

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 17-0807.01 Esther van Mourik x4215

SENATE BILL 17-112

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

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Senate Committees

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A BILL FOR AN ACT

101 **CONCERNING A CLARIFICATION OF THE EFFECT OF STATUTES OF**
102 **LIMITATIONS ON THE DISPUTE RESOLUTION PROCESS WHEN A**
103 **TAXPAYER OWES SALES OR USE TAX TO ONE LOCAL**
104 **GOVERNMENT BUT HAS ERRONEOUSLY PAID THE DISPUTED TAX**
105 **TO ANOTHER LOCAL GOVERNMENT.**

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://leg.colorado.gov>.)

The bill seeks to clarify the general assembly's intent when it enacted a dispute resolution process in 1985 to address a situation when

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
Amended 2nd Reading
February 13, 2017

a taxpayer paid a sales and use tax to one local government when it should have instead paid that disputed amount to a different local government. A recent court case applied the statute of limitations to this dispute resolution process, resulting in the taxpayer having to pay the disputed amount twice to 2 different local governments. The bill specifies that any statutes of limitations, either local, state, or in intergovernmental transfer agreements, do not apply to the remedies set forth in law.

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

2 **SECTION 1.** In Colorado Revised Statutes, 29-2-106.1, **amend**
3 (5) as follows:

4 **29-2-106.1. Deficiency notice - dispute resolution - legislative**
5 **declaration.** (5) (a) If the taxpayer asserts that all or part of a sales or use
6 tax which is the subject of the hearing has been paid to or is due to
7 another local government, then such other local government shall be
8 joined as a party to the hearing. NEITHER the taxpayer ~~need not~~ NOR THE
9 ASSESSING LOCAL GOVERNMENT NEEDS TO file a claim for refund WITH
10 SUCH OTHER LOCAL GOVERNMENT in order to pursue the remedy provided
11 by this ~~subsection (5)~~ SUBSECTION (5)(a). If the executive director
12 determines that the disputed tax was paid, but to the wrong local
13 government, then the taxpayer shall be relieved of the tax due up to the
14 amount paid BY THE TAXPAYER TO THE WRONG LOCAL GOVERNMENT
15 together with an abatement of interest thereon and all penalties.

16 (b) NOTWITHSTANDING SECTION 29-2-106 (8), THE PERIODS OPEN
17 OR CLOSED TO ASSESSMENT OR REFUND UNDER THE ORDINANCES OF THE
18 LOCAL GOVERNMENTS, UNDER SECTIONS 39-26-210, 39-21-107 (1),
19 39-26-125, AND 39-26-703 (2)(d), OR UNDER AN INTERGOVERNMENTAL
20 TRANSFER AGREEMENT MAY NOT BAR ANY OF THE REMEDIES SET FORTH
21 IN SUBSECTIONS (5)(a) AND (6) OF THIS SECTION.

22 (c) (I) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES

1 THAT:

2 (A) IN 1985, THE GENERAL ASSEMBLY ENACTED HOUSE BILL
3 85-1007 TO PROVIDE A REMEDY FOR A TAXPAYER THAT WAS ASSESSED
4 SALES OR USE TAX BY A LOCAL GOVERNMENT AND THAT HAD PAID ALL OR
5 PART OF THE ASSESSED SALES OR USE TAX TO ANOTHER LOCAL
6 GOVERNMENT. THE TAXPAYER COULD JOIN THE AFFECTED LOCAL
7 GOVERNMENTS IN A HEARING BEFORE THE EXECUTIVE DIRECTOR OF THE
8 DEPARTMENT OF REVENUE AND, IF THE EXECUTIVE DIRECTOR DETERMINED
9 THAT THE DISPUTED TAX WAS PAID, BUT TO THE WRONG LOCAL
10 GOVERNMENT, THE TAXPAYER WAS RELIEVED OF THE TAX DUE UP TO THE
11 AMOUNT PAID BY THE TAXPAYER TO THE WRONG LOCAL GOVERNMENT,
12 TOGETHER WITH AN ABATEMENT OF INTEREST THEREON AND ALL
13 PENALTIES.

14 (B) IN ENACTING THAT REMEDY FOR THE TAXPAYER, THE GENERAL
15 ASSEMBLY INTENDED THAT THE RELIEF PROVIDED WAS AVAILABLE
16 WITHOUT THE NEED TO FILE A REFUND CLAIM, BY THE TAXPAYER OR BY
17 THE ASSESSING LOCAL GOVERNMENT, WITH THE LOCAL GOVERNMENT TO
18 WHICH THE TAX WAS WRONGLY PAID, AND THAT THE RELIEF PROVIDED
19 WAS AVAILABLE REGARDLESS OF THE EXPIRATION OF ANY PERIOD OF
20 LIMITATIONS OTHERWISE APPLICABLE TO ASSESSMENTS OR REFUNDS OF
21 SALES AND USE TAXES BY THE LOCAL GOVERNMENTS;

22 (C) AS ENACTED, HOUSE BILL 85-1007 APPLIED TO ALL LOCAL
23 GOVERNMENTS, WHETHER HOME RULE OR STATUTORY, BECAUSE THE
24 GENERAL ASSEMBLY DECLARED, AS SET FORTH IN SUBSECTION (1) OF THIS
25 SECTION, THAT THE ENFORCEMENT OF SALES AND USE TAXES CAN AFFECT
26 PERSONS AND ENTITIES ACROSS THE JURISDICTIONAL BOUNDARIES OF
27 TAXING JURISDICTIONS AND THAT DISPUTE RESOLUTION IS A MATTER OF

1 STATEWIDE CONCERN;

2 (D) ON APRIL 24, 2014, THE COURT OF APPEALS ISSUED A DECISION
3 IN *QWEST CORP. V. CITY OF NORTHGLENN*, 351 P.3d 505 (COLO. APP.
4 2014), THAT PRECLUDED A TAXPAYER FROM OBTAINING THE RELIEF
5 PROVIDED BY THE 1985 LEGISLATION BY APPLICATION OF THE STATUTES
6 OF LIMITATIONS ON REFUND CLAIMS. THAT DECISION IS INCONSISTENT
7 WITH THE GENERAL ASSEMBLY'S ORIGINAL INTENT TO PROVIDE RELIEF TO
8 TAXPAYERS WITHOUT REGARD TO ANY STATUTES OF LIMITATIONS, AND
9 PRECLUDES TAXPAYERS IN MANY CASES FROM OBTAINING THE RELIEF THE
10 GENERAL ASSEMBLY INTENDED TO PROVIDE IN HOUSE BILL 85-1007.

11 (II) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
12 BY ENACTING SENATE BILL 17-112, ENACTED IN 2017, AND AMENDING
13 THIS SUBSECTION (5), IT INTENDS TO CLARIFY THAT THE RELIEF PROVIDED
14 TO TAXPAYERS IN 1985 HAS ALWAYS BEEN AVAILABLE, IS CURRENTLY
15 AVAILABLE, AND WILL CONTINUE TO BE AVAILABLE, REGARDLESS OF THE
16 EXPIRATION OF ANY PERIOD OF LIMITATIONS OTHERWISE APPLICABLE TO
17 ASSESSMENTS OR REFUNDS OF SALES AND USE TAXES BY THE LOCAL
18 GOVERNMENTS.

19 **SECTION 2.** In Colorado Revised Statutes, **amend** 39-26-210 as
20 follows:

21 **39-26-210. Limitations.** The taxes for any period, together with
22 the interest thereon and penalties with respect thereto, imposed by this
23 part 2 shall not be assessed, nor shall any notice of lien be filed, or
24 distraint warrant issued, or suit for collection be instituted, nor any other
25 action to collect the same be commenced, more than three years after the
26 date on which the tax was or is payable, EXCEPT AS SET FORTH IN SECTION
27 29-2-106.1 (5)(b); nor shall any lien continue after such period, except for

1 taxes assessed before the expiration of such period, notice of lien with
2 respect to which has been filed prior to the expiration of such period, in
3 which cases such lien shall continue only for one year after the filing of
4 notice thereof. In the case of a false or fraudulent return with intent to
5 evade tax, the tax, together with interest and penalties thereon, may be
6 assessed, or proceedings for the collection of such taxes may be begun at
7 any time. Before the expiration of such period of limitation, the taxpayer
8 and the executive director of the department of revenue may agree in
9 writing to an extension thereof, and the period so agreed on may be
10 extended by subsequent agreements in writing.

11 **SECTION 3.** In Colorado Revised Statutes, 39-21-107, **amend**
12 (1) as follows:

13 **39-21-107. Limitations.** (1) Except as provided in this section,
14 IN SECTION 29-2-106.1 (5)(b), and unless such time is extended by waiver,
15 the amount of any tax or of any charge on oil and gas production imposed
16 pursuant to articles 24 to 29 of this ~~title~~ TITLE 39 or article 3 of title 42,
17 ~~C.R.S.~~, and the penalty and interest applicable thereto, shall be assessed
18 within three years after the return was filed, whether or not such return
19 was filed on or after the date prescribed, and no assessment shall be made
20 or credit taken and no notice of lien shall be filed, nor distraint warrant
21 issued, nor suit for collection instituted, nor any other action to collect the
22 same commenced after the expiration of such period; except that a written
23 proposed adjustment of the tax liability by the department issued prior to
24 the expiration of such period shall extend the limitation of this subsection
25 (1) for one year after a final determination or assessment is made. No lien
26 shall continue after the three-year period provided for in this subsection
27 (1), except for taxes assessed before the expiration of such period, notice

1 of lien with respect to which has been filed prior to the expiration of such
2 period, and except for taxes on which written notice of any proposed
3 adjustment of the tax liability has been sent to the taxpayer during such
4 three-year period, in which case the lien shall continue for one year only
5 after the expiration of such period or after the issuance of a final
6 determination or assessment based on the proposed adjustment issued
7 prior to the expiration of the three-year period. This subsection (1) shall
8 not apply to income tax or to any tax imposed under article 23.5 of this
9 ~~title~~ TITLE 39.

10 **SECTION 4.** In Colorado Revised Statutes, **amend** 39-26-125 as
11 follows:

12 **39-26-125. Limitations.** The taxes for any period, together with
13 the interest thereon and penalties with respect thereto, imposed by this
14 part 1 shall not be assessed, nor shall any notice of lien be filed, or
15 distraint warrant issued, or suit for collection be instituted, nor any other
16 action to collect the same be commenced, more than three years after the
17 date on which the tax was or is payable, EXCEPT AS SET FORTH IN SECTION
18 29-2-106.1 (5)(b); nor shall any lien continue after such period, except for
19 taxes assessed before the expiration of such period, notice of lien with
20 respect to which has been filed prior to the expiration of such period, in
21 which cases such lien shall continue only for one year after the filing of
22 notice thereof. In the case of a false or fraudulent return with intent to
23 evade tax, the tax, together with interest and penalties thereon, may be
24 assessed, or proceedings for the collection of such taxes, may be begun,
25 at any time. Before the expiration of such period of limitation, the
26 taxpayer and the executive director of the department of revenue may
27 agree in writing to an extension thereof, and the period so agreed on may

1 be extended by subsequent agreements in writing.

2 **SECTION 5.** In Colorado Revised Statutes, 39-26-703, **amend**
3 (2)(d) and (2.5)(a) as follows:

4 **39-26-703. Disputes and refunds.** (2) (d) An application for
5 refund under ~~paragraph (c) or (c.5) of this subsection (2)~~ SUBSECTION
6 (2)(c) OR (2)(c.5) OF THIS SECTION shall be made within the applicable
7 deadline and shall be made on forms prescribed and furnished by the
8 executive director of the department of revenue, which form shall
9 contain, in addition to the foregoing information, such pertinent data as
10 the executive director prescribes. EXCEPT AS SET FORTH IN SECTION
11 29-2-106.1 (5)(b), the deadline for a sales tax refund or a refund of any
12 use tax collected by a vendor is three years after the twentieth day of the
13 month following the date of purchase and the deadline for any other use
14 tax refund is three years after the twentieth day of the month following
15 the initial date of the storage, use, or consumption in the state by the
16 person applying for the refund.

17 (2.5) (a) EXCEPT AS SET FORTH IN SECTION 29-2-106.1 (5)(b),
18 within three years after the due date of the return showing the
19 overpayment or one year after the date of overpayment, whichever is
20 later, a vendor shall file any claim for refund with the executive director
21 of the department of revenue. The executive director shall promptly
22 examine such claim and shall make a refund or allow a credit to any
23 vendor who establishes that such vendor overpaid the tax due pursuant to
24 this article.

25 **SECTION 6. Applicability.** This act applies to all assessments
26 of sales or use tax within home rule cities, home rule counties, and home
27 rule cities and counties, as well as within statutory cities and towns,

1 counties, and other taxing districts, issued before, on, or after the
2 effective date of this act that have not otherwise become final by all
3 appeals having been exhausted or times for filing an appeal having lapsed
4 without an appeal being made as of the effective date of this act.

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