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0302 Sales and Use Tax Simplification Task Force

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Report to the Colorado General Assembly:

Sales and Use Tax Simplification Task Force



RESEARCH PUBLICATION NO. 302

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RECOMMENDATIONS FOR 1986
1

(Colorado General Assembly, Legislative Council,
" SALES AND USE TAX SIMPLIFICATION
TASK FORCE.)

REPORT TO THE

COLORADO GENERAL ASSEMBLY

NON-CIRCULATING

Research Publication No. 302
December, 1985

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To Members of the Fifty-fifth Colorado General Assembly:

Submitted herewith is the final report and recommendations of the Sales and Use Tax Simplification Task Force. This Task Force was established by section 29-2-113, C.R.S., (House Bill 1007-1985 session), and is required to make recommendations to the General Assembly concerning standard definitions and regulations of taxable and exempt items for use by the state and every home rule city, town, and city and county.

The Task Force submitted its report and recommendations to the Legislative Council at its meeting on October 15. The Task Force recommends that one bill be transmitted to the General Assembly for favorable consideration. The Legislative Council reviewed the report and recommendation and voted favorably to forward the report to the Fifty-Fifth General Assembly.

Respectfully submitted,

/s/ Representative Jim Scherer
Chairman
Sales and Use Tax Simplification
Task Force

JS/pn

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SUMMARY OF TASK FORCE ACTIVITIES
AND RECOMMENDATIONS

Task Force Charge

The Sales and Use Tax Simplification Task Force was created by House Bill 1007 (1985 session). The task force was directed to meet during the period from July 1 to December 31, 1985 and was given the following two specific charges:

- (1) to make recommendations concerning standard definitions and regulations of taxable and exempt items; and
- (2) to develop a plan to phase out local storage taxes between 1987 and 1989 contingent upon finding replacement revenue for the direct and secondary revenue losses from elimination of such revenues.

Summary of Meetings

The task force met five times during July, August, and September. At its first meeting, representatives of municipalities and the business community briefed the task force on issues of concern to them. The cities, represented by the Colorado Municipal League, emphasized the importance of the sales tax as a local revenue source and the need to protect their sales tax base. The business community, represented by the Colorado Association of Commerce and Industry, identified three areas in which business has experienced problems: food, charitable organizations and leases of personal property. Representatives of the city and county of Denver discussed the fiscal impact repeal of the storage tax would have on its revenue base.

The second meeting of the task force was devoted to considering in more detail the issues discussed during the first meeting. Each of the major interests, -- business, state, and municipal -- presented additional information on each of the issues. The fiscal impact of the storage tax repeal was also explained in more detail.

Proposed statutory changes were discussed during the third meeting. Members amended and tentatively approved a storage tax proposal offered by the cities. Proposed definitions of food were also discussed, but no position was reached. The task force, however, did decide that the leasing problem presented by the business community was not a definitional issue and thus not within its charge. The Department of Revenue highlighted several areas in the tax statutes and regulations they suggest need clarification. The task force agreed to further discuss the proposed statutory definitions of newspaper, computer software and telecommunications services. In addition, the task force heard testimony from the Colorado Association

of Hospitality Accountants concerning the application of the sales tax to various purchases used in hotel rooms and restaurants. It was agreed that representatives of the department and the association should meet to attempt to resolve the problem.

The consideration of proposed statutory language continued at the fourth meeting. Tentative approval was given to the municipalities' proposal for charitable organizations and to a further amended storage tax proposal. Members discussed impressions of their site visits, during the previous week, to local food retailers. The members continued to examine the cities' proposal to tax candy and soda pop and the retailers' proposal to adopt the federal food stamp guidelines. In addition, the task force heard testimony from the Colorado Society of Association Executives regarding the hotel industry practice of charging sales tax on gratuities and service charges, and from the Colorado Optometric Association regarding an exemption of eyeglasses and contact lenses from the sales tax. It was agreed that the association executives could work out their problem with the Department of Revenue and that the optometrist's problem did not come under the task force's charge.

The task force focused on making final recommendations at its fifth meeting. Members adopted a proposal by the cities for a definition of newspaper and one by the department to clarify the taxability of computer software. Also, the task force reached agreement on a definition of food which clarifies the taxability of cocktail mixes and delicatessen items, and provides for the taxation of single servings of candy and soda pop. With regard to the storage tax repeal, the task force confirmed its recommendation of the municipalities' amended proposal. Similarly, the recommendation for charitable organizations was confirmed, except with a change in the language providing for a single exemption form.

At the sixth and final meeting of the task force, members commented on drafts of the final report and the bill containing the task force's recommendations. Interested persons were also given the opportunity to comment. Since the bill had already been approved as to substance by the Legislative Council, only technical changes designed to more closely reflect the intent of the task force were considered.

Summary of Draft Bill

The task force decided to present its recommendations to the General Assembly in one bill, rather than to prepare separate bills for each proposal. The provisions of this omnibus bill (Bill 73), are summarized below.

Storage Tax

Under Section 2 of Bill 73, beginning January 1, 1987, statutory and home rule county and municipal use taxes would no longer be applicable to the storage of personal property, subject to the following provision: any property located within a jurisdiction for a continuous period longer than sixty days would be presumed to be in use or consumption (not in storage) and would be subject to use taxes from the date of the property's acquisition. A taxpayer may rebut this presumption with evidence that the property is in storage for use or consumption outside the jurisdiction, that the taxpayer is doing business in another jurisdiction, and that the nature of the taxpayer's business is such that storage for future use in another jurisdiction is likely to occur. Finally, the proposed language specifies that a taxable incident occurs when property is removed from storage and made available for immediate or subsequent use or consumption, even if that use or consumption is completed in another jurisdiction.

Definition of Food

Section 3 of Bill 73 amends the definition of food in several ways. First, it specifies that food is "an edible product used for domestic home consumption". Then, reflecting the task force's intent to tax items intended for immediate consumption, the following items are excluded from the definition of food for sales tax purposes:

- individual servings of candy or soft drinks;
- fermented malt beverages;
- items labelled or packaged as cocktail mixes; and
- delicatessen items and party trays.

Thus, under Bill 73, these items would be subject to sales tax.

Definition of Newspaper

The existing state sales tax exemption for newspapers is based on a definition of "legal newspaper" contained in section 24-70-102, C.R.S. However, the task force heard testimony concerning potential confusion over which publications qualify for the exemption under this definition. In response, the task force recommends a definition which, in addition to the requirements for a legal newspaper, provides that the publication must be:

- printed on newsprint;
- intended for general circulation; and

- contain information and editorials on current events and news of general interest.

Computer Program Services

Currently, there is no definition of computer program services (software) in state law. The taxability of software is addressed in a Department of Revenue special regulation. Under the regulation, prewritten (or "canned") programs are taxed as tangible personal property, and programs which are considered an integral part of the computer and its operation are taxable as part of the hardware. The definition adopted by the task force would provide for the taxation of "modified" computer software programs -- that is, taxation of the custom design of a program or the modification of an existing one -- if purchased.

Charitable Organization

Sections 1 and 5 of Bill 73 provide for a definition of charitable organization for the purpose of determining whether an organization qualifies for an exemption from municipal and state sales and use taxes. The proposed definition would be narrower than the one contained in the current state sales tax statute. Section 5 also provides that the Department of Revenue is to complete, prior to 1989, a review of all exemptions granted prior to 1987. Charitable organizations which meet the requirements of the narrower definition would be issued a new letter of exemption which would be in effect for five years, after which time the organization would have to obtain a new letter. The new provision also directs the department to issue a standard exemption form for the use of exempt charitable organizations and requires the form be presented to a retailer at the time of purchase.

Effective Date

The provisions of the bill will take effect on July 1, 1987. This should give the state and the municipalities sufficient time to prepare for implementation.

BACKGROUND REPORT

Introduction to Sales and Use Tax Simplification

The State of Colorado initially established its sales tax as a temporary measure in 1935, but made the tax permanent in 1937. The use tax was enacted in 1936. At the time, only wholesale sales, items subject to other excise taxes, sales to governmental entities, and sales to charitable organizations were exempt from the sales tax. In 1967, statutory cities and counties were given authority to levy a sales tax in accordance with state law. Home rule cities and counties have always had independent authority to levy a sales tax. As the system of state and local sales and use taxes has evolved, various changes have been made in the tax bases and the definitions of taxable and exempt items. For example, the state has incorporated fifty-four additional sales tax exemptions since 1937. (See Appendix A for a summary of state sales tax exemptions.)

Business and Municipal Concerns

In reaction to the growing complexity of the sales and use tax statutes, members of the business community have become concerned over a variety of features which they contend present obstacles to compliance. They report that difficulties with compliance have developed as a result of multiple reporting and audit requirements, double taxation, confusion over the "taxable moment", and varying tax bases among jurisdictions. In response, the business community has recommended simplification through the imposition of a standard statewide base, uniform definitions of taxable and exempt items, state collection of sales taxes, coordinated audit and appeal procedures, clarification of the "taxable moment", and elimination of the storage tax.

At the same time, the sales tax has become one of the major sources of revenue to the state. Providing 34 percent of gross General Fund revenues in fiscal year 1985, it is second only to the individual income tax. It is an even more significant revenue source for local governments. For instance, according to the Colorado Municipal League (CML), the 34 home rule municipalities which collect their own sales tax collect four dollars of sales tax for every one dollar of property tax. These 34 cities collect 80 percent of all municipal sales tax and 60 percent of all municipal property tax. To further emphasize the importance of the sales tax, it was also pointed out that municipalities collect only about 8 percent of all property taxes.

Because of the importance of the sales tax in meeting their increasing financial burdens, the cities expressed concern over protecting their sales tax base. The Colorado Municipal League indicated a willingness to accept standard statewide definitions, but

emphasized that such uniformity must not occur at the expense of eroding the municipal sales tax base. This is of primary interest to the 34 home rule cities who have sales tax bases broader than the state's base. It was pointed out that the state has granted a wide range of sales tax exemptions, especially since 1976, which have not been adopted by many of these home rule cities (see Appendix A). The 120 statutory cities and 30 home rule cities whose sales tax is collected by the state are required by law to have the same tax base as the state.

1985 Legislative Activity

Some of the concerns of business and the municipalities regarding sales and use taxes were addressed in House Bill 1007 (1985 session). This bill (summarized in Appendix B) provided for uniform sales and use tax reporting and collection procedures, a dispute resolution process, and elimination of the storage tax on construction and building materials. However, the issues of standard definitions and total repeal of the storage tax remained unresolved. Thus, House Bill 1007 provided for the creation of the Sales and Use Tax Simplification Task Force to further consider these issues during the 1985 interim.

This report presents background information regarding the activities and recommendations of the task force. It may also be useful for the reader to refer to the final report of the 1984 Interim Committee on Business Issues (Legislative Council Publication No. 290) which also studied sales and use tax simplification.

Standard Statewide Definitions

The Colorado Association of Commerce and Industry (CACI), representing the business community, explained to the task force that many businesses experience difficulties in complying with sales tax laws because of the variations among cities and between cities and the state in definitions of certain taxable and exempt items. Business representatives added that these difficulties are especially acute for businesses which have operations located in several jurisdictions and must therefore adapt their reporting and accounting systems to account for these different definitions. Thus, the issue before the task force, as stated in its charge, was the development of standard definitions of taxable and exempt items. The task force made recommendations regarding standard definitions of food, charitable organizations, newspapers and computer software.

Definition of Food

Differences in the definitions of food is probably the primary area in which retailers experience confusion as a result of variations between cities. Initially, CACI and the Rocky Mountain Food Dealers

Association indicated that the actual definition of food was not a major concern, as long as all taxing jurisdictions were subject to the same definition. However, they subsequently recommended the adoption of the federal food stamp guidelines as the standard statewide definition. The key for the food dealers appeared to be eliminating the necessity for clerks to decide at the cash register whether to tax an item. It was pointed out that many small grocers could not distinguish between taxable and nontaxable food stamp items on their cash registers and often would not charge tax on any food stamp item.

The cities indicated a willingness to conform to a standard statewide definition of food, provided that the definition was not broader than existing municipal definitions. This proviso would preclude adoption of the current state definition or the federal food stamp guidelines as the standard definition, because each of those would exempt items the cities now tax. As an alternative, CML proposed an amendment to the current state definition which stated that all sales of candy and soft drinks would be taxable. They pointed out that under current law these items could be treated differently depending on whether they are purchased in a grocery store or from a vending machine, or whether the retailer determines they are being purchased for immediate consumption. It was also noted that chewing gum and carbonated water currently are subject to the sales tax. However, the candy and soft drink manufacturers objected to the CML proposed amendment and argued that taxing these items could hurt their sales.

The task force finally approved language which would tax individual servings of candy and soft drinks. In addition, the task force adopted language to clarify the taxability of fermented malt beverages, cocktail mixes and delicatessen items. Although the issue of the legislative intent to exempt basic necessities from taxation was discussed, the proposal adopted by the task force appeared to rest on the principle of taxing immediate consumption.

Charitable Organization

Many retailers experience problems determining when to charge sales tax on purchases made by charitable organizations. As with food, the problem stems from differences among the definitions of charitable organization used by the federal government, the state and home rule municipalities. Although most municipalities apparently follow the state's determinations, some home rule cities, most notably Denver, Colorado Springs and Pueblo, use stricter criteria. Business representatives explained that in such cities a retailer may fail to collect sales tax from an organization which shows a federal or state exemption letter and later find out it is liable for the tax, because the city does not recognize that particular organization as charitable. Thus, as with food, the solution recommended by the business community (represented by CACI and the Colorado Retail Council) was for all municipalities to adopt the state's definition of charitable organization.

The CML expressed the willingness of home rule cities to conform to a standard statewide definition, but argued that the current state definition is too broad and adopting it as the standard would reduce the tax base of home rule cities with stricter criteria. In connection with this argument, CML claimed that since 1978, when the state adopted the federal definition of charitable organization (Internal Revenue Code, Title 26, Section 501 (c) (3)), there has been a significant increase in the number of organizations which have qualified for a state sales tax exemption. In response to this, representatives of the Department of Revenue noted that Colorado currently allows about 5,900 charitable organization exemptions and that approximately 2,000 of those have been granted during the past two years. The department expressed satisfaction with the current state definition, but added that it would not oppose a change to a stricter definition.

