



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 22-0161	Date:	August 23, 2022
Prime Sponsors:	Rep. Bird; Woog Sen. Hansen; Liston	Bill Status:	Signed into Law
		Fiscal Analyst:	Jeff Stupak 303-866-5834 Jeff.Stupak@state.co.us

Bill Topic: ALTERNATIVE TRANSPORTATION OPTIONS TAX CREDIT

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill replaces an income tax deduction for expenses related to providing alternative transportation options for employees with a refundable tax credit for similar expenses available to employers. The bill will decrease state revenue through FY 2024-25, and increase state expenditures beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires and includes an appropriation of \$93,758 to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the enacted bill.

**Table 1
State Fiscal Impacts Under HB 22-1026**

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	(up to \$11.0 million)	(up to \$23.5 million)
	Total Revenue	(up to \$11.0 million)	(up to \$23.5 million)
Expenditures	General Fund	\$93,758	\$6,370
	Centrally Appropriated	\$2,462	\$1,429
	Total Expenditures	\$96,220	\$7,799
	Total FTE	0.2 FTE	0.1 FTE
Transfers		-	-
Other Budget Impacts	TABOR Refund	(up to \$11.0 million)	(up to \$23.5 million)
	General Fund Reserve	\$14,064	\$956

Summary of Legislation

The bill eliminates the current corporate income tax deduction for expenses incurred to provide alternative means of transportation for employees, and replaces this deduction with a new refundable tax credit equal to 50 percent of expenditures incurred by employers to provide alternative transportation options to their employees beginning in 2023. A single employer is limited to an annual tax credit of \$250,000, and the maximum amount that an employer can claim for a single employee is \$2,000. Private, non-profit, and local government employers may claim the credit. The tax credit is set to expire at the end of 2024.

Alternative transportation includes free or partially subsidized mass transit, free or partially subsidized ridesharing arrangements, including bike sharing and electric scooter sharing programs, provision of ridesharing vans, and guaranteed ride home programs. Qualifying expenses as part of a ridesharing arrangement include providing vehicles for ridesharing arrangements, cash incentives to employees to participate in ridesharing arrangements, and administrative costs borne by the employer associated with those ridesharing arrangements.

Background

The current state corporate income tax deduction for alternative means of transportation is not widely used by corporate employers. Prior to 2018, a federal deduction for employer expenses related to transportation benefits meant that the state-level deduction was largely unusable as corporate employers would only be able to deduct transportation expenses at the state level that they had not already deducted at the federal level. Given the higher federal relative to state corporate income tax rates, the benefit to claiming the deduction at the federal level was generally larger than at the state level. As of 2018, this federal deduction was eliminated by the 2017 Tax Cuts and Jobs Act. In spite of the repeal of the federal deduction, the state-level deduction remained rarely used, according to data and information published by the Office of the State Auditor (OSA). The OSA concluded that lack of its use is due to the relatively low tax benefit of the state-level deduction and a lack of knowledge that the deduction exists.¹

Assumptions

The eligible population for this new tax credit includes private sector, local government, and nonprofit employers offering subsidized public transportation and ridesharing benefits to their employees. To estimate the reduction in state revenue associated with this bill, this fiscal note uses an estimate of the number of Colorado employees receiving these subsidized benefits. Since no specific data are available for this specific subset of employees, a number of statistics about the broader regional and Colorado workforce are used.

According to the Bureau of Labor Statistics, approximately 11 percent of employees in the mountain region receive subsidized commuting benefits from their employer, which includes subsidized parking, public transportation, and carpool benefits. However, this figure includes government employers, which do not pay state income tax, and are therefore ineligible for this new tax credit.

¹ Mass Transit and Ridesharing Expenses Deduction, Evaluation Summary, January 2021, Office of the State Auditor: https://leg.colorado.gov/sites/default/files/2021-te7_mass_transit_expenses_deduction.pdf

Approximately 94 percent of employees in Colorado are employed by private and local government employers. As such, this fiscal note assumes that approximately 10.3 percent (11 percent × 94 percent) of eligible employees currently receive subsidized transit benefits.

