance with the following conditions~~
5 ~~precedent: Applications for refund shall be made within sixty days after~~
6 ~~the purchase of the goods whereon an exemption is claimed, shall be~~
7 ~~supported by the affidavit of the purchaser accompanied by the original~~
8 ~~paid invoice or sales receipt and certificate issued by the seller, and shall~~
9 ~~be made upon such forms as shall be prescribed and furnished by the~~
10 ~~executive director, which forms shall contain such information as the~~
11 ~~executive director prescribes.~~

12 (b) ~~Upon receipt of an application, the executive director of the~~
13 ~~department of revenue shall examine the same with due speed and shall~~
14 ~~give notice to the applicant by order in writing of the executive director's~~
15 ~~decision. Aggrieved applicants, within thirty days after the decision is~~
16 ~~mailed to them, may petition the executive director for a hearing on the~~
17 ~~claim in the manner provided in section 39-21-103 and may appeal to the~~
18 ~~district courts in the manner provided in section 39-21-105. The right of~~
19 ~~any person to a refund under this part 7 ARTICLE shall not be assignable,~~
20 ~~and, except as provided in paragraph (d) PARAGRAPH (c) of this~~
21 ~~subsection (2) AND SUBSECTION (2.5) OF THIS SECTION, such application~~
22 ~~for refund shall be made by the same person who purchased the goods~~
23 ~~and paid the tax thereon as shown in the invoice of the sale. Any~~
24 ~~applicant for refund under the provisions of this section, or any other~~
25 ~~person, who willfully makes any false statement in connection with an~~
26 ~~application for a refund of any taxes shall be punished as provided by~~
27 ~~section 39-21-118.~~

1 (c) A refund shall be made or a credit allowed by the executive
2 director of the department of revenue TO ANY PERSON WHO ESTABLISHES
3 THAT HE OR SHE HAS OVERPAID THE TAX DUE PURSUANT TO THIS ARTICLE
4 OR to any person entitled to an exemption where the person establishes:
5 That a tax was paid by another on a purchase made on behalf of such
6 person or that a tax was paid by an independent contractor on or before
7 July 1, 1979, on tangible personal property incorporated into realty for the
8 sole use, benefit, and ownership of any person entitled to an exemption;
9 that a refund has not been granted to the person making the purchase; and
10 that the person entitled to exemption paid or reimbursed the purchaser for
11 such tax. No such refund shall be made or credit allowed in an amount
12 greater than the tax paid less the expense allowance on the purchase
13 retained by the vendor pursuant to section 39-26-105 (1). ~~No assessment~~
14 ~~shall be made of validly issued refunds made under the rules governing~~
15 ~~this paragraph (c) in effect on June 7, 1979.~~

16 (d) An application for refund under paragraph (c) of this
17 subsection (2) shall be made within three years after the date of purchase
18 and shall be made on forms prescribed and furnished by the executive
19 director of the department of revenue, which form shall contain, in
20 addition to the foregoing information, such pertinent data as the executive
21 director prescribes.

22 (d.5) Upon receipt of the application and proof of the matters
23 contained therein, the executive director OF THE DEPARTMENT OF
24 REVENUE shall give notice to the applicant by order in writing of the
25 executive director's decision. Aggrieved applicants, within thirty days
26 after such decision is mailed to them, may petition the executive director
27 for a hearing on the claim in the manner provided in section 39-21-103

1 and may appeal to the district courts in the manner provided in section
2 39-21-105. ~~Any applicant for refund under the provisions of this~~
3 ~~paragraph (d), or any other person, who makes any false statement in~~
4 ~~connection with an application for refund of any taxes is guilty of a~~
5 ~~misdemeanor and, upon conviction, shall be punished by a fine of not~~
6 ~~more than five hundred dollars, or by imprisonment in the county jail for~~
7 ~~not more than ninety days, or by both such fine and imprisonment.~~

