

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 16-0501.01 Esther van Mourik x4215

SENATE BILL 16-036

SENATE SPONSORSHIP

Neville T. and Jahn,

HOUSE SPONSORSHIP

Kraft-Tharp and Sias,

Senate Committees

Finance
Appropriations

House Committees

Business Affairs and Labor
Appropriations

A BILL FOR AN ACT

101 **CONCERNING SURETY REQUIREMENTS WHEN A TAXPAYER APPEALS A**
102 **TAX BILL THAT THE STATE OR A LOCAL GOVERNMENT CLAIMS IS**
103 **DUE, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **APPROPRIATION.**

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>.)

Current law requires a taxpayer wishing to appeal to the district court a final determination of the executive director of the department of revenue or a final determination of a local government, within a specified

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.

SENATE
3rd Reading Unamended
April 21, 2016

SENATE
Amended 2nd Reading
April 20, 2016

time after filing a notice of appeal, to either:

- ! Set aside twice the amount of the taxes, interest, and other charges stated in the final determination by filing a surety bond in such amount with the district court;
- ! Set aside twice the amount of the taxes, interest, and other charges stated in the final determination by establishing a savings account, deposit account, or certificate of deposit for such amount at a state or national bank or a state or federal savings and loan association doing business in this state; or
- ! Deposit the disputed amount with the executive director of the department of revenue. If the taxpayer chooses this option, the interest accrual is tolled.

Current law also requires home rule jurisdictions and statutory local governments to follow the same requirements for appeals to district courts related to the sales and use taxes they impose.

The bill repeals that requirement for everything but an appeal of a final determination by the executive director for frivolous submissions and instead specifies that if the taxpayer wishes to appeal a district court ruling then within a specified number of days after the district court ruling the taxpayer must set aside money in one of the ways described above.

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

2 **SECTION 1.** In Colorado Revised Statutes, amend 39-21-105 as
3 follows:

4 **39-21-105. Appeals.** (1) The taxpayer may appeal the final
5 determination of the executive director issued pursuant to section
6 39-21-103, 39-21-104, or 39-21-104.5 within thirty days after the mailing
7 of such determination. JURISDICTION TO HEAR AND DETERMINE SUCH
8 APPEALS IS IN THE DISTRICT COURTS OF THIS STATE.

9 (2) (a) Venue shall be IS in the district court of the county wherein
10 WHERE the taxpayer resides or has his OR HER principal place of business.
11 If the taxpayer has neither a residence nor a principal place of business
12 within the state, venue shall be IS in the DENVER district court. in and for
13 the city and county of Denver.

1 (b) Jurisdiction to hear and determine appeals is conferred upon
2 the district courts of this state. Trial may be had or any order made in term
3 or in vacation. The district court shall try the case de novo, reviewing all
4 questions of law and fact, such review being conducted in accordance
5 with the Colorado rules of civil procedure. The taxpayer shall present his
6 OR HER case in the same manner as the plaintiff in other civil actions and
7 the normal rules of evidence shall apply. The taxpayer shall have HAS the
8 burden of proof with respect to the issues raised in the WRITTEN notice of
9 appeal DESCRIBED IN SUBSECTION (3) OF THIS SECTION except as to the
10 issue of whether the taxpayer has been guilty of fraud with intent to evade
11 tax. The burden of proof shall be upon IS ON the executive director of the
12 department of revenue or his OR HER delegate to show that a petitioner is
13 liable as a transferee of property of a taxpayer but not to show that the
14 taxpayer was liable for the tax. The district court may affirm, modify, or
15 reverse the determination of the executive director and may enter
16 judgment on its findings.

17 (3) Appeal to the district court shall be taken A TAXPAYER
18 APPEALS A FINAL DETERMINATION OF THE EXECUTIVE DIRECTOR by filing,
19 with the clerk of the district court of the proper county, a copy of the
20 notice of final determination received by the taxpayer, together with a
21 written notice stating that the taxpayer appeals to the district court and
22 alleging the pertinent facts upon which such appeal is grounded.

23 (4) (a) Within fifteen days after filing the notice of AN appeal TO
24 THE DISTRICT COURT FROM A DECISION PURSUANT TO SECTION
25 39-21-104.5, the taxpayer shall file with the district court a surety bond
26 in twice the amount of the taxes, interest, and other charges stated AS DUE
27 in the final determination by the executive director which are contested

1 on appeal. The taxpayer may, at his OR HER option, satisfy the surety bond
2 requirement by DEPOSIT IN a savings account or deposit ACCOUNT HELD
3 in, or PURCHASE a certificate of deposit issued by, a state or national bank
4 or by a state or federal savings and loan association, in accordance with
5 the provisions of section 11-35-101 (1), C.R.S., AN AMOUNT equal to
6 twice the amount of the taxes, interest, and other charges stated AS DUE
7 in the final determination by the executive director.

8 (b) (5) The ANY taxpayer may, at his OR HER option, deposit the
9 disputed amount with the executive director of the department of revenue
10 in lieu of posting a surety bond WITHIN FIFTEEN DAYS AFTER FILING AN
11 APPEAL TO THE DISTRICT COURT. If such amount is so deposited, no
12 further interest shall accrue ACCRUES on the deficiency contested during
13 the pendency of the action. At the conclusion of the action, after appeal
14 to the supreme court or the court of appeals or after the time for such
15 appeal has expired, the funds deposited shall MUST be, at the direction of
16 the court, either retained by the executive director and applied against the
17 deficiency or returned in whole or in part to the taxpayer with interest at
18 the rate imposed under section 39-21-110.5. No THE TAXPAYER DOES NOT
19 NEED TO MAKE A claim for refund of amounts deposited with the
20 executive director of the department of revenue need be made by the
21 taxpayer in order for such amounts to be repaid in accordance with the
22 direction of the court.

23 (5) (6) Upon filing of the WRITTEN notice of appeal DESCRIBED IN
24 SUBSECTION (3) OF THIS SECTION, the executive director of the department
25 of revenue shall be IS deemed to be a party to such THE appeal, and the
26 clerk of the district court shall docket the cause as a civil action. The
27 appellant shall cause summons to be issued and cause the same to be

1 served upon the executive director, in accordance with the manner
2 provided by law in civil cases. Notice of the date of trial shall MUST be
3 mailed to the taxpayer and to the executive director, at least twenty days
4 prior thereto BEFORE THE DATE OF THE TRIAL.

5 (6) (7) The final decision made in such AN appeal shall OF AN
6 EXECUTIVE DIRECTOR'S FINAL DETERMINATION MUST be entered as a
7 judgment, as in other civil cases, against the taxpayer or against the
8 executive director as the case may be.

9 (7) (8) (a) The decision of the district court shall be IS reviewable
10 by the supreme court or the court of appeals as is otherwise provided by
11 law; EXCEPT THAT C.R.C.P. 62 (d) AND C.R.C.P. 121 SECTION 1-23 SHALL
12 NOT APPLY. EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION
13 (8), IF THE TAXPAYER WISHES TO SEEK REVIEW OF A DISTRICT COURT
14 RULING THAT IS ADVERSE TO THE TAXPAYER IN PART OR IN WHOLE, NO
15 LATER THAN FIFTEEN DAYS AFTER THE RULING THE TAXPAYER SHALL:

16 (I) FILE WITH THE DISTRICT COURT A SURETY BOND IN TWICE THE
17 AMOUNT OF THE TAXES, INTEREST, AND OTHER CHARGES STATED AS DUE
18 IN THE DISTRICT COURT RULING, WHICH ARE CONTESTED ON APPEAL;

19 (II) DEPOSIT IN A SAVINGS ACCOUNT OR DEPOSIT ACCOUNT HELD
20 IN, OR PURCHASE A CERTIFICATE OF DEPOSIT ISSUED BY, A STATE OR
21 NATIONAL BANK OR BY A STATE OR FEDERAL SAVINGS AND LOAN
22 ASSOCIATION, IN ACCORDANCE WITH THE PROVISIONS OF SECTION
23 11-35-101 (1), C.R.S., AN AMOUNT EQUAL TO TWICE THE AMOUNT OF THE
24 TAXES, INTEREST, AND OTHER CHARGES STATED IN THE DISTRICT COURT
25 RULING; OR

26 (III) DEPOSIT THE AMOUNT STATED AS DUE IN THE DISTRICT COURT
27 RULING WITH THE EXECUTIVE DIRECTOR.

1 (b) IF THE TAXPAYER HAS POSTED A BOND, MADE A DEPOSIT, OR
2 DEPOSITED THE DISPUTED AMOUNT WITH THE EXECUTIVE DIRECTOR AS
3 SPECIFIED IN SUBSECTIONS (4) AND (5) OF THIS SECTION, SUCH PREVIOUS
4 PAYMENT OR POSTING IS CONTINUED IN EFFECT AND NO FURTHER
5 PAYMENT OR POSTING MAY BE REQUIRED.

6 (c) UPON THE TAXPAYER FULFILLING THE APPEAL REQUIREMENTS
7 SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (8), COLLECTION ON THE
8 JUDGMENT IS STAYED DURING THE PENDENCY OF THE ACTION.

9 (d) IF THE TAXPAYER DEPOSITS THE AMOUNT STATED AS DUE IN
10 THE DISTRICT COURT RULING WITH THE EXECUTIVE DIRECTOR AS SPECIFIED
11 IN SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (8), NO
12 FURTHER INTEREST SHALL ACCRUE ON THE AMOUNT DEPOSITED DURING
13 THE PENDENCY OF THE ACTION. AT THE CONCLUSION OF THE ACTION,
14 AFTER APPEAL TO THE SUPREME COURT OR AFTER THE TIME FOR SUCH
15 APPEAL HAS EXPIRED, THE FUNDS DEPOSITED MUST BE, AT THE DIRECTION
16 OF THE COURT, EITHER RETAINED BY THE EXECUTIVE DIRECTOR AND
17 APPLIED AGAINST THE DEFICIENCY OR RETURNED IN WHOLE OR IN PART TO
18 THE TAXPAYER WITH INTEREST AT THE RATE IMPOSED UNDER SECTION
19 39-21-110.5. THE TAXPAYER DOES NOT NEED TO MAKE A CLAIM FOR
20 REFUND OF AMOUNTS DEPOSITED WITH THE EXECUTIVE DIRECTOR IN
21 ORDER FOR SUCH AMOUNTS TO BE REPAID IN ACCORDANCE WITH THE
22 DIRECTION OF THE COURT.

23 =====

24 **SECTION 2.** In Colorado Revised Statutes, 11-35-101, **amend**
25 (1) as follows:
26 **11-35-101. Alternatives to surety bonds permitted -**
27 **requirements.** (1) The requirement of a surety bond as a condition to

1 licensure or authority to conduct business or perform duties in this state
2 provided in sections 12-5.5-202 (2) (b), 12-6-111, 12-6-112, 12-6-112.2,
3 12-6-512, 12-6-513, 12-14-124 (1), 12-59-115 (1), 12-60-509 (2.5) (b),
4 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and
5 (3), 38-29-119 (2), 39-21-105, ~~(4)~~, 39-27-104 (2) (a), (2) (b), (2) (c), (2)
6 (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105
7 (1), 42-6-115 (3), and 42-7-301 (6), C.R.S., may be satisfied by a savings
8 account or deposit in or a certificate of deposit issued by a state or
9 national bank doing business in this state or by a savings account or
10 deposit in or a certificate of deposit issued by a state or federal savings
11 and loan association doing business in this state. Such savings account,
12 deposit, or certificate of deposit shall be in the amount specified by
13 statute, if any, and shall be assigned to the appropriate state agency for the
14 use of the people of the state of Colorado. The aggregate liability of the
15 bank or savings and loan association shall in no event exceed the amount
16 of the deposit. For the purposes of the sections referred to in this section,
17 "bond" includes the savings account, deposit, or certificate of deposit
18 authorized by this section.

19 **SECTION 3.** In Colorado Revised Statutes, 29-2-106, **amend** (8)
20 as follows:

21 **29-2-106. Collection - administration - enforcement.**
22 (8) **Uniform collection procedures.** Each home rule city, town, and city
23 and county shall follow, and conform its ordinances where necessary to,
24 the statute of limitations applicable to the enforcement of state sales and
25 use tax collections, the statute of limitations applicable to refunds of state
26 sales and use taxes, the amount of penalties and interest payable on
27 delinquent remittances of state sales and use taxes, and the posting of

1 bonds pursuant to section 39-21-105, ~~(4)~~, C.R.S.

2 **SECTION 4.** In Colorado Revised Statutes, 29-2-106.1, **amend**
3 (3) (b), (3) (c), and (8) (d) as follows:

4 **29-2-106.1. Deficiency notice - dispute resolution.** (3) (b) If the
5 taxpayer requests a hearing before the executive director, then the local
6 government whose decision is being appealed may not require a bond or
7 payment of tax in lieu thereof; ~~until thirty days after the final decision of~~
8 ~~the executive director or his delegate;~~ but such local government may
9 require a bond or payment of tax in lieu thereof FILED WITH AND PAYABLE
10 TO THE LOCAL GOVERNMENT in the manner provided in section
11 39-21-111, C.R.S., prior to the hearing before such local government or
12 the executive director if either such local government ___ reasonably finds
13 that collection of the tax will be jeopardized by delay or the taxpayer
14 requests a postponement of the hearing before such local government or
15 the executive director, other than on account of a death, physical illness
16 or injury, or catastrophe, which substantially impairs the taxpayer's ability
17 to present his case. ~~Any such bond or payment of tax in lieu thereof shall~~
18 ~~be filed with and payable to the local government whose decision is being~~
19 ~~appealed, and such bond shall be filed or such tax shall be paid in the~~
20 ~~manner provided in section 39-21-105, C.R.S.~~ In the event that payment
21 of the tax or posting of a bond is required by the local government, the
22 taxpayer, after payment of the tax or posting of the bond, may appeal such
23 decision of the local government to the executive director and shall be
24 granted an expedited hearing on such appeal pursuant to section
25 39-21-103 (6), C.R.S., and the executive director may affirm, reverse, or
26 modify such decision.

27 (c) If the taxpayer appeals the decision ~~of the executive director~~

1 ~~on the hearing~~ ISSUED pursuant to this subsection (3) ~~the district court~~ in
2 the manner provided in section 39-21-105, C.R.S., then the ~~tax~~ TAXPAYER
3 shall be paid PAY THE TAX to or POST a bond ~~shall be posted~~ with the local
4 government whose decision is being appealed in the manner provided in
5 that section. ~~unless payment of tax or posting of bond was previously~~
6 ~~required, in which case such previous payment or posting shall continue~~
7 ~~in effect.~~

8 (8) (d) An appeal pursuant to this subsection (8) shall MUST be
9 conducted in the same manner as provided in section 39-21-105, C.R.S.;
10 except that venue shall be IS in the district court of the county wherein
11 WHERE the local government whose decision is being appealed is located,
12 AND ANY DEPOSIT MADE PURSUANT TO SECTION 39-21-105 (4), (5), OR (8)
13 (a) (III), C.R.S., MUST BE MADE WITH THE LOCAL GOVERNMENT WHOSE
14 DECISION IS BEING APPEALED.

15 **SECTION 5. Appropriation.** (1) For the 2016-17 state fiscal
16 year, \$100,000 is appropriated to the department of revenue. This
17 appropriation is from the general fund. To implement this act, the
18 department may use this appropriation for the purchase of legal services.

19 (2) For the 2016-17 state fiscal year, \$100,000 is appropriated to
20 the department of law. This appropriation is from reappropriated funds
21 received from the department of revenue under subsection (1) of this
22 section. To implement this act, the department of law may use this
23 appropriation to provide legal services to the department of revenue.

24 (3) It is the intent of the general assembly in making this
25 appropriation that the department of law and the department of revenue
26 may request supplemental appropriations to implement this act based on
27 documented evidence that legal caseload increases related to this act

1 exceed the appropriation initially provided.

2 **SECTION 6. Applicability.** This act applies to appeals filed on
3 or after the effective date of this act.

4 **SECTION 7. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2016 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.