

CHAPTER 292

TAXATION

SENATE BILL 16-036

BY SENATOR(S) Neville T. and Jahn, Baumgardner, Carroll, Cooke, Crowder, Grantham, Heath, Kefalas, Lambert, Lundberg, Marble, Merrifield, Newell, Scott, Sonnenberg, Steadman, Tate, Woods;
also REPRESENTATIVE(S) Kraft-Tharp and Sias, Neville P., Saine.

AN ACT

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

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

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

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

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

(b) ~~Jurisdiction to hear and determine appeals is conferred upon the district courts of this state. Trial may be had or any order made in term or in vacation.~~ The district court shall try the case de novo, reviewing all questions of law and fact, such review being conducted in accordance with the Colorado rules of civil procedure. The taxpayer shall present his OR HER case in the same manner as the plaintiff in other civil actions and the normal rules of evidence shall apply. The taxpayer ~~shall have~~ HAS the burden of proof with respect to the issues raised in the WRITTEN notice of ~~appeal~~ DESCRIBED IN SUBSECTION (3) OF THIS SECTION except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. The burden of proof ~~shall be upon~~ IS ON the executive director of the department of revenue or

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

his OR HER delegate to show that a petitioner is liable as a transferee of property of a taxpayer but not to show that the taxpayer was liable for the tax. The district court may affirm, modify, or reverse the determination of the executive director and may enter judgment on its findings.

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

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

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

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

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

~~(7)~~ (8) (a) The decision of the district court ~~shall be~~ IS reviewable by the supreme

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

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

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

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

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

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

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

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

11-35-101. Alternatives to surety bonds permitted - requirements. (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in sections 12-5.5-202 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-14-124 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2), 39-21-105, ~~(4)~~, 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105

(1), 42-6-115 (3), and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state. Such savings account, deposit, or certificate of deposit shall be in the amount specified by statute, if any, and shall be assigned to the appropriate state agency for the use of the people of the state of Colorado. The aggregate liability of the bank or savings and loan association shall in no event exceed the amount of the deposit. For the purposes of the sections referred to in this section, "bond" includes the savings account, deposit, or certificate of deposit authorized by this section.

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

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

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

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

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

~~shall continue in effect.~~

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

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

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

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

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

SECTION 7. 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 10, 2016, if adjournment sine die is on May 11, 2016); 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.

Approved: June 10, 2016