



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2022 Sunset Review

The Issuance of Private Letter Rulings and General
Information Letters



October 14, 2022



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 14, 2022

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Issuance of Private Letter Rulings (Rulings) and General Information Letters (Letters) by the Executive Director of the Colorado Department of Revenue (Executive Director and Department, respectively). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2023 legislative committee of reference.

The report discusses the question of whether there is a need for the issuance of Rulings and Letters provided under Section 103.5 of Article 35 of Title 24, C.R.S. The report also discusses the effectiveness of the Executive Director and Department staff in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director





Sunset Review: The Issuance of Private Letter Rulings and General Information Letters

Background

What are Private Letter Rulings and General Information Letters?

Private Letter Rulings (Rulings) are binding decisions concerning the Department of Revenue's application of tax statutes or rules. General Information Letters (Letters) are non-binding, and the purpose of Letters is for the Department to provide general information regarding the Department's interpretation of current statutes or rules.

Why are Rulings and Letters necessary?

Rulings and Letters are important because they provide taxpayers with clarity on tax law.

Who requests Rulings and Letters?

Taxpayers (businesses or individuals) may seek clarity concerning Colorado's tax statutes or rules. When uncertainty concerning tax statutes or rules arise, taxpayers may contact the Department and request guidance from them.

How are Rulings and Letters issued?

The Executive Director of the Department is responsible for issuing Rulings and Letters when requested by taxpayers.

To obtain a Ruling taxpayers must submit a statement requesting a Ruling as well as other documentation.

All Ruling requests received by the Department are evaluated and a determination is made as to the fee charged to the taxpayer.

An analysis is based on the amount of time the Department estimates will be taken to complete the Ruling.

To obtain a Letter, a taxpayer is required to submit a request that includes a reasonable description of the facts and identification of the issues. While citations to statutes and legal authority may be included, the Executive Director does not require them.

What activity is there?

In fiscal years 16-17 through 20-21, the Executive Director issued 32 Rulings and 55 Letters.

Key Recommendations

- **Continue the Rulings and Letters statute and remove it from the sunset schedule.**
- **Authorize the Department to extend the timeframe to issue a Ruling if the taxpayer who requested the Ruling agrees to the extended timeframe.**
- **Authorize the Department to issue Rulings and Letters for any tax-related issue administered by the Department.**

Table of Contents

Background	1
Sunset Criteria.....	1
Sunset Process	3
Methodology	3
Profile of Private Letter Rulings and General Information Letters	4
Legal Framework.....	7
History of Regulation	7
Legal Summary	7
Program Description and Administration	13
Rulings and Letters Activity	15
Analysis and Recommendations.....	19
Recommendation 1 - Continue the Private Letter Rulings and General Information Letters statute and remove it from the sunset review schedule.....	19
Recommendation 2 - Authorize the Department to extend the timeframe to issue a Ruling if the taxpayer who requested the Ruling agrees to the extended timeframe.	21
Recommendation 3 - Authorize the Department to issue Letters and Rulings for any tax-related issue administered by the Department.	21

Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

**Table 1
Application of Sunset Criteria**

Sunset Criteria	Where Applied
(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation;	<ul style="list-style-type: none"> • Profile • Legal Framework
(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;	<ul style="list-style-type: none"> • Legal Framework
(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;	<ul style="list-style-type: none"> • Legal Framework • Program Description and Administration • Recommendations 2 and 3
(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	<ul style="list-style-type: none"> • Program Description and Administration • Recommendation 1
(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;	<ul style="list-style-type: none"> • Not Applicable
(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;	<ul style="list-style-type: none"> • Not Applicable
(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;	<ul style="list-style-type: none"> • Not Applicable
(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action;	<ul style="list-style-type: none"> • Not Applicable

Sunset Criteria	Where Applied
(IX) Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	<ul style="list-style-type: none"> • Not Applicable
(X) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	<ul style="list-style-type: none"> • Recommendations 1-3

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR’s website at coprrr.colorado.gov.

The functions of the Executive Director of the Colorado Department of Revenue (Executive Director and Department, respectively), as enumerated in Section 103.5 of Article 35 of Title 24, Colorado Revised Statutes (C.R.S.), relating to the issuance of Private Letter Rulings (Rulings) and General Information Letters (Letters), shall terminate on September 1, 2023, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Executive Director pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to issue Rulings and Letters should be continued and to evaluate the performance of the Executive Director and staff. During this review, the Executive Director must demonstrate that the program serves the public interest. COPRRR’s findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Department staff, practitioners, and officials with state and professional associations; and reviewed Colorado statutes and rules, and the laws of other states.

