Colorado Department of Revenue

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ARTICLE 26
SALES AND USE TAX

SALES TAX

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PART 1 SALES TAX

39-26-101. Short title.

This article shall be known and may be cited as the "Emergency Retail Sales Tax Act of 1935".

Article does not violate due process requirements in that the tax is imposed without notice or hearing to the taxpayer. Sweeney Elec. Co. v. Poston, 110 Colo. 139, 132 P.2d 443 (1942).

Taxes imposed by articles 20 to 28 of this title are excise levies. Sweeney Elec. Co. v. Poston, 110 Colo. 139, 132 P.2d 443 (1942).

Article is intended to impose tax upon that which is consumed and used and exempts only that which is sold for resale. Carpenter v. Carman Distrib. Co., 111 Colo. 566, 144 P.2d 770 (1943); Palmer v. Perkins, 119 Colo. 533, 205 P.2d 785 (1949).

Vendor not having a retail sales tax license is presumptively a user or consumer. This presumption, however, is a rebuttable one, and a vendor who would escape the tax has the burden of showing, be it before the department or in court, that the sales in fact are not subject to the retail sales tax. Pluss v. Department of Revenue, 173 Colo. 86, 476 P.2d 253 (1970).

39-26-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Agricultural commodity" means any agricultural commodity as defined in section 35-28-104 (1), C.R.S.; except that, for purposes of article 26 of this title, "agricultural commodity" shall also include sugar beets, timber and timber products, oats, malting barley, barley, hops, rice, milo, and any other feed grain.

(1.3) "Auction sale" means any sale conducted or transacted at a permanent place of business operated by an auctioneer or a sale conducted and transacted at any location where tangible personal property is sold by an auctioneer when such auctioneer is acting either as agent for the owner of such personal property or is in fact the owner thereof. The auctioneer at any sale defined in subsection (11) of this section, except when acting as an agent for a duly licensed retailer or vendor or when selling only tangible personal property which is exempt under the provisions of section 39-26-114 (5) and (6), is a retailer or vendor as defined in subsection (8) of this section and the sale made by the auctioneer is a retail sale as defined in subsection (9) of this section, and the business conducted by said auctioneer in accomplishing such sale is the transaction of a business as defined by subsection (2) of this section.

(2) "Business" includes all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

(2.5) "Charitable organization" means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, or any veterans' organization registered under section 501 (c) (19) of the "Internal Revenue Code of 1986", as amended, for the purpose of sponsoring a special event, meeting, or other function in the state of Colorado so long as such event, meeting, or function is not part of such organization's regular activities in the state.

(2.6) "Coins" means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium, or other such metals now, in the future, or heretofore designated as a medium of exchange under the laws of this state, the United States, or any foreign nation.

(2.7) "Cooperative direct mail advertising" means advertising for one or more businesses which is in the form of discount coupons, advertising leaflets, or other printed advertising which are delivered by mail in a single package or bundle to potential customers of such businesses participating in such advertising.

(2.8) "Direct mail advertising materials" means discount coupons, advertising leaflets, and other printed advertising, including, but not limited to, accompanying envelopes and labels.

(3) "Doing business in this state" means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This term includes, but shall not be limited to, the following acts or methods of transacting business:

(a) The maintaining within this state, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, or other place of business;

(b) The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.

(4) "Farm close-out sale" means a sale by auction or private treaty of all tangible personal property of a farmer or rancher previously used by him in carrying on his farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his farming or ranching operations and is abandoning the said operations on the premises whereon they were previously conducted, such sale shall not be deemed a "farm close-out sale" within the meaning of this article.

(4.5) "Food" means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. sec. 2012 (h), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

(5) "Gross taxable sales" means the total amount received in money, credits, or property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within this state, and embraced within the provisions of this article. The taxpayer may take credit in this report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross sales. On all sales at retail, valued in money, when such sales are made under conditional sales contract, or under other forms of sale where the payment of the principal sum thereunder is extended over a period longer than sixty days from the date of sale thereof, only such portion of the sale amount thereof may be counted for the purpose of imposition of the tax imposed by this article as has actually been received in cash by the taxpayer during the period for which the tax imposed by this article is due and payable. Taxes paid on gross sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this article, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

(5.5) "Livestock" means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca, and goats, regardless of use, and any other animal which is raised primarily for food, fiber, or hide production. "Livestock" shall also mean "alternative livestock" as defined under section 35-41.5-102, C.R.S. "Livestock" shall not mean a pet animal as defined under section 35-80-102 (10), C.R.S.

(5.7) "Livestock production facility" means any structure used predominately for the housing, containing, sheltering, or feeding of livestock, including, without limitation, barns, corrals, feedlots, and swine houses.

(6) "Person" includes any individual, firm, limited liability company, partnership, joint adventure, corporation, estate, or trust or any group or combination acting as a unit, and the plural as well as the singular number.

(6.5) "Precious metal bullion" means any precious metal, including, but not limited to, gold, silver, platinum, and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

(6.7) "Pre-press preparation printing materials" means those tangible products converted to use for a specific print job that are subsequently saved but can only be reused for that same print client on rerun. Title to such pre-press preparation printing materials must pass to an independent customer with the sale of the printed materials, and they must be reusable for their original purpose or a similar purpose after the press run. Examples of "pre-press preparation printing materials" include, but are not limited to, photos, color keys, dies, engravings, light sensitive film or paper, masking sheets of any material, plates, rotogravure cylinders, and proofing samples of any material. No disposable materials or materials consumed to a significant degree are pre-press preparation printing materials for the purposes of this article. Examples of disposable or consumable materials include, but are not limited to, tape, alcohol, glues, adhesives, washes, silicon solutions, pens, markers, and cleaners.

(7) (a) "Purchase price" means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, if:

(I) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(II) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(b) In the case of the sale or transfer of wireless telecommunication equipment as an inducement to a consumer to enter into or continue a contract for telecommunication services that are taxable pursuant to this part 1, "purchase price" means and shall be limited to the monetary amount paid by the consumer and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer entering into or continuing a contract for such telecommunication services. Nothing in this paragraph (b) shall be construed to define "purchase price" as it applies to the amount a retailer collects from a consumer who defaults or terminates a contract for telecommunication services.

(7.5) "Qualified purchaser" means a person domiciled in Colorado who has been issued a direct payment permit number pursuant to section 39-26-103.5.

(8) "Retailer" or "vendor" means a person doing a retail business, known to the trade and public as such, and selling to the user or consumer, and not for resale.

(9) "Retail sale" includes all sales made within the state except wholesale sales.

(10) "Sale" or "sale and purchase" includes installment and credit sales and the exchange of property as well as the sale thereof for money; every such transaction, conditional or otherwise, for a consideration, constituting a sale; and the sale or furnishing of electrical energy, gas, steam, telephone, or telegraph services taxable under the terms of this article. Neither term includes:

(a) A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;

(b) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;

(c) The transfer of assets of shareholders in the formation or dissolution of professional corporations;

(d) The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

(e) The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(f) The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

(g) A transfer of a limited liability company or partnership interest;

(h) The transfer in a reorganization qualifying under section 368 (a) (1) of the "Internal Revenue Code of 1986", as amended;

(i) The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership in exchange for proportionate interests in the limited liability company or partnership;

(j) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(k) The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor corporation at the time it acquired such assets, except to the extent provided by subsection (12) of this section. For the purposes of this paragraph (k), a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

(11) "Sale" or "sale and purchase", in addition to the items included in subsection (10) of this section, includes the transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee,

assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

(12) Except as otherwise provided in this subsection (12), the sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this article. In connection with the transactions referred to in paragraph (k) of subsection (10) of this section, the sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. Except as otherwise provided in this subsection (12), the sales price is the gross value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer.

(13) "School" means an educational institution having a curriculum comparable to grade, grammar, junior high, high school, or college, or any combination thereof, requiring daily attendance, having an enrollment of at least forty students, and charging a tuition fee.

(14) "State treasurer" or "treasurer" means the state treasurer of the state of Colorado.

(15) "Tangible personal property" means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S., preprinted newspaper supplements which become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials which are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

(16) "Tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.

(17) "Taxpayer" means any person obligated to account to the executive director of the department of revenue for taxes collected or to be collected under the terms of this article.

(18) "Wholesaler" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers, or other wholesalers, for the purpose of resale.

(19) "Wholesale sale" means a sale by wholesalers to retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale, and the latter sales shall be deemed retail sales and subject to the provisions of this article. This term includes sales of all pre-press preparation printing materials, as defined by subsection (6.7) of this section, which are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within this state.

(20) (a) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit, or use, any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished, and the container, label, or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this part 1.

(b) As used in paragraph (a) of this subsection (20) with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

(I) It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

(II) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

(21) Sales and purchases of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel, for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses, and newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this part 1.

(22) Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation, nevertheless the seller shall collect and the purchaser shall pay such tax, and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the executive director of the department of revenue, showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the said executive director for a refund of such taxes, and it is his duty to determine the question of exemption, subject to review by the courts, as provided in section 39-21-105. It is a misdemeanor, punishable as provided in this article, for any seller to fail to collect or purchaser to fail to pay the tax levied by this article and on sales on which exemption is disputed.

(23) Except as provided in section 39-26-114 (1) (a) (XII), when right to continuous possession or use for more than three years of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made, such lease or contract shall be considered the sale of such article, and the tax shall be computed and paid by the vendor upon the rentals paid.

I. GENERAL CONSIDERATION.

Law reviews. For note, "The Validity of Colorado's New Chain Store Tax", see 7 Rocky Mt. L. Rev. 138 (1935). For note, "Doing Business in Colorado for Foreign Corporations: Service of Process, Qualification, Taxation", see 49 Den. L.J. 529 (1973). For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989).

The unconstitutionality of Colorado's tax system prior to 1978 amendments. Matthews v. State Dep't of Revenue, 193 Colo. 44, 562 P.2d 415 (1977).

Company not selling or leasing equipment not denied equal protection. The fact that a competing corporation, which purchased telephone equipment and leased it to its subscribers, did not pay any sales or use tax on the purchase did not mean that the imposition of the tax on a telephone company, which purchased equipment but did not sell or lease it to its subscribers, denied equal protection to the telephone company. Western Elec. Co. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974).

No limit to number of times merchandise subject to tax. There is no limit to the number of times a particular article of merchandise may be subject to a sales tax so long as it remains in the stream of commerce and passes through the regular channels of trade, and the dealer must collect the tax unless the property is exempt. Bedford v. Hartman Bros., 104 Colo. 190, 89 P.2d 584 (1939).

Resold automobile. Where an automobile dealer accepts a used car in part payment of a new one, he must collect the sales tax on the full price of the new car, and on disposing of the old one he also must collect the tax on the price for which it is sold. The collection of taxes in such a transaction does not constitute double taxation. Bedford v. Hartman Bros., 104 Colo. 190, 89 P.2d 584 (1939).

When a buyer at a public foreclosure sale receives a public trustee's certificate of purchase and subsequently assigns the certificate of purchase to a third party who had no interest in the property prior to the assignment, the assignment of the certificate constitutes a sale or sale and purchase of tangible personal property within the meaning of this section and is therefore a taxable event for sales tax purposes. The fact that the sale is subject to the redemption rights of the debtor and junior interest holders does not alter the character of the transaction at the time it occurred or its tax implications. Telluride Resort and Spa v. Colorado Dept. of Rev., 20 P.3d 1212 (Colo. App. 2000).

"Person" construed. Montgomery Ward & Co. v. State Dept. of Rev., 628 P.2d 85 (Colo. 1981).

The existence of many specific narrow exclusions from the definition of "sale" and "sale and purchase" is indication that the general assembly intended the scope of the tax to be very sweeping and all or virtually all encompassing. Telluride Resort and Spa v. Colorado Dept. of Rev., 20 P.3d 1212 (Colo. App. 2000).

II. RETAIL SALES.

Unlicensed seller involved in an isolated transaction is not a "vendor" or "retailer" within the meaning of this section and is not liable to the state for the payment of tax. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

Vendee pays tax to state if vendor not "retailer". The entire article clearly indicates a legislative intent to impose a tax in the amount levied upon purchases of tangible personal property at retail, such tax to be either in the nature of an addition to the sales price and collected by the seller if he is a licensed "vendor", or a tax to be paid by the consumer when the seller of the merchandise is not a "retailer" or "vendor" as those terms are defined by this section. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

Vendee should not pay tax to unlicensed vendor. One who makes a purchase from a seller who does not hold a license as a "retailer" or "vendor" cannot with safety pay to the seller the amount of sales tax due. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

Contractors purchasing items to install deemed users and liable for tax. When painting and electrical contractors purchase items of personal property and build them into a structure as an integral part of their entire contract, and then dispose of the completed work to the owner, they are users and consumers and not "retailers" to the owner of each item, and they are liable for the sales tax. Craftsman Painters & Decorators, Inc. v. Carpenter, 111 Colo. 1, 137 P.2d 414 (1942).

Purchase of items, not resold, by a telephone company falls within "retail sales" definition. The purchase by a telephone company of instruments, apparatus, cable, wire, etc., which the company does not resell to its subscribers, falls within the definition of "retail sales" rather than "wholesale sales" for the purpose of the sales and use tax laws. Western Elec. Co. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974).

Characterization of transaction may be corrected from "wholesale" to "retail". Where the buyer's ultimate disposition of the item purchased cannot be known at the time of purchase, the transaction's tentative characterization as "wholesale" may be corrected to "retail" by considering later events. International Bus. Machs. Corp. v. Charnes, 198 Colo. 374, 601 P.2d 622 (1979).

In considering the meaning of statutory use tax exemption, the definitions of wholesale and retail sale established by the general assembly differ from the ordinarily accepted general conception of those terms. Hirschfeld Press v. Denver, 806 P.2d 917 (Colo. 1991).

III. WHOLESALE SALES.

"Container" exemption construed. Glass bottles purchased from bottle manufacturer are exempt, whether or not a bottle is returnable. Weed v. Occhiato, 175 Colo. 509, 488 P.2d 877 (1971).

A beer keg is exempt as a "container" regardless of the fact that it is continuously reused by brewer and never sold or given away. Adolph Coors Co. v. Charnes, 690 P.2d 893 (Colo. App. 1984), aff'd, 724 P.2d 1341 (Colo. 1986).

Wholesale exemption depends entirely upon disposition of purchased product by buyer. The definitions of "wholesale sale" and "retail sale" are at variance with the generally accepted meanings of the terms "wholesale" and "retail". A purchaser may buy in large quantities what is commercially known as at "wholesale" and get wholesale prices and still the sale may not be exempt. Exemption depends entirely upon the disposition of a purchased product by the buyer. Carpenter v. Carman Distrib. Co., 111 Colo. 566, 144 P.2d 770 (1943).

All sales which are not wholesale sales fall within category of retail sales, even though they are casual or isolated transactions. Palmer v. Perkins, 119 Colo. 533, 205 P.2d 785 (1949).

Purchase of laundry business not wholesale sale. The purchase of a laundry business, including all tangible and intangible property connected therewith, is deemed not to be a wholesale sale and is therefore within the category of retail sales. Palmer v. Perkins, 119 Colo. 533, 205 P.2d 785 (1949).

Neither is sale by wholesaler to driverless-car business owner. Under the provisions of subsections (9) and (19), the sale of an automobile by a wholesaler to the owner of a driverless-car business is a sale by a wholesaler to a user or consumer not for resale, and is therefore subject to a sales tax as a retail sale. The user and consumer of an automobile may be not only he who devotes it to his own personal use, but also he who, for hire, lends or leases it to a third person. Herbertson v. Cruse, 115 Colo. 274, 170 P.2d 531, 172 A.L.R. 1312 (1946).

Sales tax collected only on end transaction, not intermediate sales of items. The exemption from taxation by subsection (20) of the intermediate sales of items incorporated in a product finally sold in a finished form at retail not only was promulgated to avoid a pyramiding of sales taxes into the cost of the finished product, but also contemplated that a sales tax should be collected on the end transaction and that such should be the measure of the total imposition on the composited product. Carpenter v. Carman Distrib. Co., 111 Colo. 566, 144 P.2d 770 (1943).

Mining operations not "manufacturing" and machinery and equipment purchased by mining company taxable. The mining operations of a corporation, even though the products thereof are devoted exclusively and necessarily to the manufacture of final products offered for sale by the company, is not "manufacturing" within the meaning of that term as used in this and following sections, and any machinery and equipment purchased and used in the company's mining operations are taxable. Bedford v. Colorado Fuel & Iron Corp., 102 Colo. 538, 81 P.2d 752 (1938).

Recapping of tires not manufacturing process. A recapper of tires does not sell his customers an article which was manufactured by him, and hence itself subject to the sales tax, but rather renders a service by repairing and restoring an article theretofore manufactured, and there is no sales tax collectible on "the end transaction" between the recapper and his customer; accordingly, to hold that recapping is a manufacturing process and that the materials entering into the processing are exempt from taxation, would be contrary to the intent of this section. Zook v. Perkins, 118 Colo. 464, 195 P.2d 962 (1948).

Packaging material used by laundry not exempt. The sale of wrapping paper, bags, etc., used to package the articles laundered or cleaned for return to customers are not exempted specifically. Carpenter v. Carman Distrib. Co., 111 Colo. 566, 144 P.2d 770 (1943).

Test for determining whether purchase is purchase for resale is whether primary purpose of transaction is the acquisition of tangible personal property for resale in unaltered and basically unused condition. In making determination, court should consider: (1) Nature of purchaser's contractual obligations, if any, to alter or consume property to produce goods or perform services; (2) degree to which items purchased are essential to purchaser's performance of obligations; (3) degree to which purchaser controls manner items are used, altered, or consumed prior to transfer to third parties; (4) and degree to which form, character, and composition of items when transferred to third parties differs from form, character, and composition of items at time of initial purchase. Colorado Springs v. Inv. Hotel Properties, 806 P.2d 375 (Colo. 1991).

Property transferred to an out-of-state vendee without consideration for use outside the state in selling products qualifies for exemption even if vendee is ultimate consumer. Scott's Liquid Gold-Inc. v. Charnes, 772 P.2d 658 (Colo. App. 1989).

Purchase of hotel property located in guest rooms does not constitute wholesale sale. Colorado Springs v. Inv. Hotel Properties, 806 P.2d 375 (Colo. 1991).

In considering the meaning of statutory use tax exemption, the definitions of wholesale and retail sale established by the general assembly differ from the ordinarily accepted general conception of those terms. Hirschfeld Press v. Denver, 806 P.2d 917 (Colo. 1991).

39-26-102.5. Change of references from "Internal Revenue Code of 1954" to "Internal Revenue Code of 1986".

The change of references in this article from the "Internal Revenue Code of 1954" to the "Internal Revenue Code of 1986" shall not affect any act done or any right accrued or accruing before or after such change, but all rights and liabilities shall continue and may be enforced in the same manner as if such references had not been changed.

39-26-103. Licenses - fee - revocation.

(1) (a) Except as otherwise provided in sub-subparagraph (A) of subparagraph (IV) of paragraph (b.5) of subsection (9) of this section, it is unlawful for any person to engage in the business of selling at retail without first having obtained a license therefor, which license shall be granted and issued by the executive director of the department of revenue and shall be in force and effect until December 31 of the year following the year in which it is issued, unless sooner revoked. Such license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the executive director may require.

(b) It is the duty of each such licensee on or before January 1 of the second year following the year in which his license is issued or renewed to obtain a renewal thereof if the licensee remains in retail business or liable to account for the tax provided in this part 1. Unless evidence is submitted to the contrary, any account for which a license has been issued which shows no retail sales activity for any period of twelve consecutive months shall not be renewed. Such inactivity shall be considered prima facie evidence that the licensee is not in the business of selling at retail.

(c) For each license issued, a fee of sixteen dollars shall be paid, which fee shall accompany the application together with an additional fifty-dollar deposit. A further fee of sixteen dollars shall be paid for each two-year period or fraction thereof for which said license is renewed. Payment of a fee for such a license issued after June 30 shall be prorated in increments of six months. The fifty-dollar deposit shall be allowed as a credit against the Colorado sales tax to be remitted. Except for licenses issued pursuant to paragraph (b) of subsection (9) of this section, all licenses issued pursuant to this section shall be renewed on a biennial basis, effective January 1, 1986.

(2) In case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required.

(3) Each license shall be numbered and shall show the name, residence, and place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.

(4) The executive director, after reasonable notice and a full hearing, may revoke the license of any person found by him or her to have violated any provision of this article. Any person engaged in the business of selling at retail in this state without securing a license therefor commits a class 3 misdemeanor and shall be punished according to section 18-1.3-501, C.R.S. Any person who engages in the business of selling at retail in this state without a license may also be subject to a civil penalty of fifty dollars per day to a maximum penalty of one thousand dollars. Such penalty shall be assessed by the executive director or his or her authorized agent and shall be waived or reduced if such failure to obtain such license is due to reasonable cause and not willful neglect or intent to defraud.

(5) Any finding and order of the executive director revoking the license of any person shall be subject to review by the district court of the district where the business of the licensee is conducted, upon application of the aggrieved party. The procedure for review shall be, as nearly as possible, the same as provided for the review of findings as provided by proceedings in the nature of certiorari.

(6) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this part 1.

(7) It is the duty of the executive director, at the time of issuance of any new license for the business of selling at retail under this part 1, to notify the county treasurer of the county where the new licensee is located, of the name and address of the licensee.

(8) (a) Any person operating exclusively as a wholesaler may apply to the department of revenue for a license to engage in the business of selling at wholesale. The application shall state the name and address of the person applying for such license, the name and location of the person's business, including the street number of such business, and such other information as the executive director of the department of revenue may require.

(b) A person shall pay a fee of sixteen dollars for each license issued under this subsection (8). If the licensee remains in the wholesale business, the licensee shall renew such license on or before January 1 of the second year following the year of issuance or renewal, but nothing in this section shall be construed to empower the executive director to refuse such renewal except revocation for cause of the licensee's prior license. Payment of a fee for a license issued after June 30 of any year shall be prorated in increments of six months. All licenses issued shall be renewed on a biennial basis, effective January 1, 1986.

(9) (a) A person operating as a charitable organization, as defined in section 39-26-102 (2.5), may apply to the department of revenue for a license to engage in the business of selling at retail. The application shall state the name and address of the person applying for such license, the name and location of the person's organization, including the street number of such organization, and such other information as the executive director of the department of revenue may require.

(b) A person conducting a singular sales event may apply to the department of revenue for a license to engage in the business of selling at retail for a temporary period of time. The application shall state the name and address of the person applying for such license, the name and location of the person's organization, including the street number of such organization, and such other information as the executive director of the department of revenue may require.

(b.5) (I) A person engaged in retail sales at more than one special sales event in any two-year period may apply to the department of revenue for a license to engage in selling at retail at such special sales event over a two-year period. Such special sales event license shall only apply to retail sales made by the person to whom the license is issued at such special sales events and shall not apply to sales at such person's business location or to any other sales. The application for such license shall state the name and address of the person desiring such a license and such other information as the executive director of the department of revenue may require. Except as otherwise provided in sub-subparagraph (A) of subparagraph (IV) of this paragraph (b.5), a person to whom a special sales event license has been issued shall file a separate return and payment of sales taxes for each special sales event at which retail sales are made by such person, which return shall be filed on the twentieth day of the month following the month in which such special sales event began.

(II) Any person who organizes a special sales event shall inform each person making any retail sales at such special sales event of the various taxes and tax rates that apply to retail sales at the special sales event and shall mail to the department within ten days of the last day of such special sales event a list of the name, address, and special sales event license number, if any, of each person making any retail sales at the special sales event.

(III) For purposes of this paragraph (b.5), "special sales event" means an event where retail sales are made by more than three persons at a location other than their normal business location, which event occurs no more than three times in any calendar year.

(IV) (A) Any person engaged in retail sales at a special sales event shall obtain a special sales event license pursuant to the provisions of subparagraph (I) of this paragraph (b.5) unless the person who organizes such special sales event elects to obtain a special sales event license pursuant to sub-subparagraph (B) of this subparagraph (IV) and such person who engages in retail sales at such special sales event elects to remit such sales tax collected to the person who organized such special sales event. Any person engaged in retail sales at a special sales event who has obtained a special sales event license pursuant to the provisions of subparagraph (I) of this paragraph (b.5) may elect to remit sales tax collected at such special sales event to the person who organized such special sales event and to whom a special sales event license has been issued pursuant to sub-subparagraph (B) of this subparagraph (IV).

(B) Any person who organizes a special sales event may apply to the department of revenue for a license for retail sales made at such special sales event. Such special sales event license shall only apply to retail sales made at such special sales event organized by the person to whom the license is issued and shall not apply to any other special sales events or sales. The application for such license shall state the name and address of the person desiring such a license and such other information as the executive director of the department of revenue may require. A person to whom a special sales event license has been issued pursuant to this sub-subparagraph (B) shall file a separate return and shall make payment of sales tax collected by persons making retail sales at such special sales event who have elected to remit such sales tax collections to the person licensed pursuant to the provisions of this sub-subparagraph (B). Such return shall be filed on the twentieth day of the month following the month in which such special sales event began. In addition to the information specified in subparagraph (II) of this paragraph (b.5), any person issued a special sales event license pursuant to this sub-subparagraph (B) shall maintain, at his place of business, a list showing the name and address of each person making any retail sales at such special sales event, the amount of gross retail sales made by such person at such special sales event, and the amount of sales tax collected by such person on such retail sales which are remitted by such licensee.

(c) A person who sells only products which are subject to city or county, but no state, sales tax may petition the department to waive the deposit established in paragraph (c) of subsection (1) of this section.

(d) An individual having an occasional or isolated sale of tangible personal property is not required to have a Colorado retail sales tax license. Such sales must be made from the private residences of such individuals, and the aggregate dollar amount of such sales may not exceed one thousand dollars for any one calendar year. In addition the following conditions must be met:

(I) Neither the seller nor any member of his household may be engaged in a trade or business where similar items are sold;

(II) An annual report of casual sales must be filed with the department by every individual making such sales, and the sales tax due must be remitted at the time the Colorado income tax return of such person is due as provided in article 22 of this title, on forms provided by the director, showing in detail all such sales made during the year; and

(III) All such returns shall be subscribed by the taxpayer or his agent and shall contain a written declaration that they are being made under the penalties of perjury in the second degree.

(e) In addition, when in the opinion of the executive director it is necessary for the efficient administration of this section to treat any salesman, representative, peddler, or canvasser as the agent of the vendor, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property sold by him or for whom he solicits business, the director may, in his discretion, treat such agent as the vendor jointly responsible with his principal, distributor, supervisor, or employer for the collection and payment over of the tax.

(f) Except as otherwise provided in this paragraph (f), a person shall pay a fee of eight dollars for each license issued under this subsection (9); except that a person shall pay a fee of sixteen dollars for a license issued or renewed under subparagraph (I) of paragraph (b.5) of this subsection (9). Any person to whom a sales tax license has been issued pursuant to paragraph (a) of subsection (1) of this section and to whom a special sales events license has been issued or renewed pursuant to paragraph (b.5) of this subsection (9) shall pay no fee for such new or renewed special sales events license. Payment of a fee for a license issued under paragraph (b.5) of this subsection (9) after June 30 of any year shall be prorated in increments of six months.

(10) Notwithstanding the amount specified for any fee in this section, the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department of revenue by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Licensed retailers or vendors, state has made them agents for collection. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965); Department of Rev. v. Durango & Silverton Narrow Gauge R.R. Co., 989 P.2d 208 (Colo. App. 1999).

Payment to agents amounts to payment to state. The payment of the sales tax by the purchaser to licensed retailers or vendors amounts to payment to the state. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

Payment to an unlicensed seller is not payment to the state and provides no protection against a demand by the state upon the purchaser for the payment of the sales tax. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

39-26-103.5. Qualified purchaser - direct payment permit number - qualifications.

(1) The executive director of the department of revenue may issue a direct payment permit number to any person that submits an application to the executive director demonstrating that:

(a) For the preceding twelve-month period, such person has purchased in Colorado in the aggregate at least seven million dollars of commodities, services, or tangible personal property that are subject to the tax imposed by this article. Purchases of commodities or tangible personal property to be erected upon or affixed to real property, including, but not limited to, building and construction materials and fixtures, shall be excluded from the aggregate total of purchases of commodities, services, or tangible personal property described in this paragraph (a).

(b) (I) Except as provided in subsection (2) of this section, if such person has been subject to the collection, remittance, or reporting requirements imposed by this article or any other article in this title administered by the department of revenue for the preceding three years, such person timely filed the required returns and timely remitted the tax shown due on such returns during said three-year period; or

(II) If such person has been subject to the collection, remittance, or reporting requirements imposed by this article or any other article in this title administered by the department of revenue for less than the three preceding years, for the period beginning on the date when such person became subject to such requirements, such person timely filed the required returns and timely remitted the tax shown due on such returns; and

(c) Such person has in place an accounting system, acceptable to the executive director of the department of revenue, that will enable the department to fully and accurately collect and allocate to municipalities, counties, and other local taxing entities all sales taxes that the department collects for such municipalities, counties, and other local taxing entities.

(2) The executive director may waive the requirements of paragraph (b) of subsection (1) of this section if the person submitting the application can show that any failure to comply with such collection, remittance, or reporting requirements was due to reasonable cause.

(3) Nothing in subsection (1) of this section shall be construed to require that a person must be subject to the collection, remittance, or reporting requirements imposed by this article in order to obtain a direct payment permit number.

(4) A person shall become a qualified purchaser upon receipt of a direct payment permit number.

(5) A direct payment permit number shall be in force and effect until December 31 of the third year following the year in which it is issued, unless sooner revoked. Such permit number shall be granted or renewed only upon the filing of an application stating the information described in subsection (1) of this section.

(6) The executive director of the department of revenue may revoke the direct payment permit number of a qualified purchaser that has violated any provision of this article. The executive director shall give a notice of revocation to such qualified purchaser by first-class mail pursuant to section 39-21-105.5. Any such revocation may be appealed by the qualified purchaser within thirty days of receipt of the notice of revocation together with a request for a hearing on such revocation before the executive director or the executive director's designee. The executive director shall promulgate rules specifying the procedures for a revocation appeal hearing. A revocation appeal hearing shall take place within a reasonable time after receipt of the request for hearing by the executive director. The executive director shall issue a finding upholding the revocation or reinstating the direct payment permit number within a reasonable time after the revocation appeal hearing.

39-26-104. Property and services taxed.

(1) There is levied and there shall be collected and paid a tax in the amount stated in section 39-26-106 as follows:

(a) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail;

(b) (I) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if:

(A) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(B) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(II) The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this article shall be prima facie evidence that such person is engaged in the business of selling vehicles of the type involved in such transactions and that he is thereby subject to any licensing requirements necessary to engage in such activity.

(c) (I) Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service. On or after August 1, 2002, mobile telecommunications service shall be subject to the tax imposed by this

section only if the service is provided to a customer whose place of primary use is within Colorado and the service originates and terminates within the same state. In accordance with the "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended, on or after August 1, 2002, mobile telecommunications service provided to a customer whose place of primary use is outside the borders of the state of Colorado is exempt from the tax imposed by this section.

(II) (A) If a customer believes that a tax, charge, or fee assessed by the state in the customer's bill for a mobile telecommunications service is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, the customer shall notify the home service provider in writing within two years after the date the bill was issued. The notification from the customer shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the home service provider may require.

(B) No later than sixty days after receipt of notice from a customer pursuant to sub-subparagraph (A) of this subparagraph (II), the home service provider shall review the information submitted by the customer and any other relevant information and documentation to determine whether an error was made. If the home service provider determines that an error was made, the home service provider shall refund or credit to the customer any tax, fee, or charge erroneously collected from the customer for a period not to exceed two years. If the home service provider determines that no error was made, the home service provider shall provide a written explanation of its determination to the customer.

(C) Any customer that believes a tax, charge, or fee assessed by the state in the customer's bill for mobile telecommunications services is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, may file a claim in the appropriate district court only after complying with the provisions of this subparagraph (II).

(III) As used in this paragraph (c), unless the context otherwise requires:

(A) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.

(B) "Customer" means customer as defined in section 124 (2) of the act.

(C) "Home service provider" means home service provider as defined in section 124 (5) of the act.

(D) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the act.

(E) "Place of primary use" means the place of primary use as defined in section 124 (8) of the act.

(F) "Taxing jurisdiction" means taxing jurisdiction as defined in section 124 (12) of the act.

(d) Repealed.

(d.1) Effective July 1, 1980, for gas and electric service, whether furnished by municipal, public, or private corporations or enterprises, for gas and electricity furnished and sold for commercial consumption and not for resale, upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by municipal, public, or private corporations or enterprises;

(d.2) Repealed.

(e) Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. Cover charges shall be included as part of the amount paid for such food or drink. However, meals provided to employees of the places mentioned in this paragraph (e) at no charge or at a reduced charge and which are considered as part of their salary, wages, or income shall be exempt from taxation under the provisions of this part 1.

(f) On the entire amount charged to any person for rooms or accommodations as designated in section 39-26-102 (11).

Denial of such credit in computing use tax unconstitutional. It was constitutionally impermissible for the Colorado taxing authorities to deny a trade-in allowance in computing the use tax on a motor vehicle purchased outside the state when such a credit was allowed when the vehicle was purchased in Colorado. Such unequal treatment was discriminatory and constituted an impermissible burden on interstate commerce. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

Obligation for the payment of the tax is upon the consumer whether the tax is called a "sales" tax or a "use" tax. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

Use tax is supplementary to the sales tax. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

There was no credit for property exchanged outside state prior to 1978 amendments. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

Subsection (1)(e) intended to impose tax upon food of public-oriented commercial establishments. The nature of the various facilities enumerated in subsection (1)(e) suggests a legislative intent to impose a tax upon meals or food sold by public-oriented commercial establishments, since all the businesses specifically designated as being subject to the tax are establishments ordinarily commercial in nature. Colorado College v. Heckers, 33 Colo. App. 219, 517 P.2d 419 (1973).

Company cafeterias subject to tax. Where company operates cafeterias wherein persons numbering approximately 10,000 might, but need not, patronize the cafeterias, the cafeterias are subject to the tax levied by this section. Bennetts v. Carpenter, 111 Colo. 63, 137 P.2d 780 (1943) (decided prior to 1978 amendment).

College snack bars or student unions. Subsection (1)(e) does not operate to levy a sales tax upon meals or food sold by private colleges in their snack bars or student unions. Colorado College v. Heckers, 33 Colo. App. 219, 517 P.2d 419 (1973).

Nonprofit lodges. Where a lodge is noncommercial and nonprofit and food service is incidental to its primary activities of furthering charitable and educational purposes and is not for pecuniary gain, and, except for rare occasions, the lodge is closed to nonmembers, this section does not apply to its food sales. B.P.O.E. Lodge No. 804 v. State Dept. of Rev., 41 Colo. App. 88, 582 P.2d 1068 (1978).

There is a strong presumption that taxation is the rule and exemption the rare exception. Southwest Catholic Credit Union v. Charnes, 665 P.2d 626 (Colo. App. 1982); Colorado Dept. of Rev. v. Woodmen of the World, 919 P.2d 806 (Colo. 1996); A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev., 997 P.2d 1241 (Colo. App. 1999), rev'd on other grounds, 19 P.3d 680 (Colo. 2001).

However, when interpreting a statute, the court must honor the plain meaning of the words when they are clear, and must begin with the proposition that the purchase of personal services is generally not subject to taxation in Colorado; rather, Colorado taxes the purchase of tangible personal property valued at its sales price. A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev., 19 P.3d 680 (Colo. 2001).

No exemption for state chartered credit unions. No exemption as to payment of sales taxes is provided to state chartered credit unions. Southwest Catholic Credit Union v. Charnes, 665 P.2d 626 (Colo. App. 1982).

