

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0609.01 Jason Gelender

HOUSE BILL 11-1162

HOUSE SPONSORSHIP

Balmer,

SENATE SPONSORSHIP

(None),

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REINSTATEMENT OF THE STATE SALES AND USE TAX
102 EXEMPTION FOR SOFT DRINKS.

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/billssummaries>.)

Effective July 1, 2011, **sections 2 and 3** of the bill reinstate the state sales and use tax exemption for soft drinks that was repealed during the 2010 legislative session. **Section 1** of the bill makes legislative findings and declarations regarding the lack of benefits arising from the taxation of soft drinks and the costs to consumers, businesses, employees,

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.

and the state of sales and use taxes that are too high or that are imposed on products for which demand is price sensitive.

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) Food and drinks intended for home consumption are generally
5 exempt from state sales and use taxes because they are basic necessities
6 that all people need;

7 (b) Singling out soft drinks by subjecting them to state sales and
8 use taxes while exempting most other food and drinks intended for home
9 consumption from such taxes is arbitrary and unfair and is bad public
10 policy because:

11 (I) It increases grocery bills for working families and other
12 persons during challenging economic times;

13 (II) It represents unwarranted government intrusion into personal
14 choices by punishing consumers who choose to purchase soft drinks; and

15 (III) It forces retailers to incur the costs of programming their
16 electronic systems to differentiate between taxable soft drinks; and

17 (c) It is therefore necessary, appropriate, and in the best interests
18 of the people of the state to reinstate the state sales and use tax
19 exemptions for soft drinks.

20 (2) The general assembly further finds and declares that:

21 (a) A consumer must account for the cost of a product when
22 deciding whether or not to purchase the product or how much of the
23 product to purchase;

24 (b) Taxes that are directly paid by consumers, such as the state
25 sales tax, increase the costs of a taxed product to the consumer in a way

1 that is visible to the consumer and can cause the consumer to decline to
2 purchase the product or to purchase less of the product than the consumer
3 would otherwise purchase, which reduces business revenues and profits
4 and can cause businesses to curtail their business activity; and

5 (c) Because these taxes are likely to cause consumers to curtail
6 their purchasing activity and to cause businesses to curtail their business
7 activity, such taxes are likely to reduce total economic activity, increase
8 unemployment and underemployment, and reduce total state tax revenues
9 if they are imposed at rates that are too high or on products for which
10 demand is price sensitive.

11 **SECTION 2.** 39-26-707 (1.5) (a), (1.5) (b) (II), (2) (d) (I), (2) (d)
12 (II) (B), and (3), Colorado Revised Statutes, are amended to read:

13 **39-26-707. Food, meals, and beverages - definitions.**
14 (1.5) (a) Notwithstanding the provisions of paragraph (e) of subsection
15 (1) of this section, on and after May 1, 2010, sales of candy ~~and soft~~
16 ~~drinks~~ shall be subject to state sales taxation.

17 (b) For the purposes of this subsection (1.5):

18 (II) ~~"Soft drinks" means nonalcoholic beverages that contain~~
19 ~~natural or artificial sweeteners. "Soft drinks" do not include beverages~~
20 ~~that contain milk or milk products, soy, rice, or similar milk substitutes,~~
21 ~~or greater than fifty percent of vegetable or fruit juice by volume.~~

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

24 (d) (I) Effective January 1, 1980, the storage, use, or consumption
25 of food as defined in section 39-26-102 (4.5); except that, on and after
26 May 1, 2010, the storage, use, or consumption of candy ~~and soft drinks~~
27 shall be subject to state use taxation.

