

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

**PREAMENDED**

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

LLS NO. 10-0737.01 Jason Gelender

**HOUSE BILL 10-1191**

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**HOUSE SPONSORSHIP**

**Pommer,**

**SENATE SPONSORSHIP**

**Heath,**

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**House Committees**

Finance  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE NARROWING OF THE EXISTING EXEMPTION FROM**  
102            **THE STATE SALES AND USE TAXES FOR FOOD, AND, IN**  
103            **CONNECTION THEREWITH, SUBJECTING CANDY AND SOFT DRINKS**  
104            **TO THE STATE SALES AND USE TAXES, AND MAKING AN**  
105            **APPROPRIATION THEREFOR.**

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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://www.leg.state.co.us/billsummaries>.)*

Effective March 1, 2010, **sections 1 and 2** of the bill:

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.*

- ! Narrow the existing state sales and use tax exemptions for food so that candy and soft drinks are no longer exempt from the state sales tax and use taxes;
- ! Authorize the department of revenue to promulgate rules that allow sellers of candy and soft drinks to, if necessary, reasonably estimate the amount of sales taxes due on their sales; and
- ! Make conforming amendments to prevent the narrowing of the exemption from affecting county, municipal, and other local government or political subdivision sales and use taxes.

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

2           **SECTION 1.** 39-26-707 (1) (e) and (2) (d), Colorado Revised  
3 Statutes, are amended, and the said 39-26-707 is further amended BY  
4 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to  
5 read:

6           **39-26-707. Food, meals, and beverages - definitions.** (1) The  
7 following shall be exempt from taxation under the provisions of part 1 of  
8 this article:

9           (e) (I) Commencing January 1, 1980, all sales of food; EXCEPT  
10 THAT, ON AND AFTER MAY 1, 2010, SALES OF CANDY AND SOFT DRINKS  
11 SHALL BE SUBJECT TO SUCH TAXATION.

12           (II) FOR THE PURPOSES OF THIS PARAGRAPH (e):

13           (A) "CANDY" MEANS A PREPARATION OF SUGAR, HONEY, OR OTHER  
14 NATURAL OR ARTIFICIAL SWEETENERS IN COMBINATION WITH CHOCOLATE,  
15 FRUIT, NUTS, OR OTHER INGREDIENTS OR FLAVORINGS IN THE FORM OF  
16 BARS, DROPS, OR PIECES. "CANDY" SHALL NOT INCLUDE ANY  
17 PREPARATION CONTAINING FLOUR AND SHALL REQUIRE NO  
18 REFRIGERATION.

19           (B) "SOFT DRINKS" MEANS NONALCOHOLIC BEVERAGES THAT

1       CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT  
2       INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE,  
3       OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF  
4       VEGETABLE OR FRUIT JUICE BY VOLUME.

5               (2) The following shall be exempt from taxation under the  
6       provisions of part 2 of this article:

7               (d) (I) Effective January 1, 1980, the storage, use, or consumption  
8       of food; ~~as defined in section 39-26-102 (4.5)~~ EXCEPT THAT, ON AND  
9       AFTER MAY 1, 2010, THE STORAGE, USE, OR CONSUMPTION OF CANDY AND  
10       SOFT DRINKS SHALL BE SUBJECT TO SUCH TAXATION.

11              (II) FOR THE PURPOSES OF THIS PARAGRAPH (d):

12              (A) "CANDY" MEANS A PREPARATION OF SUGAR, HONEY, OR OTHER  
13       NATURAL OR ARTIFICIAL SWEETENERS IN COMBINATION WITH CHOCOLATE,  
14       FRUIT, NUTS, OR OTHER INGREDIENTS OR FLAVORINGS IN THE FORM OF  
15       BARS, DROPS, OR PIECES. "CANDY" SHALL NOT INCLUDE ANY  
16       PREPARATION CONTAINING FLOUR AND SHALL REQUIRE NO  
17       REFRIGERATION.

18              (B) "SOFT DRINKS" MEANS NONALCOHOLIC BEVERAGES THAT  
19       CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT  
20       INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE,  
21       OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF  
22       VEGETABLE OR FRUIT JUICE BY VOLUME.

23              (3) NOTWITHSTANDING ANY PROVISION OF LAW TO THE  
24       CONTRARY, FOR ANY LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF  
25       THE STATE THAT LEVIES A SALES OR USE TAX BASED ON THE SALES OR USE  
26       TAX LEVIED BY THE STATE PURSUANT TO THIS ARTICLE, THE SALE OR  
27       STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS, AS DEFINED

1 IN PARAGRAPHS (e) OF SUBSECTION (1) AND (d) OF SUBSECTION (2) OF THIS  
2 SECTION, ON AND AFTER MAY 1, 2010, SHALL BE EXEMPT FROM THE SALES  
3 OR USE TAX OF THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION  
4 UNLESS THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION EXPRESSLY  
5 SUBJECTS SUCH SALES OR STORAGE, USE, OR CONSUMPTION TO ITS SALES  
6 OR USE TAX AT THE TIME OF ADOPTION OF ITS INITIAL SALES OR USE TAX  
7 ORDINANCE OR RESOLUTION OR BY SUBSEQUENT AMENDMENT THERETO.  
8 IF THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION EXPRESSLY  
9 SUBJECTS SUCH SALES OR STORAGE, USE, OR CONSUMPTION TO ITS SALES  
10 OR USE TAX, THE EFFECTIVE DATE SHALL BE EITHER JANUARY 1 OR JULY  
11 1, AND THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION SHALL  
12 PROVIDE NOTICE TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF  
13 REVENUE AT LEAST FORTY-FIVE DAYS PRIOR TO THE EFFECTIVE DATE OF  
14 THE SALES OR USE TAX.

15 (4) THE DEPARTMENT OF REVENUE MAY PROMULGATE RULES, IN  
16 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS  
17 BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL MAY,  
18 IF NECESSARY, REASONABLY ESTIMATE THE AMOUNT OF SALES TAXES DUE  
19 ON SUCH CANDY AND SOFT DRINKS. FOR ANY RETURN MADE PRIOR TO  
20 AUGUST 1, 2010, A PERSON WHO SELLS CANDY OR SOFT DRINKS AT RETAIL  
21 SHALL NOT BE LIABLE FOR ANY INTEREST OR OTHER PENALTY IMPOSED AS  
22 A RESULT OF AN ERROR MADE IN CONNECTION WITH THE ELIMINATION OF  
23 THE EXEMPTION FROM STATE SALES TAX FOR SALES OF CANDY AND SOFT  
24 DRINKS, AS DEFINED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS  
25 SECTION, BY HOUSE BILL 10-1191, ENACTED IN 2010.

26 SECTION 2. 39-26-714 (2) and (3), Colorado Revised Statutes,  
27 are amended, and the said 39-26-714 is further amended BY THE

1 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

2 **39-26-714. Vending machines - definitions.** (2) On and after  
3 January 1, 2000, all sales and purchases of food, as defined in section  
4 39-26-102 (4.5), by or through vending machines shall be exempt from  
5 taxation under the provisions of part 1 of this article; EXCEPT THAT, ON  
6 AND AFTER MAY 1, 2010, SALES AND PURCHASES OF CANDY AND SOFT  
7 DRINKS BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO SUCH  
8 TAXATION. ABSENT AN EXPRESS PROVISION IN THE CONTRACT TO THE  
9 CONTRARY, ANY VENDING MACHINE CONTRACT THAT REFERENCES THE  
10 PRICE AT WHICH PRODUCTS SHALL BE SOLD FROM A VENDING MACHINE  
11 SHALL BE INTERPRETED TO INCLUDE ANY APPLICABLE SALES TAX AS AN  
12 ADDITION TO THE REFERENCED PRICE.

13 (3) On and after January 1, 2000, the storage, use, or consumption  
14 of food, as defined in section 39-26-102 (4.5), purchased by or through  
15 vending machines shall be exempt from taxation under the provisions of  
16 part 2 of this article; EXCEPT THAT, ON AND AFTER MAY 1, 2010, THE  
17 STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS PURCHASED  
18 BY OR THROUGH VENDING MACHINES SHALL BE SUBJECT TO SUCH  
19 TAXATION.

20 (4) FOR THE PURPOSES OF THIS SECTION:

21 (a) "CANDY" MEANS A PREPARATION OF SUGAR, HONEY, OR OTHER  
22 NATURAL OR ARTIFICIAL SWEETENERS IN COMBINATION WITH CHOCOLATE,  
23 FRUIT, NUTS, OR OTHER INGREDIENTS OR FLAVORINGS IN THE FORM OF  
24 BARS, DROPS, OR PIECES. "CANDY" SHALL NOT INCLUDE ANY  
25 PREPARATION CONTAINING FLOUR AND SHALL REQUIRE NO  
26 REFRIGERATION.

27 (b) "SOFT DRINKS" MEANS NONALCOHOLIC BEVERAGES THAT

1       CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT  
2       INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE,  
3       OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF  
4       VEGETABLE OR FRUIT JUICE BY VOLUME.