Sales tax may be imposed on sale of cocaine by drug dealer if the sale is construed as a retail, rather than wholesale, transaction. Eggleston v. Colorado, 636 F. Supp. 1312 (D. Colo. 1986).

Access services for interstate telephone calls are taxable as intrastate telephone services. Since access services are provided by facilities, equipment, and personnel which are all located entirely within the state of Colorado, they are intrastate in nature and are subject to sales tax in Colorado. AT & T Com. v. Department of Rev., 778 P.2d 677 (Colo. 1989).

Personal property which loses its identity when it becomes an integral and inseparable part of realty is not tangible personal property subject to taxation under this section. Raynor Door, Inc. v. Charnes, 765 P.2d 650 (Colo. App. 1988).

The sales tax statute and applicable regulations provide that no service is taxable except those services specifically listed in the statute itself, and services rendered in "installing" or "applying" personal property are not taxable. Alteration services rendered in connection with the sale of a garment are separable from the purchase transaction and are not independently taxable. A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev., 19 P.3d 680 (Colo. 2001).

General assembly intended for the qualifying "exchange" in subsection (1)(b) to transpire in a single transaction, in which one vehicle is transferred to another person or entity as all or part of the purchase price of another vehicle. Here, plaintiff chose to structure the purchase of the new automobile and sale of the old automobile as two distinct transactions, involving separate parties. The old vehicle was not directly transferred to a person or entity as part of the purchase price for the new vehicle and, therefore, plaintiff cannot qualify for the trade-in allowance credit under this section. Sternal v. Fagan, 989 P.2d. 200 (Colo. App. 1999).

When there are multiple transactions, each transaction at which an item is sold to a consumer at retail may be taxed under this section. Furthermore, this section fails to contain an exemption expressing legislative intent that the collected tax be retained against a taxpayer where the applicable tax was paid by another. In the absence of such an intent, court will not presume an exemption. Sternal v. Fagan, 989 P.2d. 200 (Colo. App. 1999).

39-26-105. Vendor liable for tax.

(1) (a) Except as provided in paragraphs (d) and (e) of this subsection (1), every retailer, also in this part 1 called "vendor", shall, irrespective of the provisions of section 39-26-106, be liable and responsible for the payment of an amount equivalent to three percent of all sales made prior to January 1, 2001, and two and ninety one-hundredths percent of all sales made on or after January 1, 2001, by the vendor of commodities or services as specified in section 39-26-104 and shall, before the twentieth day of each month, make a return to the executive director of the department of revenue for the preceding calendar month and remit an amount equivalent to said percentage on such sales to said executive director, less three and one-third percent of the sum so remitted to cover the vendor's expense in the collection and remittance of said tax; but, if any vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the executive director, the vendor shall not be allowed to retain any amounts to cover such vendor's expense in collecting and remitting said tax, and an amount equivalent to the said percentage, plus the amount of any local vendor expense that may be allowed by the local government to the vendor, shall be remitted to the executive director by any such delinquent vendor. Such returns of the taxpayer or the taxpayer's duly authorized agent shall contain such information and be made in such manner and upon such forms as the executive director shall prescribe. Any local vendor expense remitted to the executive director shall be deposited to the state general fund.

(b) The executive director may extend the time for making a return and paying the taxes due under such reasonable rules as the executive director may prescribe, but no such extension shall be for a greater period than is provided for in section 39-26-109.

(c) The burden of proving that any retailer is exempt from collecting the tax on any goods sold and paying the same to the executive director, or from making such returns, shall be on the retailer or vendor under such reasonable requirements of proof as the executive director may prescribe.

(d) A retailer or vendor who has received in good faith from a qualified purchaser a direct payment permit number issued pursuant to section 39-26-103.5 shall not be liable or responsible for the collection and remittance of the tax imposed by this article on any sale made to the qualified purchaser that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(e) For any state fiscal year commencing on or after July 1, 2000, every retailer or vendor who sells items upon which a sales tax is imposed at a rate of one one-hundredth of one percent pursuant to section 39-26-106 (3) (a) shall be liable and responsible for the payment of an amount equivalent to the amount of sales tax imposed on such items less three and one-third percent.

(2) Every retailer or vendor conducting a business in which the transaction between the vendor and the consumer consists of the supplying of tangible personal property and services in connection with the maintenance or servicing of same shall be required to pay the taxes levied under this article upon the full contract price, unless application is made to the executive director for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The executive director is authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale which is subject to the sales tax levied under the provisions of this part 1. This section shall not be construed to include items upon which the sales tax is imposed on the full purchase price as designated in section 39-26-102 (12).

(3) (a) A qualified purchaser may provide a direct payment permit number to a vendor or retailer that is liable and responsible for collecting and remitting the tax imposed by this article on any sale made to the qualified purchaser. A qualified purchaser holding a direct payment permit number shall, before the twentieth day of each month subsequent to the month in which any sale to the qualified purchaser was made for which the qualified purchaser's direct payment permit number was used, make a return and remit directly to the executive director the amount of such tax owing on all such sales to the qualified purchaser made in the preceding month. Such returns of the qualified purchaser or duly authorized agent shall contain such information and be made in such manner and upon such forms as the executive director shall prescribe.

(b) From the amount of the tax required to be remitted pursuant to paragraph (a) of this subsection (3), a qualified purchaser shall be entitled to retain the amount specified in paragraph (a) of subsection (1) of this section that a vendor or retailer would otherwise be entitled to retain to cover the vendor's or retailer's expense in collecting and remitting the tax imposed by this article if the qualified purchaser had not provided a direct payment permit number to the vendor or retailer.

Licensed retailers or vendors, state makes them its agents for collection. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965); Department of Rev. v. Durango & Silverton Narrow Gauge R.R. Co., 989 P.2d 208 (Colo. App. 1999).

Payment to agents amounts to payment to state. Payment of the sales tax by the purchaser to licensed retailers or vendors amounts to payment to the state. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

Applied in Montgomery Ward & Co. v. State Dep't of Revenue, 628 P.2d 85 (Colo. 1981).

39-26-105.5. Remittance of sales taxes - mandatory electronic funds transfers.

For any calendar year commencing on or after January 1, 2002, any vendor whose liability for state sales tax only for the previous calendar year was more than seventy-five thousand dollars shall use electronic funds transfers to remit all state and local sales taxes required to be remitted to the executive director of the department of revenue. The executive director may promulgate rules to effectively implement this section, but shall first consult with the state treasurer to ensure that any rules promulgated do not adversely affect the ability of the state treasurer to optimize sales tax investment earnings. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S. The executive director shall not require any taxpayer required to remit sales taxes by electronic funds transfers to remit sales tax prior to the deadline specified in section 39-26-105 for taxpayers who remit sales taxes by other means.

39-26-106. Schedule of sales tax.

(1) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a) and in subsection (3) of this section, there is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of three percent of the amount of the sale, to be computed in accordance with schedules or systems approved by the executive director of the department of revenue. Said schedules or systems shall be designed so that no such tax is charged on any sale of seventeen cents or less.

(II) On and after January 1, 2001, there is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of two and ninety one-hundredths percent of the amount of the sale to be computed in accordance with schedules or systems approved by the executive director of the department of revenue. Said schedules or systems shall be designed so that no such tax is charged on any sale of seventeen cents or less.

(b) Notwithstanding the three percent rate provisions of paragraph (a) of this subsection (1), for the period May 1, 1983, through July 31, 1984, the rate of the tax imposed pursuant to this subsection (1) shall be three and one-half percent.

(2) (a) Except as provided in paragraph (b) of this subsection (2), retailers shall add the tax imposed, or the average equivalent thereof, to the sale price or charge, showing such tax as a separate and distinct item, and when added such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts. The retailer shall be entitled, as collecting agent of the state, to apply and credit the amount of the retailer's collections against the rate to be paid by the retailer under the provisions of section 39-26-105, remitting any excess of collections over said rate less the three and one-third percent collection expense allowance, to the executive director of the department of revenue in the retailer's next monthly sales tax return.

(b) Any retailer selling malt, vinous, or spirituous liquors by the drink or any vendor selling individual items of personal property through coin-operated vending machines may include in his sales price the tax levied under this part 1; except that no such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer. The schedule set forth in subsection (1) of this section shall be used by such retailer in determining amounts to be included in such sales price. No such retailer shall gain any benefit from the collection or payment of such tax, except as permitted in section 39-26-105 (1), nor shall the use of the schedule set forth in subsection (1) of this section relieve such retailer from liability for payment of the full amount of the tax levied by this part 1.

(3) (a) Notwithstanding the rate provisions of paragraph (a) of subsection (1) of this section, for any fiscal year commencing on or after July 1, 2000, if the revenue estimate prepared by the staff of the legislative council in March of the calendar year in which that fiscal year ends indicates that the aggregate amount of state revenues for that fiscal year will exceed the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for that fiscal year by three hundred fifty million dollars or more, as adjusted during such fiscal year pursuant to paragraph (b) of this subsection (3), and, prior to the end of such fiscal year, voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year, the tax imposed pursuant to subsection (1) of this section shall be imposed upon any sale of a new or used commercial truck, truck tractor, tractor, semitrailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of twenty-six thousand pounds for the period commencing on July 1 of the calendar year in which that fiscal year ends through June 30 of the immediately subsequent calendar year, at a rate of one one-hundredth of one percent.

(b) (I) No later than October 1 of any given calendar year commencing on or after January 1, 2001, the executive director shall annually adjust the dollar amount specified in paragraph (a) of this subsection (3) to reflect the rate of growth of Colorado personal income for the calendar year immediately preceding the calendar year in which such adjustment is made. For purposes of this subparagraph (I), "the rate of growth of Colorado personal income" means the percentage change between the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year immediately preceding the calendar year in which the adjustment is made and the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year prior to the calendar year immediately preceding the calendar year in which the adjustment is made.

(II) Upon calculating the adjustment of said dollar amount in accordance with subparagraph (I) of this paragraph (b), the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of the adjusted dollar amount and the basis for the adjustment. Such written notification shall be given within five working days after such calculation is completed, but such written notification shall be given no later than October 1 of the calendar year.

(III) It is the function of the executive committee of the legislative council to review and approve or disapprove such adjustment of said dollar amount within twenty days after receipt of such written notification from the executive director. Any adjustment that is not approved or disapproved by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such adjustment, such automatic approval shall not occur unless the executive committee does not approve or disapprove such adjustment after the conclusion of such hearing. Any hearing conducted by the executive committee pursuant to this subparagraph (III) shall be concluded no later than twenty-five days after receipt of such written notification from the executive director.

(IV) (A) If the executive committee of the legislative council disapproves any adjustment of said dollar amount calculated by the executive director pursuant to this paragraph (b), the executive committee shall specify such adjusted dollar amount to be utilized by the executive director. Any adjusted dollar amount specified by the executive committee pursuant to this sub-subparagraph (A) shall be calculated in accordance with the provisions of this paragraph (b).

(B) For the purpose of determining whether the sales tax rate reduction authorized by paragraph (a) of this subsection (3) is to be allowed for any given income tax year, the executive director shall not utilize any adjusted dollar amount that has not been approved pursuant to subparagraph (III) of this paragraph (b) or otherwise specified pursuant to sub-subparagraph (A) of this subparagraph (IV).

(V) (Deleted by amendment, L. 2002, p. 328, § 1, effective April 19, 2002.)

(c) The general assembly finds and declares that reducing the rate of the sales tax imposed on any sale of a new or used commercial truck, truck tractor, tractor, semitrailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of twenty-six thousand pounds is a reasonable method of refunding excess state revenues required to be refunded in accordance with section 20 (7) (d) of article X of the state constitution.

(d) Any state sales tax rate reduction allowed pursuant to this section shall be published in rules promulgated by the executive director of the department of revenue in accordance with article 4 of title 24, C.R.S., and shall be included in such notices and publications as are customarily issued by the department of revenue on at least a quarterly basis concerning exemptions from the state sales and use tax.

Statute of limitations for reimbursement pursuant to long-term lease. Where a long-term lease agreement is executed, and where the lessor subsequently pays the applicable sales taxes and invoices the amount paid to the lessee, but the lessee refuses to make reimbursement, former § 13-80-110, which provided for a six-year statute of limitations, was the applicable statutory section. Columbine Beverage Co. v. Continental Can Co., 662 P.2d 1094 (Colo. App. 1982).

Applied in City of Montrose v. Public Utils. Comm'n, 629 P.2d 619 (Colo. 1981).

39-26-107. Rules and regulations.

To provide uniform methods of adding the tax, or the average equivalent thereof, to the selling price, it is the duty of the executive director of the department of revenue to formulate and promulgate after hearing appropriate rules and regulations to effectuate the purpose of sections 39-26-105 to 39-26-113.

Director of revenue is vested with full authority to change a tax regulation designating the status of painting and electrical contractors so as to meet the requirements of this article wherein so doing he not violate any plain provision of this article. Craftsman Painters & Decorators, Inc. v. Carpenter, 111 Colo. 1, 137 P.2d 414 (1942).

39-26-108. Tax cannot be absorbed.

It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this part 1 will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or if added that it or any part thereof will be refunded. Any person violating any of the provisions of sections 39-26-105 to 39-26-113 is guilty of a misdemeanor.

Law reviews. For article, "Colorado Sales and Use Tax Consequences in Sales of Businesses", see 11 Colo. Law. 679 (1982).

Ultimate responsibility for payment of the sales tax is on the consumer. While the retailer has the duty to collect the tax, it only acts as an agent of the state in this capacity. Columbine Beverage Co. v. Continental Can Co., 662 P.2d 1094 (Colo. App. 1982).

Liability does not rest on contractual arrangement with vendor. The liability of the consumer to pay the sales tax does not rest on any contractual arrangement with the vendor regarding the collection or payment of these taxes. Therefore, it is not necessary for a lessor specifically to include provisions for payment of the tax in its written lease agreement with the lessee. Columbine Beverage Co. v. Continental Can Co., 662 P.2d 1094 (Colo. App. 1982).

39-26-109. Reports of vendor.

If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions, are such that reports of sales made on a calendar month basis will impose unnecessary hardship, the executive director of the department of revenue, upon written request of the vendor, may accept reports at such intervals as will in his opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax. The executive director may by rule permit taxpayers whose monthly tax collected is less than three hundred dollars to make returns and pay taxes at intervals not greater than every three months.

39-26-110. Retailer - multiple locations.

A retailer doing business in two or more places or locations, taxable under this part 1, may file each return covering all such business activities engaged within this state.

39-26-111. Credit sales.

(1) In case of a sale upon credit, or a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, or a chattel mortgage or a conditional sale, there shall be paid upon each payment, upon the account of purchase price, that portion of the total tax which the amount paid bears in the total purchase price. Notwithstanding any other provision of this subsection (1), a retailer doing business wholly or partly on a credit basis may, at his election, make a return, and remit sales tax on credit sales, on the basis of the aggregate amount of cash received during the month from taxable credit sales. The retailer may determine the tax to be remitted on the basis of his reasonable estimate of the aggregate amount of tax which he has collected from his credit customers during the month. A retailer's estimate of the taxes collected on credit sales made in any month (referred to in this section as "base month") shall be deemed reasonable if the cumulative sum of the monthly amounts of taxes on such credit sales remitted by the retailer on or before the close of the third, sixth, ninth, twelfth, and fifteenth calendar months following the base month is not less than twenty-five percent, forty-three and seventy-five one-hundredths percent, sixty-two and five-tenths percent, eighty-one and twenty-five one-hundredths percent, and one hundred percent, respectively, of the total taxes due on the aggregate credit sales made by the retailer in the base month. In no event, however, shall the amount of taxes remitted by the retailer in any month be less than the amount which the retailer actually estimates to have been collected in that month.

(2) If a retailer transfers, sells, assigns, or otherwise disposes of an account receivable, he shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported; except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a closely held subsidiary, as defined in section 39-26-102 (10) (k), shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on said account.

Director has authority to order payment of taxes on basis other than cash. Montgomery Ward & Co. v. State Dep't of Revenue, 628 P.2d 85 (Colo. 1981).

Treatment of sales of accounts receivable by retailer to subsidiary. Montgomery Ward & Co. v. State Dep't of Revenue, 628 P.2d 85 (Colo. 1981).

Applied in Montgomery Ward & Co. v. State Dep't. of Revenue, 675 P.2d 318 (Colo. App. 1983).

39-26-112. Excess tax - remittance.

If any vendor, during any reporting period, collects as a tax an amount in excess of three percent of all taxable sales made prior to January 1, 2001, and two and ninety one-hundredths percent of all taxable sales made on or after January 1, 2001, such vendor shall remit to the executive director of the department of revenue the full net amount of the tax imposed in this part 1 and also such excess. The retention by the retailer or vendor of any excess of tax collections over the said percentage of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the executive director the full amount required to be remitted by the provisions of this part 1 is declared to be unlawful and constitutes a misdemeanor.

Source: L. 35: p. 1009, § 5. **CSA:** C. 144, § 13. **L. 37:** p. 1085, § 1. **L. 45:** p. 580, § 4. **CRS 53:** § 138-6-12. **C.R.S. 1963:** § 138-5-12. **L. 65:** p. 1124, § 4. **L. 2001:** Entire section amended, p. 1281, § 58, effective June 5.

39-26-113. Collection of sales tax - motor vehicles - exemption.

(1) No registration shall be made of a motor or other vehicle for which registration is required and no certificate of title shall be issued for such vehicle or for a mobile home by the department of revenue or its authorized agent until any tax due on the sale and purchase of such vehicle pursuant to section 29-2-106, C.R.S., or section 39-26-106 or imposed by ordinance of any home rule city has been paid.

(2) If an applicant for registration and certificate of title for any motor or other vehicle or for a certificate of title for a mobile home fails to show payment of the sales taxes applicable to the sale and purchase thereof by means of proper receipts therefor, the department of revenue or its authorized agent shall collect all such applicable taxes at the time such application is made.

