

SENATE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

February 9, 2016  
Date

Committee on Finance.

After consideration on the merits, the Committee recommends the following:

SB16-036 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 2, strike lines 2 through 14 and substitute:

2 "SECTION 1. In Colorado Revised Statutes, **amend** 39-21-105  
3 as 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~~  
15 ~~the district courts of this state. Trial may be had or any order made in term~~  
16 ~~or in vacation.~~ The district court shall try the case de novo, reviewing all  
17 questions of law and fact, such review being conducted in accordance  
18 with the Colorado rules of civil procedure. The taxpayer shall present his  
19 OR HER case in the same manner as the plaintiff in other civil actions and  
20 the normal rules of evidence shall apply. The taxpayer ~~shall have~~ HAS the  
21 burden of proof with respect to the issues raised in the WRITTEN notice of  
22 appeal DESCRIBED IN SUBSECTION (3) OF THIS SECTION except as to the

1 issue of whether the taxpayer has been guilty of fraud with intent to evade  
2 tax. The burden of proof ~~shall be upon~~ IS ON the executive director of the  
3 department of revenue or his OR HER delegate to show that a petitioner is  
4 liable as a transferee of property of a taxpayer but not to show that the  
5 taxpayer was liable for the tax. The district court may affirm, modify, or  
6 reverse the determination of the executive director and may enter  
7 judgment on its findings.

8 (3) ~~Appeal to the district court shall be taken~~ A TAXPAYER  
9 APPEALS A FINAL DETERMINATION OF THE EXECUTIVE DIRECTOR by filing,  
10 with the clerk of the district court of the proper county, a copy of the  
11 notice of final determination received by the taxpayer, together with a  
12 written notice stating that the taxpayer appeals to the district court and  
13 alleging the pertinent facts upon which such appeal is grounded.

14 (4) (a) Within fifteen days after filing ~~the notice of~~ AN appeal TO  
15 THE DISTRICT COURT FROM A DECISION PURSUANT TO SECTION  
16 39-21-104.5, the taxpayer shall file with the district court a surety bond  
17 in twice the amount of the taxes, interest, and other charges stated AS DUE  
18 in the final determination by the executive director which are contested  
19 on appeal. The taxpayer may, at his OR HER option, satisfy the surety bond  
20 requirement by DEPOSIT IN a savings account or deposit ACCOUNT HELD  
21 in, or PURCHASE a certificate of deposit issued by, a state or national bank  
22 or by a state or federal savings and loan association, in accordance with  
23 the provisions of section 11-35-101 (1), C.R.S., AN AMOUNT equal to  
24 twice the amount of the taxes, interest, and other charges stated AS DUE  
25 in the final determination by the executive director.

26 (b) (5) ~~The~~ ANY taxpayer may, at his OR HER option, deposit the  
27 disputed amount with the executive director of the department of revenue  
28 ~~in lieu of posting a surety bond~~ WITHIN FIFTEEN DAYS AFTER FILING AN  
29 APPEAL TO THE DISTRICT COURT. If such amount is so deposited, no  
30 further interest ~~shall accrue~~ ACCRUES on the deficiency contested during  
31 the pendency of the action. At the conclusion of the action, after appeal  
32 to the supreme court or the court of appeals or after the time for such  
33 appeal has expired, the funds deposited ~~shall~~ MUST be, at the direction of  
34 the court, either retained by the executive director and applied against the  
35 deficiency or returned in whole or in part to the taxpayer with interest at  
36 the rate imposed under section 39-21-110.5. ~~No~~ THE TAXPAYER DOES NOT  
37 NEED TO MAKE A claim for refund of amounts deposited with the  
38 executive director of the department of revenue ~~need be made by the~~  
39 ~~taxpayer~~ in order for such amounts to be repaid in accordance with the  
40 direction of the court.

1           ~~(5)~~ (6) Upon filing of the WRITTEN notice of appeal DESCRIBED IN  
2 SUBSECTION (3) OF THIS SECTION, the executive director of the department  
3 of revenue ~~shall be~~ IS deemed to be a party to ~~such~~ THE appeal, and the  
4 clerk of the district court shall docket the cause as a civil action. The  
5 appellant shall cause summons to be issued and cause the same to be  
6 served upon the executive director, in accordance with the manner  
7 provided by law in civil cases. Notice of the date of trial ~~shall~~ MUST be  
8 mailed to the taxpayer and to the executive director, at least twenty days  
9 ~~prior thereto~~ BEFORE THE DATE OF THE TRIAL.

10           ~~(6)~~ (7) The final decision made in ~~such~~ AN appeal ~~shall~~ OF AN  
11 EXECUTIVE DIRECTOR'S FINAL DETERMINATION MUST be entered as a  
12 judgment, as in other civil cases, against the taxpayer or against the  
13 executive director as the case may be.

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

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

24           (II) DEPOSIT IN A SAVINGS ACCOUNT OR DEPOSIT ACCOUNT HELD  
25 IN, OR PURCHASE A CERTIFICATE OF DEPOSIT ISSUED BY, A STATE OR  
26 NATIONAL BANK OR BY A STATE OR FEDERAL SAVINGS AND LOAN  
27 ASSOCIATION, IN ACCORDANCE WITH THE PROVISIONS OF SECTION  
28 11-35-101 (1), C.R.S., AN AMOUNT EQUAL TO TWICE THE AMOUNT OF THE  
29 TAXES, INTEREST, AND OTHER CHARGES STATED IN THE DISTRICT COURT  
30 RULING; OR

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

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

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

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

15 Strike page 3.

16 Page 4, strike lines 1 through 8.

17 Page 5, line 15, strike "(3) (b) and (3) (c)" and substitute "(3) (b), (3) (c),  
18 and (8) (d)".

19 Page 5, lines 24 and 25, strike "OR THE EXECUTIVE DIRECTOR".

20 Page 6, line 15, strike "be paid REQUIRED TO" and substitute "be paid".

21 Page 6, after line 19 insert:

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

29 Page 6, strike lines 22 through 24 and substitute:

30 "SECTION 6. Act subject to petition - effective date. This act  
31 takes effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly (August  
2 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a  
3 referendum petition is filed pursuant to section 1 (3) of article V of the  
4 state constitution against this act or an item, section, or part of this act  
5 within such period, then the act, item, section, or part will not take effect  
6 unless approved by the people at the general election to be held in  
7 November 2016 and, in such case, will take effect on the date of the  
8 official declaration of the vote thereon by the governor."

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