The major contacts made during this review include, but are not limited to:

- Colorado Bar Association
- Colorado Chamber of Commerce
- Colorado Department of Revenue
- Colorado Society of Certified Public Accountants
- Ernst & Young
- PricewaterhouseCoopers, LLC

Profile of Private Letter Rulings and General Information Letters

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

In order to understand the need for Private Letter Rulings (Rulings) and General Information Letters (Letters), it is first necessary to understand what they do and who they serve.

At times, taxpayers (businesses or individuals) may seek clarity concerning Colorado's tax statutes or rules. When uncertainty concerning tax statutes or rules arise, taxpayers may contact the Department and request guidance from them. There are two types of guidance offered by the Department when there are tax questions: Letters and Rulings.

Letters are non-binding, and the purpose of Letters is for the Department to provide general information regarding the Department's interpretation of current statutes or rules. There is no fee for Letter requests, and the Department typically provides a response within 120 days of the submission of the Letter request.²

An example of a recent Letter issued by the Department is as follows:

A taxpayer requested a Letter from the Department on May 5, 2022, concerning the applicability of Colorado's sales tax to surcharges on credit transactions.

In some cases, amounts charged in connection with the retail sale of tangible personal property are not part of the taxable purchase price. For instance, the taxable purchase price generally excludes separately stated interest and finance

² Colorado Department of Revenue. *Requesting a General Information Letter or a Private Letter Ruling*. Retrieved June 2, 2022, from https://tax.colorado.gov/sites/tax/files/documents/Requesting_a_PLR_or_GIL_May_2021.pdf

charges. Similarly, transportation charges are not part of the taxable purchase price if they are both separate from the sales transaction and stated separately on a written invoice or contract.³

The Department concluded in its Letter concerning surcharges on credit transactions that as long as the surcharges are in compliance with current statutory requirements and are not used to shift part of the actual sales price to the surcharge, they are not part of the taxable purchase price.⁴

Importantly, as the example above indicates, the Letter process affords the Department the opportunity to provide non-binding guidance of general applicability on the interpretation of Colorado tax law.

Additionally, taxpayers may request Rulings from the Department. Rulings are binding decisions concerning the Department's application of tax statutes or rules to a specific situation. A request for a Ruling must, at a minimum, include a complete statement of relevant facts. The Department charges an initial \$500 for Rulings, and additional fees may apply. Currently, the Department is statutorily required to complete Rulings within 90 days of a request being filed.⁵

An example of a Ruling issued by the Department is as follows:

In May 2021, a taxpayer (cable company) requested a Ruling from the Department to determine whether services (subject transactions) such as “on demand” or “pay-per-view content,” which customers can request, is taxable under Colorado's current tax laws.

The Department determined in its Ruling that subject transactions are not subject to state and state-administered local sales taxes. The discussion in the Ruling stated, in part:

The content delivered by the [taxpayer], including movies, television shows, pay-per-view content, is tangible personal property. However, provision of these items of tangible personal property to subscribers via fiber optic and coaxial cable also includes a service component. Thus, the sale is a mixed transaction, including both a sale of tangible personal property and the provision of a service. Taken as a whole, the [s]ubject [t]ransactions are more analogous to a

³ Colorado Department of Revenue. *General Information Letter on Surcharges on Credit Transactions (GIL 22-004)*. Retrieved June 2, 2022, from <https://tax.colorado.gov/sites/tax/files/documents/GIL-22-004.pdf>

⁴ Colorado Department of Revenue. *General Information Letter on Surcharges on Credit Transactions (GIL 22-004)*. Retrieved June 2, 2022, from <https://tax.colorado.gov/sites/tax/files/documents/GIL-22-004.pdf>

⁵ Colorado Department of Revenue. *Requesting a General Information Letter or a Private Letter Ruling*. Retrieved June 2, 2022, from https://tax.colorado.gov/sites/tax/files/documents/Requesting_a_PLR_or_GIL_May_2021.pdf

service... The [s]ubject [t]ransactions are not explicitly taxed and are, therefore, excluded.⁶

The examples highlighted above are intended to provide some clarity as to the types of matters addressed through the Letters and Rulings program.

⁶ Colorado Department of Revenue. *Private Letter Ruling on Sales Tax on Cable Television (PLR 21-001)*. Retrieved June 7, 2022, from <https://tax.colorado.gov/sites/tax/files/documents/PLR-21-001.pdf>

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

In 2006, the General Assembly granted the Executive Director of the Colorado Department of Revenue (Executive Director and Department, respectively) the authority to issue binding opinions, known as Private Letter Rulings (Rulings) to taxpayers with questions regarding specific tax events. Before this time, the Executive Director could only issue non-binding opinions, known as General Information Letters (Letters).

The issuance of Rulings (there is no fee for Letters) was cash funded, and to ensure transparency, House Bill 06-1312 established Letters and Rulings issued by the Department would be public information, except that the name of the requesting taxpayer and any other identifying information would be redacted, and the request and supporting documentation would also remain confidential.

Since then, section 24-34-103.5, C.R.S., has gone through the sunset review process twice, once in 2010 and again in 2015. The 2010 sunset report recommended continuation of the statute for five years, which was passed by the General Assembly in the 2011 legislative session.

The 2015 sunset report recommended continuation of the statute for nine years, and in the 2016 legislative session the General Assembly continued it for seven years.

Importantly, there were no substantive recommended changes to section 24-34-103.5, C.R.S., in the 2010 and 2015 sunset reports.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.

A summary of the current statutes and rules is necessary to understand whether the Letters and Rules program is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

The Executive Director, or the Executive Director's designee, is responsible for issuing Rulings and Letters when requested by taxpayers (businesses or individuals).

A Ruling is a written determination, that is binding on the Department, concerning the tax consequences of a proposed or completed transaction under any tax administered by the Department specific to Titles 29 (local government) or 39 (property or other taxes) that is made in response to a written request by a taxpayer.⁷

Additionally, a Letter is a non-binding statement issued by the Executive Director that provides general information regarding any tax administered by the Department specific to Titles 29 and 39 to a taxpayer in response to a written request.⁸

The Executive Director will issue Rulings and Letters on a broad range of subjects that involve an interpretation of tax law, the applicability of tax to a given set of facts, a taxpayer's tax status or procedural issues.⁹

To obtain a Letter, a taxpayer is required to submit a request that includes a reasonable description of the facts and identification of the issues. While citations to statutes and legal authority may be included, the Executive Director does not require them. The Executive Director does not charge a fee to issue a Letter.¹⁰

A Ruling request is more comprehensive than a Letter request.¹¹

To obtain a Ruling, a taxpayer must submit to the Department a variety of items, including, but not limited to:¹²

- A statement requesting a Ruling;
- A complete and detailed statement of all the relevant facts;
- A discussion of the business reasons for the transaction at issue;
- True and complete copies of all documents relevant to the Ruling;

⁷ § 24-35-103.5(1)(b), C.R.S.

⁸ § 24-35-103.5(1)(a), C.R.S.

⁹ 1 CCR § 201-1-3(a), Taxation Division Rules.

¹⁰ 1 CCR § 201-1-4(a), Taxation Division Rules.

¹¹ 1 CCR § 201-1-4(a), Taxation Division Rules.

¹² 1 CCR § 201-1-4(b), Taxation Division Rules.

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- A statement that the same or substantially similar issue is not being considered by the Department or Internal Revenue Service (IRS) in connection with an active examination, audit of the taxpayer or related party;
 - For requests that pertain only to one step of a large integrated transaction, documents related to the entire transaction;
 - If the request is with respect to a corporate distribution, reorganization or other similar or related transaction, the corporate balance sheet nearest to the date of the transaction must be submitted. If the request relates to a prospective transaction, the most recent balance sheet must be submitted;
 - A statement as to whether the taxpayer, related party or other member of an affiliated group, has made the same or similar request for a Ruling related to the same or similar issue to the IRS or the taxing authority of another state or local jurisdiction. The request to, and Ruling of (if issued), the IRS or other taxing jurisdiction must be attached; and
 - A discussion of all the relevant issues underlying the request.

The Executive Director is authorized to establish fees, by rule, to cover the direct and indirect costs of issuing Rulings. All fees collected related to the issuance of Rulings are transmitted to the State Treasurer who credits the funds to the Private Letter Ruling Fund.¹³

The current fee schedule for Rulings is as follows:¹⁴

- First tier Ruling, initial fee and base evaluation - \$500;
- Second tier Ruling - \$1,000;
- Third tier Ruling - \$2,500;
- Fourth tier Ruling - \$5,000;
- Fifth tier Ruling - \$7,500; and
- Sixth tier Ruling - highest complexity - fee in excess of \$10,000.

The Department utilizes a fee process to determine the amount a taxpayer is charged for a Ruling. A base fee (\$500) is charged to all taxpayers that request a Ruling from the Department, and the Department may be able to perform an initial evaluation and prepare a Ruling for the base fee.¹⁵

All Ruling requests received by the Department are evaluated and a determination is made as to which tier the Ruling falls under. An analysis is based on the amount of time the Department estimates will be taken to complete the Ruling. The number of hours is multiplied by \$60 per hour, which represents the initial estimate by the Department of direct and indirect costs associated with evaluating the request and drafting the Ruling. In the case of a Ruling that the Department estimates the fee to

¹³ § 24-35-103.5(6), C.R.S.

¹⁴ 1 CCR § 201-1-5(a), Taxation Division Rules.

¹⁵ 1 CCR § 201-1-5(b), Taxation Division Rules.

exceed \$10,000, the fee must be equal to the number of estimated hours multiplied by the applicable hourly rate.¹⁶

In most instances once the fee is established, it will not be modified.

Except in cases of a first tier Ruling, the Department must give notice of the fee tier (or fee amount if a sixth tier Ruling) to the taxpayer. The taxpayer must then either accept and pay the fee or withdraw the request.¹⁷

During the initial request for a Ruling, the taxpayer is not required to disclose the taxpayer's identity. Upon receiving the draft Ruling from the Department, the taxpayer must either withdraw the request or disclose the following information before the Department will issue the Ruling:¹⁸

- Name and address;
- Social Security Number, Colorado Tax Account Number and Federal Employment Identification Number, if any;
- Telephone numbers and email addresses of the taxpayer;
- Submit a request signed by the taxpayer, or authorized representative, using language specified in rule attesting that the facts and representations in the request are true, correct and complete;¹⁹ and
- Supplement the request with any other statements, facts, arguments and citations of facts not previously disclosed.²⁰

The Executive Director may request additional information from the taxpayer before issuing a final Ruling. If the Department requests additional information, the taxpayer must submit the information to the Department.²¹

A taxpayer may withdraw a request any time prior to the issuance of the Ruling,²² and the fee paid is nonrefundable.

The Executive Director must issue a Ruling within 90 days or decline to issue a Ruling within 30 days of receiving a written request.²³

The Executive Director may decline to issue a Ruling or Letter regarding:²⁴

- An issue that is closely related to an issue before the Department or the IRS in connection with an examination or audit of the taxpayer;

¹⁶ 1 CCR § 201-1-5(b), Taxation Division Rules.

¹⁷ 1 CCR § 201-1-5(b), Taxation Division Rules.

¹⁸ 1 CCR § 201-1-4(b)(x), Taxation Division Rules.

¹⁹ 1 CCR § 201-1-4(d), Taxation Division Rules.

²⁰ 1 CCR § 201-1-4(c), Taxation Division Rules.

²¹ 1 CCR § 201-1-4(e), Taxation Division Rules.

²² 1 CCR § 201-1-8, Taxation Division Rules.

²³ § 24-35-103.5(3), C.R.S.

²⁴ 1 CCR § 201-1-3(b), Taxation Division Rules.

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- An issue that is pending appeal with the tax conferee, the Executive Director or the courts;
 - A matter that involves the tax consequence of any proposed federal, state or local legislation;
 - A request that is related to the application of a requirement of the tax law concerning “reasonable,” “good cause,” “good faith” or another similar standard;
 - A request that concerns whether a proposed transaction would subject the taxpayer to civil fraud or criminal penalty;
 - An issue that involves the application of a question of fact, such as valuation;
 - The factual scenarios require documentation or facts so voluminous as to be onerous to resolve, such as questions of “business purpose” and “economic substance;”
 - An issue that involves federal law or state constitutional law;
 - Only part of an integrated or step transaction, unless as part of a Ruling regarding the entire transaction; or
 - An issue that is raised by a business, trade or industrial association, or another similar group that relates to the members’ or constituency’s tax status or liability.