(3) Revenues due the state and collected pursuant to this section shall be distributed as are other revenues under this part 1, and revenues due any county, city, or town so collected shall be distributed in accordance with the provisions of section 29-2-106, C.R.S., or as specified by contract entered into with the department of revenue pursuant to section 24-35-110, C.R.S.

(4) To facilitate collection of sales taxes as provided in this section, the governing body of each city or town which has imposed a sales tax shall certify to the department of revenue and to the county clerk of the county in which such city or town is located a true copy of its current sales tax ordinances, and shall likewise certify any subsequent changes therein.

(5) (a) The sale of a new or used automobile to a purchaser who is a nonresident of Colorado and who purchases such automobile for use outside this state is exempt from all sales taxes, the collection of which is provided for by this section.

(b) The executive director of the department of revenue shall attempt to negotiate agreements of reciprocity concerning the collection of sales taxes on motor vehicles with adjacent states.

(c) Repealed.

(6) (a) In the case of a seller-financed sale in which the seller has added the sales tax due on the sale to the financed sales price of the motor vehicle and the purchaser has defaulted or otherwise failed to make payments due to the seller, the seller shall be entitled to deduct all portions of the unreceived payments that are attributable to the sales tax due on the sale from the next sales tax return made by the seller pursuant to this article 26. If the amount to be deducted pursuant to this subsection (6) exceeds the amount of sales tax to be remitted by the seller for the next reporting period, the seller may carry forward the remaining amount of the deduction to future sales tax returns. In no event shall this subsection (6) be construed to create a right to a refund or any other payment by the department of revenue to the seller.

(b) For purposes of this subsection (6), "seller-financed sale" means a retail sale of a motor vehicle by a seller licensed pursuant to part 1 of article 6 of title 12, C.R.S., in which the seller, or a wholly-owned affiliate or subsidiary of the seller, collects all or part of the total consideration paid for the motor vehicle in periodic payments and retains a lien on the motor vehicle until all payments have been received. Except as otherwise provided in this paragraph (b), the term does not include a retail sale of a motor vehicle in which a person other than the seller provides the consideration for the sale and retains a lien on the motor vehicle until all payments have been made.

(c) The department of revenue may promulgate rules and regulations for the implementation of this subsection (6).

Section's provisions are more than merely administrative; they are mandatory. Codding v. Jackson, 132 Colo. 320, 287 P.2d 976 (1955).

Unless strict compliance is made, no interest or right can be transferred. Codding v. Jackson, 132 Colo. 320, 287 P.2d 976 (1955).

Mobile homes are meant to be included as "motor vehicles" under sales tax provisions. State ex rel. Department of Revenue v. Modern Trailer Sales, Inc., 175 Colo. 296, 486 P.2d 1064 (1971).

Sales tax is levied upon sales transaction and not upon property transferred. State ex rel. Department of Revenue v. Modern Trailer Sales, Inc., 175 Colo. 296, 486 P.2d 1064 (1971).

Entire sales tax collectible at time of sale. In the case of motor vehicles, the entire sales tax must be collected and remitted at the time of the sale, regardless of whether the taxpayer reports on a cash or accrual basis, and if the sales tax is not paid, title cannot transfer and the vehicle may not be registered as provided for by law. State ex rel. Department of Revenue v. Modern Trailer Sales, Inc., 175 Colo. 296, 486 P.2d 1064 (1971).

Purchaser must pay sales tax before applying for certificate of title. Where a party fails to make an application for a new certificate of title within ten days as required by law and fails to pay the sales tax and the fees due within that time, he is

prevented from acquiring any right, title, or interest in the motor vehicle involved. Codding v. Jackson, 132 Colo. 320, 287 P.2d 976 (1955).

Municipal tax imposed upon transfer of ownership of a motor vehicle at auction without regard to the value of the vehicle sold was not a sales tax in violation of subsection (5)(a), but rather was an excise tax imposed on privilege of conducting a motor vehicle auction within the city. Colorado Auto Auction Services Corp. v. Commerce City, 800 P.2d 998 (Colo. 1990).

39-26-114. Exemptions - disputes - credits or refunds - definitions - creation of fund.

(1) (a) There shall be exempt from taxation under the provisions of this part 1 the following:

(I) All sales to the United States government and to the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(II) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities; except that any veterans' organization that qualifies as a charitable organization pursuant to section 39-26-102 (2.5) shall be exempt from taxation under the provisions of this part 1 only for the purpose of sponsoring a special event, meeting, or other function in the state of Colorado that is not part of such organization's regular activities in the state;

(III) All sales which the state of Colorado is prohibited from taxing under the constitution or laws of the United States or the state of Colorado and all retail sales within a distance of twenty miles within the boundaries of this state to persons resident, excluding corporations, of adjoining states, which adjoining states do not impose or levy a retail sales tax on such sales, if such residents of such adjoining states are in this state for the express purpose of making purchases and not as tourists;

(IV) All sales of cigarettes;

(V) (A) All sales of drugs dispensed in accordance with a prescription; all sales of insulin in all its forms dispensed pursuant to the direction of a licensed physician; all sales of glucose useable for treatment of insulin reactions; all sales of urine- and blood-testing kits and materials; all sales of insulin measuring and injecting devices, including hypodermic syringes and needles; all sales of prosthetic devices; all sales of wheelchairs and hospital beds; all sales of drugs or materials when furnished by a doctor as part of professional services provided to a patient; and all sales of corrective eyeglasses, contact lenses, or hearing aids;

(B) When sold in accordance with a written recommendation from a licensed doctor, all sales of therapeutic devices, appliances, or related accessories, with a retail value of more than one hundred dollars, which are sold to correct or treat a human physical disability or surgically created abnormality;

(C) All sales of therapeutic devices, appliances, or related accessories, with a retail value of one hundred dollars or less, which are sold to correct or treat a human physical disability or surgically created abnormality;

(VI) All sales and purchases of commodities and services under the provisions of section 39-26-102 (11) to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty consecutive days during the calendar year or preceding year;

(VII) (A) All commodities which are taxed under the provisions of article 27 of this title, and all commodities which are taxed under said provisions and the tax is refunded, and all sales and purchases of aviation fuel upon which no Colorado sales tax was in fact collected and retained prior to July 1, 1963; except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a sales tax was collected prior to January 1, 1989, shall not be exempt.

(B) Based upon reports submitted by retailers pursuant to the provisions of this part 1, the department of revenue shall compile a monthly report showing the amount of sales taxes collected on aviation fuel used in turbo-propeller or jet engine aircraft during the previous month by each retailer. Such monthly report shall be transmitted to the division of aeronautics created in section 43-10-103, C.R.S., for use by the division in distributing moneys in the aviation fund in accordance with section 43-10-110, C.R.S.

(VIII) All sales made to schools, other than schools held or conducted for private or corporate profit;

(IX) Any sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this state if such vehicle is purchased from the manufacturer for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of

delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery;

(X) Any sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery;

(XI) All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks; however, any actual use of such construction and building materials shall, at the time of such actual use, be subject to the tax imposed by part 2 of this article and any use tax imposed pursuant to article 2 of title 29, C.R.S.;

(XII) Any right to the continuous possession or use for three years or less of any article of tangible personal property under a lease or contract, if the lessor has paid to the state of Colorado a sales or use tax on such tangible personal property upon its acquisition. The department of revenue may permit a lessor of tangible personal property leased for a period of three years or less to acquire such property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on such property.

(XIII) The transfer of tangible personal property without consideration (other than the purchase, sale, or promotion of the transferor's product) to an out-of-state vendee for use outside of this state in selling products normally sold at wholesale by the transferor;

(XIV) The sale of tangible personal property for testing, modification, inspection, or similar type of activities in this state if the ultimate use of such property in manufacturing or similar type of activities occurs outside of this state and if the test, modification, or inspection period does not exceed ninety days;

(XV) The sale of special fuel, as defined in section 39-27-101 (6.3), used for the operation of farm vehicles when such vehicles are being used on farms and ranches;

(XVI) Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1) (e);

(XVII) Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1) (e);

(XVIII) All transactions specified in section 39-26-104 (1) (b) (I) in which the fair market value of the exchanged property is excluded from the consideration or purchase price because such exchanged property is covered by section 39-26-104 (1) (b) (I) (A) or (1) (b) (I) (B), and in which, because there is no additional consideration involved in the transaction, there is no purchase price within the meaning of section 39-26-102 (7);

(XIX) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

(A) The United States government, the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(B) Charitable organizations in the conduct of their regular charitable functions and activities; or

(C) Schools, other than schools held or conducted for private or corporate profit;

(XX) Commencing January 1, 1980, all sales of food;

(XXI) Effective July 1, 1980, all sales and purchases of electricity, coal, wood, gas, fuel oil, or coke sold, but not for resale, to occupants of residences, whether owned, leased, or rented by said occupants, for the purpose of operating residential fixtures and appliances which provide light, heat, and power for such residences. For the purposes of this subparagraph (XXI), "gas" includes natural, manufactured, and liquefied petroleum gas.

(XXII) Effective July 1, 1984, all sales of aircraft used or purchased for use in interstate commerce by a commercial airline;

(XXIII) The sale of tangible personal property that is to be permanently affixed or attached as a component part of an aircraft;

(XXIV) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock;

(XXV) All sales of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company;

(XXVI) From May 1, 1998, to and including April 30, 2001, and after April 30, 2001, internet access services, as defined in section 24-79-102 (2), C.R.S.

(b) Should a dispute arise between the purchaser and seller as to whether or not any sale, service, or commodity is exempt from taxation under this section, nevertheless the seller shall collect and the purchaser shall pay the tax, and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the executive director of the department of revenue, showing the names of the seller and the purchaser, the items purchased, the date, price, and amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to said executive director for a refund of such taxes, and it is then the duty of the executive director to determine the question of exemption. The purchaser may request a hearing pursuant to section 39-21-103, and the final determination of the executive director may be appealed to the district court pursuant to section 39-21-105.

(c) The department of revenue shall adopt rules and regulations for the administration and enforcement of this section.

(d) On application by a purchaser or seller, the department of revenue shall issue to a contractor or subcontractor a certificate or certificates of exemption indicating that the contractor's or subcontractor's purchase of construction or building materials is for a purpose stated in subparagraph (XIX) of paragraph (a) of this subsection (1) and is, therefore, free from sales tax. Said department shall provide forms for such application and for such certificate and shall have the authority to verify that the contractor or subcontractor is, in fact, entitled to the issuance of such certificate prior to such issuance.

(2) (a) A refund shall be made, or a credit allowed, for the tax so paid under dispute by any purchaser who has an exemption as provided in this article. Such refund shall be made by the executive director after compliance with the following conditions precedent: Applications for refund must be made within sixty days after the purchase of the goods whereon an exemption is claimed, and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller, and must be made upon such forms as shall be prescribed and furnished by the executive director, which forms shall contain such information as the executive director prescribes.

(b) Upon receipt of an application, the executive director shall examine the same with due speed and shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants, within thirty days after such decision is mailed to them, may petition the executive director for a hearing on the claim in the manner provided in section 39-21-103 and may appeal to the district courts in the manner provided in section 39-21-105. The right of any person to a refund under this article shall not be assignable, and, except as provided in paragraph (d) of this subsection (2), such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof. Any applicant for refund under the provisions of this section, or any other person, who willfully makes any false statement in connection with an application for a refund of any taxes shall be punished as provided by section 39-21-118.

(c) A refund shall be made or a credit allowed by the executive director to any person entitled to an exemption where such person establishes: That a tax was paid by another on a purchase made on behalf of such person; or that a tax was paid by an independent contractor on or before July 1, 1979, on tangible personal property incorporated into realty for the sole use, benefit, and ownership of any person entitled to an exemption; and that a refund has not been granted to the person making the purchase; and that the person entitled to exemption paid or reimbursed the purchaser for such tax. No such refund shall be made or credit allowed in an amount greater than the tax paid less the expense allowance on such purchase retained by the vendor pursuant to section 39-26-105 (1). No assessment may be made of validly issued refunds made under the rules and regulations governing this paragraph (c) in effect on June 7, 1979.

(d) Such application for refund under paragraph (c) of this subsection (2) shall be made within three years after the date of purchase and shall be made on forms prescribed and furnished by the executive director of the department of revenue, which form shall contain, in addition to the foregoing information, such pertinent data as said executive director prescribes. Upon receipt of such application and proof of the matters contained therein, the executive director shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants, within thirty days after such decision is mailed to them, may petition the executive director for a hearing on the claim in the manner provided in section 39-21-103 and may appeal to the district courts in the manner provided in section 39-21-105. Any applicant for refund under the provisions of this paragraph (d), or any other person, who makes any false statement in connection with an application for refund of any taxes is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(e) Claims for tax moneys paid in error or by mistake may be processed for refund in accordance with departmental regulations under paragraph (c) of this subsection (2); except that the proceeds of any such claim for refund shall first be applied by the department of revenue to any tax deficiencies or liabilities existing against the claimant before allowance of such claim by the department; and further except that, if such excess payment of tax moneys in any period is discovered as a result of audit by the department and deficiencies are discovered and assessed against the taxpayer as a result of such audit, such excess moneys shall be first applied against any deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.

(3) If any person is convicted under the provisions of this section, such convictions shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the executive director is empowered to bring appropriate action for recovery of such refunds. A brief summary statement of the above mentioned penalties shall be printed on each form application for refund.

(4) The burden of proving that sales, services, and commodities on which tax refunds are claimed are exempt from taxation under this part 1, or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the executive director prescribes. Should the applicant for refund be aggrieved at the final decision of the executive director, he may proceed to have the same reviewed by the district courts in the manner provided for review of other decisions of the executive director as provided in section 39-21-105.

(5) All sales and purchases of livestock; all sales and purchases of live fish for stocking purposes; and all farm close-out sales shall be exempt from taxation under this part 1, and the storage, use, or consumption of such property shall be exempt from taxation under part 2 of this article.

(6) All sales and purchases of feed for livestock; all sales and purchases of seeds; and all sales and purchases of orchard trees shall be exempt from taxation under this part 1, and the storage, use, or consumption of such property shall be exempt from taxation under part 2 of this article.

(7) (a) Every vendor selling individual items of personal property through coin-operated vending machines shall pay a sales tax pursuant to section 39-26-106 (2) (b) on the personal property sold in excess of fifteen cents through such coin-operated vending machines unless the sale is otherwise exempt under the provisions of this article.

(b) To be eligible for the exemption provided for in this subsection (7), each vendor shall:

(I) Be licensed under section 39-26-103;

(II) Maintain a record of the identification number, ownership, location, and disposition of every coin-operated vending machine used by him in his operation as a vendor;

(III) Within sixty days after commencing business as such vendor, submit to the department of revenue an accurate list containing the information required under subparagraph (II) of this paragraph (b) and submit such list annually thereafter on January 1, commencing in 1971;

(IV) Make application to the department of revenue for identification numbers to be affixed to every such coin-operated vending machine, in accordance with rules and regulations promulgated by the executive director of the department of revenue;

(V) Remit a fee of ten cents per machine with the application submitted under this paragraph (b), to defray the expenses of the department of revenue in furnishing such identification numbers; except that the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(c) Any unregistered coin-operated vending machine found being used for retail sales at any place in this state without the prescribed identification number affixed thereto may be seized without warrant by the department of revenue, its agents, or employees or by any peace officer when directed or requested by the department of revenue. At the time of seizure, written notice of seizure shall be given to the proprietor or person in charge of the business, or to the agents or employees of the proprietor or person in charge of the business, where the vending machine is seized. The department shall also give notice by first-class mail as set forth in section 39-21-105.5 to the person whose name and mailing address appear on the machine. The department shall not be required to seize and confiscate any unregistered vending machine or assess a penalty when there is reason to believe that the owner thereof is not intentionally evading the tax imposed by this article.

(d) In addition to any other penalty provided by law, the department of revenue is authorized to assess and collect a penalty of twenty-five dollars for each unregistered vending machine being operated in this state.

(e) Upon proof of ownership, the department of revenue shall deliver to the owner thereof any vending machine seized under paragraph (c) of this subsection (7) after payment of the twenty-five-dollar penalty and seizure costs, if the owner is liable therefor, and upon registration of the machine. At the expiration of sixty days after the date of notice, any unregistered vending machine and the contents therein still in the possession of the department of revenue may be sold at public sale to the highest bidder, but, prior to any such sale, ten days' notice of the sale shall be given by first-class mail as set forth in section 39-21-105.5 to those entitled to notice under paragraph (c) of this subsection (7).

(7.5) On or after January 1, 2000, all sales and purchases of food, as defined in section 39-26-102 (4.5), by or through vending machines shall be exempt from taxation under this part 1.

(8) All sales and purchases of straw and other bedding for use in the care of livestock or poultry shall be exempt from taxation under this part 1; and the storage, use, or consumption of straw and other bedding for use in the care of livestock or poultry shall be exempt from taxation under part 2 of this article.

(9) Repealed.

(10) Forty-eight percent of the purchase price of factory-built housing, as such housing is defined in section 24-32-703 (3), C.R.S., shall be exempt from taxation under this part 1; except that the entire purchase price in any subsequent sale of a manufactured home, as such vehicle is defined in section 42-1-102 (106) (b), C.R.S., after such manufactured home has been once subject to the payment of sales tax by virtue of section 39-26-113, shall be exempt from taxation under this part 1.

(11) (a) (I) Except as allowed in section 39-30-106, effective July 1, 1979, but prior to January 1, 1988, purchases of machinery or machine tools in excess of one thousand dollars by a person engaged in manufacturing to be used in Colorado directly and exclusively by such person in manufacturing tangible personal property, for sale or profit, are exempt from taxation under this part 1 to the extent such purchases do not exceed one hundred thousand dollars in calendar year 1979, two hundred thousand dollars in calendar year 1980, three hundred thousand dollars in calendar year 1981, four hundred thousand dollars in calendar year 1982, or five hundred thousand dollars in calendar year 1983, and in each calendar year thereafter.