1 (II) For the purposes of this paragraph (d):

2 (B) ~~"Soft drinks" means nonalcoholic beverages that contain~~
3 ~~natural or artificial sweeteners. "Soft drinks" do not include beverages~~
4 ~~that contain milk or milk products, soy, rice, or similar milk substitutes,~~
5 ~~or greater than fifty percent of vegetable or fruit juice by volume.~~

6 (3) The department of revenue may promulgate rules, in
7 accordance with article 4 of title 24, C.R.S., to provide a means by which
8 a person who sells candy or, BETWEEN MAY 1, 2010, AND JUNE 30, 2011,
9 ONLY, soft drinks, at retail may, if necessary, reasonably estimate the
10 amount of sales taxes due on such candy and soft drinks. For any return
11 made prior to August 1, 2010, a person who sells candy or soft drinks at
12 retail shall not be liable for any interest or other penalty imposed as a
13 result of an error made in connection with the elimination of the
14 ~~exemption~~ EXEMPTIONS from state sales tax for sales of candy and soft
15 drinks, as defined in paragraph (b) of subsection (1.5) of this section, by
16 House Bill 10-1191, enacted in 2010, PRIOR TO THE REINSTATEMENT OF
17 THE EXEMPTION FROM STATE SALES TAX FOR SALES OF SOFT DRINKS BY
18 HOUSE BILL 11-____, ENACTED IN 2011.

19 **SECTION 3.** 39-26-714 (2), (3), (4) (b), and (5), Colorado
20 Revised Statutes, are amended to read:

21 **39-26-714. Vending machines - definitions.** (2) On and after
22 January 1, 2000, all sales and purchases of food, as defined in section
23 39-26-102 (4.5), by or through vending machines shall be exempt from
24 taxation under the provisions of part 1 of this article; except that, on and
25 after May 1, 2010, sales and purchases of candy ~~and soft drinks~~ by or
26 through vending machines shall be subject to state sales taxation. Absent
27 an express provision in the contract to the contrary, any vending machine

1 contract that references the price at which products shall be sold from a
2 vending machine shall be interpreted to include any applicable sales tax
3 as an addition to the referenced price.

4 (3) On and after January 1, 2000, the storage, use, or consumption
5 of food, as defined in section 39-26-102 (4.5), purchased by or through
6 vending machines shall be exempt from taxation under the provisions of
7 part 2 of this article; except that, on and after May 1, 2010, the storage,
8 use, or consumption of candy ~~and soft drinks~~ purchased by or through
9 vending machines shall be subject to state use taxation.

10 (4) For the purposes of this section:

11 (b) ~~"Soft drinks" means nonalcoholic beverages that contain~~
12 ~~natural or artificial sweeteners. "Soft drinks" do not include beverages~~
13 ~~that contain milk or milk products, soy, rice, or similar milk substitutes,~~
14 ~~or greater than fifty percent of vegetable or fruit juice by volume.~~

15 (5) The department of revenue shall promulgate rules, in
16 accordance with article 4 of title 24, C.R.S., to provide a means by which
17 a person who sells candy or, BETWEEN MAY 1, 2010, AND JUNE 30, 2011,
18 ONLY, soft drinks, purchased by and through vending machines may, if
19 necessary, reasonably estimate the amount of sales taxes due on such
20 candy and soft drinks. For any return made prior to August 1, 2010, a
21 person who sells candy or soft drinks at retail shall not be liable for any
22 interest or other penalty imposed as a result of an error made in
23 connection with the elimination of the ~~exemption~~ EXEMPTIONS from state
24 sales tax for sales of candy and soft drinks, as defined in subsection (4)
25 of this section, PURCHASED BY AND THROUGH VENDING MACHINES, by
26 House Bill 10-1191, enacted in 2010, PRIOR TO THE REINSTATEMENT OF
27 THE EXEMPTION FROM STATE SALES TAX FOR SALES OF SOFT DRINKS

1 PURCHASED BY AND THROUGH VENDING MACHINES BY HOUSE BILL
2 11-____, ENACTED IN 2011.

3 **SECTION 4. Effective date - applicability.** This act shall take
4 effect July 1, 2011, and shall apply to sales, storage, use, or consumption
5 of soft drinks on or after said date.

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