

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 22-0481.01 Pierce Lively x2059

HOUSE BILL 22-1118

HOUSE SPONSORSHIP

Daugherty,

SENATE SPONSORSHIP

Kolker,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON PURCHASERS' CLAIMS FOR SALES AND**
102 **USE TAX REFUNDS.**

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 requires the executive director of the department of revenue (executive director) to issue a voucher to the controller in favor of a purchaser who makes a valid and complete claim for a sales and use tax overpayment refund on or after July 1, 2022. The voucher must be for the amount of the refund of the sales or use tax overpayment without interest.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Amended 2nd Reading
March 18, 2022

If a purchaser makes a frivolous claim for a sales and use tax refund, the bill requires the executive director to assess and collect, in addition to other penalties provided by law, a civil penalty equal to 10% of the total refund claimed. If the frivolous claim is prepared, in whole or in part, by a person other than the purchaser, the executive director can impose the penalty on that other person. In certain cases, the executive director may waive this penalty.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-21-110,
3 **amend** (1) introductory portion and (1)(b); and **add** (1)(c) as follows:

4 **39-21-110. Interest on overpayments.** (1) Interest shall be
5 allowed and paid upon any overpayment in respect to any tax or any
6 charge on oil and gas production imposed pursuant to articles 22 to 29 of
7 this title, article 60 of title 34, or article 3 of title 42 ~~C.R.S.~~, at the rate
8 imposed under section 39-21-110.5. Such interest shall be allowed and
9 paid as follows:

10 (b) EXCEPT AS PROVIDED IN SUBSECTION (1)(c) OF THIS SECTION,
11 in the case of a refund, from the date of the overpayment to a date, to be
12 determined by the executive director of the department of revenue or his
13 THEIR delegate, preceding the date of the refund by not more than thirty
14 days, whether or not such refund is accepted by the taxpayer after tender
15 of such refund to the taxpayer. The acceptance of such refund shall be
16 without prejudice to any right of the taxpayer to claim any additional
17 overpayment and interest thereon; OR

18 (c) (I) IN THE CASE OF A REFUND CLAIM MADE BY A PURCHASER
19 FOR SALES OR USE TAX PAID TO A VENDOR UNDER SECTION 39-26-703 (2)
20 ON OR AFTER JULY 1, 2022, BUT BEFORE JULY 1, 2026, FROM THE DATE
21 THAT THE CLAIM FOR REFUND WAS FILED TO A DATE, TO BE DETERMINED
22 BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE OR THEIR

1 DELEGATE, PRECEDING THE DATE OF THE REFUND BY NOT MORE THAN
2 THIRTY DAYS, WHETHER OR NOT SUCH REFUND IS ACCEPTED BY THE
3 TAXPAYER AFTER TENDER OF SUCH REFUND TO THE TAXPAYER, BUT ONLY
4 IF THE DATE OF THE REFUND IS MORE THAN ONE HUNDRED AND EIGHTY
5 DAYS FROM THE DATE THE CLAIM FOR REFUND WAS FILED. THE
6 ACCEPTANCE OF SUCH REFUND SHALL BE WITHOUT PREJUDICE TO ANY
7 RIGHT OF THE PURCHASER TO CLAIM ANY ADDITIONAL OVERPAYMENT AND
8 INTEREST THEREON.

9 (II) THIS SUBSECTION (1)(c) IS REPEALED, EFFECTIVE JULY 1, 2030.

10 SECTION 2. In Colorado Revised Statutes, 39-26-703, **amend**
11 (2)(d); and **add** (5) as follows:

12 **39-26-703. Disputes and refunds.** (2) (d) An application for
13 refund under subsection (2)(c) or (2)(c.5) of this section ~~shall~~ MUST be
14 made within the applicable deadline and ~~shall~~ MUST be made on forms
15 prescribed and furnished by the executive director of the department of
16 revenue, which form ~~shall~~ MUST contain, in addition to the foregoing
17 information, such OTHER pertinent data, INFORMATION, OR
18 DOCUMENTATION as the executive director prescribes BY RULES
19 PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24. Except as
20 set forth in section 29-2-106.1 (5)(b), the deadline for a sales tax refund
21 or a refund of any use tax collected by a vendor is three years after the
22 twentieth day of the month following the date of purchase and the
23 deadline for any other use tax refund is three years after the twentieth day
24 of the month following the initial date of the storage, use, or consumption
25 in the state by the person applying for the refund.

26 (5) (a) (I) IF A PURCHASER FILES A CLAIM FOR REFUND OF TAX PAID
27 DESCRIBED IN SUBSECTION (5)(b) OF THIS SECTION AND PURSUANT TO THIS

1 ARTICLE 26 TO A VENDOR ON OR AFTER JULY 1, 2022, BUT BEFORE JULY 1,
2 2026, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL
3 ASSESS AND COLLECT, IN ADDITION TO OTHER PENALTIES PROVIDED BY
4 LAW, A CIVIL PENALTY AS FOLLOWS:

5 (A) FIVE PERCENT OF THE TOTAL REFUND CLAIMED IF THE CLAIM
6 IS FOUND TO BE MATERIALLY INCOMPLETE; AND

7 (B) TEN PERCENT OF THE AMOUNT OF THE REFUND CLAIM THAT IS
8 FOUND TO BE DUPLICATIVE OR LACKING A REASONABLE BASIS IN LAW OR
9 IN FACT.

