

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

REVISED

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

LLS NO. 11-0705.01 Bob Lackner

SENATE BILL 11-086

SENATE SPONSORSHIP

Foster, King K., Nicholson

HOUSE SPONSORSHIP

Murray,

Senate Committees

Local Government and Energy

House Committees

Local Government

A BILL FOR AN ACT

101 **CONCERNING PERIODS GOVERNING THE APPEAL BY TAXPAYERS IN TAX**
102 **DISPUTES WITH LOCAL GOVERNMENTS IN CONNECTION WITH**
103 **THE IMPOSITION OF SALES OR USE TAX BY SUCH GOVERNMENTS.**

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>.)

The bill modifies various statutory requirements governing the process by which a taxpayer may appeal a deficiency notice or refund claim denial issued by a county or municipality (local government) in connection with the imposition of sales or use tax by such government.

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
2nd Reading Unam ended
March 7, 2011

SENATE
3rd Reading Unam ended
February 14, 2011

SENATE
2nd Reading Unam ended
February 11, 2011

Specifically:

- ! The bill clarifies the enumeration of particular events that need to occur before the taxpayer can be said to have exhausted local remedies and, therefore, be authorized to request a hearing before the executive director of the department of revenue or the district court on the deficiency notice or refund claim denial.
- ! The bill specifies that the deadline by which the local government is required to render a decision on an appeal of a deficiency notice following a hearing may be extended beyond the current statutory deadline with the agreement of the taxpayer and the local government.
- ! The bill specifies that a taxpayer has exhausted local remedies as a condition precedent to filing an appeal if, among other things:
 - ! The taxpayer and local government agree in writing that no hearing will be held or no final decision will issue from the local government; or
 - ! The local government notifies the taxpayer in writing that it does not intend to conduct a hearing 180 days or more after the date of the taxpayer's request for a hearing.
- ! In the event the taxpayer has timely requested in writing a hearing before the local government and none of the events that establish exhaustion of local remedies on the part of the local government have occurred, the taxpayer may request a hearing at any time after the period specified in the statute.
- ! Any hearing before a local government shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the local government may submit a brief.

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

2 **SECTION 1.** 29-2-106.1 (2) (c), (3) (a), and (8), Colorado Revised
3 Statutes, are amended, and the said 29-2-106.1 (2) is further amended BY
4 THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

5 **29-2-106.1. Deficiency notice - dispute resolution.** (2) (c) The
6 taxpayer shall request the hearing pursuant to subsection (3) of this section
7 within thirty days after the taxpayer's exhaustion of local remedies. ~~The~~

1 taxpayer shall have no right to such hearing if he has not exhausted local
2 remedies or if he fails to request such hearing within the time period
3 provided for in this subsection (2). For purposes of this subsection (2) (c)
4 PARAGRAPH (c), "exhaustion of local remedies" means THAT ONE OF THE
5 FOLLOWING EVENTS HAS OCCURRED:

6 (I) The taxpayer has timely requested in writing a hearing before
7 the local government, and such local government has held such hearing
8 and issued a final decision thereon. ~~Such hearing shall be informal and no~~
9 ~~transcript, rules of evidence, or filing of briefs shall be required; but the~~
10 ~~taxpayer may elect to submit a brief, in which case the local government~~
11 ~~may submit a brief. Such hearing, IF ANY, shall be held and the final~~
12 ~~decision thereon issued within ninety days after the local government's~~
13 ~~receipt of the taxpayer's written request therefor, except the period may be~~
14 ~~extended if the delay in holding the hearing or issuing the decision thereon~~
15 ~~was occasioned by the taxpayer, but, in any such event, such hearing shall~~
16 ~~be held and the ANY decision thereon issued within one hundred eighty~~
17 ~~days of AFTER the taxpayer's request in writing therefor OR WITHIN SUCH~~
18 ~~FURTHER TIME AS THE TAXPAYER AND LOCAL GOVERNMENT MAY AGREE~~
19 ~~UPON IN WRITING.~~

