

2019

Report to the Colorado General Assembly



Tax Expenditure Evaluation Interim Study Committee



Prepared by Legislative Council Staff
Research Publication No. 739
December 2019

Tax Expenditure Evaluation Interim Study Committee

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December 2019

To Members of the Seventy-second General Assembly:

Submitted herewith is the final report of the Tax Expenditure Evaluation Interim Study Committee. This committee was created pursuant to interim study committee request letter 2019-5. The purpose of this committee is to study the policy considerations contained in the tax expenditure evaluations prepared by the Office of the State Auditor pursuant to Senate Bill 16-203.

At its meeting on November 15, 2019, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2020 session was approved.

Sincerely,

/s/ Senator Leroy Garcia
Chair

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The text of each bill is included as Attachments A through E after the resource materials page.

This report is also available online at:

<https://leg.colorado.gov/committees/tax-expenditure-evaluation-interim-study-committee/2019-regular-session>

Committee Charge

The Tax Expenditure Evaluation Interim Study Committee (“committee”) was created pursuant to interim study committee request letter 2019-5 to study the policy considerations contained in the tax expenditure evaluations prepared by the Office of the State Auditor (OSA) pursuant to Senate Bill 16-203, codified at Section 39-21-305, C.R.S. Issues for study included repealing, clarifying, or otherwise changing current tax expenditures to improve their effectiveness or administration. The committee was authorized to meet up to four times in 2019 and to recommend up to five bills to the Legislative Council.

Committee Activities

The committee held five meetings during the 2019 interim. Briefings and presentations were made by the OSA, the Tax Foundation, the Pew Charitable Trusts, Legislative Council Staff, the Office of Legislative Legal Services, the Department of Revenue, and members of the public on a range of subjects including:

- tax expenditures and tax expenditure evaluation;
- budget considerations;
- considerations related to TABOR and other constitutional provisions;
- the OSA’s tax expenditure evaluation methodology; and
- policy considerations identified by the OSA in relation to 29 specific tax expenditures.

The following sections discuss the committee’s activities during the 2019 interim.

Discussion of Tax Expenditures and Tax Expenditure Evaluation

The committee received a presentation from the Tax Foundation, a Washington, D.C.-based think tank, concerning policy considerations related to tax expenditures in state tax codes. The presentation identified and explained different types of tax expenditures including deductions, exemptions, and credits. Tax expenditures may be enacted as part of the broader tax architecture (“structural expenditure”) or to incentivize certain activity or benefit certain taxpayers (“preferential expenditures”). The Tax Foundation suggested that many of Colorado’s preferential tax expenditures are small budget items because they do not strongly incentivize taxpayer behavior, and that some such expenditures apply so narrowly as to have distortive market effects. Additionally, some tax expenditures may fail to accomplish their objective because they provide a tax benefit for economic activity that would have occurred independent of the tax incentive.

The committee received a presentation from the Pew Charitable Trusts (“Pew”), a Philadelphia-based nonprofit that works on public policy issues, concerning tax expenditure evaluation in other states. The Pew presentation focused on cases, notably in Maryland and North Dakota, where tax expenditure evaluations had motivated policymakers to change the structure and availability of tax expenditures.

Committee discussion of these topics concerned:

- interstate efforts to consolidate or eliminate certain tax expenditures;
- the empowerment of tax expenditure evaluators to make policy recommendations concerning the continuation, modification, or termination of tax expenditures;
- the effects of tax expenditures in different sub-state geographies;
- whether a tax expenditure could be made available to industries falling below a certain economic threshold, rather than to specific industries identified in statute;
- studies of what share of economic activity rewarded through tax expenditures would have occurred if the expenditure were not available; and
- Colorado’s tax expenditure evaluation system.

Committee recommendations. As a result of its discussions, the committee recommends Bill A and Bill D. Bill A requires that future legislation creating a tax expenditure identify the tax expenditure’s purpose and data sources that can be used to evaluate its effectiveness. Bill D would create a Task Force Concerning Tax Policy, which would study tax policy issues, and a Legislative Oversight Committee Concerning Tax Policy, which would oversee the task force and introduce legislation in response to task force recommendations.

Discussion of Statutory and Budget Considerations

The committee received a presentation from the Office of Legislative Legal Services (OLLS) on provisions related to tax expenditures in current state law. The OLLS presented the statutory definition of a tax expenditure, which is “a tax provision that provides a gross or taxable income definition, deduction, exemption, credit, or rate for certain persons, types of income, transactions, or property that results in reduced tax revenue.”¹ The OLLS also briefed the committee concerning broader tax architecture considerations, including, for example, the difference between “structural” tax expenditures, which are foundational features of the tax code, and “preferential” tax expenditures, which are created to incentivize particular types of economic activity or create benefits for preferred taxpayers.

Legislative Council Staff (LCS) presented to the committee concerning the budgetary impacts of tax expenditures. The LCS explained that tax data are not available to quantify the impact of every tax expenditure, forcing estimators to rely on other sources to prepare estimates. The Department of Revenue’s Tax Profile and Expenditure Report identifies a total revenue loss of \$6.6 billion, though most of this amount is attributable to structural sales and use tax exemptions like those for wholesale goods, manufacturing inputs, and component parts. Additionally, data limitations make identifying an exact amount impossible and perhaps suggest that revenue loss from all tax expenditures is greater than the estimate. The LCS also briefed the committee concerning the structural and preferential tax expenditures with the largest budget impact.

¹Section 39-21-302 (2), C.R.S.

Discussion of Constitutional Considerations

The committee received a presentation from the OLLS concerning constitutional constraints related to enactment, modification, and repeal of tax expenditures. In particular, subsection (4)(a) of the TABOR Amendment² requires voter approval in advance for the enactment of tax policy changes directly causing a net tax revenue gain to the state or any local government. The OLLS presented relevant holdings from the Colorado Supreme Court's 2009 decision in *Mesa County Board of County Commissioners v. State*, as well as its 2018 decision in *TABOR Foundation v. Regional Transportation District*. These decisions provide the most direct findings concerning when repeal of a tax expenditure may constitute a tax policy change requiring voter approval in advance.

The OLLS also briefed the committee concerning the Colorado Constitution's single subject requirement, which requires that all bills other than general appropriations bills have a single, clearly stated bill subject.

Overview of Evaluation Process and Methodology

The committee received a presentation from the OSA concerning its tax expenditure evaluation process pursuant to Senate Bill 16-203. Two hundred and twenty-six tax expenditures have been identified in statute for evaluation; however, the number of tax expenditures can fluctuate according to different interpretations of statute. Fifteen tax expenditure evaluations were published in 2018 with a total of 45 evaluations completed through July 2019. The OSA expected to publish ten additional evaluations in September 2019.

The OSA presented on key statutory requirements for assessing tax expenditures, such as determining whether the expenditure is meeting its purpose, the economic costs and benefits, the impact on intended beneficiaries, data constraints, and policy considerations to improve effectiveness and administration.

The OSA explained that it met with JBC members, Legislative Council Staff, the Office of Legislative Legal Services, the Department of Revenue, the Pew Charitable Trusts, and the Colorado Fiscal Institute to help develop their evaluation methodology. In addition, the OSA reviewed how other states evaluate tax expenditures. Because most Colorado state tax expenditures do not have a direct statement of purpose or performance measures in statute, determining whether or not a tax expenditure is successful can be difficult. The OSA talked to taxpayers who utilize tax expenditures in an attempt to answer the "but for" question; i.e., whether the economic activity benefitting from the tax expenditure would have occurred if the expenditure was not available. Most evaluations have been impacted by data constraints. These include instances where the Department of Revenue is unable to capture the data from the income tax form, where data for multiple expenditure are reported on the same line, or where inaccurate data is reported by taxpayers. The OSA has had to rely on third-party data for many evaluations. Finally, the OSA explained under what circumstances it would identify policy considerations. As of the date of its presentation, the OSA had identified policy

²Colo. Const. art. X, §20 (4)(a).

considerations for 29 tax expenditures, of which 5 were classified “consider repeal,” 8 were “clarify statute,” 12 were “review effectiveness,” and 4 were for “administration issues.”

Policy Considerations: Repeal

The OSA briefed the committee concerning five tax expenditures for which it had identified policy considerations related to the expenditures’ repeal. These are discussed below.

Crop hail insurance premium tax exemption. The crop hail insurance premium tax exemption was enacted in 1961 and exempts small-scale, member-owned insurers from the insurance premium tax. Currently, no companies issuing crop insurance qualify for the exemption, so the exemption is not being used.

Occasional sale of liquor by public auction exemption. Liquor, including beer, wine, and spirits, sold through public auction is exempt from the excise tax. The exemption was enacted in 1935 and is likely not being used. The Department of Revenue has no records of taxpayers claiming the exemption and the OSA was unable to identify any public auctions that would qualify for the exemption.

Sales to residents of bordering states exemption. Enacted in 1963, residents of neighboring states without a sales tax are exempt from paying Colorado sales taxes when the sale occurs within 20 miles of the border. All states neighboring Colorado impose a retail sales tax or, in the case of New Mexico, a gross receipts tax, so the exemption is no longer applicable.

Pre-1987 net operating loss deduction for individuals, estates, and trusts. Colorado individuals, estates, and trusts are allowed to deduct net operating losses incurred prior to January 1, 1987, when computing their Colorado taxable income. Prior to 1987, net operating losses could be carried forward for 15 years, making the deduction obsolete since 2002.

Previously taxed income or gain deduction for C corporations. Corporations have been able to deduct income that was previously taxed by Colorado from their federal taxable income since 1964, so this deduction is likely unavailable. The OSA discussed the deduction with several certified public accountants and was unable to identify a tax situation in which a taxpayer could take the deduction.

Committee recommendations. The committee requested that bills be drafted to repeal: the crop hail insurance premium tax exemption; the sales to residents of bordering states exemption; the pre-1987 net operating loss deduction for individuals, estates, and trusts; and the previously taxed income or gain deduction for C corporations.³ Following a recommendation from the OLLS, the committee voted to send a letter to the Statutory Revision Committee requesting that committee to draft, consider, and introduce legislation to repeal these four tax expenditures. Having referred these issues to the Statutory Revision Committee, the committee did not consider motions to refer the draft bills to the Legislative Council.

³Bills 6, 10, 12, and 13, respectively.

The committee also requested that Bill 4 be drafted to repeal the occasional sale of liquor by public auction exemption. The draft bill was initially approved by the committee, but was not selected to be included in the five bills recommended to the Legislative Council.

Policy Considerations: Clarify Statute

The OSA briefed the committee concerning eight tax expenditures for which it had identified policy considerations related to clarifying statute. These are discussed below.

Farm close-out sales tax exemption. Sales of used farming property are exempt from sales taxes when the farm or ranch sells the property because it is shutting down its agricultural operations. Many times, motor vehicles are part of the property for sale and receive the exemption. In most other circumstances, motor vehicles are subject to sales taxes to be paid when the vehicle is titled and registered. The OSA suggested that the sale of motor vehicles at a farm close-out sale may be inconsistent with other state tax policies.

Long-term lodging exemption. In general, stays at hotels and motels and other short-term accommodation rentals are subject to the state lodging tax, while stays longer than 30 days are exempt from the lodging tax. The lodging tax was passed in 1959 and the OSA identified two provisions of the statute that may require clarification:

1. The exemption for stays longer than 30 days applies to individual tenants that have a long-term rental agreement, but it does not specifically apply to third parties like businesses that are paying for employee housing.
2. The long-term lodging exemption applies specifically to hotels, motels, and campgrounds in the lodging tax statute. Other provisions of law require collecting lodging tax for short term rentals on home sharing platforms (like Airbnb and VRBO), but statute is not clear as to whether the long-term lodging exemption applies to rental agreements on home sharing platforms.

Newspapers exemption. Newspapers are exempt from the state sales tax under an exemption adopted in 1943. The OSA found that the statute is unclear on whether the exemption applies to digital newspapers. The Department of Revenue has ruled that digital editions of the newspapers are exempt from the sales tax; however, digital publishers that sell other goods must collect and remit sales taxes.

Biogas production components sales tax exemption. Between 2014 and 2019, components used to capture biogas and turn it into renewable natural gas were exempt from the state sales tax. The exemption helped to increase the use of biogas as an alternative energy source, but it did not apply to biogas that was captured and used on-site for electricity or heat. The OSA found that expanding the exemption to apply to components of more types of biogas facilities would encourage broader use. The original biogas components sales tax exemption sunset on July 1, 2019, after five years.

Agricultural inputs sales tax exemptions. Analyses of six agricultural inputs exemptions were considered under this heading. All of them exempt certain goods or transactions commonly used for agricultural purposes. The OSA found that there is some confusion about which agricultural inputs are exempt and suggested that the legislature could clarify the statute regarding whether fertilizer, soil conditioners, fish for non-stocking purposes, and animal embryos are exempt from the sales tax as agricultural inputs.

Employee retirement plan insurance premium tax deduction. Insurers are allowed to deduct premiums paid on insurance plans that cover pensions, profit-sharing, or annuity plans if the covered plans are deductible from an employee's income. The deduction is only available for retirement plans established by an employer, and the OSA suggested clarifying if the deduction applies to retirement plans sponsored by partnerships, limited liability companies, S corporations, and other pass-through entities.

Excise tax credit for unsalable alcoholic beverages. Manufacturers and distributors are allowed to claim a credit for excise taxes paid on unsalable alcohol. The credit is clearly allowed in statute for breakage or damage but statute is not clear regarding whether the credit is available for spoilage. The OSA suggests clarifying whether alcoholic beverages that spoil and are unable to be sold are eligible for the excise tax credit.

Colorado net operating loss deduction for C corporations. Taxpayers are allowed to carry forward net operating losses (NOLs) on Colorado income taxes in the same manner as allowed for federal taxes. In 2017, the federal Tax Cuts and Jobs Act changed how NOLs are calculated, affecting the deduction allowed for state purposes. The OSA suggested clarifying whether the Colorado deduction ought to be:

- carried forward for an indefinite period of time, as allowed under the new federal law;
- capped at 80 percent of taxable income, similar to federal law; and
- applicable to financial institutions in the same manner as for other corporate taxpayers, as financial institutions are currently subject to a specific and unique 15-year carryforward provision.

Committee recommendations. As a result of its discussions, the committee recommends Bill B and Bill C. Bill B modifies the long-term lodging exemption, such that the exemption applies only to purchases of long-term lodging services by natural persons. Bill C limits the carryforward period for the Colorado net operating loss deduction for C corporations to 20 years.

The committee voted to send a letter to the Joint Agriculture Committee encouraging that committee to consider the policy considerations raised by the OSA in regard to the agricultural inputs sales tax exemption.

The committee also requested that bills be drafted to repeal the farm close-out sales tax exemption, the employee retirement plan insurance premium tax deduction, and the excise tax credit for unsalable alcoholic beverages.⁴ These draft bills were initially approved by the committee, but were not selected to be included in the five bills recommended to the Legislative Council.

⁴Bills 9, 3, and 2, respectively.

Policy Considerations: Effectiveness

The OSA briefed the committee concerning 12 tax expenditures for which it had identified policy considerations related to effectiveness. These are discussed below.

Agricultural lease deduction. When agricultural land is leased to a first-time farmer or rancher, the landowner may deduct up to 20 percent of the lease payments from their income taxes, up to \$25,000 per year for up to three years. The goal is to incentivize older farmers to lease their land to younger farmers, but the deduction has not been claimed. The OSA suggested that the General Assembly could reevaluate the mechanism by which agricultural producers can apply for the deduction, and/or review whether the deduction is sufficient to incentivize the behavior intended.

Hunger relief income tax credit and crop and livestock contribution corporate income tax credit. A farmer or rancher may claim an income tax credit for 25 percent of the value of any food donated to hunger relief organizations, up to \$5,000 per year, while an agricultural C corporation may claim a similar credit up to \$1,000 per year. The OSA found that this credit may not be effective due to the lack of awareness about the credit, the already low tax burden of many agricultural producers, the qualifying requirements, and the low credit amount not being sufficient to incentivize food donations.

Sacramental wines excise tax exemption. Under this exemption, religious organizations do not pay the liquor excise tax on the purchase of sacramental wine, although the purchases must currently be made through a sacramental wine distributor in order to be exempt. The OSA suggested allowing different methods of receiving the exemption and not limiting it to sacramental wine distributors.

Fraternal society exemption. Fraternal societies that offer insurance to their members are exempt from paying the insurance premium tax under this exemption. This exemption was enacted in 1883 when fraternal societies played a larger role in society; however, the market for insurance through these organizations comprises a much smaller portion of the total market. The OSA suggests reviewing the current utility of the exemption.

Insurance premium tax expenditures. Four insurance-related tax expenditures were evaluated, including an income tax exemption, reinsurance deduction, return premium deduction, and early termination deduction. All serve to reduce or remove the income tax liability for insurance companies and instead levy a premium tax on the gross amount of revenue received from policies, or deduct reinsurance or dividends and refunds paid to policyholders. The OSA found that these tax expenditures are meeting their purpose and suggests consideration of deducting local government licenses, fees, or taxes paid from the premium tax base.

Child care expenses credit. The two child care expenses credits allow taxpayers to deduct a portion of their child care expenses from their income taxes. It was determined the credits are meeting their purpose; however, there are large disparities in the amounts received across the income distribution. Changes could be made to make the credits more equitable across incomes and family types.

On-demand aircraft used outside state exemption. Aircraft purchased for use in on-demand flights and housed outside of the state are exempt from sales and use tax. This exemption has not been taken since its enactment in 2014, and therefore may need to be reevaluated for its utility.

Historic property preservation credit. Owners of historic property who rehabilitate the property are eligible for a tax credit in an amount up to 20 percent of the rehabilitation costs, up to \$50,000. The OSA found that many taxpayers eligible for this tax credit are taking a more recently enacted tax credit, the Historic Structures Credit, which is more beneficial to taxpayers.

Deduction for wages and salaries due to Internal Revenue Code 280C. C corporations and taxpayers with income from S corporations are allowed to deduct wages and salary expenses from their federal taxable income that are not usually deductible due to IRC 280C, which determines their taxable state income. The OSA found this deduction is being used and suggests that the expenditure could be reevaluated to potentially expand the deduction to sole proprietorships, partnerships, and limited liability corporations.

State income tax refund deductions for individuals, estates, and trusts. If taxpayers overpay their Colorado income taxes, this deduction gives them a mechanism by which they can avoid paying taxes on any state tax refunds or credits due to the overpayment. It was found this deduction was meeting its purpose, and OSA suggests that the state income tax add-back provision for these taxpayers could be reviewed to address recent changes in federal tax law.

Non-profit transit agency fuel tax exemption. Non-profit transit agencies are exempt from paying special fuels excise taxes on liquefied petroleum gas and natural gas used in their vehicles. The OSA found that this exemption has not been used, serves a very small population of agencies, and may need to be updated to serve the needs of the organizations it is intended to serve.

Committee recommendations. The committee requested that Bill 7 be drafted to repeal the non-profit agency fuel tax exemption. Following a recommendation from the Office of Legislative Legal Services, the committee voted to send a letter to the Statutory Revision Committee requesting that committee to draft, consider, and introduce legislation to repeal this tax expenditure. Having referred the issue to the Statutory Revision Committee, the committee did not consider a motion to refer the draft bill to the Legislative Council.

The committee also requested that bills be drafted to repeal the crop and livestock contribution corporate income tax credit, the sacramental wines excise tax exemption, and the deduction for wages and salaries due to Internal Revenue Code 280C, and to modify eligibility requirements and benefit amounts for the child care expense credit.⁵ These draft bills were initially approved by the committee, but were not selected to be included in the five bills recommended to the Legislative Council.

The committee also requested that Bill 1 be drafted to repeal the fraternal society exemption, but the draft bill was not approved by the committee.

⁵Bills 14, 5, 17, and 16, respectively.

Policy Considerations: Administration

The OSA briefed the committee concerning four tax expenditures for which it had identified policy considerations related to administration. These are discussed below.

Sales to charitable organizations exemption. Charitable organizations are exempt from paying state sales tax on purchases related to the activities or functioning of their organizations. They may obtain an exemption certificate from the Department of Revenue to show at the time of purchase or file for a refund for any sales taxes paid. The OSA found some charitable organizations have difficulty obtaining the exemption from retailers, and may be encumbered by the interaction between state and local home rule sales tax jurisdictional rules.

Rural and frontier healthcare preceptor credit. Uncompensated rural preceptors in the state are allowed an income tax credit of \$1,000 if they provide at least four weeks of instruction, training, or supervision to Colorado-based graduate students. The tax credit is limited to 200 preceptors per year, and only one credit may be claimed per year per preceptor. The OSA found that the definition of the time of service required to claim this could be changed to hours or days instead of weeks to facilitate understanding of eligibility among the targeted population.

Tax-exempt organization insurance premium tax deduction. Any premium taxes paid on policies purchased by tax-exempt organizations can be deducted from the insurers' premium taxes. The OSA found that the instructions to claim this deduction do not clearly explain how insurers should deduct the premium taxes for insurance purchased by non-profit, charitable, and religious organizations.

Energy used for industrial and manufacturing purposes exemption. The sale or purchase of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel that is used for industrial or manufacturing purposes is exempt from state sales tax. The OSA found that the instructions on how to calculate the amount of energy used that can be exempted are not clear, and that allowing a flat percentage of energy use may simplify the exemption.

Committee recommendation. As a result of its discussions, the committee recommends Bill E, which requires that industrial and manufacturing energy users install a meter to measure energy used for tax-exempt purposes.

Public Testimony Received

The committee received public testimony concerning:

- the sales and use tax exemption for energy used in manufacturing and industrial processes, where two witnesses requested that the exemption be preserved;
- the nonprofit agency fuel tax exemption, where a witness requested that the exemption be preserved;
- a witness's request that the committee sponsor legislation to create a tax commission or permanent interim committee to continue discussion of the issues that had been investigated by this committee;

- a witness's request that tax exemption forms and related documents provide additional guidance to tax-exempt nonprofit organizations;
- a witness's request that the committee sponsor legislation to address the interaction between the two state child care expenses income tax credits, which limit the value of the credit for certain low-income taxpayers;
- the fraternal society exemption, where four witnesses requested that the exemption be preserved; and
- the OSA's request to be excluded from the list of organizations represented on the Task Force Concerning Tax Policy that are authorized to accept gifts, grants, and donations to support their participation.

Summary of Recommendations

As a result of the committee's activities, the committee recommended five bills to the Legislative Council for consideration in the 2020 session. At its meeting on November 15, 2019, the Legislative Council approved all five recommended bills for introduction. The approved bills are described below.

Bill A — Tax Expenditure Bill Requirements

Bill A requires future legislation that creates a new tax expenditure or extends an expiring tax expenditure to include a tax preference performance statement and a defined repeal date. The tax preference performance statement must explain the reason for the expenditure and identify metrics and data requirements to measure the effectiveness of the expenditure.

Bill B — Long-Term Lodging Sales Tax Exemption

Beginning on January 1, 2021, Bill B limits the state sales tax exemption on long-term lodging to natural persons only. Under current law, the exemption is available for stays of 30 days or more at hotels, apartment hotels, lodging houses, motor hotels, guesthouses, guest ranches, trailer coaches, mobile homes, auto camps, or trailer courts and parks. The bill also continues the application of the sales tax exemption to local governments unless they choose to explicitly subject long-term lodging to their local sales and use tax rates.

Bill C — Net Operating Loss Deduction Modification

Starting in the 2021 tax year, Bill C modifies the net operation loss deduction (NOL) taxpayers are allowed to claim on Colorado corporate income taxes. The bill specifies that the Colorado NOL deduction may be carried forward for up to 20 years and that financial institutions are subject to the same NOL provisions as other taxpayers.

Bill D — Legislative Oversight Committee Concerning Tax Policy

Bill D creates the Legislative Oversight Committee Concerning Tax Policy ("oversight committee") and the associated Task Force Concerning Tax Policy ("task force").

Oversight committee. The oversight committee is made up of six legislators and must meet at least four times a year to review the policy considerations contained in the tax expenditure evaluations prepared by the OSA. The oversight committee is required to make annual reports to the General Assembly concerning its activities.

Task force. The task force is made up of 21 non-legislative members; voting members of the task force are appointed by the chair and vice-chair of the oversight committee. It must meet at least six times a year to study tax policy and propose to the oversight committee modifications to the current system of state and local taxation. The task force is required to make annual reports to the oversight committee concerning the issues studied and associated legislative or policy proposals.

Bill E — Sales Tax Exemption for Industrial and Manufacturing Energy Use

Bill E requires a metered machine be used to quantify the amount of energy or fuel that is used for industrial or manufacturing purposes in order to claim a sales tax exemption on that use of energy or fuel. Currently, the sales tax exemption exists; however, there is no metering system required.

Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<https://leg.colorado.gov/content/committees>

Meeting Date and Topics Discussed

July 23, 2019

- ◆ Tax expenditures and tax expenditure evaluation
- ◆ Tax expenditures in Colorado and Colorado's state budget
- ◆ TABOR and single subject considerations
- ◆ Overview of the evaluation process and methodology

July 24, 2019

- ◆ Single subject considerations
- ◆ Policy considerations I: Repeal
- ◆ Policy considerations II: Clarify statute
- ◆ Policy considerations III: Effectiveness

August 19, 2019

- ◆ Policy considerations IV: Administration
- ◆ Questions of the Department of Revenue
- ◆ Public testimony
- ◆ Requests for draft legislation

October 30, 2019

- ◆ Approval of committee letter to Joint Agriculture Committee
- ◆ Public testimony on draft legislation
- ◆ Consideration of draft legislation

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

Attachment A

BILL A

LLS NO. 20-0231.01 Esther van Mourik x4215

SENATE BILL

SENATE SPONSORSHIP

Court and Tate, Moreno

HOUSE SPONSORSHIP

Snyder and Benavidez,

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING CERTAIN REQUIREMENTS THAT MUST BE INCLUDED IN A**
102 **TAX EXPENDITURE BILL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Tax Expenditure Evaluation Interim Study Committee. Current law requires a legislative declaration stating the intended purpose of a new tax expenditure or the intended purpose for extending an expiring tax expenditure. The bill expands that law by:

- Requiring a statutory legislative declaration, not nonstatutory;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- Requiring any bill that creates a new tax expenditure to include a repeal of the expenditure after a specified period of tax years and any bill that extends an expiring tax expenditure to extend the expenditure for a specified period of tax years; and
- Requiring the statement of the intended purpose to be a part of a tax preference performance statement, which includes:
 - The classification of the type of the tax expenditure; and
 - Detailed information regarding the legislative purpose of the tax expenditure, which, at minimum, includes clear, relevant, and ascertainable metrics and data requirements that allow the tax expenditure to be measured for effectiveness in achieving the intended purpose.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 39-21-304 as
 3 follows:

4 **39-21-304. Tax expenditure - tax preference performance**
 5 **statement - tax expenditure repeal requirement.** (1) (a) On and after
 6 ~~January 1, 2012~~ JANUARY 1, 2021, any bill that creates a new tax
 7 expenditure or extends an expiring tax expenditure ~~shall~~ **MUST** include a
 8 ~~legislative declaration stating the intended purpose of the tax expenditure~~
 9 TAX PREFERENCE PERFORMANCE STATEMENT AS PART OF A STATUTORY
 10 LEGISLATIVE DECLARATION.

11 (b) IF THE BILL EXTENDS AN EXPIRING TAX EXPENDITURE, THE BILL
 12 MUST EITHER INCLUDE A TAX PREFERENCE PERFORMANCE STATEMENT IF
 13 ONE WAS NOT EARLIER INCLUDED OR IT MUST AMEND, IN SUCH A WAY AS
 14 TO PROVIDE UPDATED INFORMATION, THE TAX PREFERENCE PERFORMANCE
 15 STATEMENT THAT WAS INCLUDED WHEN THE TAX EXPENDITURE WAS
 16 ENACTED.

17 (2) THE TAX PREFERENCE PERFORMANCE STATEMENT MUST

1 INDICATE ONE OR MORE OF THE FOLLOWING GENERAL CATEGORIES, BY
2 REFERENCE TO THE APPLICABLE CATEGORY SPECIFIED IN THIS SUBSECTION
3 (2), AS THE LEGISLATIVE PURPOSE OF THE NEW TAX EXPENDITURE:

4 (a) TAX EXPENDITURE INTENDED TO INDUCE CERTAIN DESIGNATED
5 BEHAVIOR BY TAXPAYERS;

6 (b) TAX EXPENDITURE INTENDED TO IMPROVE INDUSTRY
7 COMPETITIVENESS;

8 (c) TAX EXPENDITURE INTENDED TO CREATE OR RETAIN JOBS;

9 (d) TAX EXPENDITURE INTENDED TO REDUCE STRUCTURAL
10 INEFFICIENCIES IN THE TAX STRUCTURE; OR

11 (e) TAX EXPENDITURE INTENDED TO PROVIDE TAX RELIEF FOR
12 CERTAIN BUSINESSES OR INDIVIDUALS.

13 (3) IN ADDITION TO THE GENERAL CATEGORY SPECIFIED IN
14 SUBSECTION (2) OF THIS SECTION, A TAX PREFERENCE PERFORMANCE
15 STATEMENT MUST ALSO PROVIDE DETAILED INFORMATION REGARDING THE
16 LEGISLATIVE PURPOSE OF THE NEW TAX EXPENDITURE OR OF THE
17 EXTENSION OF THE EXPIRING TAX EXPENDITURE. THE REQUIRED DETAILED
18 INFORMATION MUST, AT MINIMUM, INCLUDE CLEAR, RELEVANT, AND
19 ASCERTAINABLE METRICS AND DATA REQUIREMENTS THAT ALLOW THE
20 GENERAL ASSEMBLY AND THE STATE AUDITOR TO MEASURE THE
21 EFFECTIVENESS OF THE TAX EXPENDITURE IN ACHIEVING THE PURPOSE
22 DESIGNATED UNDER THIS SECTION.

23 (4) ON AND AFTER JANUARY 1, 2021, ANY BILL THAT CREATES A
24 NEW TAX EXPENDITURE MUST INCLUDE A REPEAL OF THE EXPENDITURE
25 AFTER A SPECIFIED PERIOD OF TAX YEARS AND ANY BILL THAT EXTENDS AN
26 EXPIRING TAX EXPENDITURE MUST EXTEND THE EXPENDITURE FOR A
27 SPECIFIED PERIOD OF TAX YEARS. A BILL THAT CREATES A NEW TAX

1 EXPENDITURE OR EXTENDS AN EXPIRING TAX EXPENDITURE MAY NOT
2 ESTABLISH THE TAX EXPENDITURE FOR AN INDEFINITE PERIOD OF TIME.

3 **SECTION 2. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2020 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

Attachment B

BILL B

LLS NO. 20-0234.01 Pierce Lively x2059

HOUSE BILL

HOUSE SPONSORSHIP

Snyder and Benavidez,

SENATE SPONSORSHIP

Moreno and Court,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REPEAL OF THE STATE SALES TAX EXEMPTION FOR**
102 **LONG-TERM LODGING.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Tax Expenditure Evaluation Interim Study Committee. Under current law, the sales tax exemption for long-term lodging exempts stays of 30 days or more at hotels, apartment hotels, lodging houses, motor hotels, guesthouses, guest ranches, trailer coaches, mobile homes, auto camps, or trailer courts and parks from the state sales tax on lodgings. The bill limits this exemption so it only applies to natural persons.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) The sales tax exemption for long-term lodging exempts stays
5 of thirty days or more at hotels, apartment hotels, lodging houses, motor
6 hotels, guesthouses, guest ranches, trailer coaches, mobile homes, auto
7 camps, or trailer courts and parks from the state sales tax on lodgings.

8 (b) This sales tax exemption has remained largely unchanged
9 since it was enacted in 1959.

10 (c) The exemption does not state whether it can be claimed in the
11 case where the lodgings are paid for by the same payer for at least 30
12 days, but multiple persons stay in the lodging during that period of time
13 and none of those persons stay for longer than 30 days. The department
14 of revenue has allowed the exemption to be claimed in this circumstance.
15 However, this application of the long-term lodging exemption expands
16 the use of the exemption beyond its presumed original purpose of
17 providing equal tax treatment for persons who enter into residential leases
18 of 30 days or more and persons who stay for more than 30 days in
19 lodgings that are typically used for short-term stays.

20 (d) The department of revenue does not collect data specifically
21 for the long-term lodging exemption.

22 (2) Therefore, it is the intent of the general assembly to simplify
23 the collection and administration of taxes for the state of Colorado and to
24 relieve taxpayers' confusion and vendors' administrative burdens by
25 repealing tax expenditures that are not meeting their original purpose and
26 which are not tracked by the department of revenue.

1 **SECTION 2.** In Colorado Revised Statutes, 39-26-704, **amend**
2 (3) as follows:

3 **39-26-704. Miscellaneous sales tax exemptions - governmental**
4 **entities - hotel residents - schools - exchange of property.**

5 (3) (a) There shall be exempt from taxation under the provisions of part
6 1 of this article **26** all sales and purchases of commodities and services
7 under the provisions of section 39-26-102 (11) to any ~~occupant~~ NATURAL
8 PERSON who is a permanent resident of any hotel, apartment hotel,
9 lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile
10 home, auto camp, or trailer court or park and who enters into or has
11 entered into a written agreement for occupancy of a room or
12 accommodations for a period of at least thirty consecutive days during the
13 calendar year or preceding year.