10 (II) THE CIVIL PENALTY IMPOSED BY THIS SUBSECTION (5) APPLIES
11 ONLY TO CLAIMS TOTALING FIVE THOUSAND DOLLARS OR MORE.

12 (III) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
13 SHALL ASSESS AND COLLECT, IN THE SAME MANNER AS A SALES OR USE
14 TAX DEFICIENCY, THE CIVIL PENALTY IMPOSED BY THIS SUBSECTION (5)
15 FROM THE PURCHASER UNLESS THE CLAIM FOR REFUND IS PREPARED, IN
16 WHOLE OR IN PART, BY A PERSON OTHER THAN THE PURCHASER, IN WHICH
17 CASE THE PENALTY IS IMPOSED ON THAT PERSON. THE EXECUTIVE
18 DIRECTOR SHALL GIVE THE PERSON AGAINST WHOM THE PENALTY IS
19 ASSESSED WRITTEN NOTICE OF THE PENALTY IN ACCORDANCE WITH
20 SECTION 39-21-105.5. WITHIN THIRTY DAYS AFTER SUCH NOTICE IS
21 MAILED, THE PERSON AGAINST WHOM THE PENALTY WAS ASSESSED MAY
22 PETITION THE EXECUTIVE DIRECTOR FOR A HEARING ON THE NOTICE IN THE
23 MANNER PROVIDED IN SECTION 39-21-103 AND MAY APPEAL TO THE
24 DISTRICT COURT IN THE MANNER PROVIDED IN SECTION 39-21-105.

25 (b) A CLAIM FOR REFUND IS SUBJECT TO THE PENALTY UNDER THIS
26 SUBSECTION (5) IF:

27 (I) IT IS INCOMPLETE;

1 (II) IT INCLUDES A PURCHASE FOR WHICH AN EARLIER CLAIM FOR
2 REFUND HAS ALREADY BEEN FILED; OR

3 (III) IT, OR ANY PART OF IT, LACKS A REASONABLE BASIS IN LAW
4 OR IN FACT.

5 (c) (I) A CLAIM FOR REFUND IS INCOMPLETE IF IT DOES NOT
6 INCLUDE THE FORM AND SUBSTANTIALLY ALL OF THE PERTINENT DATA,
7 INFORMATION, AND DOCUMENTATION REQUIRED BY SUBSECTION (2)(d) OF
8 THIS SECTION AND THE RULES PROMULGATED THEREUNDER.

9 (II) PRIOR TO ASSESSING A PENALTY FOR A CLAIM FOR REFUND DUE
10 TO INCOMPLETENESS UNDER SUBSECTION (5)(b)(I) OF THIS SECTION, THE
11 EXECUTIVE DIRECTOR SHALL NOTIFY THE PURCHASER OR THE PREPARER
12 OF THE CLAIM, IF ANY, THAT THE CLAIM APPEARS TO BE INCOMPLETE. THE
13 NOTIFICATION MUST SPECIFY THE PERTINENT DATA, INFORMATION, AND
14 DOCUMENTATION THAT APPEARS TO BE MISSING AND MUST STATE THAT
15 FAILURE TO EITHER CORRECT THE OMISSION OR WITHDRAW THE CLAIM FOR
16 REFUND WITHIN SIXTY DAYS OF THE DATE OF THE NOTICE, PLUS SUCH
17 ADDITIONAL TIME ALLOWED BY THE EXECUTIVE DIRECTOR FOR
18 REASONABLE CAUSE SHOWN, WILL RESULT IN THE ASSESSMENT AND
19 COLLECTION OF THE CIVIL PENALTY ALLOWED UNDER THIS SUBSECTION
20 (5). CORRECTING THE OMISSION REQUIRES THE PURCHASER OR PREPARER
21 TO PROVIDE THE MISSING DATA, INFORMATION, AND DOCUMENTATION AND
22 TO DEMONSTRATE WHY THE CLAIM IS NOT INCOMPLETE.

23 (d) IF AN APPLICATION FOR REFUND IS IDENTIFIED AT THE TIME OF
24 FILING AS A PROTECTIVE CLAIM FILED IN ORDER TO PRESERVE THE RIGHT
25 TO A REFUND PRIOR TO THE EXPIRATION OF THE STATUTE OF LIMITATIONS,
26 THE EXECUTIVE DIRECTOR SHALL DETERMINE IF THE CLAIM FOR REFUND
27 IS SUBJECT TO THE PENALTY UNDER THIS SUBSECTION (5) AFTER THE

1 CLAIM FOR REFUND IS PERFECTED.

2 (e) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
3 MAY WAIVE THE CIVIL PENALTY IMPOSED BY THIS SUBSECTION (5) IF THE
4 PERSON AGAINST WHOM THE PENALTY IS ASSESSED:

5

6 (I) ESTABLISHES THAT A DUPLICATE CLAIM WAS NOT INTENTIONAL
7 AND WAS EITHER MINIMAL OR IMMATERIAL; OR

8 (II) DEMONSTRATES OTHER GOOD CAUSE FOR WAIVER OF THE CIVIL
9 PENALTY.

10 (f) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JULY 1, 2030.

11 **SECTION 3. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, or safety.