20 (II) The taxpayer ~~has timely requested~~ AND LOCAL GOVERNMENT
21 ~~AGREE in writing a THAT NO hearing before the local government and such~~
22 ~~local government has failed to hold such hearing or has failed to issue a~~
23 ~~final decision thereon within the time periods prescribed in subparagraph~~
24 ~~(I) above WILL BE HELD, OR THAT NO FINAL DECISION WILL ISSUE FROM THE~~
25 ~~LOCAL GOVERNMENT. SUCH WRITTEN AGREEMENT SHALL STATE THAT THE~~
26 ~~TAXPAYER EXHAUSTED LOCAL REMEDIES IN ACCORDANCE WITH THIS~~
27 ~~SECTION, SHALL IDENTIFY THE DATE OF SUCH EXHAUSTION, AND SHALL~~

1 ADVISE THE TAXPAYER OF THE RIGHT TO PURSUE FURTHER REVIEW
2 PURSUANT TO SUBSECTION (3) OR (8) OF THIS SECTION WITHIN THIRTY DAYS
3 AFTER SUCH EXHAUSTION.

4 (III) ONE HUNDRED EIGHTY DAYS OR MORE AFTER THE DATE OF THE
5 TAXPAYER'S REQUEST FOR A HEARING, THE LOCAL GOVERNMENT NOTIFIES
6 THE TAXPAYER IN WRITING THAT THE LOCAL GOVERNMENT DOES NOT
7 INTEND TO CONDUCT A HEARING. IN SUCH INSTANCE, THE WRITTEN
8 NOTIFICATION SHALL ALSO STATE THAT THE TAXPAYER EXHAUSTED LOCAL
9 REMEDIES IN ACCORDANCE WITH THIS SECTION, THAT SUCH EXHAUSTION
10 OCCURRED ON THE DATE OF THE WRITTEN NOTIFICATION, AND THAT THE
11 TAXPAYER MAY PURSUE FURTHER REVIEW PURSUANT TO SUBSECTION (3)
12 OR (8) OF THIS SECTION WITHIN THIRTY DAYS AFTER SUCH EXHAUSTION.

13 (d) IN THE EVENT THE TAXPAYER HAS TIMELY REQUESTED IN
14 WRITING A HEARING BEFORE THE LOCAL GOVERNMENT AND NONE OF THE
15 EVENTS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (2) HAVE
16 OCCURRED, THE TAXPAYER MAY REQUEST A HEARING PURSUANT TO
17 SUBSECTION (3) OF THIS SECTION AT ANY TIME AFTER THE PERIOD
18 PRESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (c) OF THIS SUBSECTION
19 (2).

20 (e) ANY HEARING BEFORE A LOCAL GOVERNMENT SHALL BE
21 INFORMAL AND NO TRANSCRIPT, RULES OF EVIDENCE, OR FILING OF BRIEFS
22 SHALL BE REQUIRED; BUT THE TAXPAYER MAY ELECT TO SUBMIT A BRIEF,
23 IN WHICH CASE THE LOCAL GOVERNMENT MAY SUBMIT A BRIEF.

24 (3) (a) If a taxpayer ~~has exhausted his local remedies as provided~~
25 ~~in~~ SATISFIES THE REQUIREMENTS OF paragraph (c) of subsection (2) of this
26 section, the taxpayer may request the executive director of the department
27 of revenue to conduct a hearing on such deficiency notice or claim for

1 refund, and such request shall be made and such hearing shall be
2 conducted in the same manner as set forth in section 39-21-103, C.R.S.
3 Any local government to which the deficiency notice being appealed
4 claims taxes are due, or, in the case of a claim for refund, the local
5 government ~~which~~ THAT denied such claim, shall be notified by the
6 executive director that a hearing is scheduled and shall be allowed to
7 participate in the hearing as a party.

8 (8) (a) If a deficiency notice or claim for refund involves only one
9 local government, in lieu of requesting a hearing pursuant to subsection (3)
10 of this section, the taxpayer may appeal such deficiency or denial of a
11 claim for refund to the district court.

