

**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,

Senate Committees

Finance
Appropriations

House Committees

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.**

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/bills summaries>.)

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 time after filing a notice of appeal, to either:

! Set aside twice the amount of the taxes, interest, and other

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.

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.

14 (b) Jurisdiction to hear and determine appeals is conferred upon

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

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

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

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

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

22 (5) (6) Upon filing of the WRITTEN notice of appeal DESCRIBED IN
23 SUBSECTION (3) OF THIS SECTION, the executive director of the department
24 of revenue shall be IS deemed to be a party to such THE appeal, and the
25 clerk of the district court shall docket the cause as a civil action. The
26 appellant shall cause summons to be issued and cause the same to be
27 served upon the executive director, in accordance with the manner

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

4 (6) (7) The final decision made in such AN appeal shall OF AN
5 EXECUTIVE DIRECTOR'S FINAL DETERMINATION MUST be entered as a
6 judgment, as in other civil cases, against the taxpayer or against the
7 executive director as the case may be.

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

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

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

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

27 (b) IF THE TAXPAYER HAS POSTED A BOND, MADE A DEPOSIT, OR

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

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

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

22

23 **SECTION 2.** In Colorado Revised Statutes, 11-35-101, **amend**
24 (1) as follows:

25 **11-35-101. Alternatives to surety bonds permitted -**
26 **requirements.** (1) The requirement of a surety bond as a condition to
27 licensure or authority to conduct business or perform duties in this state

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

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

20 **29-2-106. Collection - administration - enforcement.**
21 **(8) Uniform collection procedures.** Each home rule city, town, and city
22 and county shall follow, and conform its ordinances where necessary to,
23 the statute of limitations applicable to the enforcement of state sales and
24 use tax collections, the statute of limitations applicable to refunds of state
25 sales and use taxes, the amount of penalties and interest payable on
26 delinquent remittances of state sales and use taxes, and the posting of
27 bonds pursuant to section 39-21-105, ~~(4)~~, C.R.S.

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

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

26 (c) If the taxpayer appeals the decision ~~of the executive director~~
27 ~~on the hearing~~ ISSUED pursuant to this subsection (3) ~~the district court~~ in

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

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

14 **SECTION 5. Applicability.** This act applies to appeals filed on
15 or after the effective date of this act.

16 **SECTION 6. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part will not take effect
23 unless approved by the people at the general election to be held in
24 November 2016 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.