5               (5) THE DEPARTMENT OF REVENUE SHALL PROMULGATE RULES, IN  
6       ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO PROVIDE A MEANS  
7       BY WHICH A PERSON WHO SELLS CANDY OR SOFT DRINKS PURCHASED BY  
8       AND THROUGH VENDING MACHINES MAY, IF NECESSARY, REASONABLY  
9       ESTIMATE THE AMOUNT OF SALES TAXES DUE ON SUCH CANDY AND SOFT  
10      DRINKS. FOR ANY RETURN MADE PRIOR TO AUGUST 1, 2010, A PERSON  
11      WHO SELLS CANDY OR SOFT DRINKS AT RETAIL SHALL NOT BE LIABLE FOR  
12      ANY INTEREST OR OTHER PENALTY IMPOSED AS A RESULT OF AN ERROR  
13      MADE IN CONNECTION WITH THE ELIMINATION OF THE EXEMPTION FROM  
14      STATE SALES TAX FOR SALES OF CANDY AND SOFT DRINKS, AS DEFINED IN  
15      SUBSECTION (4) OF THIS SECTION, BY HOUSE BILL 10-1191, ENACTED IN  
16      2010.

17              (6) NOTWITHSTANDING ANY PROVISION OF LAW TO THE  
18      CONTRARY, FOR ANY LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF  
19      THE STATE THAT LEVIES A SALES OR USE TAX BASED ON THE SALES OR USE  
20      TAX LEVIED BY THE STATE PURSUANT TO THIS ARTICLE, THE SALE OR  
21      STORAGE, USE, OR CONSUMPTION OF CANDY AND SOFT DRINKS, AS DEFINED  
22      IN SUBSECTION (4) OF THIS SECTION, PURCHASED BY OR THROUGH  
23      VENDING MACHINES ON AND AFTER MAY 1, 2010, SHALL BE EXEMPT FROM  
24      THE SALES OR USE TAX OF THE LOCAL GOVERNMENT OR POLITICAL  
25      SUBDIVISION UNLESS THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION  
26      EXPRESSLY SUBJECTS SUCH SALES OR STORAGE, USE, OR CONSUMPTION TO  
27      ITS SALES OR USE TAX AT THE TIME OF ADOPTION OF ITS INITIAL SALES OR

1 USE TAX ORDINANCE OR RESOLUTION OR BY SUBSEQUENT AMENDMENT  
2 THERETO. IF THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION  
3 EXPRESSLY SUBJECTS SUCH SALES OR STORAGE, USE, OR CONSUMPTION TO  
4 ITS SALES OR USE TAX, THE EFFECTIVE DATE SHALL BE EITHER JANUARY  
5 1 OR JULY 1, AND THE LOCAL GOVERNMENT OR POLITICAL SUBDIVISION  
6 SHALL PROVIDE NOTICE TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT  
7 OF REVENUE AT LEAST FORTY-FIVE DAYS PRIOR TO THE EFFECTIVE DATE  
8 OF THE SALES OR USE TAX.

9 SECTION 3. Part 1 of article 21 of title 39, Colorado Revised  
10 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
11 read:

12 39-21-122. Revenue impact of 2010 tax legislation - tracking  
13 by department. THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL  
14 REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1191,  
15 ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS  
16 AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY  
17 REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE  
18 STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

19 SECTION 4. Part 1 of article 75 of title 24, Colorado Revised  
20 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
21 read:

22 24-75-113. 2010 bills to increase state revenue - prohibition on  
23 hiring of new state employees. NO MONEYS DERIVED FROM THE  
24 INCREASE IN STATE REVENUES RESULTING FROM THE PASSAGE OF HOUSE  
25 BILL 10-1191, ENACTED IN 2010, SHALL BE APPROPRIATED FOR THE  
26 PURPOSE OF FUNDING ADDITIONAL FULL TIME EQUIVALENT STATE  
27 EMPLOYEES.

1           **SECTION 5. Appropriation.** In addition to any other  
2           appropriation, there is hereby appropriated, out of any moneys in the  
3           general fund not otherwise appropriated, to the department of revenue, for  
4           allocation to the taxation business group, taxation and compliance  
5           division, for the fiscal year beginning July 1, 2009, the sum of ninety-four  
6           thousand three hundred twenty-two dollars (\$94,322) and 0.9 FTE, or so  
7           much thereof as may be necessary, for the implementation of this act.

8           **SECTION 6. Safety clause.** The general assembly hereby finds,  
9           determines, and declares that this act is necessary for the immediate  
10          preservation of the public peace, health, and safety.