The task force recommends a definition proposed by CML. The definition is considered restrictive enough so as not to conflict with existing home rule definitions. The recommended language was developed from a ruling by the Colorado Supreme Court which defined the term "charitable purposes" (United Presbyterian Association v. Board of County Commissioners, 167 Colo. 485 or 448 P.2nd 967). To insure compliance with this stricter definition, the task force recommendation requires the Department of Revenue to review all existing state exemptions for charitable organizations. Organizations which still qualify will be reissued a new exemption letter which will be in effect for five years, at which time they will have to reapply for exemption. To assist retailers, the exemption form will indicate that the organization qualifies for an exemption from both state and local sales and use taxes. The only cities for which this exemption form will not apply are those home rule municipalities which elect local determination and administration of exemption eligibility -- currently Denver, Colorado Springs and Pueblo -- and those cities will be listed specifically on the form.

Definition of Newspaper

Representatives of the Department of Revenue reviewed various provisions of the state sales and use tax statutes which have been identified as "provisions that could be modernized or amplified for greater clarity and to reduce problems for both the business community and the tax administrators" (see Appendix C). The task force recommends statutory clarification on two of the provisions reviewed: newspaper and computer software.

The department expressed a concern that the current definition of newspaper, section 24-70-102, C.R.S., possibly could be interpreted by a court to include some magazines and thus allow those magazines to gain a state sales and use tax exemption as a newspaper. It was emphasized that there was no existing problem with this, but that the proposal was intended to clarify legislative intent and avoid unintended exemptions in the future.

The language adopted by the task force was a CML proposal which had been derived from a definition of newspaper contained in Black's Law Dictionary. The proposed definition was perceived as an attempt to clarify the requirements which would have to be met by a publication in order to gain a sales tax exemption as a newspaper. The definition would be applicable to both the state and local governments.

Computer Software

The task force also recommends statutory language to clarify the taxability of computer software. The department explained that, since there is no definition of computer software contained in statute, there can be different interpretations of its taxability. Depending on one's perspective, the sale of certain kinds of computer software may be considered the sale of a service (nontaxable), while the sale of other kinds may be considered the sale of tangible personal property (taxable).

Under current Department of Revenue regulations, the internalized instruction code which controls the basic operations of a computer is considered part of the hardware and thus is taxable. Also, prewritten, prepackaged computer software programs (when fully usable without modification) are taxable as tangible personal property. However, any computer software, whether on cards, disk, or tape, which requires analysis, adaptation, or other kind of modification in order to be used in a computer, is considered intangible personal property and thus not taxable.

The recommended statutory language would clearly state that the sale of such "modified" computer software is taxable. Even though this could be considered a proposal to tax a service, the task force determined that such software should be treated as tangible personal property subject to tax.

Storage Tax Repeal

Under current law, sections 39-26-202 and 29-2-109, C.R.S., both the state and local governments have the authority to impose a use tax on the "storage, use or consumption" of tangible personal property. Statutory cities and counties may only impose a use tax on building materials and vehicles requiring registration. After January 1, 1986, as provided in House Bill 1007, the storage tax on building materials will be repealed.

Conceptually, the use tax is a complement to the sales tax and together they provide for the taxation of all tangible personal property purchased at retail, except where specific exemptions are noted. According to Department of Revenue regulation, for taxing purposes, "use" is not necessarily actual and ultimate usage, but also

can be any act by which control over property is assumed by a purchaser. The authority to tax storage reflects this extension of the concept of use.

Business and Municipal Concerns

Businesses have argued that the government's ability to tax storage has resulted in what is essentially a series of "trade barriers" across the state in major warehousing or shipping transfer cities. According to CACI and other business representatives, property is often stored temporarily in a city and then transferred to another city where it is also stored or eventually put into use. Under current practice, the business may have to pay tax to the city where the property is stored and also to the city where it is used. Even if the business can apply for a credit for previous tax paid, responding to this double taxation increases business costs. The solution recommended by the business community is to repeal the storage tax and only apply the use tax at the final destination, where the property is actually used.

The municipalities, on the other hand, view the storage tax as another tool with which to administer sales and use taxes. Representatives of the City and County of Denver and CML stated that it is often difficult to establish when property is in use, in the narrow sense, and it is also often difficult to follow the trail of goods which are stored in various cities before eventual use. Thus, the storage tax is a method of enabling cities to collect use taxes that would otherwise be lost. As a result, the cities' position was that they could support repeal of the storage tax only if provision was made for replacement revenue.

Replacement Revenue

The City and County of Denver is the primary municipality that would be affected by a repeal of the storage tax. Representatives from the city explained that outright repeal of the storage tax (as had been proposed in the initial version of House Bill 1007) would cost the city \$3.15 million in direct tax losses and \$5 million in indirect tax losses. The direct impact would include lost storage tax on transportation, building materials and other industries. The indirect impact would result from decreased use tax compliance and incentives to purchase goods outside of Denver. (A breakdown of these revenue losses is provided in Appendix D.)

As the task force discussed proposals for repeal of the storage tax, members took note that House Bill 1007 had already addressed the issue of double taxation and eliminated the storage tax on building materials for statutory cities and counties. Members also discussed the difficulty of providing replacement revenue. It was suggested that the proposals regarding standard definitions could provide additional revenue to the cities, but it was pointed out that the

cities most affected by the storage tax already treat food, charitable organizations and computer software much the same as in the task force recommendations.

The proposal eventually recommended by the task force addressed the issue of finding replacement revenue indirectly by reducing the total fiscal impact of storage tax repeal. Essentially, defining storage for more than sixty days as "use" should reduce the incentive to purchase items outside the city and lessen the tax compliance problems under outright repeal. Also, clarifying that property becomes taxable when it is removed from storage or made available for immediate or subsequent use should eliminate tax losses from the storage of consumable items, such as diesel and aviation fuel, and airline meals and beverages. The City and County of Denver estimated that the fiscal impact of the task force proposal would be lost revenue of \$1.4 million. (See Appendix D for a breakdown of this figure.)

Taking into consideration the charge contained in House Bill 1007, the task force recognizes the statutory responsibility to replace directly the above mentioned revenue loss as a condition for the repeal of local storage taxes. Therefore, the task force's recommendation that local storage taxes be repealed, as provided in Bill 73, is contingent upon the provision of such adequate replacement revenue.

Preliminary analysis by the municipalities has indicated that the recommendation clarifying the taxability of computer program services at the state level may enhance Denver's enforcement of its tax on computer program services and offset its loss from repeal of storage taxes. Therefore, the task force designates the revenue from the taxation of computer program services as the replacement revenue for repeal of local storage taxes. In the event that subsequent revenue estimates developed by the state and the City and County of Denver fail to substantiate this expected offset, or in the event the computer programming provisions are deleted from the bill during legislative consideration, the task force recommends that repeal of storage taxes be deleted from the bill until the General Assembly, through its State Tax Policy Committee or otherwise, directly provides for the replacement revenue as required by House Bill 1007.

Other Issues

In addition to the five issues about which recommendations were made, the task force considered several other sales tax related issues. No recommendations were made regarding these issues either because they did not fall under the task force charge or because the problem could be worked out with the cooperation of the Department of Revenue.

Leasing

Testimony from CACI representatives indicated that there is confusion in the leasing industry over which transactions are taxable, who is liable for the tax, and which jurisdiction is owed the tax. The concern was limited to leases of tangible personal property and especially transactions where the purchaser lives in another jurisdiction. The task force was told that currently two options are available to leasing companies: 1) a company may either pay a use tax when the property is purchased and not charge sales tax on leases; or 2) pay no use tax when the property is purchased and charge sales tax on leases. There does not appear to be uniformity of practice in this area. There appears to be uncertainty as to whether the tax is paid to the jurisdiction where the business is located or the one where the property is used. The solution recommended by the business community was to treat purchases of property to be leased as purchases of nontaxable wholesale inventory and leases of the property as taxable retail sales, payable to the jurisdiction to which the property is delivered. However, the task force decided this was not a definitional issue and was therefore not under its charge.

Hotel/Motel Accommodations

Representatives of the Colorado Association of Hospitality Accountants outlined what was described as an inequity in the sales tax law regarding hotels and motels. It was explained that under current regulations hotels and motels pay tax on items such as linens, furniture and eating utensils at the time of purchase, and it was argued that such purchases should be exempt under section 39-26-102 (20) (a), C.R.S., as wholesale sales. Members of the task force pointed out that the Department of Revenue's special regulations on this issue have been upheld in court and expressed doubt that it was a definitional issue. Representatives of the department did, however, agree to meet with the association to discuss the problem.

Eyeglasses/Contact Lenses

Representatives of the Colorado Optometric Association discussed a concern optometrists have regarding the sales taxation of eyeglasses and contact lenses. It was noted that section 39-26-114 (1) (a) (V) (A), C.R.S., provides a sales tax exemption for "all sales of corrective eyeglasses, contact lenses, or hearing aids." The problem, it was argued, is that many cities will charge a tax on the eyeglass frame or on contact lenses they deem to be cosmetic, rather than corrective. Task force members decided this was an issue of tax exemption rather than of definition; therefore, no recommendation for change was made.

Hotel/Motel Charges

Representatives of the Colorado Society of Association Executives explained that associations often have a sales tax problem when they hold an event in a hotel. It was explained that a hotel may collect taxes on the service charge for a room and the gratuity paid for the hotel employees. Representatives of the Department of Revenue responded that the problem has been discussed with the hotel/motel association. It was also pointed out that if such establishments separate the gratuity or service charge from the total bill, then no tax would be paid on those amounts. The task force did not consider the issue further.

Telecommunications Services

Representatives of CML explained a proposal that the state adopt a definition of "telecommunications service" to encourage uniformity as cities begin to tax such services. It was emphasized that this proposal was intended to update statutory language (which still refers to "telephone and telegraph" service) and would not affect either state or local tax bases. Others suggested that there is still too much uncertainty in this area to pass a new definition at this time, and cited as an example the many unresolved issues relating to the American Telephone and Telegraph Company breakup. The task force decided not to make any recommendations in this area.

BILL 73

A BILL FOR AN ACT

1 CONCERNING THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE
2 SALES AND USE TAX SIMPLIFICATION TASK FORCE PURSUANT TO
3 HOUSE BILL NO. 1007, ENACTED AT THE FIRST REGULAR SESSION
4 OF THE FIFTY-FIFTH GENERAL ASSEMBLY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Beginning January 1, 1987, exempts personal property in temporary storage from statutory and home rule county and municipal use taxes. Specifies the length of time property must be located within a jurisdiction to give rise to a rebuttable presumption of use and consumption. Provides that the presumption of use and consumption may be rebutted by evidence that the taxpayer is doing business in another jurisdiction and that the stored property will be used or consumed outside the legislating jurisdiction. Specifies when storage ends and a taxable incident occurs.

Narrows, for the purposes of exemption from state, state-collected local, and home rule local sales and use taxes on and after January 1, 1987, the definition of "charitable organization" by restricting application of that definition to those organizations which exclusively, freely, and voluntarily minister to the physical, mental, or spiritual needs of an indefinite number of persons and by so doing lessen the burdens of government. For the state and the state-collected local sales and use taxes, also requires the department of revenue to review the charitable status of organizations and to issue an exemption letter to organizations qualifying under the amended definition. Establishes a five-year period for

validity of the exemption letter. Directs the department to issue a standard exemption form for use by persons making purchases on behalf of an exempt organization. Requires persons making purchases on behalf of exempt organizations to present the exemption form at the time of purchase.

Amends the definition of "food" for the purpose of exemption from state and state-collected local sales and use tax. Excludes individual servings of candy or soft drinks, fermented malt beverages, and hot and cold ready-to-eat foods from the definition. Redefines newspapers and newspaper supplements concerning the state and state-collected local sales and use tax. Imposes a state and state-collected local sales tax on computer program services.

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

2 SECTION 1. 29-2-105, Colorado Revised Statutes, 1977
3 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
4 SUBSECTION to read:

5 29-2-105. Contents of sales tax ordinances and
6 proposals. (5) On and after January 1, 1987, no exemption
7 from the sales tax of any home rule city and county, city, or
8 town shall apply to sales made to charitable organizations
9 unless the charitable organization is an organization which,
10 in a manner consistent with existing laws and for the benefit
11 of an indefinite number of persons, exclusively, freely, and
12 voluntarily ministers to their physical, mental, or spiritual
13 needs and which thereby lessens the burdens of government.

14 SECTION 2. 29-2-109 (1) (d), Colorado Revised Statutes,
15 1977 Repl. Vol., is amended, and the said 29-2-109, as
16 amended, is further amended BY THE ADDITION OF THE FOLLOWING
17 NEW SUBSECTIONS, to read:

18 29-2-109. Contents of use tax ordinances and proposals.
19 (1) (d) To the storage, use, or consumption of tangible

1 personal property by the United States government, or the
2 state of Colorado, or its institutions, or its political
3 subdivisions in their governmental capacities only or by
4 religious or charitable corporations in the conduct of their
5 regular religious or charitable functions IF SUCH RELIGIOUS OR
6 CHARITABLE CORPORATIONS HOLD AN EXEMPTION LETTER PURSUANT TO
7 THE PROVISIONS OF SECTION 39-26-114 (1) (a) (II), C.R.S.;

8 (8) (a) On and after January 1, 1987, the use tax of a
9 statutory or home rule county, city and county, city, or town
10 shall not apply to the storage of any article of tangible
11 personal property; however, any article of tangible personal
12 property located within the jurisdiction of any statutory or
13 home rule county, city and county, city, or town for a
14 continuous period of longer than sixty days shall be presumed
15 to be in use or consumption rather than in storage and shall
16 be subject to any applicable use tax the incidence of which
17 tax shall apply from the date of the property's acquisition,
18 unless rebutted as provided in paragraph (b) of this
19 subsection (8).

20 (b) The taxpayer may rebut such presumption by
21 satisfactory evidence that:

22 (I) Such property is in fact in storage for use or
23 consumption outside the jurisdiction of such statutory or home
24 rule county, city and county, city, or town; and

25 (II) The taxpayer is doing business in another local
26 jurisdiction and the nature of the taxpayer's business is such
27 that storage is likely to occur for future use in another

1 local jurisdiction.

2 (c) For the purposes of this subsection (8), storage
3 ends and a taxable incident occurs when the property is taken
4 out of storage and placed into use or is consumed. Such use
5 or consumption includes removal from storage and being made
6 available for immediate or subsequent use or consumption at
7 will, even if the use or consumption is not completed within
8 the taxing jurisdiction.

9 (9) On and after January 1, 1987, no exemption from the
10 use tax of any home rule city and county, city, or town shall
11 apply to sales made to charitable organizations unless the
12 charitable organization is an organization which, in a manner
13 consistent with existing laws and for the benefit of an
14 indefinite number of persons, exclusively, freely, and
15 voluntarily ministers to their physical, mental, or spiritual
16 needs and which thereby lessens the burdens of government.

