A BILL FOR AN ACT

CONCERNING THE REINSTATEMENT OF THE STATE SALES AND USE TAX 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/billsummaries.)

During the 2010 legislative session, the general assembly repealed the state sales and use tax exemption for soft drinks. The bill reinstates the exemption effective July 1, 2016. The bill also makes legislative findings and declarations regarding the lack of benefits arising from the taxation of soft drinks and the costs to consumers, businesses, employees, and the state of sales and use taxes that are too high or that are imposed
on products for which demand is price sensitive.

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

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

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

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

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

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

(III) It forces retailers to incur the costs of programming their electronic systems to differentiate between taxable soft drinks and other food and drinks that are exempt from taxation; and

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

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

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

(b) Taxes that are directly paid by consumers, such as the state
sales tax, increase the costs of a taxed product to the consumer in a way that is visible to the consumer. This can cause the consumer to decline to purchase the product or to purchase less of the product than the consumer would otherwise purchase, which reduces business revenues and profits and can cause businesses to curtail their business activity.

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

SECTION 2. In Colorado Revised Statutes, 39-26-707, amend (1.5) (a), (2) (d) (I), and (3); and repeal (1.5) (b) (II) and (2) (d) (II) (B) as follows:


(1.5) (a) Notwithstanding the provisions of paragraph (e) of subsection (1) of this section, on and after May 1, 2010, sales of candy and soft drinks shall be subject to state sales taxation.

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

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

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

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

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

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

(3) The department of revenue may promulgate rules, in accordance with article 4 of title 24, C.R.S., to provide a means by which a person who sells candy or soft drinks at retail may, if necessary, reasonably estimate the amount of sales taxes due on such candy and soft drinks. For any return made prior to August 1, 2010, a person who sells candy or soft drinks at retail shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption from state sales tax for sales of candy and soft drinks, as defined in paragraph (b) of subsection (1.5) of this section, by House Bill 10-1191, enacted in 2010.

SECTION 3. In Colorado revised statutes, 39-26-714, amend (2), (3), and (5); and repeal (4) (b) as follows:

39-26-714. Vending machines - definitions. (2) On and after January 1, 2000, all sales and purchases of food, as defined in section 39-26-102 (4.5), by or through vending machines shall be exempt from taxation under the provisions of part 1 of this article; except that, on and after May 1, 2010, sales and purchases of candy and soft drinks by or through vending machines shall be subject to state sales taxation. Absent an express provision in the contract to the contrary, any vending machine contract that references the price at which products shall be sold from a...
vending machine shall be interpreted to include any applicable sales tax as an addition to the referenced price.

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

(4) For the purposes of this section:

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

(5) The department of revenue shall promulgate rules, in accordance with article 4 of title 24, C.R.S., to provide a means by which a person who sells candy or soft drinks purchased by and through vending machines may, if necessary, reasonably estimate the amount of sales taxes due on such candy and soft drinks. For any return made prior to August 1, 2010, a person who sells candy or soft drinks at retail shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption from state sales tax for sales of candy and soft drinks, as defined in subsection (4) of this section, by House Bill 10-1191, enacted in 2010.

SECTION 4. In Colorado Revised Statutes, 39-26-104, amend (2) (e) (III) as follows:

39-26-104. Property and services taxed. (2) Upon the effective date of an act of congress that authorizes states to require certain retailers
to pay, collect, or remit state or local sales taxes:

(e) Notwithstanding any provisions of law, the following incidents are not subject to the collection and payment of sales tax by remote sellers as set forth in paragraph (a) of this subsection (2):

(III) Soft drinks, as defined in section 39-26-707 (1.5) (b) (II);

For purposes of this subparagraph (III), "soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

SECTION 5. Effective date - applicability. This act takes effect July 1, 2016, and applies to the sales, storage, use, or consumption of soft drinks on or after said date.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.