(II) On or after July 1, 1996, purchases of machinery or machine tools, or parts thereof, in excess of five hundred dollars to be used in Colorado directly and predominantly in manufacturing tangible personal property, for sale or profit, are exempt from taxation under this part 1.

(b) A parent corporation and all closely held subsidiary corporations, as defined in section 39-26-102 (10) (k), shall be considered one person for the purposes of this section and, as a group, shall be subject to the provisions of paragraph (a) of this subsection (11).

(c) As used in this subsection (11):

(I) "Machinery" means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

(II) "Manufacturing" means the operation of producing a new product, article, substance, or commodity different from and having a distinctive name, character, or use from raw or prepared materials.

(c.5) For purposes of this subsection (11), direct use in manufacturing is deemed to begin for items normally manufactured from inventoried raw material at the point at which raw material is moved from plant inventory on a contiguous plant site and to end at a point at which manufacturing has altered the raw material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process is deemed to be directly used in manufacturing.

(d) In order to qualify for the exemption provided in this subsection (11), a purchase must be of such nature that it would have qualified for the investment tax credit against federal income tax as was provided by section 38 of the "Internal Revenue Code of 1954", as amended.

(e) An exemption may not be claimed under this subsection (11) for sales tax paid in another state which is credited against Colorado sales tax or use tax or both.

(f) To receive an exemption under this subsection (11), a declaration of entitlement must be filed by the purchaser with the vendor of the machinery or machine tools and with the executive director of the department of revenue.

(12) Repealed.

(13) In any case in which a sales tax has been imposed under this part 1 on lubricating oil used other than in motor vehicles, the purchaser thereof shall be entitled to a refund equal to the amount of the state sales tax paid on that portion of the sale price thereof which is attributable to the federal excise tax imposed on the sale of such lubricating oil. In any case in which a use tax has been imposed under part 2 of this article on lubricating oil used other than in motor vehicles, the payer of such tax is entitled to a refund equal to the amount of such use tax paid on that portion of the amount upon which the use tax was imposed which is attributable to the federal excise tax paid on such lubricating oil. The refund allowed under this subsection (13) shall be paid by the executive director upon receiving evidence that the purchaser has received under section 6424 of the federal "Internal Revenue Code of 1986", as from time to time amended, a refund of the federal excise tax paid on the sale of such lubricating oil. The claim for a refund shall be made upon such forms as shall be prescribed and furnished by the executive director, which forms shall contain such information as the executive director may prescribe.

(14) All sales and purchases of refractory materials and carbon electrodes used by a person manufacturing iron and steel for sale or profit and all sales and purchases of inorganic chemicals used in the processing of vanadium-uranium ores shall be exempt from taxation under this part 1, and the storage, use, or consumption of such property shall be exempt from taxation under part 2 of this article.

(15) All sales of food purchased with food stamps shall be exempt from taxation under this part 1. For the purposes of this subsection (15), "food" shall have the same meaning as provided in 7 U.S.C. section 2012 (g), as such section exists on October 1, 1987, or is thereafter amended.

(16) All sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. section 1786, shall be exempt from taxation under this part 1. For the purposes of this subsection (16), "food" shall have the same meaning as provided in 42 U.S.C. section 1786, as such section exists on October 1, 1987, or is thereafter amended.

(17) All sales of precious metal bullion and coins, as defined in section 39-26-102 (2.6) and (6.5), shall be exempt from taxation under the provisions of this part 1.

(18) (a) Effective July 1, 1995, all occasional sales by a charitable organization shall be exempt from taxation under this part 1.

(b) For purposes of this subsection (18), "occasional sales" means retail sales of tangible personal property, including concessions, for fund-raising purposes if:

(I) The sale of tangible personal property or concessions by the charitable organization takes place no more than twelve days, whether consecutive or not, during any one calendar year;

(II) The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service; and

(III) The funds raised by the charitable organization through these sales do not exceed twenty-five thousand dollars during any one calendar year.

(19) All sales and purchases of tangible personal property by a manufacturer that uses such property as a component part of goods that it manufactures, including, but not limited to, high technology goods, and that donates such goods to the United States government; the state of Colorado or any department, institution, or political subdivision thereof; or any organization exempt from federal income taxes pursuant to section 501 (c) (3) of the "Internal Revenue Code of 1986", as amended, to the extent that the aggregate value of the goods included in a single donation exceeds one thousand dollars shall be exempt from taxation under this part 1.

(20) (a) (I) All sales and purchases of farm equipment shall be exempt from taxation under this part 1.

(II) (A) Any farm equipment under lease or contract shall be exempt from taxation under this part 1 if the fair market value of such equipment is at least one thousand dollars and the equipment is rented or leased for use primarily and directly in any farm operation.

(B) The lessor or seller of such farm equipment shall obtain a signed affidavit from the lessee, renter, or purchaser affirming that the farm equipment will be used primarily and directly in a farm operation.

(b) For purposes of this subsection (20):

(I) "Attachments" means any equipment or machinery added to an exempt farm tractor or implement of husbandry that aids or enhances the performance of such tractor or implement.

(II) "Farm equipment" means farm tractors, as defined in section 42-1-102 (33), C.R.S., implements of husbandry, as defined in section 42-1-102 (44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars. "Farm equipment" also includes, regardless of purchase price, attachments and bailing wire, binders twine, and surface wrap used primarily and directly in any farm

operation. On and after July 1, 2000, "farm equipment" also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this subparagraph (II), all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. On and after July 1, 2001, "farm equipment" also includes, regardless of purchase price, dairy equipment. For purposes of this subsection (20), "dairy equipment" means any item that is used at a farm dairy in connection with the production of raw milk and not at a commercial dairy in connection with the production of pasturized, separated milk products for retail sale, including, without limitation: milking claws, shells, inflators, pulsators, meters, cow identification systems, transponders, automatic takeoffs, piping, receiver jars, pumps, filter assemblies, milk containment tanks, cooling compressors, wash vats, clean in place assemblies, wash lines, wash control units, pulsator controls, milking system controls, programmable logical control systems, vacuum pumps, vacuum distribution tanks, backflush and related valves, rubber and similar hoses, rubber and similar gaskets, and any other similar or related item used in any farm dairy facility or farm dairy operation or in the production of raw milk, regardless of whether or not the item has become a fixture. To the extent the farm dairy is also involved in the production of pasturized, separated milk products for retail sale, only the equipment used exclusively in the production of raw milk constitutes dairy equipment for purposes of this subsection (20). Except for shipping pallets, crates, or aids used in the transfer or shipping of agricultural products, "farm equipment" does not include:

(A) Vehicles subject to the registration requirements of section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used;

(B) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;

(C) Maintenance and janitorial equipment and supplies; and

(D) Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

(III) "Farm operation" means the production of any of the following products for profit, including but not limited to a business that hires out to produce or harvest such products:

(A) Agricultural, viticultural, fruit, and vegetable products;

(B) Livestock, as defined in section 39-26-102 (5.5);

(C) Milk;

(D) Honey; and

(E) Poultry and eggs.

(21) (a) All sales and purchases of agricultural compounds to be consumed by, administered to, or otherwise used in caring for livestock and all sales and purchases of semen for agricultural or ranching purposes shall be exempt from taxation under this part 1.

(b) For purposes of this subsection (21), "agricultural compounds" means:

(I) Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;

(II) Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock; and

(III) Animal pharmaceuticals that have been approved by the food and drug administration.

(22) (a) The sale of any motor vehicle, power source for any motor vehicle, or parts used for converting the power source for any motor vehicle if the gross vehicle weight rating of the motor vehicle is greater than ten thousand pounds and if the motor vehicle, power source, or parts used for converting the power source are certified by the federal environmental protection agency or any state as provided in the "Federal Clean Air Act" as meeting an emission standard equal to or more stringent than the low-emitting vehicle emission standard shall be exempt from taxation under the provisions of this part 1.

(b) For purposes of this subsection (22), unless the context otherwise requires:

(I) "Motor vehicle" shall have the same meaning as set forth in section 39-22-516 (2.5) (a) (III).

(II) "Parts used for converting" shall mean the wiring, fuel lines, engine coolant system, fuel storage containers, fuel control system, and other components associated with reducing the emissions characteristics of an engine or motor.

(III) "Power source" shall have the same meaning as set forth in section 39-22-516 (2.5) (a) (V).

(23) All sales and purchases of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S., shall be exempt from taxation under this part 1.

(24) All sales of equipment, as defined in section 12-9-102 (5), C.R.S., to a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S., shall be exempt from taxation under this part 1.

Editor's note: (1) The amendment to this section made by chapter 1, L. 91, First Extraordinary Session, p. 6, section 9, supersedes the amendment made by chapter 330, L. 91, p. 2397, section 20. Both acts contained a July 1, 1991, effective date. However the Governor did not sign the act enacted at the First Extraordinary Session until July 5. The act contained in chapter 1 from the First Extraordinary Session was subject to an interrogatory submitted to the Supreme Court by the Governor. The court held the act constitutional on its face. (See In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).)

(2) Subsection (19) was originally numbered as (20) in House Bill 98-1269 but has been renumbered on revision for ease of location.

(3) Amendments to the introductory portion to subsection (20)(b)(II) by Senate Bill 01-055 and House Bill 01-1256 were harmonized.

Cross references: (1) For the legislative declaration contained in the 1996 act amending subsections (1)(a)(XXIV) and (1)(a)(XXV), see section 1 of chapter 237, Session Laws of Colorado 1996.

(2) For the legislative declaration contained in the 1999 act enacting subsection (23), see section 1 of chapter 318, Session Laws of Colorado 1999.

Am. Jur.2d. See 68 Am. Jur.2d, Sales and Use Taxes, § § 116-139, 141-164.

C.J.S. See 53 C.J.S., Licenses, § § 35-36, 72.

Law reviews. For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989). For article, "Colorado's Machinery Exemption", see 25 Colo, Law. 65 (January 1996). For article, "Colorado Machinery Exemption: An Update", see 25 Colo. Law. 113 (October 1996). For article, "State and Local Sales and Use Tax Exemptions for Colorado Charitable Organizations", see 29 Colo. Law. 55 (August 2000).

Taxation is the rule and exemption therefrom is the exception. Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972); Department of Rev. v. Durango & Silverton Narrow Gauge R.R. Co., 989 P.2d 208 (Colo. App. 1999); Colo. Dept. of Rev. v. City of Aurora, 32 P.3d 590 (Colo. App. 2001); Ball Corp. v. Fisher, __ P.3d __ (Colo. App. 2001).

There is a strong presumption that taxation is the rule and exemption the rare exception. Southwest Catholic Credit Union v. Charnes, 665 P.2d 626 (Colo. App. 1982).

The burden is on the taxpayer who claims an exemption to clearly establish the right to such an exemption. Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972); Department of Rev. v. Durango & Silverton Narrow Gauge R.R. Co., 989 P.2d 208 (Colo. App. 1999).

By including the phrase "as amended" in subsection (11)(d) of this section, the general assembly indicated that that paragraph was intended to track the referenced federal provision as it evolved. Ball Corp. v. Fisher, __ P.3d __ (Colo. App. 2001).

Sales to governmental agencies exempt only when used in governmental capacity. Sales to the United States government and to the state of Colorado, its departments, institutions, and political subdivisions thereof are exempt under the provisions of the sales and use tax only where they are to be used by them in their "governmental capacities". Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972).

Governmental exemption not applicable to independent contractor. This section does not embrace a contractor which is neither a branch, agency, or alter ego of the United States government, but merely an independent contractor under contract with the United States government. Temple v. Arthur Venneri Co., 172 Colo. 105, 470 P.2d 576 (1970).

Reimbursement of taxes to contractor cannot exempt sale. The mere fact that a municipality reimburses a private contractor for taxes does not establish that a sale of goods was made to the municipality and is thus exempt from taxes under subsection (1)(a). Weed v. City of Pueblo, 197 Colo. 52, 591 P.2d 80 (1979).

State did not err in declining to impose a constructive trust upon use taxes erroneously paid to the state by taxpayers of the city and in failing to grant the city restitution for money had and received. The city is prohibited by its own legislation from seeking to recover the funds. The city's ordinance is a statute of repose that precludes the city from commencing any action, including equitable as well as legal actions, to recover use taxes after a three-year period. City of Colorado Springs v. Tipton, 910 P.2d 75 (Colo. App. 1995).

Company purchases made for charitable functions exempt. Purchases made by a company in connection with its charitable functions and activities, regardless of the nature of its ordinary business, are exempt from the operation of this article. Bedford v. Colorado Fuel & Iron Corp., 102 Colo. 538, 81 P.2d 752 (1938).

Only purchases used in regular charitable activities. Only those purchases by charitable organizations which are for use in the conduct of their regular charitable functions and activities are exempt from the sales and use tax. Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972).

Insurance companies do not fall within the classifications of the entities exempted under the sales and use tax. Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972).

No exemption for state chartered credit unions. No exemption as to payment of sales taxes is provided to state chartered credit unions. Southwest Catholic Credit Union v. Charnes, 665 P.2d 626 (Colo. App. 1982).

Railroad is exempt from the sales tax imposed by this section with respect to sales of food and beverages sold by the railroad to passengers on its line pursuant to subparagraph (1)(A)(III) of this section and § 40-20-109. Department of Rev. v. Durango & Silverton Narrow Gauge R.R. Co., 989 P.2d 208 (Colo. App. 1999).

Fraternal benevolent societies are not exempt from sales taxes that were not contemplated in 1911 when they were declared to be "charitable and benevolent institution[s]" when such sales tax was first adopted in 1935 and the legislature imposed the tax on "all sales and purchases of tangible personal property at retail". This is particularly true if the legislation that created the tax listed specific exemptions that did not include fraternal benevolent societies. Colorado Dept. of Rev. v. Woodmen of the World, 919 P.2d 806 (Colo. 1996).

The reintroduction of the words "and every" to a phrase making it read "all and every state tax" does not strengthen and reaffirm the broad scope of the exemption for fraternal benefit societies, it merely was replaced after being determined by the revisor of statutes to be redundant. The meaning of the phrase remains unchanged. Colorado Dept. of Rev. v. Woodmen of the World, 919 P.2d 806 (Colo. 1996).

City should have imposed sales tax on golf cart rentals because city acted in a proprietary capacity in renting golf carts. Since sales tax had not been collected, requiring city to pay use tax in lieu of sales tax was appropriate. Colo. Dept. of Rev. v. City of Aurora, 32 P.3d 590 (Colo. App. 2001).

Applied in First Lutheran Mission v. Department of Revenue, 44 Colo. App. 417, 613 P.2d 351 (1980).

39-26-115. Deficiency due to negligence.

If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten percent of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under section 39-21-110.5, in addition to the interest provided by section 39-21-109, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten days after written notice and demand to him by the executive director of the department of revenue. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent of the total amount of the deficiency, and, in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten days after written notice and demand by the executive director, and an additional three percent per month on said amount shall be added from the date the return was due until paid.

Law reviews. For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

Penalty provisions applicable to sales and use taxes. The penalty provisions of this section apply to sales taxes under part 1 of article 26, and also to use taxes under part 2. Rose v. Executive Dir. of Dep't of Revenue, 42 Colo. App. 319, 593 P.2d 982 (1979).

Section imposes a penalty upon an intentional but nonfraudulent avoidance of the sales tax. Western Elec. Co. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974).

To avoid penalty imposed by section, taxpayer should pay tax under protest and then seek judicial review. Western Elec. Co. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974).

39-26-116. Record of sales.

It is the duty of every person engaging or continuing in business in this state, for the transaction of which a license is required under this part 1 to keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable under this part 1. It is the duty of every such person to keep and preserve for a period of three years all invoices of goods and merchandise purchased for resale and all such books, invoices, and other records shall be open for examination at any time by the executive director of the department of revenue or his duly authorized agent.

39-26-117. Tax lien - exemption from lien.

(1) (a) Except as provided in paragraphs (b) and (f) of this subsection (1), the tax imposed by this part 1 shall be a first and prior lien upon the goods and business fixtures of or used by any retailer or qualified purchaser under lease, title retaining contract, or other contract arrangement, excepting stock of goods sold or for sale in the ordinary course of business, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature.

(b) Any retailer or person in possession shall provide a copy of any lease pertaining to the assets and property described in paragraph (a) of this subsection (1) to the department of revenue within ten days after seizure by the department of such assets and property. The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in paragraph (a) of this subsection (1). The real or personal property of an owner who has made a bona fide lease to a retailer shall be exempt from the lien created in paragraph (a) of this subsection (1) if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in paragraph (a) of this subsection (1); except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(b.5) Any coin-operated vending machine or video or other game machine shall be exempt from the lien created in paragraph (a) of this subsection (1) if:

(I) The machine is placed on the retailer's premises under the terms of a lease or other agreement under which the retailer is given no right to become the owner of the machine;

(II) The machine is plainly marked in a location accessible to agents of the department of revenue with information sufficient to permit identification of the owner of said property; and

(III) The owner of the machine has filed with the department of revenue a schedule listing the machine by serial number and including thereon the owner's full name and the address of his business and such other information as the executive director of the department of revenue may require. To protect the anonymity of owners of property, the executive director of the department of revenue may permit property covered by this paragraph (b.5) to be marked using numbers or other coded identification.

(c) Any retailer who is in possession of property under the terms of a lease, which property is exempt from lien as provided in this section, may be required by the executive director of the department of revenue to remit taxes collected at more frequent intervals than monthly, but no more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

(d) Any retailer who sells out his business or stock of goods, or quits business, shall be required to make out the return as provided in this part 1, within ten days after the date he sold his business or stock of goods or quit business, and his successor in business shall be required to withhold sufficient purchase money to cover the amount of said taxes due and unpaid until such time as the former owner produces a receipt from the executive director of the department of revenue showing that the taxes have been paid or a certificate that no taxes are due.

(e) If the purchaser of a business or stock of goods fails to withhold the purchase money as provided in paragraph (d) of this subsection (1), and the taxes are due and unpaid after the ten-day period allowed, he, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any retailer under lease, title retaining contract, or other contract arrangement, by purchase, foreclosure sale, or otherwise, takes same subject to the lien for any delinquent sales taxes owed by such retailer and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of property so taken or acquired.