8 (e) ~~Claims for tax moneys paid in error or by mistake may be~~
9 ~~processed for refund in accordance with departmental rules under~~
10 ~~paragraph (c) of this subsection (2); except that~~ The proceeds of any
11 claim for refund shall first be applied by the department of revenue to any
12 tax deficiencies or liabilities existing against the claimant before
13 allowance of the claim by the department; and further except that, if such
14 excess payment of tax moneys in any period is discovered as a result of
15 audit by the department and deficiencies are discovered and assessed
16 against the taxpayer as a result of the audit, the excess moneys shall be
17 first applied against any deficiencies outstanding to the date of the
18 assessment but shall not be applied to any future tax liabilities.

19 (2.5) (a) WITHIN THREE YEARS AFTER THE DUE DATE OF THE
20 RETURN SHOWING THE OVERPAYMENT OR ONE YEAR AFTER THE DATE OF
21 OVERPAYMENT, WHICHEVER IS LATER, THE EXECUTIVE DIRECTOR OF THE
22 DEPARTMENT OF REVENUE SHALL MAKE A REFUND OR ALLOW A CREDIT TO
23 ANY VENDOR WHO ESTABLISHES THAT SUCH VENDOR OVERPAID THE TAX
24 DUE PURSUANT TO THIS ARTICLE.

25 (b) (I) A VENDOR MAY CLAIM A REFUND ON BEHALF OF ANY
26 PURCHASER OF THE VENDOR IF:

27 (A) THE PURCHASER COULD TIMELY FILE A CLAIM FOR A REFUND

1 ON HIS OR HER OWN BEHALF; AND

2 (B) THE VENDOR ESTABLISHES TO THE SATISFACTION OF THE
3 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THAT THE
4 AMOUNT CLAIMED, INCLUDING ANY INTEREST PAYABLE PURSUANT TO
5 SECTION 39-21-110, HAS BEEN OR WILL ACTUALLY BE PAID BY THE
6 VENDOR TO THE PURCHASER.

7 (II) NOTHING IN THIS PARAGRAPH (b) SHALL PROHIBIT A VENDOR
8 FROM TAKING A CREDIT THAT THE VENDOR BELIEVES TO BE DUE ON A
9 SUBSEQUENT PERIOD RETURN FOR AN OVERPAYMENT OR FOR TAX
10 COLLECTED IN ERROR AND SUBSEQUENTLY REFUNDED TO A PURCHASER;
11 EXCEPT THAT SUCH CREDIT SHALL BE SUBJECT TO AUDIT AND SHALL NOT
12 BEAR ANY INTEREST PURSUANT TO SECTION 39-21-110.

13 (c) NO VENDOR SHALL BE COMPELLED BY ANY PARTY TO FILE A
14 REFUND CLAIM PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2.5).
15 IT SHALL BE A COMPLETE DEFENSE TO ANY CLAIM BY A PURCHASER
16 AGAINST A VENDOR FOR TAX COLLECTED IN ERROR THAT THE VENDOR HAS
17 PAID THE TAX OVER TO THE DEPARTMENT OF REVENUE. ANY ACTION BY
18 A PURCHASER FOR TAX COLLECTED BY A VENDOR IN ERROR THAT HAS
19 BEEN REMITTED TO THE DEPARTMENT MUST BE MADE PURSUANT TO
20 SUBSECTION (2) OF THIS SECTION AND SECTION 39-21-108.

21 (3) If any person is convicted under the provisions of ~~this section~~
22 SECTION 39-21-118, the convictions shall be prima facie evidence that all
23 refunds received by the person during the current year were obtained
24 unlawfully, and the executive director of the department of revenue is
25 empowered to bring appropriate action for recovery of such refunds. A
26 brief summary statement of the above mentioned penalties shall be
27 printed on each form application for refund.

1 **SECTION 4. Applicability.** This act shall apply to all claims for
2 refunds of sales or use tax filed with the department of revenue before,
3 on, or after the effective date of this act.

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