The Executive Director may decline a Ruling or Letter request when the Department lacks sufficient resources to prepare a response. In this case, the Department will issue a notice on its website.²⁵ The Executive Director may also decline to issue a Ruling or Letter if it determines that it would not be in the best interests of the state.²⁶

Neither a Ruling nor a Letter is binding on the taxpayer. However, a Ruling is binding on the Department, unless the Ruling is revoked or modified,²⁷ and a Ruling or Letter may be used as evidence relevant to the assessment of penalties and other issues of good faith.²⁸

A taxpayer does not have the right to appeal a Ruling or a Letter.²⁹

A Ruling must be either revoked or modified in any of the following instances:³⁰

- The Ruling is determined by the Department to be in error,
- Legislation is subsequently adopted that contradicts the tax determination in the Ruling,
- The Colorado Court of Appeals or the Colorado Supreme Court issues a contrary decision, or

²⁵ 1 CCR § 201-1-3(c), Taxation Division Rules.

²⁶ 1 CCR § 201-1-3(d), Taxation Division Rules.

²⁷ 1 CCR § 201-1-10(a), Taxation Division Rules.

²⁸ 1 CCR § 201-1-12, Taxation Division Rules.

²⁹ 1 CCR § 201-1-11, Taxation Division Rules.

³⁰ 1 CCR § 201-1-10(c), Taxation Division Rules.

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- The Department promulgates a rule that is contrary to the Ruling and the rule becomes effective subsequent to the issuance of the Ruling.

Rulings and Letters do not constitute a tax policy change in relation to section 20(4)(a) of Article X of the Constitution of the State of Colorado.³¹

The Department will, at its own discretion, make Rulings and Letters available to the public.³² A taxpayer may file objections to a redacted version of a Ruling or Letter prior to its publication. However, the Department retains the authority to make the final determination regarding the public version of the Ruling or Letter.³³

³¹ § 24-35-103.5(4), C.R.S.

³² 1 CCR § 201-1-14(b), Taxation Division Rules.

³³ 1 CCR § 201-1-13(d), Taxation Division Rules.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third and fourth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures practices and any other circumstances, including budgetary, resource and personnel matters; and

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Executive Director of the Department of Revenue (Executive Director and Department, respectively), or the Executive Director's designee, is charged with issuing Private Letter Rulings (Rulings) and General Information Letters (Letters).

The Office of Tax Policy and Analysis (Office) in the Division of Taxation (Division) within the Department is responsible for receiving Ruling and Letter requests and conducting the analysis for the Executive Director. In addition to issuing Rulings and Letters, the Office reviews and writes all tax regulations for the Division, provides general tax guidance to the public, and reviews legislation.

Table 2 illustrates the total expenditures for the Office, the total revenue collected for Rulings, and the full-time equivalent (FTE) employees in the Office. Office staff performs additional duties other than those related to Rulings and Letters. As such, the total expenditures include all of the expenditures for the Office. Also, as Table 2 indicates, revenue is collected for Rulings only. For Letters, there is no cost to the taxpayer.

Table 2
Agency Fiscal Information

Fiscal Year	Total Program Expenditures	Private Letter Rulings Revenue	FTE
16-17	\$346,385	\$11,000	3.4
17-18	\$339,101	\$7,000	4.4
18-19	\$320,116	\$6,500	5.4
19-20	\$782,825	\$8,500	8.4
20-21	\$773,751	\$5,000	8.4

As Table 2 indicates, the total program expenditures in fiscal years 19-20 and 20-21 increased from previous fiscal years. The increase in expenditures is attributable to the increase in FTE for the Office.

In fiscal year 21-22, the Office devoted 6.0 FTE to fulfill its duties, including the Letters and Rulings program. The FTE are as follows:

- Administrative Assistant III—1.0 FTE—who is responsible for, among other things, receiving requests, processing payments and entering requests into tracking software.
- Policy Advisor III, Policy Advisor IV and Policy Advisor V—3.0 FTE—who are responsible for, among other things, researching questions received through the Letters and Rulings program, communicating with requesters and writing Letters and Rulings.
- Policy Advisor VI—1.0 FTE—who is responsible for, among other things, researching questions received through the Letters and Rulings program, reviewing the work of others and developing a standard operating procedure for the Letters and Rulings program.

Also, Table 2 shows the revenue that the Office generated from Rulings during the past five fiscal years. Taxpayers that request Rulings are required to pay an initial \$500 fee, which is nonrefundable.

Table 3 highlights the current fee schedule utilized by the Department for the direct and indirect costs related to the issuance of Rulings. The Department does not charge a fee to taxpayers for Letters.

**Table 3
Fee Schedule**

Tier	Fee
First	\$500
Second	\$1,000
Third	\$2,500
Fourth	\$5,000
Fifth	\$7,500
Sixth	\$10,000

The Department utilizes a fee process to determine the amount a taxpayer is charged for a Ruling. A base fee (\$500) is charged to all taxpayers that request a Ruling from the Department, and the Department may be able to perform an initial evaluation and prepare a Ruling for the base fee.³⁴

³⁴ 1 CCR § 201-1-5(b), Taxation Division Rules.

All Ruling requests received by the Department are evaluated and a determination is made as to which tier the Ruling falls under. An analysis is based on the amount of time the Department estimates will be taken to complete the Ruling. The number of hours is multiplied by \$60 per hour, which represents the initial estimate by the Department of direct and indirect costs associated with evaluating the request and drafting the Ruling. In the case of a Ruling that the Department estimates the fee to exceed \$10,000, the fee must be equal to the number of estimated hours multiplied by the applicable hourly rate.³⁵

In most instances once the fee is established, it will not be modified.

Except in cases of a first tier Ruling, the Department must give notice of the fee tier (or fee amount if a sixth tier Ruling) to the taxpayer. The taxpayer must then either withdraw the request or accept and pay the fee.³⁶

In the past five fiscal years, the vast majority of fees charged by the Department were to issue Rulings from the first or second tier. In fact, 24 Rulings were in the first tier, 7 Rulings were in the second tier and 1 Ruling was in the fourth tier.

Rulings and Letters Activity

Taxpayers may request Rulings or Letters from the Department. Rulings are binding decisions concerning the Department's application of tax statutes or rules to a specific situation. A request for a Ruling must, at a minimum, include a complete statement of relevant facts.³⁷ Currently, the Department is statutorily required to complete Rulings within 90 days of a request being filed.

Letters are non-binding, and the purpose of Letters is for the Department to provide general information regarding the Department's interpretation of current statutes or rules.³⁸ The Department typically provides a response within 120 days of the submission of the Letter request.

Table 4 highlights the total number of Letters and Rulings issued by the Executive Director in the past five fiscal years.

³⁵ 1 CCR § 201-1-5(b), Taxation Division Rules.

³⁶ 1 CCR § 201-1-5(b), Taxation Division Rules.

³⁷ Colorado Department of Revenue. *Requesting a General Information Letter or a Private Letter Ruling*. Retrieved June 2, 2022, from https://tax.colorado.gov/sites/tax/files/documents/Requesting_a_PLR_or_GIL_May_2021.pdf

³⁸ Colorado Department of Revenue. *Requesting a General Information Letter or a Private Letter Ruling*. Retrieved June 2, 2022, from https://tax.colorado.gov/sites/tax/files/documents/Requesting_a_PLR_or_GIL_May_2021.pdf

Table 4
Total Number of Letters and Rulings Issued in Fiscal Years 16-17 through 20-21

Fiscal Year	Letters	Rulings	Total
16-17	22	5	27
17-18	18	11	29
18-19	6	6	12
19-20	4	5	9
20-21	5	5	10

As highlighted in Table 4, the number of Letters and Rulings varied each fiscal year. Letters and Rulings are requested by taxpayers, so it is difficult to explain the fluctuation in requests from one year to the next.

Generally, Letters that were requested by taxpayers included general inquiries concerning sales and use tax issues.

Also, Rulings were generally related to inquiries concerning corporate taxes, individual income taxes and sales and use taxes.

The Executive Director is authorized to decline to issue Letters and Rulings. Table 5 shows the number of requests for Letters and Rulings the Executive Director declined in the past five fiscal years.

Table 5
Total Number of Letters and Rulings Declined in Fiscal Years 16-17 through 20-21

Fiscal Year	Letters Declined	Rulings Declined	Total
16-17	10	3	13
17-18	6	3	9
18-19	10	1	11
19-20	7	8	15
20-21	1	0	1

As illustrated in Table 5, the total number of requests for Letters and Rulings declined by the Executive Director varied in the past five fiscal years. The most common reason Letter requests were declined was that the questions posed by the taxpayer were too specific and not general in nature.

The most common reason Ruling requests were declined was for lack of payment for a Ruling or incomplete information on an application.

There were also instances in the past five fiscal years where requests for Letters were diverted by the Executive Director. For purposes of this sunset review, “diverted” means the Executive Director notified the taxpayer that the question posed in a Letter request had already been answered in a previous Letter issued by the Executive Director, so it is not necessary for the Executive Director to issue another Letter.

