

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

**PREAMENDED**

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

LLS NO. 17-0807.01 Esther van Mourik x4215

**SENATE BILL 17-112**

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**SENATE SPONSORSHIP**

**Neville T.**, Court, Hill, Jahn, Kerr, Tate, Smallwood

**HOUSE SPONSORSHIP**

**Pabon**, Covarrubias, Lawrence, Thurlow, Van Winkle, Leonard, Liston

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**Senate Committees**

Finance

**House Committees**

Local Government

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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.**

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**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  
3rd Reading Unamended  
February 14, 2017

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.

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

1 OF AFTER JANUARY 1, 2018, IF THE TAXPAYER PAYS SALES OR USE TAX TO  
2 THE WRONG LOCAL GOVERNMENT, RECEIVES A NOTICE FROM THE CORRECT  
3 LOCAL GOVERNMENT, AND FAILS TO COMPLY WITH THE INSTRUCTIONS IN  
4 THE NOTICE, THEN THE TAXPAYER MAY NOT CLAIM THE REMEDY SET  
5 FORTH IN SUBSECTION (5)(a) OF THIS SECTION WITH RESPECT TO SUCH  
6 TRANSACTION, UNLESS THE TAXPAYER RECEIVES A SIMILAR NOTICE  
7 DESCRIBED IN SUBSECTION (5)(c)(II) OF THIS SECTION FROM ANOTHER  
8 LOCAL GOVERNMENT THAT PROVIDES CONTRARY INSTRUCTIONS.

9 (II) THE NOTICE REQUIRED IN SUBSECTION (5)(c)(I) OF THIS  
10 SECTION MUST BE RECEIVED BY THE TAXPAYER WITHIN NINETY DAYS OF  
11 THE PURCHASE OR SALE TRANSACTION AND MUST:

12 (A) BE SENT BY CERTIFIED OR REGISTERED MAIL OR DELIVERED BY  
13 A NATIONALLY RECOGNIZED COURIER SERVICE THAT PROVIDES A RECEIPT  
14 UPON DELIVERY;

15 (B) BE IN WRITING;

16 (C) BE SIGNED BY AN APPROPRIATE OFFICIAL OF THE CORRECT  
17 LOCAL GOVERNMENT;

18 (D) INSTRUCT THE TAXPAYER TO PAY SALES OR USE TAX ON THE  
19 TRANSACTION AT ISSUE TO THE CORRECT LOCAL GOVERNMENT; AND

20 (E) INCLUDE NOTICE THAT FAILURE TO COMPLY WITH THE  
21 INSTRUCTIONS WILL RESULT IN THE TAXPAYER BEING DENIED THE REMEDY  
22 SET FORTH IN SUBSECTION (5)(a) OF THIS SECTION WITH RESPECT TO SUCH  
23 TRANSACTION. ■ ■

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

26 **39-26-210. Limitations.** The taxes for any period, together with  
27 the interest thereon and penalties with respect thereto, imposed by this

1 part 2 shall not be assessed, nor shall any notice of lien be filed, or  
2 distraint warrant issued, or suit for collection be instituted, nor any other  
3 action to collect the same be commenced, more than three years after the  
4 date on which the tax was or is payable, EXCEPT AS SET FORTH IN SECTION  
5 29-2-106.1 (5)(b); nor shall any lien continue after such period, except for  
6 taxes assessed before the expiration of such period, notice of lien with  
7 respect to which has been filed prior to the expiration of such period, in  
8 which cases such lien shall continue only for one year after the filing of  
9 notice thereof. In the case of a false or fraudulent return with intent to  
10 evade tax, the tax, together with interest and penalties thereon, may be  
11 assessed, or proceedings for the collection of such taxes may be begun at  
12 any time. Before the expiration of such period of limitation, the taxpayer  
13 and the executive director of the department of revenue may agree in  
14 writing to an extension thereof, and the period so agreed on may be  
15 extended by subsequent agreements in writing.

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

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

1 proposed adjustment of the tax liability by the department issued prior to  
2 the expiration of such period shall extend the limitation of this subsection  
3 (1) for one year after a final determination or assessment is made. No lien  
4 shall continue after the three-year period provided for in this subsection  
5 (1), except for taxes assessed before the expiration of such period, notice  
6 of lien with respect to which has been filed prior to the expiration of such  
7 period, and except for taxes on which written notice of any proposed  
8 adjustment of the tax liability has been sent to the taxpayer during such  
9 three-year period, in which case the lien shall continue for one year only  
10 after the expiration of such period or after the issuance of a final  
11 determination or assessment based on the proposed adjustment issued  
12 prior to the expiration of the three-year period. This subsection (1) shall  
13 not apply to income tax or to any tax imposed under article 23.5 of this  
14 ~~title~~ TITLE 39.

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

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

1 evade tax, the tax, together with interest and penalties thereon, may be  
2 assessed, or proceedings for the collection of such taxes, may be begun,  
3 at any time. Before the expiration of such period of limitation, the  
4 taxpayer and the executive director of the department of revenue may  
5 agree in writing to an extension thereof, and the period so agreed on may  
6 be extended by subsequent agreements in writing.

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

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

22 (2.5) (a) EXCEPT AS SET FORTH IN SECTION 29-2-106.1 (5)(b),  
23 within three years after the due date of the return showing the  
24 overpayment or one year after the date of overpayment, whichever is  
25 later, a vendor shall file any claim for refund with the executive director  
26 of the department of revenue. The executive director shall promptly  
27 examine such claim and shall make a refund or allow a credit to any

1 vendor who establishes that such vendor overpaid the tax due pursuant to  
2 this article.

3           **SECTION 6. Applicability.** This act applies to all assessments  
4 of sales or use tax within home rule cities, home rule counties, and home  
5 rule cities and counties, as well as within statutory cities and towns,  
6 counties, and other taxing districts, issued before, on, or after the  
7 effective date of this act that have not otherwise become final by all  
8 appeals having been exhausted or times for filing an appeal having lapsed  
9 without an appeal being made as of the effective date of this act.

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