



**Colorado Department of Revenue
Statement of Emergency Justification and Adoption
Emergency Rule 39-26-734-1.
Declared Wildfire Disaster Rebuild Exemption Refund Rate.**

Pursuant to sections 24-4-103(6), 39-21-112(1), 39-26-122, 39-26-734(6)(c), 32-9-119(2), and 32-13-107, C.R.S., I, Heidi Humphreys, Interim Executive Director of the Department of Revenue, hereby adopt emergency rule 39-26-734-1.

Section 24-4-103(6), C.R.S., authorizes the Executive Director to adopt temporary or emergency rules if the Executive Director finds that the immediate adoption of the rules are imperatively necessary to comply with a state or federal law or for the preservation of public health, safety, or welfare, and that compliance with the requirements of section 24-4-103, C.R.S., regarding promulgation of permanent rules, would be contrary to the public interest.

I find that the immediate adoption of this rule is imperatively necessary to comply with state law, specifically HB23-1240, which took effect immediately upon signature of the Governor on May 12, 2023, in order to provide financial relief to Coloradoans recovering and rebuilding from declared wildfire disasters. This emergency rule is necessary to comply with the rulemaking required by section 39-26-734(6)(c) in order to allow qualified homeowners to promptly begin the refund claim process and receive the relief needed to repair or rebuild their homes. As a result, I find that compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest under these circumstances.

Statutory Authority

The statutory authorities for this rule are sections 24-4-103(6), 39-21-112(1), 39-26-122, 39-26-734(6)(c), 32-9-119(2), and 32-13-107, C.R.S.

Section 39-26-734(3)(a), C.R.S., exempts the sale, storage, use, or consumption of construction and building materials used directly in rebuilding or repairing a qualified residential structure from the state sales tax under part 1 and the state use tax under part 2 of article 26 of title 39, C.R.S. Subsection (1)(h) defines a “qualified residential structure” to mean “a residential structure that was damaged or destroyed by a declared wildfire disaster.” The phrase “declared wildfire disaster” means “a wildfire that was declared a disaster emergency by the governor pursuant to section 24-33.5-704 (4) on or after January 1, 2020, but before January 1, 2023.” The exemption is allowed solely through a refund to qualified homeowners as provided in subsection (4).

Certain political subdivisions of the state are authorized by state statute to impose sales taxes and use taxes. These taxes are generally imposed consistent with the state sales and use taxes. Specifically, section 39-26-119(2), C.R.S., authorizes the Regional Transportation District to impose a sales tax “upon every transaction or other incident with respect to which a sales tax is now levied by the state, pursuant to the provisions of article 26 of title 39, C.R.S.” Section 32-13-107(1)(a), C.R.S. authorizes the same with respect to the Scientific and Cultural Facilities District. As a consequence of these connections, the creation of new exemptions from the state sales or use tax may, in turn, exempt the same transactions for purposes of these local taxes. Furthermore, the provisions authorizing these local taxes provide for their administration by the Department in the same manner as the state sales tax imposed by article 26 of title 39, which

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includes the rulemaking authority granted by sections 39-26-122 and 39-26-734(6)(c), C.R.S. Sections 32-9-119(2)(c)(I) and 32-13-107(2), C.R.S.

The exemption in section 39-26-734 is limited by an exception in subsection (3)(c) precluding the exemption from applying to other local taxes. For this reason, the reengrossed bill set the amount of the refund allowed at 2.90% of the estimated cost of construction and building materials used to repair or rebuild a qualified residential structure. The current state sales and use tax rate is 2.90%. Amendment L.008 to HB23-1240, which was offered in the Senate Finance Committee, excluded from this exception the taxes imposed by the Regional Transportation District and the Scientific and Cultural Facilities District. Accordingly, it increased the refund amount to 4% to reflect the present 1.0% tax rate imposed by the Regional Transportation District, and the 0.1% tax rate imposed by the Scientific and Cultural Facilities District.

As discussed above, the exemption is allowed with respect to the purchase and use of construction and building materials used to repair a qualified residential structure. It is administered as a refund, and the refund is paid to the qualified homeowner regardless of whether the homeowner hired a contractor or acquired or used the materials. Furthermore, the amount of the refund is based upon the estimated cost of construction and building materials. As such, it provides relief in a streamlined manner avoiding the need for homeowners to determine which local sales or use taxes were paid at the time of purchase or use and supply supporting documentation accordingly. The streamlined process will reduce the costs of administration by the Department and allow the Department to expedite the payment of these important refunds.

Although several of the declared wildfire disasters in 2020, 2021, and 2022 were not within the Regional Transportation District and/or the Scientific and Cultural Facilities District, section 39-26-734 sets a flat 4% rate for all structures and makes no change to the rate with respect to the location of the qualified residential structure. Furthermore, neither section 39-26-734 nor section 39-26-703 alter the procedure for applying for a refund of the taxes subject to exemption under subsection (3)(a) for the purchase and use of construction and building materials outside of these districts. Although a qualified residential structure may be outside of these districts, the purchase of construction and building materials used in their repair may occur within these districts thereby incurring district sales taxes.

Purpose

The purpose of this rule is to explain how the sales and use tax exemptions allowed by section 39-26-734(3)(a) and related refunds will be calculated with respect to qualified residential structures that are outside the Regional Transportation District, the Scientific and Cultural Facilities District, or both. As discussed above, it is necessary for the Department to resolve the ambiguity caused by the inclusion of these districts without adjustments to the rate based upon the location of the fire to provide guidance to taxpayers on the claim process and to begin accepting claims under HB23-1240. Based upon the clear statement of the refund rate in section 39-26-734, the attached rule affirms that the refund rate is not adjusted in the case of qualified residential structures outside of these districts.

Adoption

For the reasons set forth above, I hereby adopt emergency rule 39-26-734, which is attached to this Statement. This rule shall be effective on the date of this adoption and shall apply prospectively. This emergency rule shall be in force and effect for a period of one hundred and twenty days from the date of this notice, unless sooner terminated or replaced by a permanent rule adopted in accordance with section 24-4-103, C.R.S.



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Humphreys
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Heidi Humphreys
Interim Executive Director
Colorado Department of Revenue

8/3/2023

Date