Additionally, although not common, the Executive Director “diverted” Rulings. In these instances, the Executive Director determined that a Ruling request was better suited for a Letter.

Table 6 shows the total number of “diverted” Letters and Rulings in the past five fiscal years.

**Table 6
Total Number of Diverted Letters and Rulings**

Fiscal Year	Letters Diverted	Rulings Diverted	Total
16-17	1	0	1
17-18	7	0	7
18-19	5	1	6
19-20	5	1	6
20-21	4	0	4

As Table 6 delineates, the majority of “diverted” requests were for Letters.

Additionally, the Executive Director has occasionally rescinded individual Letters or Rulings. The primary purpose for rescinding Letters and Rulings is changes in tax laws that make a particular Letter or Ruling outdated or inconsistent with current tax laws.

Table 7 highlights the number of rescinded Letters and Rulings in the past five fiscal years.

**Table 7
Rescinded Letters and Rulings**

Fiscal Year	Rescinded Letters	Rescinded Rulings	Total
16-17	0	0	0
17-18	0	0	0
18-19	0	1	1
19-20	34	10	44
20-21	4	0	4

Table 7 shows that most rescinded Letters and Rulings were in fiscal year 19-20. The rescinded Letters and Rulings were attributable to changes in Colorado tax laws. Specifically, House Bill 19-1240 amended Colorado’s sales and use tax laws, which made several previously issued Letters and Rulings inconsistent with the new tax laws.

Table 8 details the total number of Letters and Rulings where taxpayers chose to withdraw their request in the past five fiscal years.

Table 8
Letter and Ruling Requests Withdrawn

Fiscal Year	Letters Withdrawn	Rulings Withdrawn	Total
16-17	0	5	5
17-18	0	4	4
18-19	0	9	9
19-20	0	1	1
20-21	1	6	7

As noted in Table 8, Rulings requests are withdrawn more often than requests for Letters. The most common reason a taxpayer chooses to withdraw their Ruling request is when the outcome is not favorable to them. This may be because taxpayers must disclose their identity for Rulings, and Rulings may be used by the Department as evidence relevant to the assessment of penalties and other issues of good faith.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the Private Letter Rulings and General Information Letters statute and remove it from the sunset review schedule.

The Executive Director of the Department of Revenue (Executive Director and Department, respectively), or the Executive Director's designee, is charged with issuing Private Letter Rulings (Rulings) and General Information Letters (Letters).

The Office of Tax Policy and Analysis in the Division of Taxation within the Department is responsible for receiving Ruling and Letter requests and conducting the analysis on behalf of the Executive Director.

At times, taxpayers may seek clarity concerning Colorado's tax statutes or rules. When uncertainty concerning tax statutes or rules arise, taxpayers may contact the Department and request guidance from them. There are two types of guidance offered by the Department when there are tax questions: Letters and Rulings.

Letters are non-binding, and the purpose of Letters is to enable the Department to provide general information regarding the Department's interpretation of current statutes or rules. There is no fee for Letter requests, and the Department typically provides a response within 120 days of the submission of the Letter request.³⁹

Additionally, taxpayers may request Rulings from the Department. Rulings are binding decisions concerning the Department's application of tax statutes or rules to a specific situation. A request for a Ruling must, at a minimum, include a complete statement of relevant facts.⁴⁰ The Department charges an initial \$500 fee for Rulings; additional fees may apply. Currently, the Department is statutorily required to complete Rulings within 90 days of a request being filed.

The vast majority of Ruling and Letter requests are related to sales tax guidance. With sales tax, when a taxpayer interprets the law differently from the state, the taxpayer almost certainly will not collect the correct taxes at the point of sale, but the tax is

³⁹ Colorado Department of Revenue. *Requesting a General Information Letter or a Private Letter Ruling*. Retrieved June 2, 2022, from https://tax.colorado.gov/sites/tax/files/documents/Requesting_a_PLR_or_GIL_May_2021.pdf

⁴⁰ Colorado Department of Revenue. *Requesting a General Information Letter or a Private Letter Ruling*. Retrieved June 2, 2022, from https://tax.colorado.gov/sites/tax/files/documents/Requesting_a_PLR_or_GIL_May_2021.pdf

still due. When an audit uncovers a taxpayer who did not pay the state what it is owed, then the taxpayer must pay the outstanding taxes in addition to penalties and interest.

The state creates the tax law and enforces it. If the laws are unclear, it is only reasonable for the state to provide the guidance necessary so that taxpayers understand how much tax to collect and pay.