However, this 10.3 percent of employees that receive subsidized transit benefits includes solo drivers receiving subsidized parking benefits who are not eligible for this new tax credit, as well as employees receiving public transportation and carpooling benefits. According to the Bureau of Transportation Statistics, approximately 8.6 percent of employees in Colorado carpool to work and 3.2 percent take public transportation. Based on these figures, this fiscal note assumes that of the total estimated 3.1 million employees in 2023 and 3.2 million in 2024 approximately 0.9 percent of employees (10.3 percent × 8.6 percent), or about 27,752 employees, will receive carpooling benefits from their employer in 2023, and 0.3 percent (10.3 percent × 3.2 percent), or about 10,326 employees, will receive public transit benefits from their employer in 2023.

Additionally, this fiscal note assumes that all employers offering these benefits will utilize the new alternative transportation tax credit. Further, this fiscal note assumes that the number of employees receiving carpooling and public transit benefits from their employers will increase 10 percent in 2024 as more employers become aware of the new tax credit.

This fiscal note assumes that employers will expend on average \$1,152 per employee per year in 2023 and \$1,176 in 2024 in qualifying alternative transportation benefits. This figure is based on the estimated future price of a local RTD pass reduced by 20 percent to reflect bulk purchase pricing, an estimated \$96 per month in 2023 and \$98 in 2024.

Employment and inflation estimates used in this fiscal note are consistent with the December 2021 Legislative Council Staff forecast.

State Revenue

The bill is expected to decrease state revenue by up to \$11.0 million in FY 2022-23 (a half-year impact), by up to \$23.5 million in FY 2023-24, and by similar amounts in subsequent years until the credit expires in 2024. These amounts reflect the assumptions stated above; however, the bill's actual revenue impact could be lower or higher depending on the rate at which the credit is utilized. The bill decreases revenue from income taxes, which are subject to TABOR. Revenue impacts on a tax year basis and additional information are presented in Table 2.

Table 2
Revenue Reduction Under HB 22-1026

	Tax Year 2023	Tax Year 2024
Number of employees receiving alternative transportation benefits	38,078	42,599
Average annual expenditure per employee	\$1,152	\$1,176
Total expenditures by employers	\$43.9 million	\$50.1 million
State Revenue Impact—50 percent credit	up to (\$21.9 million)	up to (\$25.1 million)

Employers are estimated to expend approximately \$43.9 million in qualifying alternative transportation benefits in tax year 2023 and \$50.1 million in tax year 2024. This amounts to forgone state income tax revenue of approximately \$21.9 million in 2023 and \$25.1 million in 2024 due to the 50 percent tax credit, if the credit is utilized by all eligible employers.

State Expenditures

This bill is expected to increase General Fund expenditures by \$96,220 and 0.2 FTE in FY 2022-23, by \$7,799 and 0.1 FTE in FY 2023-24, and by similar amounts in subsequent years until the tax credit expires at the end of 2032.

**Table 3
Expenditures Under HB 22-1026**

	FY 2022-23	FY 2023-24
Department of Revenue		
Personal Services	\$5,139	\$4,770
GenTax Programming	\$18,000	-
Computer and User Acceptance Testing	\$58,425	-
Tax Form Changes	\$12,194	-
Data Reporting	-	\$1,600
Centrally Appropriated Costs ¹	\$2,462	\$1,429
Total Cost	\$96,220	\$7,799
Total FTE	0.2 FTE	0.1 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Revenue. The Department of Revenue (DOR) will require an additional 0.2 FTE tax examiners in FY 2022-23 and 0.1 FTE tax examiners in FY 2023-24 and subsequent years. The tax examiners are necessary to process and review additional returns claiming the new tax credit and to resolve errors in returns.

- **Computer programming and testing.** For FY 2022-23 only, the bill will require changes to DOR’s GenTax software system and additional testing. Changes are programmed by a contractor at a cost of \$225 per hour. Approximately 80 hours of computer programming will be required to implement this bill, totaling \$18,000. