

CHAPTER 110

TAXATION

HOUSE BILL 22-1118

BY REPRESENTATIVE(S) Daugherty, Benavidez, Bird, Cutter, Gonzales-Gutierrez, Jodeh, Kipp, Lindsay, Ricks, Titone, Valdez A., Woodrow;
also SENATOR(S) Kolker.

AN ACT**CONCERNING LIMITATIONS ON PURCHASERS' CLAIMS FOR SALES AND USE TAX REFUNDS.**

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

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

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

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

(c) (I) IN THE CASE OF A REFUND CLAIM MADE BY A PURCHASER FOR SALES OR USE TAX PAID TO A VENDOR UNDER SECTION 39-26-703 (2) ON OR AFTER JULY 1, 2022, BUT BEFORE JULY 1, 2026, FROM THE DATE THAT THE CLAIM FOR REFUND WAS FILED TO A DATE, TO BE DETERMINED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE OR THEIR DELEGATE, PRECEDING THE DATE OF THE REFUND BY NOT MORE THAN THIRTY DAYS, WHETHER OR NOT SUCH REFUND IS ACCEPTED BY THE TAXPAYER AFTER TENDER OF SUCH REFUND TO THE TAXPAYER, BUT ONLY IF THE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

DATE OF THE REFUND IS MORE THAN ONE HUNDRED AND EIGHTY DAYS FROM THE DATE THE CLAIM FOR REFUND WAS FILED. THE ACCEPTANCE OF SUCH REFUND SHALL BE WITHOUT PREJUDICE TO ANY RIGHT OF THE PURCHASER TO CLAIM ANY ADDITIONAL OVERPAYMENT AND INTEREST THEREON.

(II) THIS SUBSECTION (1)(c) IS REPEALED, EFFECTIVE JULY 1, 2030.

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

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

(5) (a) (I) IF A PURCHASER FILES A CLAIM FOR REFUND OF TAX PAID DESCRIBED IN SUBSECTION (5)(b) OF THIS SECTION AND PURSUANT TO THIS ARTICLE 26 TO A VENDOR ON OR AFTER JULY 1, 2022, BUT BEFORE JULY 1, 2026, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL ASSESS AND COLLECT, IN ADDITION TO OTHER PENALTIES PROVIDED BY LAW, A CIVIL PENALTY AS FOLLOWS:

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

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

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

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

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

(I) IT IS INCOMPLETE;

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

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

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

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

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

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

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

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

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

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

Approved: April 21, 2022