As the data in Table 4 of this sunset report indicate, taxpayers requested many Letters and Rulings for guidance on tax law. In fact, in the past five fiscal years, the Executive Director issued 55 letters and 32 Rulings.

Since Letters and Rulings are utilized by taxpayers, the statute authorizing Rulings and Letters should be continued by the General Assembly. Letters and Rulings are important because they provide taxpayers with clarity on tax law, and the Executive Director should continue to provide them.

The fourth sunset criterion asks whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively. As mentioned earlier, the Department issued 55 Letters and 32 Rulings in the past five fiscal years, thereby demonstrating its effectiveness.

Additionally, the Letters and Rulings statute should be removed from the sunset review schedule for several reasons. First, the Colorado Office of Policy, Research and Regulatory Reform conducted sunset reviews of the statute in 2010 and 2015. Both sunset reports contained one statutory recommendation each, which was to continue the statute. No substantive changes were recommended to modify or update the statute, which calls into question the need to require the Letters and Rulings statute to undergo periodic sunset reviews. Instead, the Letters and Rulings program has demonstrated that it is functioning well, and taxpayers are utilizing the program.

Although this sunset review contains additional recommendations to the General Assembly concerning the statute, they are not substantive in nature. Instead, the recommendations simply provide minor updates to the statute.

The Letters and Rulings statute is important and provides valuable guidance to taxpayers and should continue, but it does not need to be subject to the sunset review process. As such, the General Assembly should remove the Letters and Rulings statute from the sunset schedule.

Recommendation 2 - Authorize the Department to extend the timeframe to issue a Ruling if the taxpayer who requested the Ruling agrees to the extended timeframe.

Currently, section 24-35-103.5(3), Colorado Revised Statutes, requires the Department to issue a Ruling within 90 days of a request. The Department strives to adhere to the 90-day requirement. However, there have been instances where the Department needs to have additional dialogue or needs additional information to comprehensively develop a Ruling. At times, the additional dialogue or waiting for additional information from the taxpayer may cause the Department to fail to comply with the 90-day deadline.

In instances where additional information and/or dialogue is necessary, the Department should be authorized to obtain permission from the requestor for additional time to complete the Ruling. If the requestor agrees, the Department should be permitted to have additional time to complete the Ruling.

Providing flexibility in the Ruling process is important because Rulings are binding on the Department and could be used as guidance by other taxpayers. As such, it is critical that the Department has all the relevant information it needs to issue a comprehensive and accurate Ruling.

The third sunset criterion asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and other circumstances, including budgetary, resource and personnel matters. Also, the tenth sunset criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. Allowing flexibility in the timeframe for completing Rulings will improve agency operations and enhance the public interest.

Therefore, the General Assembly should authorize the Department to use additional time to issue a Ruling if the requestor agrees to the extended timeframe. Doing so will enable the Department to ascertain all necessary information to make an accurate and informed Ruling.

Recommendation 3 - Authorize the Department to issue Letters and Rulings for any tax-related issue administered by the Department.

Currently, the Rulings statute authorizes the Department to issue Rulings that are binding on the Department, concerning the tax consequences of a proposed or completed transaction under any tax administered by the Department specific to Titles 29 (local government) or 39 (property or other taxes) that is made in response to a written request by a taxpayer.⁴¹

⁴¹ § 24-35-103.5(1)(b), C.R.S.

The vast majority of requests for a Ruling are related to tax issues in Titles 29 and 39; however, at times, the Department does receive requests for Rulings for taxes that are administered in other sections of Colorado's statutes. For example, the Department has received requests for Rulings on liquor taxes, which are in Title 44. Since liquor taxes are not located in either Titles 29 or 39, the Department does not have statutory authority to issue Rulings related to liquor taxes.

Additionally, the statute authorizes the Department to issue Letters to a taxpayer related to taxes administered by the Department specific to Titles 29 or 39.

The third sunset criterion asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource and personnel matters. The Letters and Rulings program operates in the public interest by providing guidance to taxpayers on issues related to tax questions.

The tenth sunset criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. Authorizing the Department to issue Letters and Rulings for any tax related issue will improve agency operations to enhance the public interest.

Therefore, the General Assembly should authorize the Department to issue Letters and Rulings for any tax related issue it administers. Doing so will ensure that taxpayers may receive a binding decision from a Ruling and general information from Letters from the Department on a tax related issue that is ambiguous or unclear to the taxpayer.