17 SECTION 3. 39-26-102 (4.5) and (15), Colorado Revised
18 Statutes, 1982 Repl. Vol., as amended, are amended, and the
19 said 39-26-102 is further amended BY THE ADDITION OF A NEW
20 SUBSECTION, to read:

21 39-26-102. Definitions. (4.5) "Food" means food AN
22 EDIBLE PRODUCT USED FOR DOMESTIC HOME CONSUMPTION which is
23 advertised or marketed for human consumption and is sold in
24 the same form, condition, quantities, and packaging as is
25 commonly sold by grocers. The term includes cereals and
26 cereal products; milk and milk products; meats and meat
27 products; fish and fish products; eggs and egg products;

1 vegetables and vegetable products; fruits and fruit products;
2 sugars, sugar products, and sugar substitutes; coffees and
3 coffee substitutes; teas, cocoa, and cocoa products; spices,
4 condiments, salt, and oleomargarine. The term does not
5 include food or drink served or furnished as described in
6 section 39-26-104 (1) (e); chewing gum; INDIVIDUAL SERVINGS OF
7 CANDY OR SOFT DRINKS; spirituous, malt, or vinous liquors OR
8 ANY FERMENTED MALT BEVERAGE; ITEMS LABELED OR PACKAGED AS
9 cocktail mixes; proprietary medicines; nostrums; lozenges;
10 tonics; vitamins and other dietary supplements; water, mineral
11 water, and carbonated water marketed in containers; ice; pet
12 foods; food or drink furnished, prepared, or served for
13 consumption at tables, chairs, or counters, or from trays,
14 glasses, dishes, or other tableware provided by the retailer;
15 ANY PRODUCT PREPARED BY OR FOR A RETAILER AND MARKETED AS
16 READY TO EAT AND WHICH REQUIRES REFRIGERATING OR HEATING UNTIL
17 THE TIME OF PURCHASE; PARTY TRAYS; prepared food or drink sold
18 by retailers who regularly sell for consumption on or near the
19 premises of the retailer even-though WHETHER OR NOT such food
20 or drink is sold on a "take out" or "to go" order and is
21 bagged, packaged, or wrapped and taken from the premises of
22 the retailer; and food or drink vended by or through machines
23 on behalf of a vendor.

24 (5.5) "Newspaper" means:

25 (a) A newspaper, as legally defined by section
26 24-70-102, C.R.S., printed on newsprint, intended for general
27 circulation, containing information and editorials on current

1 events and news of general interest; or

2 (b) A publication which meets the requisites of a legal
3 newspaper as provided in part 1 of article 70 of title 24,
4 C.R.S.

5 (15) "Tangible personal property" means corporeal
6 personal property. ~~The term shall not be construed to include~~
7 ~~newspapers; as legally defined by section 24-70-102; C.R.S.;~~
8 ~~or preprinted newspaper supplements which become attached to~~
9 ~~or inserted in and distributed with such newspapers;~~

10 SECTION 4. 39-26-104 (1), Colorado Revised Statutes,
11 1982 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH
12 to read:

13 39-26-104. Property and services taxed. (1) (g) On the
14 design, development, writing, translation, fabrication,
15 maintenance, lease, or transfer of computer program services.

16 SECTION 5. 39-26-114 (1) (a) (II) and (1) (a) (XIX) (B),
17 Colorado Revised Statutes, 1982 Repl. Vol., are amended, and
18 the said 39-26-114 (1) (a), as amended, is further amended BY
19 THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, to read:

20 39-26-114. Exemptions - disputes - credits or refunds.
21 (1) (a) (II) (A) All sales made to charitable organizations,
22 in the conduct of their regular charitable functions and
23 activities.

24 (B) ON AND AFTER JANUARY 1, 1987, NO ORGANIZATION SHALL
25 BE PERMITTED TO APPLY TO THE DEPARTMENT OF REVENUE FOR AN
26 EXEMPTION PURSUANT TO THIS SUBPARAGRAPH (II) UNLESS SUCH
27 ORGANIZATION QUALIFIES FOR A FEDERAL EXEMPTION LETTER PURSUANT

1 TO SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE
2 OF 1954", AS AMENDED. HOWEVER, NOTWITHSTANDING THE PROVISIONS
3 OF SECTION 39-26-102 (2.5), SUCH FEDERAL EXEMPTION LETTER
4 SHALL NOT BE DETERMINATIVE OF AN ORGANIZATION'S QUALIFICATION
5 AS A CHARITABLE ORGANIZATION. IN ORDER TO QUALIFY FOR THE
6 EXEMPTION PROVIDED IN THIS SUBPARAGRAPH (II), SUCH
7 ORGANIZATION SHALL BE A CHARITABLE ORGANIZATION WHICH, IN A
8 MANNER CONSISTENT WITH EXISTING LAWS AND FOR THE BENEFIT OF AN
9 INDEFINITE NUMBER OF PERSONS, EXCLUSIVELY, FREELY, AND
10 VOLUNTARILY MINISTERS TO THEIR PHYSICAL, MENTAL, OR SPIRITUAL
11 NEEDS AND WHICH THEREBY LESSENS THE BURDENS OF GOVERNMENT.

12 (C) THE DEPARTMENT OF REVENUE SHALL DEVELOP A PROCEDURE
13 FOR REVIEWING EACH EXEMPTION IT HAS GRANTED PRIOR TO JANUARY
14 1, 1987. SUCH REVIEW OF ALL SUCH EXEMPTIONS SHALL BE
15 COMPLETED BEFORE JANUARY 1, 1989. SUCH REVIEW SHALL DETERMINE
16 WHETHER AN ORGANIZATION QUALIFIES FOR AN EXEMPTION UNDER THE
17 STANDARDS SET FORTH IN SUB-SUBPARAGRAPH (B) OF THIS
18 SUBPARAGRAPH (II). IF AN ORGANIZATION SO QUALIFIES, THE
19 DEPARTMENT OF REVENUE SHALL ISSUE A NEW EXEMPTION LETTER WHICH
20 SHALL BE EFFECTIVE FOR A PERIOD OF FIVE YEARS FROM THE DATE OF
21 ISSUANCE. SUCH LETTER SHALL BE NONRENEWABLE, AND THE
22 ORGANIZATION SHALL APPLY FOR A NEW EXEMPTION LETTER UPON OR
23 PRIOR TO THE EXPIRATION OF SUCH LETTER IN ACCORDANCE WITH
24 PROCEDURES ESTABLISHED BY THE DEPARTMENT.

25 (D) EACH ORGANIZATION WHICH HAS AN EXEMPTION LETTER
26 ISSUED PRIOR TO JANUARY 1, 1987, SHALL APPLY TO THE DEPARTMENT
27 OF REVENUE FOR A REVIEW OF ITS EXEMPTION UPON NOTIFICATION

1 FROM THE DEPARTMENT AND IN ACCORDANCE WITH THE PROCEDURES
2 ESTABLISHED BY THE DEPARTMENT PURSUANT TO SUB-SUBPARAGRAPH (C)
3 OF THIS SUBPARAGRAPH (II). ANY EXEMPTION LETTER ISSUED PRIOR
4 TO JANUARY 1, 1987, SHALL BE NULL AND VOID AFTER DECEMBER 31,
5 1988.

6 (E) ON AND AFTER JANUARY 1, 1987, EACH EXEMPTION LETTER
7 ISSUED BY THE DEPARTMENT OF REVENUE TO AN ORGANIZATION WHICH
8 QUALIFIES FOR AN EXEMPTION UNDER THE STANDARDS SET FORTH IN
9 SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II) SHALL BE
10 EFFECTIVE FOR A PERIOD OF FIVE YEARS FROM THE DATE OF
11 ISSUANCE. SUCH LETTER SHALL BE NONRENEWABLE, AND THE
12 ORGANIZATION SHALL APPLY FOR A NEW EXEMPTION LETTER ON OR
13 PRIOR TO THE EXPIRATION OF SUCH LETTER IN ACCORDANCE WITH
14 PROCEDURES ESTABLISHED BY THE DEPARTMENT.

15 (F) EFFECTIVE JANUARY 1, 1987, THE DEPARTMENT OF REVENUE
16 SHALL UTILIZE AN EXEMPTION FORM TO CERTIFY THOSE ORGANIZATIONS
17 ENTITLED TO EXEMPTIONS FROM STATE AND LOCAL SALES AND USE
18 TAXES. THE EXEMPTION FORM SHALL BE ISSUED TO ORGANIZATIONS
19 WHICH QUALIFY FOR EXEMPTION FROM THE STATE SALES AND USE TAX
20 AND SHALL APPLY TO THE SALES AND USE TAXES OF THE STATE AND
21 ALL LOCAL GOVERNMENTS EXCEPT THOSE OF HOME RULE MUNICIPALITIES
22 WHICH ELECT LOCAL DETERMINATION AND ADMINISTRATION OF
23 EXEMPTION ELIGIBILITY. SUCH HOME RULE MUNICIPALITIES SHALL
24 NOTIFY THE DEPARTMENT OF REVENUE IN WRITING OF SUCH ELECTION.
25 THE DEPARTMENT'S EXEMPTION FORM SHALL SPECIFY THAT THE
26 EXEMPTION APPLIES TO ALL STATE AND LOCAL SALES AND USE TAXES
27 EXCEPT FOR THOSE HOME RULE MUNICIPALITIES LISTED ON THE FORM

1 AS HAVING LOCAL DETERMINATION AND ADMINISTRATION. A RETAILER
2 SHALL CONTINUE TO COLLECT ANY APPLICABLE SALES OR USE TAX OF A
3 HOME RULE MUNICIPALITY OPTING FOR LOCAL ADMINISTRATION, UNLESS
4 THE TAXPAYER PRESENTS SUCH EVIDENCE OF EXEMPTION AS MAY BE
5 REQUIRED BY SUCH HOME RULE MUNICIPALITY. THE DEPARTMENT OF
6 REVENUE SHALL PERIODICALLY PROVIDE FOR THE UPDATING OF THE
7 EXEMPTION FORM TO REFLECT ANY CHANGES IN THE PRACTICES OF THE
8 DEPARTMENT AND OF HOME RULE MUNICIPALITIES. NO PURCHASER
9 SHALL BE ENTITLED TO MAKE A PURCHASE EXEMPT FROM ANY SALES OR
10 USE TAX UNLESS HE PRESENTS TO THE VENDOR AT THE TIME OF SUCH
11 PURCHASE A VALID EXEMPTION FORM OR OTHER ACCEPTABLE EVIDENCE
12 OF EXEMPTION.

13 (XIX) (B) Charitable organizations in the conduct of
14 their regular charitable functions and activities IF EACH SUCH
15 ORGANIZATION HOLDS AN EXEMPTION LETTER PURSUANT TO THE
16 PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (a); or

17 (XXIII) Newspapers;

18 (XXIV) Preprinted newspaper supplements which become
19 attached to or inserted in and distributed with newspapers.

20 SECTION 6. 39-26-202 (1), Colorado Revised Statutes,
21 1982 Repl. Vol., as amended, is amended to read:

22 39-26-202. Authorization of tax. (1) There is imposed
23 and shall be collected from every person in this state a tax
24 or excise at the rate of three percent of storage or
25 acquisition charges or costs for the privilege of storing,
26 using, or consuming in this state any articles of tangible
27 personal property purchased at retail AND FOR THE PRIVILEGE OF

1 STORING, USING, OR CONSUMING IN THIS STATE ANY COMPUTER
2 PROGRAM SERVICES TO WHICH THE SALES TAX WOULD OTHERWISE APPLY
3 PURSUANT TO SECTION 39-26-104 (1) (g). Such tax shall be
4 payable to and shall be collected by the executive director of
5 the department of revenue and shall be computed in accordance
6 with schedules or systems approved by said executive director.

7 SECTION 7. 39-26-203 (1) (w) (II), Colorado Revised
8 Statutes, 1982 Repl. Vol., is amended, and the said 39-26-203
9 (1), as amended, is further amended BY THE ADDITION OF THE
10 FOLLOWING NEW PARAGRAPHS, to read:

11 39-26-203. Exemptions. (1) (w) (II) Charitable
12 organizations in the conduct of their regular charitable
13 functions and activities IF EACH SUCH ORGANIZATION HOLDS AN
14 EXEMPTION LETTER PURSUANT TO THE PROVISIONS OF SECTION
15 39-26-114 (1) (a) (II); or

16 (bb) To the storage, use, or consumption of newspapers;

17 (cc) To the storage, use, or consumption of preprinted
18 newspaper supplements which become attached to or inserted in
19 and distributed with newspapers.

20 SECTION 8. Effective date. This act shall take effect
21 January 1, 1987.

22 SECTION 9. Safety clause. The general assembly hereby
23 finds, determines, and declares that this act is necessary
24 for the immediate preservation of the public peace, health,
25 and safety.

APPENDIX A

MEMORANDUM

July 26, 1985

TO: Interested Persons
FROM: Legislative Council Staff
SUBJECT: Sales and Use Tax Exemptions

The State of Colorado has imposed a sales tax since 1935 and a use tax since 1936. The sales tax applied to personal property sold at retail, telephone services, commercial and domestic heat and fuel, and restaurant meals. The use tax, intended as a supplement to the sales tax, applied to the storage, use or consumption of personal property purchased at retail. Initially the only exemptions from the sales tax were wholesale sales (items purchased for resale), items subject to other excise taxes, sales to government entities, and sales to religious or charitable organizations. The use tax incorporated these exemptions in addition to exemptions for any item subject to the sales tax and property brought into the state by a nonresident for use while temporarily in the state.

Since 1936, the General Assembly has approved fifty-four additional exemptions from the sales tax and twenty-seven from the use tax. Thirty-six of the sales tax exemptions and fifteen of the use tax exemptions have taken effect since 1976. The following tables list those exemption enacted by the General Assembly and contained in statute.

TABLE I

Sales and Use Tax Exemptions
(1936-1975)

<u>Year</u>	<u>Exemption</u>
1943	1) Sales of livestock; 2) farm auction close-out sales; 3) sales of printers ink and newsprint for use by newspapers and printers
1945	Sales of seeds, orchard trees and feed for livestock
1957	Sales of personal property below nineteen cents sold through vending machines
1959	1) Sales of personal property worth fifteen cents or less through vending machines; 2) sales of cigarettes; 3) sales of motor fuel; 4) lodging for permanent residents; 5) sales of beer, wine and liquor already subject to an excise tax
1961	Sales of straw for livestock bedding
1963	Sales within twenty miles of the state border if the bordering state has no sales tax
1964	Sales of aviation fuel
1965	Sales of prescription drugs; alcoholic beverage exemption extended
1969	Sales to public schools
1970	1) Sales of live fish for stocking; 2) exemption for sales from vending machines increased to thirty cents
1971	Sales of fuel or power used in construction

TABLE II

Sales and Use Tax Exemptions
(1976-1985)

<u>Bill No.</u>	<u>Exemption</u>	<u>Effective Date</u>	<u>Statute</u>
<u>1976</u>			
H.B. 1077	Sales of trucks and trailers purchased for use outside Colorado or in interstate commerce; includes vehicles manufactured within Colorado.	7-1-76	39-26-114(1)(a)(IX) and (X) 39-26-203(1)(p) and (q)
<u>1977</u>			
S.B. 72	1976 exemption extended to <u>used</u> trucks, trailers and truck bodies purchased for use outside Colorado or in interstate commerce; also new and used truck-tractors	7-1-77	39-26-114(1)(a)(IX) and (X) 39-26-203(1)(p) and (q)
S.B. 161	Definition of "sale or sale and purchase" amended to exclude: a) sales of partnership assets among partners, b) transfer of assets in exchange for stock, c) transfer of assets in formation or dissolution of a corporation, and repossession of or foreclosure on property	6-3-77	39-26-102(10)(a) through (j)
S.B. 574	Leases of personal property for three years or less if tax paid upon original acquisition	1-15-77	39-26-114(1)(a)(XII)
H.B. 1070	Sales of insulin dispensed pursuant to direction of a physician	1-1-78	39-26-114(1)(a)(V)
H.B. 1187	Sales of motor vehicles by nonresidents purchased for use outside Colorado; to be repealed June 30, 1979	7-23-77	39-26-113(5)

<u>Bill No.</u>	<u>Exemption</u>	<u>Effective Date</u>	<u>Statute</u>
H.B. 1502	Sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use in construction or maintenance of its railroad tracks	7-1-77	39-26-114(1)(a)(XI)
H.B. 1535	Transfers of personal property, without consideration to out-of-state vendees to be used out of state in selling products normally sold at wholesale;	7-22-77	39-26-114(1)(a)(XIII) 39-26-203(1)(r)
	Sales of property for testing, modification or similar activity if test period is 90 days or less and major use occurs outside state; and		39-26-114(1)(a)(XIV) 39-26-203(1)(s)
	Sales of special fuel for operation of farm vehicles on farms and ranches (also S.B.571)		39-26-114(1)(a)(VII) and (XV) 39-26-203(1)(c)
<u>1978</u>			
H.B. 1045	Definition of "sale or sale and purchase" amended to exclude: transfers of assets between a parent corporation and a closely held subsidiary or between subsidiary corporations closely held by same parent	4-18-78	39-26-102(10)(K) and (12)
H.B. 1120	Definition of charitable organization expanded and exemption of sales clarified	3-8-78	39-26-102 (2.5) 39-26-114(1)(a)(II) 39-26-203(1)(e)
H.B. 1160	Sales of any article, containers or bags to a retailer or vendor of food if provided to the consumer without a separate charge	4-4-78	39-26-114(1)(a)(XVI) and (XVII) 39-26-203(1)(t) and (u)
H.B. 1172	Any exchange of one vehicle for another if both are subject to licensing in Colorado	1-1-78	39-26-102(7) 39-26-114(1)(a)(XVIII) 39-26-203(1)(a)

<u>Bill No.</u>	<u>Exemption</u>	<u>Effective Date</u>	<u>Statute</u>
H.B. 1257	Value of meals furnished to employees of food service establishments free or at reduced rates and considered part of their income	5-5-78	39-26-104(1)(e) 39-26-203(1)(v)
<u>1979</u>			
H.B. 1005	Exemption on purchase on new and used automobiles by nonresidents for use outside Colorado continued	6-29-79	39-26-113(5)
H.B. 1048	Sales of straw and other bedding used in the care of poultry	7-1-79	39-26-114(8)
H.B. 1451	Sales of construction and building materials for use by contractors on public works projects used by tax exempt organizations	6-7-79	39-26-114(1)(a)(XIX) 39-26-203(1)(w)
	48 percent of the purchase price of factory built housing		39-26-114(10)
H.B. 1514	Sales of glucose for treatment of insulin reactions, urine and blood testing kits, and insulin measuring and injecting devices	1-1-80	39-26-114(1)(a)(V)
H.B. 1611	Sales of personal property through vending machines (exemption raised from 15 to 30 cents);	7-1-79	39-26-114(7)(a)
	Sales of machinery and machine tools of value between \$1,000 and \$100,000 (graduated to \$500,000 by 1983);	7-1-79	39-26-114(11)(a) 39-26-203(1)(y)
	Sales of food for off-premises consumption;	1-1-80	39-26-114(1)(a)(XX) 39-26-203(1)(x)
	Sales of fuels for residential heat, light and power to be repealed 7-1-81	7-1-80	39-26-104(1)(d) 39-26-114(1)(a)(XXI) 39-26-203(1)(z)

<u>Bill No.</u>	<u>Exemption</u>	<u>Effective Date</u>	<u>Statute</u>
<u>1980</u>			
S.B. 114	Sales of electric powered motor vehicles, also batteries and controls	4-10-80	39-26-114(12)
H.B. 1207	Exemption for residential heat, light and power expanded to include wood and extended for one year	7-1-80	39-26-114(1)(a)(XXI) 39-26-203(1)(z)
H.B. 1136	Exemption of feed for livestock extended to include horses	7-1-80	39-26-114(6)
H.B. 1264	Sales of certain medical supplies and equipment including hospital beds, wheelchairs, eyeglasses, contact lenses, hearing aids and certain therapeutic devices valued at more than \$100	1-1-81	39-26-114(1)(a)(V)

1981

H.B. 1529	Sales of poultry	5-26-81	39-26-114(5)
H.B. 1570	A refund of sales tax paid on that portion of the sale price attributable to the federal excise tax on lubricating oil not used in a motor vehicle	5-18-81	39-26-114(13)

1982

H.B. 1166	Repeal date for exemption of residential heat, light and power removed	4-27-82	39-26-114(1)(a)(XXI) 39-26-203(1)(z)
H.B. 1168	Property for use in food manufacturing when such property becomes part of product or is unfit for further use	7-1-82	39-26-102(20) 39-26-203(1)(f)
	Nuclear fuel	7-1-82	39-26-102(21) 39-26-203(1)(g)

<u>Bill No.</u>	<u>Exemption</u>	<u>Effective Date</u>	<u>Statute</u>
	Sales of refractory materials and carbon electrodes used in manufacturing iron and steel, and inorganic chemicals used in processing uranium-vanadium ores	7-1-82	39-26-114(14)
<u>1984</u>			
H.B. 1016	Sales of aircraft used or purchased for use in interstate commerce by a commercial airline	7-1-84	39-26-114(1)(a)(XXII) 39-26-203(1)(aa)
<u>1985</u>			
H.B. 1131	Definition of tangible personal property clarified to exclude preprinted newspaper supplements	6-6-85	39-26-102(15) •

APPENDIX B

MEMORANDUM No. 2

July 15, 1985

TO: Sales and Use Tax Simplification Task Force
FROM: Legislative Council Staff
SUBJECT: Summary of House Bill 1007

One of the directives to the 1984 Interim Committee on Business Issues was to study state and local sales and use taxes and to determine whether "simplification" would result in efficiencies and economies in the administration of such taxes. In response to that directive, the committee recommended a bill which was introduced as House Bill 1007 and sponsored by Representative Scherer and Senator Hefley. This memorandum summarizes the provisions of House Bill 1007 as signed by the Governor. Also, attached to the memorandum is a copy of the report of the Committee on Business Issues.