14 (b) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
15 CONTRARY, ON OR AFTER JANUARY 1, 2021, FOR ANY LOCAL GOVERNMENT
16 OR POLITICAL SUBDIVISION OF THE STATE THAT LEVIES A SALES OR USE
17 TAX BASED ON THE SALES OR USE TAX LEVIED BY THE STATE PURSUANT TO
18 THIS ARTICLE 26, ALL SALES AND PURCHASES OF COMMODITIES AND
19 SERVICES UNDER THE PROVISIONS OF SECTION 39-26-102 (11) TO ANY
20 OCCUPANT WHO IS A PERMANENT RESIDENT OF ANY HOTEL, APARTMENT
21 HOTEL, LODGING HOUSE, MOTOR HOTEL, GUESTHOUSE, GUEST RANCH,
22 TRAILER COACH, MOBILE HOME, AUTO CAMP, OR TRAILER COURT OR PARK
23 AND WHO ENTERS INTO OR HAS ENTERED INTO A WRITTEN AGREEMENT FOR
24 OCCUPANCY OF A ROOM OR ACCOMMODATIONS FOR A PERIOD OF AT LEAST
25 THIRTY CONSECUTIVE DAYS DURING THE CALENDAR YEAR OR PRECEDING
26 CALENDAR YEAR SHALL BE EXEMPT FROM THE SALES OR USE TAX OF SUCH
27 LOCAL GOVERNMENT OR POLITICAL SUBDIVISION, UNLESS THE LOCAL

1 GOVERNMENT OR POLITICAL SUBDIVISION EXPRESSLY SUBJECTS SUCH SALE
2 TO ITS SALES OR USE TAX FOR THE APPLICABLE PERIOD AT THE TIME OF
3 ADOPTION OF ITS INITIAL SALES OR USE TAX ORDINANCE OR RESOLUTION
4 OR SUBSEQUENT AMENDMENT THERETO.

5 **SECTION 3. Act subject to petition - effective date -**
6 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
7 the expiration of the ninety-day period after final adjournment of the
8 general assembly (August 5, 2020, if adjournment sine die is on May 6,
9 2020); except that, if a referendum petition is filed pursuant to section 1
10 (3) of article V of the state constitution against this act or an item, section,
11 or part of this act within such period, then the act, item, section, or part
12 will not take effect unless approved by the people at the general election
13 to be held in November 2020 and, in such case, will take effect on the
14 date of the official declaration of the vote thereon by the governor.

15 (2) This act applies to sales taxes levied on or after January 1,
16 2021.

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

Attachment C

BILL C

LLS NO. 20-0238.01 Esther van Mourik x4215

HOUSE BILL

HOUSE SPONSORSHIP

Benavidez and Snyder,

SENATE SPONSORSHIP

Moreno, Court

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE STATE'S NET OPERATING LOSS**
102 **DEDUCTION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Tax Expenditure Evaluation Interim Study Committee. Colorado taxpayers can claim a net operating loss deduction on their Colorado tax return. Unless statute otherwise provides, the state deduction is currently allowed in the same manner that a similar deduction is allowed under the internal revenue code to determine federal taxable income.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Under current law, corporate taxpayers in Colorado are allowed to carry forward their net operating loss deduction for the same number of years as allowed for a federal net operating loss. For many years, taxpayers were limited to a 20-year carryforward period for both state and federal taxes. The federal "Tax Cuts and Jobs Act" (TCJA), enacted in 2017, allowed federal taxpayers unlimited years to carry forward net operating losses. Because Colorado's statute specifies that net operating losses may be carried forward "for the same number of years as allowed for a federal net operating loss", the TCJA's change resulted in the same change to Colorado's law. The bill partially decouples the corporate net operating loss deduction from the federal net operating loss deduction by returning the state's carryforward period to 20 years.

The bill also repeals a state provision that was effective only for financial institutions, so that, for purposes of the period of years a loss can be carried forward, financial institutions will now be treated the same as any other taxpayer.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that the intended purpose of this change to the
4 net operating loss deduction is to limit the state's corporate net operating
5 loss carryforwards to twenty years, as was allowed for many tax years
6 prior to a recent change to federal law, and to partially decouple the state
7 deduction from federal law, which now allows carryforwards for an
8 unlimited number of years. Changing the carryforward period back to
9 twenty years and decoupling from the federal carryforward period will
10 align Colorado with a majority of other states: Thirty states have
11 decoupled from the federal law and sixteen states have adopted the
12 former federal carryforward period of twenty years. The general assembly
13 further finds and declares that twenty years of carryforwards still allows
14 the majority of corporate taxpayers in Colorado to deduct their full net
15 operating losses over that period.

16 (2) The general assembly hereby finds and declares that the

1 intended purpose of the change to the net operating loss deduction for
2 financial institutions is to treat all taxpayers uniformly, giving all
3 corporate taxpayers a twenty-year carryforward period. When this special
4 provision was enacted for financial institutions in 1987, federal law
5 provided that financial institutions were only allowed to carry losses
6 forward for five years as compared to fifteen years for other corporations.
7 The Colorado law, which allowed financial institutions to carry losses
8 forward for fifteen years, was likely enacted to allow financial institutions
9 to be treated equally to other taxpayers in the state.

10 **SECTION 2.** In Colorado Revised Statutes, 39-22-504, **amend**
11 (3) and (4) as follows:

12 **39-22-504. Net operating losses.** (3) (a) FOR INCOME TAX YEARS
13 COMMENCING BEFORE JANUARY 1, 2021, net operating losses of
14 corporations may be carried forward for the same number of years as
15 allowed for a federal net operating loss. Net operating losses of
16 corporations may not be carried back to an earlier tax year.

17 (b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
18 1, 2021, NET OPERATING LOSSES OF CORPORATIONS MAY BE CARRIED
19 FORWARD FOR TWENTY YEARS. NET OPERATING LOSSES OF CORPORATIONS
20 MAY NOT BE CARRIED BACK TO AN EARLIER TAX YEAR.

21 (4) If a financial institution suffers a net operating loss for any
22 taxable year beginning on or after January 1, 1984, AND BEFORE JANUARY
23 1, 2021, the amount of the unused net operating loss may be carried
24 forward to each of the fifteen years following the taxable year of such
25 loss. For the purposes of this subsection (4), "financial institution" means
26 any institution to which section 585 or 593 of the internal revenue code
27 applies.

1 **SECTION 3. Act subject to petition - effective date.** This act
2 takes effect at 12:01 a.m. on the day following the expiration of the
3 ninety-day period after final adjournment of the general assembly (August
4 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
5 referendum petition is filed pursuant to section 1 (3) of article V of the
6 state constitution against this act or an item, section, or part of this act
7 within such period, then the act, item, section, or part will not take effect
8 unless approved by the people at the general election to be held in
9 November 2020 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

Attachment D

BILL D

LLS NO. 20-0241.02 Esther van Mourik x4215

SENATE BILL

SENATE SPONSORSHIP

Court and Tate, Moreno

HOUSE SPONSORSHIP

Benavidez and Bockenfeld, Snyder

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE LEGISLATIVE OVERSIGHT**
102 **COMMITTEE CONCERNING TAX POLICY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Tax Expenditure Evaluation Interim Study Committee. The bill creates the legislative oversight committee concerning tax policy (committee), and the associated task force (task force).

The committee is required to consider the policy considerations contained in the tax expenditure evaluations prepared by the state auditor and is responsible for the oversight of the task force. The committee may

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Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 THAT HAVE RESULTED IN UNINTENDED CONSEQUENCES;

2 (d) THESE MODIFICATIONS MAY HAVE RESULTED IN THE TAX
3 BURDEN FOR FINANCING GOVERNMENT SERVICES AND PROGRAMS BEING
4 BORNE DISPROPORTIONATELY BY CERTAIN TAXPAYERS AND MAY HAVE
5 DIMINISHED COLORADO'S ABILITY TO ATTRACT NEW BUSINESSES AND
6 RETAIN EXISTING BUSINESSES THAT ARE VITAL TO THE ECONOMIC
7 WELL-BEING OF THE STATE AND ITS CITIZENS; AND

8 (e) IT IS NECESSARY TO REVIEW THE STATE'S CURRENT TAX POLICY.

9 (2) THEREFORE, THE GENERAL ASSEMBLY FURTHER FINDS AND
10 DECLARES THAT IT IS NECESSARY TO CREATE THE LEGISLATIVE OVERSIGHT
11 COMMITTEE CONCERNING TAX POLICY AND, IN ADDITION, TO ESTABLISH
12 THE COMMITTEE AS THE APPROPRIATE ENTITY TO REVIEW THE
13 EVALUATIONS OF TAX EXPENDITURES THAT ARE STATUTORILY COMPLETED
14 BY THE STATE AUDITOR.

15 **39-21-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "LEGISLATIVE OVERSIGHT COMMITTEE" OR "COMMITTEE"
18 MEANS THE LEGISLATIVE OVERSIGHT COMMITTEE CONCERNING TAX
19 POLICY ESTABLISHED PURSUANT TO SECTION 39-21-403.

20 (2) "TASK FORCE" MEANS THE TASK FORCE CONCERNING TAX
21 POLICY ESTABLISHED PURSUANT TO SECTION 39-21-404.

22 **39-21-403. Legislative oversight committee concerning tax**
23 **policy - creation - duties - report.** (1) **Creation.** (a) THERE IS HEREBY
24 CREATED A LEGISLATIVE OVERSIGHT COMMITTEE CONCERNING TAX
25 POLICY.

26 (b) THE COMMITTEE CONSISTS OF SIX MEMBERS AS FOLLOWS:

27 (I) THE PRESIDENT OF THE SENATE SHALL APPOINT TWO SENATORS

1 TO SERVE ON THE COMMITTEE, AND THE MINORITY LEADER OF THE SENATE
2 SHALL APPOINT ONE SENATOR TO SERVE ON THE COMMITTEE; AND

3 (II) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL
4 APPOINT TWO REPRESENTATIVES TO SERVE ON THE COMMITTEE, AND THE
5 MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT
6 ONE REPRESENTATIVE TO SERVE ON THE COMMITTEE.

7 (c) (I) APPOINTEES TO THE COMMITTEE MUST HAVE EXPERIENCE
8 WITH OR INTEREST IN THE STUDY AREAS OF THE COMMITTEE AND TASK
9 FORCE, AS SET FORTH IN SECTION 39-21-404.

10 (II) APPOINTMENTS MUST BE MADE NO LATER THAN THIRTY DAYS
11 AFTER THE EFFECTIVE DATE OF THIS ACT.

12 (d) THE TERMS OF THE MEMBERS EXPIRE ON OR TERMINATE ON THE
13 CONVENING DATE OF THE FIRST REGULAR SESSION OF THE SEVENTY-THIRD
14 GENERAL ASSEMBLY. AS SOON AS PRACTICABLE AFTER SUCH CONVENING
15 DATE, BUT NO LATER THAN THE END OF THE LEGISLATIVE SESSION, THE
16 SPEAKER AND MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES AND
17 THE PRESIDENT AND THE MINORITY LEADER OF THE SENATE SHALL EACH
18 APPOINT OR REAPPOINT MEMBERS IN THE SAME MANNER AS PROVIDED IN
19 SUBSECTION (1)(b) OF THIS SECTION. THEREAFTER, THE TERMS OF
20 MEMBERS APPOINTED OR REAPPOINTED EXPIRE ON THE CONVENING DATE
21 OF THE FIRST REGULAR SESSION OF EACH GENERAL ASSEMBLY, AND ALL
22 SUBSEQUENT APPOINTMENTS AND REAPPOINTMENTS MUST BE MADE AS
23 SOON AS PRACTICABLE AFTER SUCH CONVENING DATE, BUT NO LATER
24 THAN THE END OF THE LEGISLATIVE SESSION.

25 (e) THE PERSON MAKING THE ORIGINAL APPOINTMENT OR
26 REAPPOINTMENT SHALL FILL ANY VACANCY BY APPOINTMENT FOR THE
27 REMAINDER OF AN UNEXPIRED TERM. MEMBERS APPOINTED OR

1 REAPPOINTED SERVE AT THE PLEASURE OF THE APPOINTING AUTHORITY
2 AND CONTINUE IN OFFICE UNTIL THE MEMBER'S SUCCESSOR IS APPOINTED.

3 (f) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL
4 SELECT THE FIRST CHAIR OF THE COMMITTEE, AND THE PRESIDENT OF THE
5 SENATE SHALL SELECT THE FIRST VICE-CHAIR. THE CHAIR AND VICE-CHAIR
6 SHALL ALTERNATE ANNUALLY THEREAFTER BETWEEN THE TWO HOUSES.

7 (g) THE CHAIR AND VICE-CHAIR OF THE COMMITTEE MAY
8 ESTABLISH SUCH ORGANIZATIONAL AND PROCEDURAL RULES AS ARE
9 NECESSARY FOR THE OPERATION OF THE COMMITTEE AND, IN
10 COLLABORATION WITH THE TASK FORCE, GUIDELINES AND EXPECTATIONS
11 FOR ONGOING COLLABORATION WITH THE TASK FORCE.

12 (h) (I) MEMBERS OF THE COMMITTEE ARE ENTITLED TO RECEIVE
13 COMPENSATION AND REIMBURSEMENT OF EXPENSES AS PROVIDED IN
14 SECTION 2-2-326.

15 (II) THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL,
16 THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES, AND THE
17 STATE AUDITOR SHALL SUPPLY STAFF ASSISTANCE TO THE COMMITTEE AS
18 THEY DEEM APPROPRIATE, WITHIN EXISTING APPROPRIATIONS.

19 (2) **Duties.** (a) (I) THE COMMITTEE SHALL MEET AT LEAST FOUR
20 TIMES EACH YEAR AND AT SUCH OTHER TIMES AS IT DEEMS NECESSARY.

21 (II) EACH COMMITTEE MEMBER SHALL ANNUALLY EITHER ATTEND
22 OR CALL INTO AT LEAST ONE REGULAR TASK FORCE MEETING. COMMITTEE
23 MEMBERS ARE ENCOURAGED TO ATTEND SEPARATE MEETINGS AND INFORM
24 THE REST OF THE COMMITTEE ABOUT THE CURRENT WORK OF THE TASK
25 FORCE.

26 (b) (I) THE COMMITTEE SHALL CONSIDER THE POLICY
27 RECOMMENDATIONS CONTAINED IN THE TAX EXPENDITURE EVALUATIONS

1 PREPARED BY THE STATE AUDITOR PURSUANT TO SECTION 39-21-305.

2 (II) THE COMMITTEE IS RESPONSIBLE FOR THE OVERSIGHT OF THE
3 TASK FORCE.

4 (c) THE COMMITTEE MAY RECOMMEND LEGISLATIVE CHANGES
5 THAT ARE TREATED AS BILLS RECOMMENDED BY AN INTERIM LEGISLATIVE
6 COMMITTEE FOR PURPOSES OF ANY INTRODUCTION DEADLINES OR BILL
7 LIMITATIONS IMPOSED BY THE JOINT RULES OF THE GENERAL ASSEMBLY.

8 (d) ON OR BEFORE JANUARY 15 OF EACH YEAR, THE COMMITTEE
9 SHALL SUBMIT, AND MAKE PUBLICLY AVAILABLE ON ITS WEBSITE, A
10 REPORT TO THE GENERAL ASSEMBLY. THE ANNUAL REPORT MUST BRIEFLY
11 SUMMARIZE THE STUDY ISSUES, RECOMMENDATIONS CONSIDERED, AND
12 ANY ACTIONS TAKEN BY THE COMMITTEE AND THE TASK FORCE DURING
13 THE PREVIOUS YEAR. THE REPORT MUST COMPLY WITH THE PROVISIONS OF
14 SECTION 24-1-136 (9). NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I),
15 THE REQUIREMENT IN THIS SECTION TO REPORT TO THE GENERAL
16 ASSEMBLY CONTINUES INDEFINITELY.

17 **39-21-404. Task force concerning tax policy - creation -**
18 **membership - duties. (1) Creation. (a) THERE IS HEREBY CREATED A**
19 **TASK FORCE CONCERNING TAX POLICY. THE TASK FORCE CONSISTS OF**
20 **TWENTY-ONE MEMBERS APPOINTED AS PROVIDED IN SUBSECTIONS (1)(b)**
21 **AND (1)(c) OF THIS SECTION.**

22 (b) FOUR NONVOTING TASK FORCE MEMBERS, ONE APPOINTMENT
23 FROM EACH OFFICE, WITH RELEVANT EXPERIENCE IN ECONOMICS,
24 BUDGETING, OR TAX POLICY, SHALL BE APPOINTED BY:

- 25 (I) THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL;
26 (II) THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL
27 SERVICES;

1 (III) THE STAFF DIRECTOR OF THE JOINT BUDGET COMMITTEE; AND

2 (IV) THE STATE AUDITOR.

3 (c) WITH INPUT FROM THE GOVERNOR'S OFFICE, THE SPEAKER OF
4 THE HOUSE OF REPRESENTATIVES, AND THE PRESIDENT OF THE SENATE,
5 THE CHAIR AND VICE-CHAIR OF THE COMMITTEE SHALL APPOINT
6 SEVENTEEN VOTING MEMBERS AS FOLLOWS:

7 (I) A REPRESENTATIVE OF THE OFFICE OF STATE PLANNING AND
8 BUDGETING;

9 (II) A REPRESENTATIVE FROM THE TAXATION DIVISION IN THE
10 DEPARTMENT OF REVENUE;

11 (III) A REPRESENTATIVE OF THE OFFICE OF ECONOMIC
12 DEVELOPMENT;

13 (IV) A REPRESENTATIVE OF THE OFFICE OF THE STATE TREASURER;

14 (V) ONE MEMBER FROM A STATE PUBLIC OR PRIVATE INSTITUTION
15 OF HIGHER EDUCATION WITH KNOWLEDGE OF TAX POLICY;

16 (VI) ONE MEMBER FROM A STATE PUBLIC OR PRIVATE INSTITUTION
17 OF HIGHER EDUCATION WITH KNOWLEDGE OF ECONOMICS;

18 (VII) FOUR MEMBERS REPRESENTING LOCAL GOVERNMENT, ONE
19 FROM A HOME RULE CITY OR CITY AND COUNTY, ONE FROM A STATUTORY
20 CITY, ONE FROM A HOME RULE COUNTY, AND ONE FROM A STATUTORY
21 COUNTY;

22 (VIII) TWO TAX LAW PRACTITIONERS WHO ARE NOT EMPLOYED BY
23 A HOME RULE OR STATUTORY CITY OR CITY AND COUNTY;

24 (IX) TWO CERTIFIED PUBLIC ACCOUNTANTS WITH STATE AND
25 LOCAL TAX EXPERIENCE WHO ARE NOT EMPLOYED BY A HOME RULE OR
26 STATUTORY CITY OR CITY AND COUNTY;

27 (X) ONE SMALL BUSINESS OWNER;

1 (XI) ONE LARGE BUSINESS OWNER; AND

2 (XII) ONE MEMBER REPRESENTING A NONPROFIT ORGANIZATION
3 WITH EXPERTISE IN TAX POLICY.

4 (d) MEMBERS OF THE TASK FORCE SERVE WITHOUT
5 COMPENSATION.

6 (e) A VACANCY OCCURRING IN A POSITION FILLED BY THE CHAIR
7 AND VICE-CHAIR OF THE COMMITTEE PURSUANT TO SUBSECTION (1)(c) OF
8 THIS SECTION MUST BE FILLED AS SOON AS POSSIBLE BY THE CHAIR AND
9 VICE-CHAIR OF THE COMMITTEE IN ACCORDANCE WITH THE LIMITATIONS
10 SPECIFIED IN SUBSECTION (1)(c) OF THIS SECTION. IN ADDITION, THE CHAIR
11 AND VICE-CHAIR OF THE COMMITTEE MAY REMOVE AND REPLACE ANY
12 APPOINTMENT TO THE TASK FORCE MADE PURSUANT TO SUBSECTION (1)(c)
13 OF THIS SECTION.

14 (f) IN MAKING APPOINTMENTS OF VOTING MEMBERS TO THE TASK
15 FORCE, THE CHAIR AND VICE-CHAIR SHALL ENSURE THAT THE MEMBERSHIP
16 OF THE TASK FORCE INCLUDES PERSONS WHO HAVE EXPERIENCE WITH OR
17 INTEREST IN THE STUDY AREAS OF THE TASK FORCE AS SET FORTH IN
18 SUBSECTION (2) OF THIS SECTION; PERSONS WHO REFLECT THE ETHNIC,
19 CULTURAL, AND GENDER DIVERSITY OF THE STATE; REPRESENTATION OF
20 ALL AREAS OF THE STATE; AND, TO THE EXTENT PRACTICABLE, PERSONS
21 WITH DISABILITIES.

22 (g) (I) ALL TASK FORCE MEMBERS ARE EXPECTED TO SEEK INPUT
23 FROM THE VARIOUS DEPARTMENTS, OFFICES, OR ORGANIZATIONS THEY
24 REPRESENT OR THAT THEY ARE ASSOCIATED WITH, IF ANY.

25 (II) IN ORDER TO ADVANCE THE WORK OF THE TASK FORCE,
26 MEMBERS ARE ENCOURAGED TO PARTICIPATE IN DECISION-MAKING, WITH
27 THE UNDERSTANDING THAT INDIVIDUAL VOTES ON TASK FORCE ISSUES ARE

1 BASED ON SUBJECT MATTER EXPERTISE AND DO NOT COMMIT
2 REPRESENTATIVE ENTITIES OR ORGANIZATIONS TO ANY POSITION OR
3 ACTION. TASK FORCE MEMBERS SHALL ADHERE TO ANY AGREED UPON
4 PROCEDURAL RULES AND GUIDELINES.

5 **(2) Issues for study.** (a) THE TASK FORCE SHALL STUDY TAX
6 POLICY AND DEVELOP AND PROPOSE FOR COMMITTEE CONSIDERATION ANY
7 MODIFICATIONS TO THE CURRENT SYSTEM OF STATE AND LOCAL
8 TAXATION.

9 (b) THE REQUIREMENTS SET FORTH IN THIS SUBSECTION (2) DO NOT
10 PROHIBIT THE TASK FORCE, AT ANY TIME DURING ITS EXISTENCE, FROM
11 STUDYING, PRESENTING FINDINGS AND RECOMMENDATIONS TO THE
12 COMMITTEE ON, OR REQUESTING PERMISSION FROM THE COMMITTEE TO
13 DRAFT LEGISLATIVE PROPOSALS CONCERNING ANY ISSUE DESCRIBED IN
14 THIS SUBSECTION (2).

15 **(3) Additional duties of the task force.** THE TASK FORCE SHALL
16 ANNUALLY DELIVER POLICY AND LEGISLATIVE RECOMMENDATIONS TO THE
17 COMMITTEE PURSUANT TO THIS SECTION. IN ADDITION, THE TASK FORCE
18 SHALL:

19 (a) ON OR BEFORE AUGUST 1 OF EACH YEAR, SELECT A CHAIR AND
20 VICE-CHAIR FROM AMONG ITS MEMBERS;

21 (b) MEET AT LEAST SIX TIMES EACH YEAR, OR MORE OFTEN AS
22 DIRECTED BY THE CHAIR OF THE COMMITTEE;

23 (c) ESTABLISH ORGANIZATIONAL AND PROCEDURAL RULES FOR THE
24 OPERATION OF THE TASK FORCE AND FOR COLLABORATION WITH THE
25 COMMITTEE;

26 (d) DESIGNATE SPECIFIC TASK FORCE MEMBERS RESPONSIBLE FOR
27 COLLABORATING WITH AND OBTAINING INPUT FROM OTHER STATE

1 OFFICIALS, GROUPS, TASK FORCES, OR STATEWIDE INITIATIVES THAT
2 COMPLEMENT OR RELATE TO THE TASK FORCE'S IDENTIFIED AREAS OF
3 STUDY;

4 (e) CREATE SUBCOMMITTEES AS NEEDED TO CARRY OUT THE
5 DUTIES OF THE TASK FORCE. THE SUBCOMMITTEES MAY CONSIST, IN PART,
6 OF PERSONS WHO ARE NOT MEMBERS OF THE TASK FORCE BUT HAVE
7 PARTICULAR EXPERTISE RELATED TO THE TOPICS BEING STUDIED. SUCH
8 PERSONS MAY VOTE ON ISSUES BEFORE THE SUBCOMMITTEE BUT ARE NOT
9 ENTITLED TO A VOTE AT TASK FORCE MEETINGS.

10 (f) UPON REQUEST BY A COMMITTEE MEMBER, PROVIDE
11 EVIDENCE-BASED FEEDBACK ON THE POTENTIAL BENEFITS OR
12 CONSEQUENCES OF A LEGISLATIVE OR OTHER POLICY PROPOSAL NOT
13 DIRECTLY AFFILIATED WITH OR GENERATED BY THE TASK FORCE,
14 INCLUDING ANY BILL OR RESOLUTION INTRODUCED BY THE GENERAL
15 ASSEMBLY THAT AFFECTS TAX POLICY. THE FEEDBACK MUST BE
16 DELIVERED WITHIN TWO WEEKS TO THE ENTIRE COMMITTEE AND REMAIN
17 AS CONCISE AS POSSIBLE WHILE CAPTURING ANY AVAILABLE EVIDENCE. IF
18 THE TASK FORCE CANNOT IDENTIFY EVIDENCE TO EFFECTIVELY INFORM A
19 RESPONSE, THE FEEDBACK WILL INDICATE A LACK OF EVIDENCE AND
20 REPORT ON ANY ACTIONS TAKEN.

21 (g) ON OR BEFORE OCTOBER 1 OF EACH YEAR, PREPARE AND
22 SUBMIT TO THE COMMITTEE, WHICH THE COMMITTEE MAY MAKE PUBLICLY
23 AVAILABLE ON ITS WEBSITE, A REPORT THAT, AT A MINIMUM, INCLUDES:

24 (I) ISSUES STUDIED BY THE TASK FORCE, AS WELL AS FINDINGS FOR
25 LEGISLATIVE OR OTHER RECOMMENDATIONS;

26 (II) LEGISLATIVE OR POLICY PROPOSALS OF THE TASK FORCE THAT
27 IDENTIFY THE POLICY ISSUES INVOLVED, THE AGENCIES RESPONSIBLE FOR

1 THE IMPLEMENTATION OF THE CHANGES, AND THE FUNDING SOURCES
2 REQUIRED FOR IMPLEMENTATION;

3 (III) A SUMMARY OF MONTHLY TASK FORCE MEETING ACTIVITIES
4 AND DISCUSSIONS;

5 (IV) ANY EVIDENCE-BASED FEEDBACK PROVIDED TO THE
6 COMMITTEE PURSUANT TO SUBSECTION (3)(f) OF THIS SECTION; AND

7 (V) A SUMMARY OF EFFORTS MADE TO COMMUNICATE,
8 COLLABORATE, OR COORDINATE WITH OTHER GROUPS, TASK FORCES, OR
9 STATE INITIATIVES.

10 (4) **Coordination.** THE TASK FORCE MAY WORK WITH OTHER
11 STATE AGENCIES, GROUPS, TASK FORCES, OR STATEWIDE INITIATIVES THAT
12 ARE PURSUING ISSUES AND POLICY INITIATIVES SIMILAR TO THOSE
13 ADDRESSED IN SUBSECTION (2) OF THIS SECTION. THE TASK FORCE MAY
14 DEVELOP RELATIONSHIPS WITH OTHER TASK FORCES, COMMITTEES, AND
15 ORGANIZATIONS TO LEVERAGE EFFICIENT POLICY-MAKING OPPORTUNITIES
16 THROUGH COLLABORATIVE EFFORTS.

17 (5) **Task force funding - staff support.** (a) THE LEGISLATIVE
18 COUNCIL STAFF AND THE DEPARTMENT OF REVENUE SHALL SUPPLY STAFF
19 ASSISTANCE, WITHIN EXISTING APPROPRIATIONS, TO THE TASK FORCE AS
20 THE COMMITTEE DEEMS APPROPRIATE. IF EXISTING APPROPRIATIONS ARE
21 NOT ADEQUATE TO SUPPLY STAFF ASSISTANCE, THE DIRECTOR OF THE
22 LEGISLATIVE COUNCIL STAFF OR THE DIRECTOR OF THE DEPARTMENT OF
23 REVENUE SHALL REQUEST ADDITIONAL NECESSARY FUNDING IN THEIR
24 ANNUAL BUDGET REQUESTS.

25 (b) ANY STATE DEPARTMENT, AGENCY, OR OFFICE WITH AN ACTIVE
26 REPRESENTATIVE ON THE TASK FORCE IS AUTHORIZED TO RECEIVE AND
27 EXPEND GIFTS, GRANTS, AND DONATIONS, INCLUDING DONATIONS OF

1 IN-KIND SERVICES FOR STAFF SUPPORT, FROM ANY PUBLIC OR PRIVATE
2 ENTITY FOR ANY DIRECT OR INDIRECT COSTS ASSOCIATED WITH THE
3 DUTIES OF THE TASK FORCE.

4 **39-21-405. Repeal of part.** THIS PART 4 IS REPEALED, EFFECTIVE
5 JULY 1, 2025.

6 **SECTION 2. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, or safety.

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

Attachment E

BILL E

LLS NO. 20-0242.01 Pierce Lively x2059

HOUSE BILL

HOUSE SPONSORSHIP

Benavidez and Snyder,

SENATE SPONSORSHIP

Court and Tate, Moreno

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE SALES TAX EXEMPTION FOR**
102 **CERTAIN ENERGY USES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Tax Expenditure Evaluation Interim Study Committee. Under current law, the sales tax exemption for energy use exempts the sale and purchase of electricity, gas, fuel oil, steam, coal, coke, or nuclear fuel used in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses, and newsprint and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

printer's ink used by newspaper publisher and commercial printers from state sales tax. The bill modifies this sales exemption to only apply when the energy is used by a metered machine.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) The sales tax exemption for energy use exempts the sale and
5 purchase of electricity, gas, fuel oil, steam, coal, coke, or nuclear fuel
6 used in processing, manufacturing, mining, refining, irrigation,
7 construction, telegraph, telephone, and radio communication, street and
8 railroad transportation services, and all industrial uses, and newsprint and
9 printer's ink used by newspaper publisher and commercial printers.

10 (b) Energy that does not directly contribute to one of the uses
11 enumerated in the exemption, such as energy used to heat or light break
12 rooms, office spaces, and sales rooms, does not qualify for the exemption.

13 (c) Because only certain energy qualifies for the sales tax
14 exemption, it is difficult for certain taxpayers to determine what energy
15 they use qualifies for the exemption and the exemption is open to fraud.

16 (d) (I) Moreover, there are unique burdens for the taxpayer and
17 energy provider in tracking and reporting this sales tax exemption.

18 (II) If a taxpayer's energy usage that qualifies for the exemption
19 is under 75% of the taxpayer's total energy use, the taxpayer must pay the
20 sales tax to their energy provider on the full amount of their energy
21 purchases and then apply for a refund from the department of revenue.

22 (III) If a taxpayer's energy usage that qualifies for the exemption
23 is 75% or more of their total energy use, the taxpayer can file a form with
24 their energy provider. If the taxpayer files this form, their energy provider

1 does not collect any sales tax from the taxpayer for the taxpayer's energy
2 purchases. The energy provider reports to the department of revenue the
3 amount of the taxpayer's energy purchases they exempted from sales tax.
4 If any of the taxpayer's energy use is not exempt from sales tax, the
5 taxpayer is responsible for remitting the nonexempt sales tax to the
6 department of revenue.

7 (IV) There is a separate process for restaurants that claim this
8 sales tax exemption. Restaurants with sales of food for immediate
9 consumption that exceed 25% of their total sales revenue can receive the
10 sales tax exemption for energy use for 55% of the sales tax they paid on
11 their energy purchases. Restaurants with sales of food for immediate
12 consumption that are 25% or less of their total sales revenue can claim the
13 sales tax exemption for energy use for an amount equivalent to 0.5% of
14 their total food sales.

15 (2) Therefore, it is the intent of the general assembly to simplify
16 the collection and administration of taxes for the state of Colorado and to
17 relieve taxpayers' confusion and vendors' administrative burdens by
18 amending tax expenditures where necessary.

19 **SECTION 2.** In Colorado Revised Statutes, 39-26-102, **amend**
20 (21)(a) as follows:

21 **39-26-102. Definitions.** As used in this article 26, unless the
22 context otherwise requires:

23 (21) (a) Sales and purchases of electricity, coal, gas, fuel oil,
24 steam, coke, or nuclear fuel, for use in processing, manufacturing,
25 mining, refining, irrigation, construction, telegraph, telephone, and radio
26 communication, street and railroad transportation services, and all
27 industrial uses, and newsprint and printer's ink for use by publishers of

1 newspapers and commercial printers shall be deemed to be wholesale
2 sales and shall be exempt from taxation under this part 1 SO LONG AS THE
3 ELECTRICITY, COAL, GAS, FUEL OIL, STEAM, COKE, OR NUCLEAR FUEL USED
4 IS MEASURED BY A METERED MACHINE THAT QUANTIFIES THE AMOUNT OF
5 ELECTRICITY, COAL, GAS, FUEL OIL, STEAM, COKE, OR NUCLEAR FUEL THAT
6 IS USED FOR A PURPOSE ENUMERATED IN THIS SECTION.

7 **SECTION 3. Act subject to petition - effective date.** This act
8 takes effect October 1, 2020; except that, if a referendum petition is filed
9 pursuant to section 1 (3) of article V of the state constitution against this
10 act or an item, section, or part of this act within the ninety-day period
11 after final adjournment of the general assembly, then the act, item,
12 section, or part will not take effect unless approved by the people at the
13 general election to be held in November 2020 and, in such case, will take
14 effect on the date of the official declaration of the vote thereon by the
15 governor.