(f) Any qualified purchaser that provides a direct payment permit number issued pursuant to section 39-26-103.5 to a vendor or retailer shall be subject to the lien created in paragraph (a) of this subsection (1) to the extent of any tax owed as a result of purchases made by the qualified purchaser plus any penalty and interest assessed pursuant to this article or article 21 of this title.

(2) Whenever the business or property of any taxpayer subject to this part 1 shall be placed in receivership, bankruptcy, or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties, and interest imposed by this part 1, and for which said retailer is in any way liable under the terms of this part 1, shall be a prior and preferred claim against all the property of said taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the filing of the notice as provided in section 39-26-118 on the property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer. No sheriff, receiver, assignee, or other officer shall sell the property of any person subject to this part 1 under process or order of any court without first ascertaining from the executive director the amount of any taxes due and payable under this part 1, and, if there are any such taxes due, owing, or unpaid, it is the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as provided in this section. For the purposes of this part 1, "taxpayer" includes "retailer".

Constitutionality. This section does not create separate classes of persons in violation of the equal protection clause of the fourteenth amendment. ITT Diversified Credit Corp. v. Couch, 669 P.2d 1355 (Colo. 1983).

This section, as used to seize property of lessor due to lessee's violation, does not violate due process nor does it effect a taking. This section represents a valid exercise of the sovereign power to assess and collect taxes, which is distinguishable from the taking of private property for a public purpose. Burtkin Associates v. Tipton, 845 P.2d 525 (Colo. 1993).

This section does not violate the equal protection and due process rights of a consignor when a rational basis exists for exempting leased property from the tax lien while enforcing the tax lien against consigned property. Van Dorn Retail Mgt., Inc. v. City & County of Denver, 902 P.2d 383 (Colo. App. 1994).

Lien imposed by section valid. In an action involving the priority of liens of a chattel mortgage and that of sales taxes under this section, the statutory lien cannot be considered "secret" and thus without validity. Sweeney Elec. Co. v. Poston, 110 Colo. 139, 132 P.2d 443 (1942).

Any lien for general taxes on personal property is inferior to the lien under this section. City & County of Denver v. Armstrong, 105 Colo. 290, 97 P.2d 448 (1939); Sweeney Elec. Co. v. Poston, 110 Colo. 139, 132 P.2d 443 (1942).

Lien takes priority over security interest. A lien for sales and service taxes takes priority over a security interest which has previously attached. Young v. Golden State Bank, 632 P.2d 1053 (Colo. App. 1981).

A lien for state sales taxes is a first and prior lien on goods and business fixtures and has priority over a prior perfected security interest. ITT Diversified Credit Corp. v. Couch, 669 P.2d 1355 (Colo. 1983); Wimmer v. Jenkins, 703 P.2d 1326 (Colo. App. 1985).

There is a statutory priority for tax liens over any interest a third party might have in the goods, stock in trade, and business fixtures of a delinquent taxpayer. ITT Diversified Credit Corp. v. Couch, 669 P.2d 1355 (Colo. 1983).

Statutory priority for tax liens over perfected security interests in goods and business fixtures is not limited to the period when the goods are in the control of the delinquent taxpayer and to permit such priority to be terminated upon repossession of the goods by a secured party would defeat the public policy and legislative intent of tax lien priority statutes. ITT Diversified Credit Corp. v. Couch, 669 P.2d 1355 (Colo. 1983).

Under this section, mere use of personal property subjects it to a lien, notwithstanding the lack of ownership in the using party. Horacek v. Cherry Creek Corp., 28 Colo. App. 258, 472 P.2d 158 (1970).

Subsection (1)(a) exemption limited. The exemption created in subsection (1)(a) protects only the retail customers of the taxpayer who purchased goods from the retailer's inventory in the ordinary course of business. The exception does not apply to persons who obtain the retailer's goods and fixtures by foreclosure, bulk sale of inventory, or repossession. ITT Diversified Credit Corp. v. Couch, 669 P.2d 1355 (Colo. 1983).

Strict compliance with recording requirements in subsection (1)(b) is required in order to qualify for tax lien exemption. Charnes v. Norwest Leasing, Inc., 787 P.2d 145 (Colo. 1990).

Under this section, liens for sales and use taxes are entitled to priority over all other liens, including liens of the FDIC. Pima Financial Serv. v. Intermountain Home Systems, 786 F. Supp. 1551 (D. Colo. 1992).

39-26-118. Recovery of taxes, penalty, and interest.

(1) All sums of money paid by the purchaser to the retailer as taxes imposed by this article shall be and remain public money, the property of the state of Colorado, in the hands of such retailer, and he shall hold the same in trust for the sole use and benefit of the state of Colorado until paid to the executive director of the department of revenue, and, for failure to so pay to the executive director, such retailer shall be punished as provided by law.

(2) (a) If a person neglects or refuses to make a return in payment of the tax or to pay any tax as required by this article, the executive director of the department of revenue shall make an estimate, based upon the information that may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars for the failure or ten percent thereof plus one-half percent per month from the date when due, not exceeding eighteen percent in the aggregate, and interest on the delinquent taxes at the rate imposed under section 39-21-110.5. Promptly thereafter, the executive director shall give to the delinquent taxpayer written notice of the estimated taxes, penalty, and interest, which notice shall be sent by first-class mail as set forth in section 39-21-105.5.

(b) Such estimate shall thereupon become a notice of deficiency as provided in section 39-21-103. A hearing may be held and the executive director shall make a final determination pursuant to that section. The taxpayer may appeal the said final determination in the manner provided in section 39-21-105.

(3) (a) If any taxes, penalty, or interest imposed by this article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this section are not paid within five days after the same are due, the executive director shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties, and interest, the date of the accrual thereof, and that the state of Colorado claims a first and prior lien therefor on the real and tangible personal property of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice as provided in this section on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.

(b) Said notice shall be on forms prepared by the executive director, and shall be verified by him or his duly qualified deputy, or any duly qualified agent of the executive director, whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder of any county in the state in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create such lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice is filed or not, the executive director may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of any county of the state, commanding him to levy upon, seize, and sell sufficient of the real and personal property of the tax debtor found within his county for the payment of the amount due, together with interest, penalties, and costs, as may be provided by law, subject to valid preexisting claims or liens.

(4) Such revenue collector or the sheriff shall forthwith levy upon sufficient of the property of the taxpayer, or any property used by such taxpayer in conducting his retail business, except property made exempt from lien pursuant to the provisions of section 39-26-117 (1) (b), and said property so levied upon shall be sold in all respects with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishments shall apply. The sheriff shall be entitled to such fees in executing such warrant as are allowed by law for similar services.

(5) Any lien for taxes as shown on the records of the county clerk and recorders as provided in this section, upon payment of all taxes, penalties, and interest covered thereby, shall be released by the executive director in the same manner as mortgages and judgments are released.

(6) It is the duty of any county clerk and recorder to whom such notices are sent to file and record the same without cost or charge.

(7) (a) The executive director may also treat any such taxes, penalties, or interest due and unpaid as a debt due the state from the vendor. In case of failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the executive director may receive at law the amount of such taxes, penalties, and interest in such county or district court of the county wherein the taxpayer resides or has his principal place of business having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the executive director, as provided in this article, shall be prima facie proof of the amount due.

(b) Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff, and in any such proceeding no bond shall be required of the executive director, nor shall any sheriff require of the executive director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings; and the executive director may prosecute appeals in such cases without the necessity of providing bond therefor. It is the duty of the attorney general or any district attorney, when requested by the executive director, to commence action for the recovery of taxes due under this article, and this remedy shall be in addition to all other existing remedies or remedies provided in this article and article 21 of this title.

(8) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the state of Colorado may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. In any such action, service of summons upon the executive director or any person in charge of the office of the executive director shall be sufficient service and binding upon the state of Colorado.

(9) The executive director is authorized to waive, for good cause shown, any penalty or interest assessed as provided in this article and article 21 of this title, and interest imposed in excess of the rate imposed under section 39-21-110.5 shall be deemed a penalty.

Section constitutional. The provisions of this section, giving to the director of revenue the power of distraint, levy, and sale, do not unconstitutionally confer judicial powers upon the executive branch of government. Sweeney Elec. Co. v. Poston, 110 Colo. 139, 132 P.2d 443 (1942).

Retailer collecting tax deemed trustee. A retailer who collects the tax by virtue of this section is a trustee and answerable to the state for such moneys until they are paid over to the state treasurer. Sweeney Elec. Co. v. Poston, 110 Colo. 139, 132 P.2d 443 (1942).

Revocation of authority to remit sales tax on cash receipt basis is not notice of deficiency. A determination that sales tax on credit sales should be remitted on a sales or accrual basis and the revocation of authority to remit on cash receipt basis was not a notice of deficiency and assessment of tax under subsection (2). Montgomery Ward & Co. v. State Dep't. of Revenue, 675 P.2d 318 (Colo. App. 1983).

Section 39-26-125 governs the department's attempt to collect sales tax in general, including those held in trust by virtue of this section, which merely describes the nature of the taxes held by the retailer and does not purport to usurp the mandates of the statute of limitations. F.W. Woolworth Co. v. State Dept. of Revenue, 699 P.2d 1 (Colo. App. 1984).

In order to enforce liens for sales taxes, the department of revenue may activate its liens by recording the notice of delinquency pursuant to this section or by the more immediate means of distraint in accordance with § 39-21-114. ITT Diversified Credit Corp. v. Couch, 669 P.2d 1355 (Colo. 1983).

Applied in Dye Constr. Co. v. Dolan, 41 Colo. App. 293, 589 P.2d 497 (1978).

39-26-119. License and tax additional.

The license and tax imposed by this part 1 shall be in addition to all other licenses and taxes imposed by law, except as otherwise provided in this part 1.

39-26-120. False or fraudulent return, statement - penalty.

(1) It is unlawful for any retailer or vendor to refuse to make any return required to be made in this part 1 or to make any false or fraudulent return or false statement on any return, or fail and refuse to make payment to the executive director of the department of revenue of any taxes collected or due the state, or in any manner evade the collection and payment of the tax, or any part thereof, or for any person or purchaser to fail or refuse to pay such tax, or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax.

(2) Any person willfully violating any of the provisions of this section is guilty of a felony. Any corporation willfully making a false return or a return willfully containing a false statement, is guilty of a felony. Any court of competent jurisdiction of the county in which the offender resides, or, if a corporation, then the county of its principal place of business, shall have jurisdiction to enforce this section.

(3) In addition to the foregoing penalties, any person who knowingly and willfully swears to or verifies any false statement is guilty of perjury in the second degree and, upon conviction thereof, shall be punished in the manner provided by law.

39-26-121. Penalty.

Unless otherwise provided in this part 1, any person guilty of a felony, as defined and declared in this part 1, upon conviction thereof, shall be punished as provided by section 39-21-118.

39-26-122. Administration.

The administration of this part 1 is vested in and shall be exercised by the executive director of the department of revenue who shall prescribe forms and reasonable rules and regulations in conformity with this part 1 for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed under this part 1, and for the proper administration and enforcement of this part 1.

Injunction prohibiting executive director from promulgating rules and regulations is improper interference with the executive branch of government. Colorado College v. Heckers, 33 Colo. App. 219, 517 P.2d 419 (1973).

Because courts cannot interfere until director exercises authority. Actions of the executive director are subject to judicial review, but until he has exercised his authority, the courts may not interfere with the administrative authority vested in him. Colorado College v. Heckers, 33 Colo. App. 219, 517 P.2d 419 (1973).

39-26-123. Receipts - disposition.

(1) Eighty-five percent of all receipts collected under the provisions of this article shall be credited to the old age pension fund. Before July 1, 1997, the remaining fifteen percent shall be credited to the general fund, and the general assembly shall make appropriations therefrom for the expenses of the administration of this article.

(2) (a) (I) (A) Eighty-five percent of all receipts collected under the provisions of this article shall be credited to the old age pension fund. For the fiscal year commencing July 1, 1997, and for each fiscal year thereafter, except for the fiscal year commencing July 1, 2000, the remaining fifteen percent shall be allocated between and credited to the general fund and the highway users tax fund, as a portion of the sales and use taxes attributable to sales or use of vehicles and related items, as follows: Except as otherwise provided in sub-subparagraph (A.8) of this subparagraph (I), subparagraph (I.5) of this paragraph (a), paragraph (a.5) of this subsection (2), and subsection (3) of this section, ten percent of net revenue from sales and use tax to the highway users tax fund and five percent thereof to the general fund.

(A.5) Notwithstanding sub-subparagraph (A) of this subparagraph (I), commencing with state fiscal year 2000-2001, the amount of the net revenue allocated to the highway users tax fund shall be increased and the amount allocated to the general fund shall be decreased in accordance with section 24-75-216, C.R.S., in order to offset lower motor vehicle registration fees pursuant to the application of the fee reductions enacted by House Bill 00-1227, enacted at the second regular session of the sixty-second general assembly.

(A.6) For the fiscal year commencing July 1, 2000, eighty-five percent of all receipts collected under the provisions of this article shall be credited to the old age pension fund. The remaining fifteen percent shall be allocated among and credited to the general fund, to the older Coloradans cash fund established in section 26-11-205.5, C.R.S., as providing additional services to Coloradans sixty years of age and older, and to the highway users tax fund, as a portion of the sales and use taxes attributable to sales or use of vehicles and related items, as follows: Ten percent of the net revenue from sales and use tax to the highway users tax fund; three million dollars to the older Coloradans cash fund; and five percent of the net revenue from sales and use tax, less three million dollars, to the general fund.

(A.7) Commencing August 1, 2000, the allocation of receipts under sub-subparagraph (A) of this subparagraph (I) to the highway users tax fund shall be increased by fifteen one-thousandths of a percentage point, and the allocation to the general fund shall be decreased by fifteen one-thousandths of a percentage point, pursuant to House Bill 00-1162, enacted at the second regular session of the sixty-second general assembly. The modifications to the allocation of receipts made pursuant to this sub-subparagraph (A.7) shall be in addition to any other modifications to the allocation of such receipts made by law.

(A.8) On and after February 1, 2001, up to and including June 30, 2001, and for fiscal years beginning on and after July 1, 2001, the allocation of receipts under sub-subparagraph (A) of this subparagraph (I) to the highway users tax fund shall be increased by thirty-four one-hundredths of a percentage point, and the allocation to the general fund shall be decreased by thirty-four one-hundredths of a percentage point, pursuant to House Bill 00-1259, enacted at the second regular session of the sixty-second general assembly. The modifications to the allocation of receipts made pursuant to this sub-subparagraph (A.8) shall be in addition to any other modifications to the allocation of such receipts made by law.

(A.9) (Deleted by amendment, L. 2002, p. 145, § 2, effective March 27, 2002.)

(B) For purposes of this section, "net revenue" means the gross amount of sales and use tax receipts collected under the provisions of this article, less three and one-third percent of such amount retained by vendors for the collection and remittance of such tax pursuant to section 39-26-105 (1) (a).

(I.5) Notwithstanding any provision of subparagraph (I) of this paragraph (a) to the contrary, for the fiscal year 2001-02, any net revenue from sales and use tax that would have otherwise been allocated to the highway users tax fund pursuant to sub-subparagraph (A) of subparagraph (I) of this paragraph (a) shall be allocated to the general fund.

(II) (A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (II), in any fiscal year, if the revenue estimate prepared in accordance with section 24-75-201.3 (2), C.R.S., indicates that, after making required expenditures, making the allocation to the highway users tax fund in accordance with sub-subparagraph (A) of subparagraph (I) of this paragraph (a), and maintaining the statutorily required reserve, there will not be sufficient general fund revenue to fund general fund expenditures up to the statutory appropriation limit, the governor shall direct the state treasurer to reduce the amount of sales and use taxes credited to the highway users tax fund as necessary to provide the additional general fund revenue to fully fund the general fund expenditures up to the statutory appropriation limit.

(B) The provisions of sub-subparagraph (A) of this subparagraph (II) shall not apply in fiscal year 2001-02.

(III) (Deleted by amendment, L. 99, p. 561, § 1, effective May 7, 1999.)

(a.5) For the 2002-03 fiscal year, in the event of any transfer of moneys to the general fund pursuant to section 24-75-201.5 (1) (d), C.R.S., eighty-five percent of all receipts collected under the provisions of this article shall be credited to the old age pension fund, and the remaining fifteen percent shall be allocated to the general fund for said fiscal year, unless on or after January 1, 2003, sufficient general fund revenues are received by the state to:

(I) Make required expenditures, as defined in subparagraph (I) of paragraph (b) of this subsection (2);

(II) Fully fund general fund expenditures for such fiscal year based on appropriations then in effect;

(III) Make transfers from the general fund to the employment support fund, the tobacco litigation settlement trust fund, the unclaimed property trust fund, and the major medical insurance fund on or before June 30, 2003, in order to restore to said funds any amounts transferred pursuant to section 24-75-201.5 (1) (d) (II), C.R.S.; and

(IV) Maintain the reserve required by section 24-75-201.1 (1) (d), C.R.S.

(b) As used in this section:

(I) "Required expenditures" means the total of all moneys continuously appropriated by a permanent statute or constitutional provision.

(II) (A) "Sales and use taxes attributable to sales or use of vehicles and related items" means the revenue raised from the state sales and use taxes imposed pursuant to this article on the sales or use of new or used motor vehicles, including motor homes, motor vehicle batteries, tires, parts, or accessories, utility trailers, camper coaches, or camper trailers.

(B) With respect to sales tax, "related items" includes only items sold by persons whose primary business activity is the sale or service of motor vehicles or related items.

(c) If the general assembly implements a tax policy change resulting in a significant reduction of general fund revenues, the general assembly shall:

(I) Examine the conditions imposed on the revenues credited to the highway users tax fund in subparagraphs (II) and (III) of paragraph (a) of this subsection (2) and shall determine whether such conditions should be modified in light of any such change; and

(II) Examine the amount of sales and use taxes credited to the highway users tax fund pursuant to paragraph (a) of this subsection (2) and shall determine whether such amount should be modified in light of any such change.

(d) For the fiscal year commencing July 1, 1997, and for each fiscal year thereafter, the state treasurer shall credit an amount of sales and use taxes attributable to sales or use of vehicles and related items to the highway users tax fund as provided in paragraph (a) of this subsection (2).

(e) (Deleted by amendment, L. 99, p. 561, § 1, effective May 7, 1999.)

(3) Commencing July 1, 2002, the allocation of receipts under sub-subparagraph (A) of subparagraph (I) of paragraph (a) of subsection (2) of this section to the general fund shall be decreased by one million dollars, and such amount shall be credited to the supplemental old age pension health and medical care fund created in section 26-2-117 (3), C.R.S., pursuant to House Bill 02-1276, enacted at the second regular session of the sixty-third general assembly. The modifications to the allocation of receipts made pursuant to this subsection (3) shall be in addition to any other modifications to the allocation of such receipts made by law.

(4) For the fiscal years commencing on and after July 1, 2002, eighty-five percent of all receipts collected under the provisions of this article shall be credited to the old age pension fund. The remaining fifteen percent shall be allocated among and credited to the general fund, to the older Coloradans cash fund established in section 26-11-205.5, C.R.S., as providing additional services to Coloradans sixty years of age and older, and to the highway users tax fund, as a portion of the sales and use taxes attributable to sales or use of vehicles and related items, as follows: Ten percent of the net revenue from sales and use tax to the highway users tax fund; two million dollars to the older Coloradans cash fund; and five percent of the net revenue from sales and use tax, less two million dollars, to the general fund.

39-26-124. Applicability to banks.

The provisions of this part 1 shall apply to national banking associations and to banks organized and chartered under the laws of this state.

39-26-125. Limitations.

The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this part 1 shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes, may be begun, at any time. Before the expiration of such period of limitation, the taxpayer and the executive director of the department of revenue may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

PART 2 USE TAX

39-26-201. Definitions.

In addition to the definitions in section 39-26-102, as used in this part 2, unless the context otherwise requires:

(1) "Acquisition charges or costs" includes "purchase price", as defined in section 39-26-102 (7).

(2) "Person" means an individual, corporation, limited liability company, partnership, firm, joint adventure, association, estate, trust, receiver, or group acting as a unit and includes the plural as well as the singular number.

(3) "Storage" or "storing" means any keeping or retention of, or exercise of dominion or control over, tangible personal property in this state.

39-26-202. Authorization of tax.

(1) (a) Except as otherwise provided in paragraph (b) of this subsection (1) and in subsection (3) of this section, there is imposed and shall be collected from every person in this state a tax or excise at the rate of three percent of storage or acquisition charges or costs for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail.

(b) On and after January 1, 2001, there is imposed and shall be collected from every person in this state a tax or excise at the rate of two and ninety one-hundredths percent of storage or acquisition charges or costs for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail.

(c) Such tax shall be payable to and shall be collected by the executive director of the department of revenue and shall be computed in accordance with schedules or systems approved by said executive director. The transfer of wireless telecommunication equipment as an inducement to enter into or continue a contract for telecommunication services that are taxable pursuant to part 1 of this article shall not be construed to be storage, use, or consumption of such equipment by the transferror.

(2) Notwithstanding the three percent rate provisions of subsection (1) of this section, for the period May 1, 1983, through July 31, 1984, the rate of the tax imposed pursuant to this section shall be three and one-half percent.

(3) (a) Notwithstanding the rate provisions of paragraphs (a) and (b) of subsection (1) of this section, for any fiscal year commencing on or after July 1, 2000, if the revenue estimate prepared by the staff of the legislative council in June of the calendar year in which that fiscal year ends indicates that the aggregate amount of state revenues will exceed the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for that fiscal year by three hundred fifty million dollars or more, as adjusted pursuant to paragraph (b) of this subsection (3), and voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year, the tax imposed pursuant to subsection (1) of this section shall be imposed upon any sale of a new or used commercial truck, truck tractor, tractor, semitrailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of twenty-six thousand pounds for the period commencing on July 1 of the calendar year in which that fiscal year ends through June 30 of the immediately subsequent calendar year, at a rate of one one-hundredth of one percent.

(b) (I) No later than October 1 of any given calendar year commencing on or after January 1, 2001, the executive director shall annually adjust the dollar amount specified in paragraph (a) of this subsection (3) to reflect the rate of growth of Colorado personal income for the calendar year immediately preceding the calendar year in which such adjustment is made. For purposes of this subparagraph (I), "the rate of growth of Colorado personal income" means the percentage change between the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year immediately preceding the calendar year in which the adjustment is made and the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year prior to the calendar year immediately preceding the calendar year in which the adjustment is made.

(II) Upon calculating the adjustment of said dollar amount in accordance with subparagraph (I) of this paragraph (b), the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of the adjusted dollar amount and the basis for the adjustment. Such written notification shall be given within five working days after such calculation is completed, but such written notification shall be given no later than October 1 of the calendar year.

(III) It is the function of the executive committee of the legislative council to review and approve or disapprove such adjustment of said dollar amount within twenty days after receipt of such written notification from the executive director. Any adjustment that is not approved or disapproved by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such adjustment, such automatic approval shall not occur unless the executive committee does not approve or disapprove such adjustment after the conclusion of such hearing. Any hearing conducted by the executive committee

pursuant to this subparagraph (III) shall be concluded no later than twenty-five days after receipt of such written notification from the executive director.

(IV) (A) If the executive committee of the legislative council disapproves any adjustment of said dollar amount calculated by the executive director pursuant to this paragraph (b), the executive committee shall specify such adjusted dollar amount to be utilized by the executive director. Any adjusted dollar amount specified by the executive committee pursuant to this sub-subparagraph (A) shall be calculated in accordance with the provisions of this paragraph (b).

(B) For the purpose of determining whether the use tax rate reduction authorized by paragraph (a) of this subsection (3) is to be allowed for any given income tax year, the executive director shall not utilize any adjusted dollar amount that has not been approved pursuant to subparagraph (III) of this paragraph (b) or otherwise specified pursuant to sub-subparagraph (A) of this subparagraph (IV).

(V) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any calendar year commencing on or after January 1, 2001, that seek authorization for the state to retain and spend all or any portion of the amount of excess state revenues for the state fiscal year ending during said calendar year, the executive director shall not determine whether the use tax rate reduction authorized by paragraph (a) of this subsection (3) shall be allowed and shall not promulgate rules containing said use tax rate reduction until the impact of the results of said election on the amount of the excess state revenues to be refunded is ascertained.

(c) The general assembly finds and declares that reducing the rate of the use tax imposed on the storage, use, or consumption of a new or used commercial truck, truck tractor, tractor, semitrailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of twenty-six thousand pounds is a reasonable method of refunding excess state revenues required to be refunded in accordance with section 20 (7) (d) of article X of the state constitution.

(d) Any state use tax rate reduction allowed pursuant to this section shall be published in rules promulgated by the executive director of the department of revenue in accordance with article 4 of title 24, C.R.S., and shall be included in such notices and publications as are customarily issued by the department of revenue on at least a quarterly basis concerning exemptions from the state sales and use tax.

Denial of trade-in allowance on out-of-state purchase unconstitutional. It is constitutionally impermissible for the Colorado taxing authorities to deny a trade-in allowance in computing the use tax on a motor vehicle purchased outside the state when such a credit is allowed when the vehicle was purchased in Colorado. Such unequal treatment is discriminatory and constitutes an impermissible burden on interstate commerce. Matthews v. Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977).

When issue of material fact existed as to whether general partnership had been assessed with a use tax, trial court erred in entering motion for summary judgment in favor of individual partner on grounds that partner could not be held jointly and severally liable for deficiency owed by partnership. AF Property v. Dept. of Revenue, 852 P.2d 1267 (Colo. App. 1992).

Use taxes equalize burden between in-state and out-of-state purchasers. Use taxes are enacted primarily to equalize the tax burden as between those who purchase within and without the state. Matthews v. Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977).

Use tax is not a separate tax from the sales tax and should not be viewed in isolation. Matthews v. Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977).

The use tax is supplementary to the sales tax. Matthews v. Dept. of Revenue, 193 Colo. 44, 562 P.2d 415 (1977).

Multiple taxation is to be avoided. CF&I Steel Corp. v. Charnes, 637 P.2d 324 (Colo. 1981).

Use tax no greater than necessary to compensate for earlier avoided sales tax. Given the supplementary nature and equalizing function of the use tax, the burden on the taxpayer should be no greater than necessary to compensate for the sales tax originally avoided on purchases of materials for manufacturing and resale. A levy upon the "full finished goods cost" or "capitalized cost" of goods withdrawn from a company's inventory inevitably would have the effect of taxing the company's labor and overhead. In effect, it would amount to a value added tax. International Bus. Machs. Corp. v. Charnes, 198 Colo. 374, 601 P.2d 622 (1979).

Only tangible personalty purchased at retail subject to use tax. While the use of tangible personal property may constitute a taxable event, only that tangible personal property purchased at retail is subject to the use tax. CF&I Steel Corp. v. Charnes, 637 P.2d 324 (Colo. 1981).

Use tax liability depends on use, not ownership. Tri-State Generation & Transmission Ass'n v. Dept. of Revenue, 636 P.2d 1335 (Colo. App.1981); AF Property v. Dept. of Revenue, 852 P.2d 1267 (Colo. App. 1992).

It is the privilege of using property installed in making an improvement on realty that is taxable under this and following sections. The exercise of the privilege of using it results in the incidence of the tax, and no subsequent use, or failure to use, the completed structure can relieve the owner from its payment. Fifteenth St. Inv. Co. v. People, 102 Colo. 571, 81 P.2d 764 (1938).

Party controlling construction project "uses" materials. Where a party shares in the direction and control of a construction project, that party "uses" the materials going into the project for use tax purposes. Tri-State Generation & Transmission Ass'n v. Dept. of Revenue, 636 P.2d 1335 (Colo. App. 1981).

Contractors purchasing out-of-state supplies for in-state job liable for tax. Painting and electrical contractors who purchase supplies outside the state and use such supplies in a construction job which is delivered complete for a fixed price are liable for the use tax on the supplies. Craftsman Painters & Decorators, Inc. v. Carpenter, 111 Colo. 1, 137 P.2d 414 (1942).

Purchase of a laundry business is subject to a use tax deficiency assessment upon the privilege of storing, using, or consuming the tangible personal property so purchased in connection therewith. Palmer v. Perkins, 119 Colo. 533, 205 P.2d 785 (1949).

Purchase of bar snacks subject to use tax. Hotel's purchase of bar snacks to promote its bar services is subject to a use tax since the snacks were made available on a complimentary basis and were not purchased for resale. Broadmoor Hotel v. Dept. of Revenue, 773 P.2d 627 (Colo. App. 1989).

In considering the meaning of the statutory use tax exemption, the definitions of wholesale and retail sale established by the General Assembly differ from the ordinarily accepted general conception of those terms. Bedford v. Colorado Fuel and Iron Corp., 102 Colo. 538, 81 P.2d 752 (1938); Hirschfeld Press v. Denver, 806 P.2d 917 (Colo. 1991).

39-26-203. Exemptions - definitions.

(1) This part 2 is declared to be supplementary to the "Emergency Retail Sales Tax Act of 1935", part 1 of this article, and shall not apply:

(a) To the storage, use, or consumption of any tangible personal property the sale of which is subject to the retail sales tax imposed by the "Emergency Retail Sales Tax Act of 1935" and any amendments thereto, including transactions which are exempt from taxation under section 39-26-114 (1) (a) (XVIII);

(b) To the storage, use, or consumption of any tangible personal property purchased for resale in this state, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.

(c) (I) To the storage, use, or consumption of gasoline which is taxed under the provisions of part 1 of article 27 of this title and to all gasoline which is taxed under said provisions and the tax on which is refunded and to special fuel, as defined in section 39-27-101 (6.3), used for the operation of farm vehicles when the same are being used on farms or ranches; except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a tax was collected pursuant to the provisions of this part 2 prior to January 1, 1989, shall not be exempt.

(II) Based upon reports submitted by users or consumers pursuant to the provisions of this part 2, the department of revenue shall compile a monthly report showing the amount of use taxes collected on aviation fuel used in turbo-propeller or jet engine aircraft during the previous month by each user or consumer. Such monthly report shall be transmitted to the division of aeronautics created in section 43-10-103, C.R.S., for use by the division in distributing moneys in the aviation fund in accordance with section 43-10-110, C.R.S.

(d) To the storage, use, or consumption of tangible personal property brought into this state by a nonresident thereof for his own storage, use, or consumption while temporarily within this state;

(e) To the storage, use, consumption, or loan of tangible personal property by or to the United States government, the state of Colorado, or its institutions, or its political subdivisions in their governmental capacities only, or any charitable organization in the conduct of its regular charitable functions and activities; except that any veterans' organization that qualifies as a charitable organization pursuant to section 39-26-102 (2.5) shall be exempt from taxation under the provisions of this part 2 only for the purpose of sponsoring a special event, meeting, or other function in the state of Colorado that is not part of such organization's regular activities in the state;

(f) (I) To the storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished, and the container, label, or the furnished shipping case.

(II) As used in subparagraph (I) of this paragraph (f) with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

(A) It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

(B) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption;

(g) To the storage, use, or consumption of electricity, coal, coke, fuel oil, steam, nuclear fuel, or gas for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses;

(h) To the storage and use of neat cattle, sheep, lambs, swine, and goats within this state; or to the storage and use within this state of mares and stallions kept, held, and used for breeding purposes only;

(i) To the storage, use, or consumption of printers ink and newsprint;

(j) To the storage, use, or consumption of cigarettes;

(k) To the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by this part 2. A credit shall be granted against the use tax imposed by this part 2 with respect to a person's storage, use, or consumption in this state of tangible personal property purchased by him in another state. The amount of the credit shall be equal to the tax paid by him to another state by reason of the imposition of a similar tax on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this part 2.

(l) To the storage, use, or consumption of tangible personal property and household effects acquired outside of this state and brought into it by a nonresident acquiring residency;

(m) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of Colorado and he purchased the vehicle outside of this state for use outside this state and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled, and licensed said motor vehicle outside of Colorado;

(n) To the storage, use, or consumption of tangible personal property purchased by a resident of Colorado while outside the state in amounts of one hundred dollars or less;

(o) To the storage, use, or consumption of a manufactured home, as such vehicle is defined in section 42-1-102 (106) (b), C.R.S., after such manufactured home has been once subject to the payment of use tax by virtue of section 39-26-208;

(p) To the storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this state if such vehicle is purchased from the manufacturer for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery;

(q) To the storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery;

(r) To the storage, use, or consumption of tangible personal property which is thereafter transferred to an out-of-state vendee without consideration (other than the purchase, sale, or promotion of the transferor's product) for use outside of this state in selling products normally sold at wholesale by the corporation or person storing, using, or consuming said property;

(s) To the testing, modification, inspection, or similar type activities of tangible personal property acquired for ultimate use outside of this state in manufacturing or similar type of activities if the test, modification, or inspection period does not exceed ninety days;

(t) To the storage, use, or consumption of any article by a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1) (e);

(u) To the storage, use, or consumption of any container or bag by a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1) (e);

(v) Repealed.

(v.1) Effective January 1, 1980, to the storage, use, or consumption of food or meals which are provided to employees of the places described in section 39-26-104 (1) (e) if such are provided to such employees at no charge or at a reduced charge and are considered as part of their salary, wages, or income;

(w) To the storage, use, or consumption by a contractor or subcontractor of construction and building materials for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

(I) The United States government, the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(II) Charitable organizations in the conduct of their regular charitable functions and activities; or

(III) Schools, other than schools held or conducted for private or corporate profit;

(x) Effective January 1, 1980, to the storage, use, or consumption of food as defined in section 39-26-102 (4.5);

(y) Effective July 1, 1979, to the storage, use, or consumption of machinery or machine tools exempt from sales tax by section 39-26-114 (11);

(z) Effective July 1, 1980, to the storage, use, or consumption of electricity, coal, wood, gas, fuel oil, or coke sold, but not for resale, to any occupant of a residence, whether owned, leased, or rented by the occupant, for the purpose of operating fixtures or appliances which provide light, heat, or power for the residence. For the purposes of this paragraph (z), "gas" includes natural, manufactured, and liquefied petroleum gas.

(aa) Effective July 1, 1984, to the storage, use, or consumption of aircraft used or purchased for use in interstate commerce by a commercial airline;

(bb) To the storage, use, or consumption of precious metal bullion and coins, as defined in section 39-26-102 (2.6) and (6.5);

(cc) To the storage, use, or consumption of any tangible personal property which is to be permanently affixed or attached as a component part of an aircraft;

(dd) To the storage, use, or consumption of any tangible personal property which is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock;

(ee) To the storage, use, or consumption of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company;

(ff) To the storage, use, or consumption of manufactured goods, including, but not limited to, high technology goods, donated by the manufacturer of such goods to the United States government; the state of Colorado or any department, institution, or political subdivision thereof; or any organization exempt from federal income taxes pursuant to section 501 (c) (3) of the "Internal Revenue Code of 1986", as amended, to the extent that the aggregate value of all such goods included in a single donation exceeds one thousand dollars;

(gg) From May 1, 1998, to and including April 30, 2001, and after April 30, 2001, to internet access services, as defined in section 24-79-102 (2), C.R.S.;

(hh) To the storage, use, or consumption of farm equipment. For purposes of this paragraph (hh):

(I) "Attachments" means any equipment or machinery added to an exempt farm tractor or implement of husbandry that aids or enhances the performance of such tractor or implement.