Section 1 exempts from the local sales tax of both home rule and statutory entities building and construction materials if such materials are subject to use tax. It also provides a credit against the sales tax on sales of tangible personal property at retail or sales of services when a sales or use tax previously has been paid to another local government.

Section 2 requires home rule entities to conform their collection procedures to state law with regard to statutes of limitation penalties, interests, and bonds. On and after July 1, 1985, requires a standard form for reporting home rule and statutory municipal sales and use taxes.

Section 3 establishes a deficiency dispute resolution procedure when a local government asserts that sales or use taxes are due in excess of the amount paid by the taxpayer. The local government must notify the taxpayer of the deficiency. Only after the "exhaustion of local remedies" (as defined in the statute), the taxpayer has the right to a hearing before the Department of Revenue or under specified circumstances may choose a hearing before the district court or pursue judicial review of the local government's decision. These remedies also apply to claims for a refund and situations where the disputed tax has been paid to the wrong jurisdiction. It also requires home rule entities to provide boundary maps upon which a vendor may rely in determining whether a sales or use tax is collectible.

Section 4 clarifies the limitations on the applicability of this section.

Section 5 eliminates the use tax on the storage of construction and building materials. It also precludes application of the use tax to tangible personal property the sale or use of which has already been subjected to a sales or use tax by an equivalent local jurisdiction, whether statutory or home rule. In addition, home rule municipalities are prohibited from taxing a use or consumption of tangible personal property which occurs more than 3 years after the most recent sale of the property if the property has been significantly used within that period. Finally, limits are placed on a home rule municipality's use tax as applied to construction equipment through the use of a proration formula.

Section 6 establishes a sales and use tax simplification task force as of July 1, 1985, to study and make recommendations for standard definitions and regulations of taxable and exempt items and phasing out storage taxes. It also abolishes the task force on January 1, 1986. ●

Section 7 appropriates \$61,700 and 1.0 FTE to the Department of Revenue for its costs related to the collection of sales and use tax.

STATE OF COLORADO

DEPARTMENT OF REVENUE
 Taxpayer Service Division
 204 Capitol Annex,
 1375 Sherman St.
 Denver, Colorado 80261
 Phone (303) 866-3233



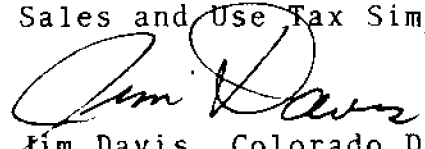
August 26, 1985

Alan N. Charnes
 Executive Director

James R. Davis
 Division Chief

MEMORANDUM

TO: Sales and Use Tax Simplification Task Force

FROM:  Jim Davis, Colorado Department of Revenue

SUBJECT: Antiquated Portions of the Colorado Sales Tax Statutes

As requested, I have reviewed the current Colorado sales and use tax statutes for provisions that could be modernized or amplified for greater clarity and to reduce problems for both the business community and the tax administrators.

1. The short title of Article 26 continues to be "Emergency Retail Sales Tax Act of 1935."
2. Article 26 covers two basic taxes--Sales Tax (Part I) and Use Tax (Part II). The statutes do not clearly define when a sales tax should be imposed or when a use tax is due.

Counties, the RTD, and some cities do not impose a broad base use tax. The lack of a clear definition creates uncertainty on which tax should be collected.

3. The sales tax statutes do not clearly define how local sales tax is collected on motor vehicles. Some points of clarification would be:
 - a. That the sales or use tax is paid to the jurisdiction where the vehicle is registered and that the vehicle must be registered in the county where the owner resides.

- b. A clear definition of a motor vehicle.
- c. Clear rules are needed on the imposition of sales tax on long term leases of motor vehicles. Local tax should be paid based on where the vehicle is registered. The vehicle should be registered in the county where the lessee (tenant) resides.

There could be an option to either pay the tax when the lease contract is initiated or with each lease payment.

- 4. Sales or use tax is imposed on telephone and telegraph services. This area has expanded greatly into what is currently being called telecommunications services. The issue was addressed last year in H.B. 1368.
- 5. 39-26-102(21) states that sales of electricity, coal, gas, fuel oil, coke or nuclear fuel used in producing taxable products is considered a wholesale sale and is not subject to sales tax.

Problems arise in determining what part of an integrated business operation uses the exempt electricity, coal, etc. For example, a restaurant uses electricity to process food. They would also use electricity to light their eating area.

A statute change may not be necessary, however, all jurisdictions should follow the same regulations and guidelines.

- 6. There are problems in determining when a retailer is required to collect a sales tax.

At the state level, we have a relatively broad definition of "Doing business in this state." However, because of prominent court cases, we are losing considerable sales tax revenue on mail order sales. The question concerns interstate commerce and will probably require Federal legislation to solve.

At the local level, there is no uniform definition of doing business. This is also referred to as the nexus issue.

The Colorado Supreme Court, in the case of The Denver Dry Goods vs. City of Arvada held that mere delivery into a city does not constitute nexus. The court did not say when the retailer could be required to collect the tax. Clarification is needed to set guidelines to determine when a retailer is doing sufficient business within the jurisdiction to be required to collect the sales tax.

7. A clear definition of "newspaper" is needed which will differentiate between newspapers and other types of magazines and printed materials.
8. There can be different interpretations on the taxability of computer software. Computer software can be considered either the sale of a service or tangible personal property.

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APPENDIX D

Detail of Revenue Losses From Repeal of Storage Tax
(City and County of Denver)

IMPACT OF OUTRIGHT REPEAL

Direct Losses (\$3.15 million) Indirect Losses (\$5 million)

- | | |
|--|--|
| A) Transportation (\$2 million) | A) Incentive to Purchase Goods Outside Denver (\$2.8 million) |
| -- \$675,000 lost on storage of diesel fuel used by major railroads | -- represents 2 percent of annual sales tax estimated lost when vendors motivated to make purchases outside Denver to avoid both sales and storage tax |
| -- \$325,000 lost storage tax on food and liquor stored by airlines, but not consumed in Denver | |
| -- \$1 million lost on storage of aircraft fuel | |
| B) Other Industries (\$800,000) | B) Decreased Use Tax Compliance (\$1.6 million) |
| -- based upon a sample of the amounts of supplies stored in Denver on an annual basis by several major companies | -- represents 10 percent of annual "consumer use tax" estimated lost as voluntary compliance declines and the audit function is weakened |
| C) Building Materials (\$350,000) | C) Shift in Purchases of Transportation Fuel (\$600,000) |
| -- estimate of cost of exempting building materials used in construction per H.B.1007 | -- represents a 10 percent permanent loss of tax revenue as vendors respond in a manner similar to (A) above |

IMPACT OF TASK FORCE RECOMMENDATION

As noted above, the proposal recommended by the task force was intended to reduce the fiscal impact of outright repeal, rather than to directly find replacement revenue. The sixty day threshold in the proposal was designed to reduce or eliminate the indirect costs in (A) and (B). Clarification of the "taxable incident" was intended to remove the direct impacts in (A) and (C) and indirect impacts in (C). According to the city and county of Denver, this leaves the direct impact in (B) and one-half percent indirect impact in (A) (or \$600,000). Thus, the estimate of \$1.4 million as the fiscal impact to Denver of the task force proposal.