

### **39-26-714. Vending Machines - definitions**

(1) (a) Every vendor selling individual items of personal property through 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 the vending machines unless the sale is otherwise exempt under the provisions of this part 7.

(b) To be eligible for the exemption provided for in this subsection (1), 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 vending machine used by the vendor in his or her 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 vending machine, in accordance with rules promulgated by the executive director of the department of revenue;

(V) Remit a fee of ten cents per machine with the application submitted under subparagraph (IV) of this paragraph (b), to defray the expenses of the department of revenue in furnishing the 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 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. 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 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 any vending machine seized under paragraph (c) of this subsection (1) 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 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 (1).

(2) On and 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 the provisions of part 1 of this article; except that, on and after May 1, 2010, sales and purchases of candy and soft drinks by or through vending machines shall be subject to state sales taxation. Absent an express provision in the contract to the contrary, any vending machine contract that references the price at which products shall be sold from a vending machine shall be interpreted to include any applicable sales tax as an addition to the referenced price.

(3) On and after January 1, 2000, the storage, use, or consumption of food, as defined in section 39-26-102 (4.5), purchased by or through vending machines shall be exempt from taxation under the provisions of part 2 of this article; except that, on and after May 1, 2010, the storage, use, or consumption of candy and soft drinks purchased by or through vending machines shall be subject to state use taxation.

(4) For the purposes of this section:

(a) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(b) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(5) The department of revenue shall promulgate rules, in accordance with article 4 of title 24, C.R.S., to provide a means by which a person who sells candy or soft drinks purchased by and through vending machines may, if necessary, reasonably estimate the amount of sales taxes due on such candy and soft drinks. For any return made prior to August 1, 2010, a person who sells candy or soft drinks at retail shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption from state sales tax for sales of candy and soft drinks, as defined in subsection (4) of this section, by House Bill 10-1191, enacted in 2010.

**History Source:** L. 2004: Entire part added with relocations, p. 1027, Section 2, effective July 1. L. 2010: (2) and (3) amended and (4) and (5) added, (HB 10-1191), ch. 7, p. 46, Section 3, effective February 24.

**Editor's note:** The provisions of this section are similar to several former provisions of Sections 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.