(II) "Farm equipment" means farm tractors, as defined in section 42-1-102 (33), C.R.S., implements of husbandry, as defined in section 42-1-102 (44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars. "Farm equipment" also includes, regardless of purchase price, attachments and bailing wire, binders twine, and surface wrap used primarily and directly in any farm operation. Effective July 1, 2000, "farm equipment" also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this subparagraph (II), all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. On and after July 1, 2001, "farm equipment" also includes, regardless of purchase price, dairy equipment. For purposes of this paragraph (hh), "dairy equipment" shall have the same meaning as set forth in section 39-26-114 (20) (b) (II). Except for shipping pallets, crates, or aids used in the transfer or shipping of agricultural products, "farm equipment" does not include:

(A) Vehicles subject to the registration requirements of section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used;

(B) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;

(C) Maintenance and janitorial equipment and supplies; and

(D) Tangible personal property used in any activity other than agriculture, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

(III) "Farm operation" means the production of any of the following products for profit, including but not limited to a business that hires out to produce or harvest such products:

(A) Agricultural, viticultural, fruit, and vegetable products;

(B) Livestock, as defined in section 39-26-102 (5.5);

(C) Milk;

(D) Honey; and

(E) Poultry and eggs.

(ii) (I) To any farm equipment under lease or contract if the fair market value of such equipment is at least one thousand dollars and the equipment is rented or leased for storage, use, or consumption primarily and directly in any farm operation.

(II) The lessor shall obtain a signed affidavit from the lessee or renter affirming that the farm equipment will be stored, used, or consumed primarily and directly in a farm operation.

(jj) On or after January 1, 2000, to the storage, use, or consumption of food, as defined in section 39-26-102 (4.5), purchased by or through vending machines;

(kk) (I) To the storage, use, or consumption of:

(A) Agricultural compounds to be consumed by, administered to, or otherwise used in caring for livestock; or

(B) Semen used for agricultural or ranching purposes.

(II) For purposes of this paragraph (kk), "agricultural compounds" means:

(A) Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;

(B) Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock; and

(C) Animal pharmaceuticals that have been approved by the food and drug administration.

(ll) (I) To the storage, use, or consumption of a motor vehicle, power source for a motor vehicle, and parts used for converting the power source of a motor vehicle, if the gross vehicle weight rating of the motor vehicle is greater than ten thousand pounds and if the motor vehicle, power source, or parts used for converting the power source are certified by the federal environmental protection agency or any state as provided in the "Federal Clean Air Act" as meeting an emission standard equal to or more stringent than the low-emitting vehicle emission standard.

(II) For purposes of this paragraph (ll), unless the context otherwise requires:

(A) "Motor vehicle" shall have the same meaning as set forth in section 39-22-516 (2.5) (a) (III).

(B) "Parts used for converting" shall mean the wiring, fuel lines, engine coolant system, fuel storage containers, fuel control system, and other components associated with reducing the emissions characteristics of an engine or motor.

(C) "Power source" shall have the same meaning as set forth in section 39-22-516 (2.5) (a) (V).

(mm) To the storage, use, or consumption of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S.

(nn) To the storage, use, or consumption of equipment, as defined in section 12-9-102 (5), C.R.S., by a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 68 Am. Jur.2d, Sales and Use Taxes, § § 130-171, 219.

C.J.S. See 53 C.J.S., Licenses, § 35-36.

Law reviews. For article, "Home Rule Use-Tax Credits and Interstate Multi-Jurisdictional Transactions", see 30 Colo. Law. 79 (May 2001).

Denial of trade-in allowance on out-of-state purchases unconstitutional. It is constitutionally impermissible for the Colorado taxing authorities to deny a trade-in allowance in computing the use tax on a motor vehicle purchased outside the state when such a credit is allowed when the vehicle is purchased in Colorado. Such unequal treatment is discriminatory and constitutes an impermissible burden on interstate commerce. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

Use taxes equalize burden between in-state and out-of-state purchasers. Use taxes are enacted primarily to equalize the tax burden as between those who purchase within and without the state. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

Use tax is not a separate tax from the sales tax and should not be viewed in isolation. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

Use tax is supplementary to the sales tax. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

Use tax no greater than necessary to compensate for earlier avoided sales tax. Given the supplementary nature and equalizing function of the use tax, the burden on the taxpayer should be no greater than necessary to compensate for the sales tax originally avoided on purchases of materials for manufacturing and resale. A levy upon the "full finished goods cost" or "capitalized cost" of goods withdrawn from a company's inventory inevitably would have the effect of taxing the company's labor and overhead. In effect, it would amount to a value added tax. International Bus. Machs. Corp. v. Charnes, 198 Colo. 374, 601 P.2d 622 (1979).

Taxation is the rule and exemption therefrom is the exception. Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972); Colo. Dept. of Rev. v. Woodmen of the World, 919 P.2d 806 (Colo. 1996); Colo. Dept. of Rev. v. City of Aurora, 32 P.3d 590 (Colo. App. 2001).

The burden is on the taxpayer who claims an exemption to clearly establish the right to such an exemption. Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972).

In considering the meaning of the statutory use tax exemption, the definitions of wholesale and retail sale established by the general assembly differ from the ordinarily accepted general conception of those terms. Bedford v. Colorado Fuel and Iron Corp., 102 Colo. 538, 81 P.2d 752 (1938); Hirschfeld Press v. Denver, 806 P.2d 917 (Colo. 1991).

The primary purpose of a purchase, as determined by objective criteria, determines whether the purchase is for resale. Hirschfeld Press v. Denver, 806 P.2d 917 (Colo. 1991).

The determination of whether a transaction constitutes a purchase for resale turns on whether the item purchased is acquired primarily for resale in an unaltered condition and basically unused by the purchaser. Hirschfeld Press v. Denver, 806 P.2d 917 (Colo. 1991).

II. SPECIFIC EXEMPTIONS.

Only price of parts, not labor, taxable. Of the contract prices of elevators installed in a building, that part representing the amount expended for labor is exempt from the tax, the balance representing the cost of materials being taxable. Fifteenth St. Inv. Co. v. People, 102 Colo. 571, 81 P.2d 764 (1938).

Section prevents use tax on property for which sales tax paid. This section is intended to prevent the imposition of a "use" tax on tangible personal property in those instances where the consumer has actually paid to a licensed "vendor" the statutory sales tax due on the sale. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

Phrase "in the regular course of a business" in subsection (1)(b) involves a requirement of commercial continuity of consistency. Rose v. Executive Dir. of Dep't of Revenue, 42 Colo. App. 319, 593 P.2d 982 (1979).

The question of whether a purchase of an item of personal property is a purchase for resale as contemplated by subsection (1)(b) requires a determination of whether the item is purchased primarily for resale in an unaltered condition and basically unused by the purchaser. Regional Transportation District v. Martin Marietta Corp, 805 P.2d 1102 (Colo. 1991).

The use to which the purchaser puts the property will often define the true nature of a particular transaction. The test of whether a purchase of an item of tangible property is a purchase for resale does not emphasize the subjective intent of the purchaser, but rather focuses on the conduct of the purchaser. Regional Transportation District v. Martin Marietta Corp, 805 P.2d 1102 (Colo. 1991).

Governmental agency uses exempt only when use in governmental capacity. Sales to the United States government and to the state of Colorado, its departments, institutions, and political subdivisions thereof, are exempt under the provisions of the sales and use tax only where they are to be used by them in their "governmental capacities". Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972).

Exemption for tangible personal property purchased for resale in the regular course of business was construed in Martin Marietta v. Regional Transp. Dist., 772 P.2d 668 (Colo. App. 1989), cert. denied, 785 P.2d 916 (Colo. 1989).

Only property becoming constituent part of finished product entitled to exemption. In order to be exempt under the processing clause of the sales and use tax provisions, tangible personal property purchased by a manufacturer must become a constituent part of the finished product, wholly or partially, by either chemical or mechanical means. CF&I Steel Corp. v. Charnes, 637 P.2d 324 (Colo. 1981).

City liable for use tax on golf cart rentals. City acted in a proprietary capacity in renting golf carts and was therefore liable to the state under § 39-26-105 for sales tax that it failed to collect from customers renting golf carts. Since sales tax had not been collected, requiring city to pay use tax in lieu of sales tax was appropriate. Colo. Dept. of Rev. v. City of Aurora, 32 P.3d 590 (Colo. App. 2001).

Purchase of communications apparatus by telephone company. The purchase by a telephone company of instruments, apparatus, cable, wire, etc., does not "enter into the processing of" the service rendered by the company, and therefore is not exempt from the sales and use tax. Western Elec. Co. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974).

Purchases by charitable organizations for use in charitable functions exempt. Those purchases by charitable organizations which are for use in the conduct of their regular charitable functions and activities are exempt from the sales and use tax. Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972).

"Container" exemption construed. Glass bottles purchased from bottle manufacturer are exempt, whether or not the bottle is returnable. Weed v. Occhiato, 175 Colo. 509, 488 P.2d 877 (1971).

A beer keg is exempt as a "container" regardless of the fact that it is continuously reused by brewer and never sold or given away. Adolph Coors Co. v. Charnes, 690 P.2d 893 (Colo. App. 1984), aff'd, 724 P.2d 1341 (Colo. 1986).

Bar snacks not exempt. Snacks provided by a hotel in connection with its bar services are not exempt because they are not furnished for "use with" food. This exemption applies to certain wooden, paper, and plastic products which are used to serve food and beverages. Broadmoor Hotel v. Dept. of Rev., 773 P.2d 627 (Colo. App. 1989).

Insurance companies do not fall within the classifications of the entities exempted under the sales and use tax. Security Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972).

Components of beer manufacturer's load-out facility and the brewing adjunct used by the manufacturer were exempt from use tax pursuant to subsections (1)(y) and (1)(f), respectively. Coors Brewing Co. v. Fagan, 949 P.2d 110 (Colo. App. 1997).

39-26-204. Periodic return - collection.

(1) (a) Every person subject to the provisions of this part 2 who uses, stores, or consumes tangible personal property in the conduct of a business in this state, which property is purchased either inside or outside this state, and who has not paid the sales or use tax imposed by this article to a retailer shall make a return and remit the tax imposed by this part 2 to the executive director of the department of revenue for the preceding period covered by the remittance on forms prescribed by him, showing in detail the tangible personal property stored, used, or consumed by said person in the conduct of his business within the state in the preceding period covered by the remittance and on which property the said sales or use tax has not been paid. Every person subject to the provisions of this part 2 shall maintain monthly records of the amount of tax due. At such time as the cumulative tax due at the end of any month is in excess of three hundred dollars, such person shall make a return and remit the tax due before the twentieth day of the following month. If the total tax due in a calendar year is less than three hundred dollars, such person shall make a single return and remittance for such calendar year before January 20 of the following calendar year.

(b) Every person who is subject to the provisions of this part 2 who uses, stores, or consumes tangible personal property not in the conduct of a business, which is purchased either inside or outside this state, who has not paid the sales or use tax imposed by this article to a retailer, shall make a return and remit the tax annually, at the time the Colorado income tax of such person is due and payable as provided in article 22 of this title, on forms prescribed by the executive director, showing in detail the tangible personal property stored, used, or consumed by said persons within this state for the preceding taxable year.

(c) All such returns shall be subscribed by the taxpayer or his agent and shall contain a written declaration that it is made under the penalties of perjury in the second degree.

(2) Every retailer doing business in this state and making sales of tangible personal property for storage, use, or consumption in the state, and not exempted as provided in section 39-26-203, at the time of making such sales or taking the orders therefor, or, if the storage, use, or consumption of such tangible personal property is not then taxable under this part 2, then at the time such storage, use, or consumption becomes taxable under this part 2, shall collect the tax imposed by section 39-26-202, from the purchaser and give to the purchaser a receipt therefor, which receipt shall identify the property, the date sold or the date ordered, and the tax collected and paid. The tax required to be collected by such retailer from such purchaser shall be displayed separately from the advertised price listed on the forms or advertising matter on all sales checks, orders, sales slips, or other proof of sales.

(3) It is unlawful for such retailer or agent to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by such retailer or agent, or that it will not be added to the selling price of the property sold, or, if added, that it or any part thereof will be refunded. The tax required to be collected by such retailer or agent shall be remitted to the state in like manner as otherwise provided in this article for the remittance of sales taxes collected by retailers, and all such retailers or agents collecting the tax imposed by section 39-26-202 shall make returns on forms provided by the executive director at such times and in such manner as is provided for the making of returns in the payment of the sales taxes. The procedure for assessing and collecting said taxes from such retailers or agents, or from the user when not paid to a retailer or agent, shall be the same as provided in this article and article 21 of this title for the collection of sales taxes, including collection by distraint warrant, and said taxes due and owing from any retailer or agent for the storage, use, or consumption of tangible personal property shall bear interest and be subject to the same penalties as is provided in this article and article 21 of this title for nonpayment or delinquencies of sales taxes.

(4) All sums of money paid by the purchaser to the retailer as taxes imposed by this article shall be and remain public money, the property of the state in the hands of such retailer, and he shall hold the same in trust for the sole use and benefit of the state until paid to the executive director of the department of revenue. For failure to so pay to the executive director, such retailer shall be punished as provided by law.

(5) (a) If a person neglects or refuses to make a return in payment of the tax or to pay any tax as required by this article, the executive director of the department of revenue shall make an estimate, based upon the information that may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent thereof and interest on the delinquent taxes at the rate imposed under section 39-21-110.5, plus one-half of one percent per month from the date when due. Promptly thereafter, the executive director shall give to the delinquent taxpayer written notice of the estimated taxes, penalty, and interest, which notice shall be sent by first-class mail as set forth in section 39-21-105.5.

(b) Such estimate shall thereupon become a notice of deficiency as provided in section 39-21-103. At the delinquent taxpayer's request, a hearing shall be held and the executive director shall make a final determination pursuant to said section. The taxpayer may appeal said final determination in the manner provided in section 39-21-105.

39-26-205. Tax constitutes lien - exemption from lien.

(1) The tax imposed by section 39-26-202 shall be a first and prior lien on the tangible personal property stored, used, or consumed, subject only to any valid mortgage or other liens of record on and prior to the recording of notice as required by section 39-26-118 (3), and, when such tax is collected by retailers or agents, shall be a first and prior lien on all the stock of goods or business fixtures of or used by such retailer, excepting goods sold in the ordinary course of business, which lien shall have precedence over all other liens of whatsoever kind or nature, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.

(2) Upon default of payment thereof, the executive director of the department of revenue, after demand upon the person owing such tax, may bring an action in his name as executive director in attachment and seize property as authorized by this section to secure the payment of said tax, interest, and penalties. In any such proceeding, no bond shall be required of the executive director, nor shall any sheriff require from the executive director an indemnifying bond for executing the writ of attachment or levy, and no sheriff shall be liable in damages when acting in accordance with such writs. The remedies provided in this section shall be in addition to all other remedies.

(3) Any taxpayer or person in possession shall provide a copy of any lease pertaining to the assets and property described in subsection (1) of this section to the department of revenue within ten days after seizure by the department of such assets and property. The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in subsection (1) of this section. The real or personal property of an owner who has made a bona fide lease to any taxpayer described in subsection (1) of this section shall be exempt from the lien created therein if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in subsection (1) of this section; except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(3.5) Any coin-operated vending machine or video or other game machine shall be exempt from the lien created in subsection (1) of this section if:

(a) The machine is placed on the retailer's premises under the terms of a lease or other agreement under which the retailer is given no right to become the owner of the machine;

(b) The machine is plainly marked in a location accessible to agents of the department of revenue with information sufficient to permit identification of the owner of said property; and

(c) The owner of the machine has filed with the department of revenue a schedule listing the machine by serial number and including thereon the owner's full name and the address of his business and such other information as the executive director of the department of revenue may require. To protect the anonymity of owners of property, the executive director of the department of revenue may permit the marking of property covered by this subsection (3.5) to be marked using numbers or other coded identification.

(4) Any retailer who is in possession of property under the terms of a lease, which property is exempt from the lien as provided in this section, may be required by the executive director to remit tax funds due at more frequent intervals than monthly, but no more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

39-26-206. Failure to make return.

Any person who willfully fails or refuses to make the return required in section 39-26-204, or who makes a false or fraudulent return, or who willfully fails to pay any tax owing by him, and any person who aids or abets another in an attempt to evade such tax, shall be punished as provided by section 39-21-118.

39-26-207. Penalty interest on unpaid tax.

Any tax due and unpaid under this part 2 shall be a debt to the state, and shall draw interest at the rate imposed under section 39-21-110.5, in addition to the interest provided by section 39-21-109, from the time when due until paid. The executive director of the department of revenue may recover at law the amount of such tax and interest in a suit instituted by the attorney general in the name of the executive director of the department of revenue, and this remedy shall be in addition to all other remedies.

39-26-208. Collection of use tax - motor vehicles.

(1) No registration shall be made of a motor or other vehicle for which registration is required and no certificate of title shall be issued for such vehicle or for a mobile home by the department of revenue or its authorized agent until any tax due upon the storage, use, or consumption thereof pursuant to section 39-26-202 or imposed by ordinance of any municipality or resolution of any county has been paid.

(2) If an applicant for registration and certificate of title for any motor or other vehicle or for a certificate of title for a mobile home fails to show payment of the taxes applicable under this section by means of proper receipts therefor, the department of revenue or its authorized agent shall collect all such applicable taxes at the time such application is made.

(3) Revenues due the state and collected pursuant to this section shall be distributed as are other revenues under this part 2, and revenues due any municipality so collected shall be distributed as specified by contract entered into with the department of revenue pursuant to section 24-35-110, C.R.S.

(4) To facilitate collection of taxes as provided in this section, the governing body of each municipality which has imposed a tax upon storage, use, or consumption shall certify to the department of revenue and to the county clerk and recorder of the county in which such municipality is located a true copy of its current applicable tax ordinances and shall likewise certify any subsequent changes therein.

39-26-209. Rules and regulations.

The administration of this part 2 is vested in the executive director of the department of revenue, and he shall prescribe forms, rules, and regulations for the administration and enforcement of this part 2.

39-26-210. Limitations.

The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this part 2 shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the executive director of the department of revenue may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.