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An Act

HOUSE BILL 09-1126

BY REPRESENTATIVE(S) Hullinghorst, Curry, Apuan, Fischer, Frangas, Green, Kefalas, Kerr A., Merrifield, Miklosi, Pace, Primavera, Ryden, Schafer S., Todd, Court, Labuda, Levy, McFadyen, Middleton, Pommer, Priola, Rice, Solano, Vigil;
also SENATOR(S) Shaffer B., Heath, Boyd, Carroll M., Foster, Gibbs, Groff, Keller, Newell, Penry, Williams.

CONCERNING INCENTIVES FOR THE DEVELOPMENT OF SOLAR THERMAL ENERGY SYSTEMS.

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

SECTION 1. Legislative declaration. (1) On November 6, 2006, the executive director of the department of revenue issued final determination DD-598, in which the executive director concluded that machinery used to produce electricity did not qualify for exemption from sales and use tax under section 39-26-709, Colorado Revised Statutes, as in effect prior to legislative amendments made in the 2007 legislative session. Final determination DD-598 is inconsistent with final determination DD-567, which was issued by the executive director on February 5, 2001, and which concluded that certain machinery used in the production of electricity qualified for the exemption from sales and use tax under section 39-26-709, Colorado Revised Statutes.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) The general assembly is cognizant of pending litigation concerning the scope of section 39-26-709, Colorado Revised Statutes, as in effect prior to 2007. By enacting House Bill 09-1126, the general assembly does not intend to indicate whether final determination DD-598 reflects the correct construction or interpretation of section 39-26-709, Colorado Revised Statutes, or whether the final determination is a change in policy. Furthermore, by enacting House Bill 09-1126, the general assembly does not intend to indicate whether certain components specified in section 2 of this act may already be exempt from sales and use tax under section 39-26-709, Colorado Revised Statutes.

SECTION 2. 31-20-101.3 (2), Colorado Revised Statutes, is amended to read:

31-20-101.3. Incentives for installation of renewable energy fixtures - definitions. (2) For purposes of this section, unless the context otherwise requires, "renewable energy fixture" means any fixture, product, system, device, or interacting group of devices that produces ENERGY, INCLUDING BUT NOT LIMITED TO ALTERNATING CURRENT electricity, from renewable resources, including, but not limited to, photovoltaic systems, solar thermal systems, small wind systems, biomass systems, or geothermal systems.

SECTION 3. 39-26-724, Colorado Revised Statutes, is amended to read:

39-26-724. Components used to produce energy from a renewable energy source - definitions. (1) (a) For fiscal years commencing on or after July 1, 2006, all sales, storage, and use of components used in the production of alternating current electricity from a renewable energy source, including but not limited to wind, shall be exempt from taxation under ~~the provisions of~~ parts 1 and 2 of this article.

(b) FOR STATE FISCAL YEARS 2009-10 THROUGH 2016-17, ALL SALES, STORAGE, AND USE OF COMPONENTS USED IN SOLAR THERMAL SYSTEMS SHALL BE EXEMPT FROM TAXATION UNDER PARTS 1 AND 2 OF THIS ARTICLE.

(2) As used in this section:

(a) "COMPONENTS USED IN SOLAR THERMAL SYSTEMS" SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO:

(I) SOLAR COLLECTORS, INCLUDING FLAT-PLATE COLLECTORS, EVACUATED TUBE COLLECTORS, SOLAR AIR COLLECTORS, AND CONCENTRATING SOLAR THERMAL COLLECTORS;

(II) TANKS FOR THE STORAGE OF GASES OR LIQUIDS THAT HAVE BEEN HEATED OR COOLED BY SOLAR-GENERATED ENERGY;

(III) PUMPS, IMPELLERS, AND FANS FOR THE CIRCULATION OF GASES OR LIQUIDS THAT HAVE BEEN HEATED OR COOLED BY SOLAR-GENERATED ENERGY;

(IV) HEAT EXCHANGERS USED TO TRANSFER SOLAR-GENERATED ENERGY;

(V) SUPPORT STRUCTURES, RACKS, AND FOUNDATIONS FOR ANY COMPONENTS LISTED IN SUBPARAGRAPHS (I) TO (IV) OF THIS PARAGRAPH (a); AND

(VI) ANY OTHER SYSTEM COMPONENTS SUCH AS PIPING, VALVES, GAUGES, FITTINGS, INSULATION, AND CONTROLS FOR ANY COMPONENTS LISTED IN SUBPARAGRAPHS (I) TO (IV) OF THIS PARAGRAPH (a).