12 (b) The taxpayer shall appeal to the district court pursuant to this
13 subsection (8) within thirty days after the taxpayer's exhaustion of local
14 remedies. ~~The taxpayer shall have no right to such hearing if he has not~~
15 ~~exhausted local remedies or if he fails to request such hearing within the~~
16 ~~time period provided for in this subsection (8).~~ For purposes of this
17 subsection (8), "exhaustion of local remedies" means THAT ONE OF THE
18 FOLLOWING EVENTS HAS OCCURRED:

19 (I) The taxpayer has timely requested in writing a hearing before
20 the local government, and such local government has held such hearing
21 and issued a final decision thereon. Such hearing shall be informal and no
22 transcript, rules of evidence, or filing of briefs shall be required; but the
23 taxpayer may elect to submit a brief, in which case the local government
24 may submit a brief. Such hearing, IF ANY, shall be held and ~~the final~~
25 ~~decision thereon issued within ninety days after the local government's~~
26 ~~receipt of the taxpayer's written request therefor, except the period may be~~
27 ~~extended if the delay in holding the hearing or issuing the decision thereon~~

1 ~~was occasioned by the taxpayer, but, in any such event, such hearing shall~~
2 ~~be held and the~~ ANY decision thereon issued within one hundred eighty
3 days of the taxpayer's request in writing therefor OR WITHIN SUCH FURTHER
4 TIME AS THE TAXPAYER AND LOCAL GOVERNMENT MAY AGREE UPON IN
5 WRITING.

6 (II) The taxpayer ~~has timely requested~~ AND LOCAL GOVERNMENT
7 AGREE in writing a THAT NO hearing before the local government ~~and such~~
8 ~~local government has failed to hold such hearing or has failed to issue a~~
9 ~~final decision thereon within the time periods prescribed in subparagraph~~
10 ~~(f) of this paragraph (b)~~ WILL BE HELD, OR THAT NO FINAL DECISION WILL
11 ISSUE FROM THE LOCAL GOVERNMENT. SUCH WRITTEN AGREEMENT SHALL
12 STATE THAT THE TAXPAYER EXHAUSTED LOCAL REMEDIES IN ACCORDANCE
13 WITH THIS SECTION, SHALL IDENTIFY THE DATE OF SUCH EXHAUSTION, AND
14 SHALL ADVISE THE TAXPAYER OF THE RIGHT TO PURSUE FURTHER REVIEW
15 PURSUANT TO SUBSECTION (3) OF THIS SECTION OR THIS SUBSECTION (8)
16 WITHIN THIRTY DAYS AFTER SUCH EXHAUSTION.

17 (III) ONE HUNDRED EIGHTY DAYS OR MORE AFTER THE DATE OF THE
18 TAXPAYER'S REQUEST FOR A HEARING, THE LOCAL GOVERNMENT NOTIFIES
19 THE TAXPAYER IN WRITING THAT THE LOCAL GOVERNMENT DOES NOT
20 INTEND TO CONDUCT A HEARING. IN SUCH INSTANCE, THE WRITTEN
21 NOTIFICATION SHALL ALSO STATE THAT THE TAXPAYER EXHAUSTED LOCAL
22 REMEDIES IN ACCORDANCE WITH THIS SECTION, THAT SUCH EXHAUSTION
23 OCCURRED ON THE DATE OF THE WRITTEN NOTIFICATION, AND THAT THE
24 TAXPAYER MAY PURSUE FURTHER REVIEW PURSUANT TO SUBSECTION (3)
25 OF THIS SECTION OR THIS SUBSECTION (8) WITHIN THIRTY DAYS AFTER SUCH
26 EXHAUSTION.

27 (c) IN THE EVENT THE TAXPAYER HAS TIMELY REQUESTED IN

1 WRITING A HEARING BEFORE THE LOCAL GOVERNMENT AND NONE OF THE
2 EVENTS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (8) HAVE
3 OCCURRED, THE TAXPAYER MAY APPEAL SUCH DEFICIENCY OR DENIAL OF
4 A CLAIM FOR REFUND TO THE DISTRICT COURT AT ANY TIME AFTER THE
5 PERIOD PRESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS
6 SUBSECTION (8).

7 ~~(c)~~ (d) ~~Such~~ AN appeal PURSUANT TO PARAGRAPH (c) OF THIS
8 SUBSECTION (8) shall be conducted in the same manner as provided in
9 section 39-21-105, C.R.S.; except that venue shall be in the district court
10 of the county wherein the local government whose decision is being
11 appealed is located.

12 **SECTION 2. Effective date - applicability.** This act shall take
13 effect July 1, 2011, and shall apply to deficiency notices and refund claim
14 denials mailed by a local government on or after said date.

15 **SECTION 3. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.