(b) (I) "Components USED IN THE PRODUCTION OF ALTERNATING CURRENT ELECTRICITY FROM A RENEWABLE ENERGY SOURCE" shall include, but shall not be limited to, wind turbines, rotors and blades, solar modules, trackers, generating equipment, supporting structures or racks, inverters, towers and foundations, balance of system components such as wiring, control systems, switchgears, and generator step-up transformers, and concentrating solar power components that include, but are not limited to, mirrors, plumbing, and heat exchangers.

~~(b)~~ (II) ~~As used in this section,~~ "Components USED IN THE PRODUCTION OF ALTERNATING CURRENT ELECTRICITY FROM A RENEWABLE ENERGY SOURCE" shall not include any components beyond the point of generator step-up transformers located at the production site, labor, energy storage devices, or remote monitoring systems.

(c) "SOLAR THERMAL SYSTEM" MEANS A SYSTEM WHOSE PRIMARY PURPOSE IS TO USE ENERGY FROM THE SUN TO PRODUCE HEAT OR COLD FOR:

(I) HEATING OR COOLING A RESIDENTIAL OR COMMERCIAL BUILDING;

(II) HEATING OR COOLING WATER; OR

(III) ANY INDUSTRIAL, COMMERCIAL, OR MANUFACTURING PROCESS.

SECTION 4. 29-2-105 (1) (d) (I) (J), Colorado Revised Statutes, is amended to read:

29-2-105. Contents of sales tax ordinances and proposals.

(1) The sales tax ordinance or proposal of any incorporated town, city, or county adopted pursuant to this article shall be imposed on the sale of tangible personal property at retail or the furnishing of services, as provided in paragraph (d) of this subsection (1). Any countywide or incorporated town or city sales tax ordinance or proposal shall include the following provisions:

(d) (I) A provision that the sale of tangible personal property and services taxable pursuant to this article shall be the same as the sale of tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., except as otherwise provided in this paragraph (d). The sale of tangible personal property and services taxable pursuant to this article shall be subject to the same sales tax exemptions as those specified in part 7 of article 26 of title 39, C.R.S.; except that the sale of the following may be exempted from a town, city, or county sales tax only by the express inclusion of the exemption either at the time of adoption of the initial sales tax ordinance or resolution or by amendment thereto:

(J) The exemption for sales of components used in the production of ENERGY, INCLUDING BUT NOT LIMITED TO alternating current electricity, from a renewable energy source ~~including but not limited to wind~~, specified in section 39-26-724, C.R.S.; except that this sub-subparagraph (J) shall not apply to any incorporated town, city, or county that adopted the exemption specified in sub-subparagraph (A) of this subparagraph (I) prior to May 27, 2008;

SECTION 5. The introductory portion to 29-2-109 (1), Colorado

Revised Statutes, is amended to read:

29-2-109. Contents of use tax ordinances and proposals. (1) The use tax ordinance, resolution, or proposal of any town, city, or county adopted pursuant to this article shall be imposed only for the privilege of using or consuming in the town, city, or county any construction and building materials purchased at retail or for the privilege of storing, using, or consuming in the town, city, or county any motor and other vehicles, purchased at retail on which registration is required, or both. For the purposes of this subsection (1), the term "construction and building materials" shall not include parts or materials utilized in the fabrication, construction, assembly, or installation of passenger tramways, as defined in section 25-5-702 (4), C.R.S., by any ski area operator, as defined in section 33-44-103 (7), C.R.S., or any person fabricating, constructing, assembling, or installing a passenger tramway for a ski area operator. The ordinance, resolution, or proposal may recite that the use tax shall not apply to the storage and use of wood from salvaged trees killed or infested in Colorado by mountain pine beetles as exempted from the state use tax pursuant to section 39-26-723, C.R.S. The ordinance, resolution, or proposal may recite that the use tax shall not apply to the storage and use of components used in the production of ENERGY, INCLUDING BUT NOT LIMITED TO alternating current electricity, from a renewable energy source, ~~including but not limited to wind~~, as exempted from the state use tax pursuant to section 39-26-724, C.R.S. The ordinance, resolution, or proposal shall recite that the use tax shall not apply:

SECTION 6. Effective date - applicability. (1) This act shall apply to systems and components installed on or after July 1, 2009.

(2) This act shall not take effect unless House Bill 09-1366 is enacted and becomes law.

SECTION 7. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO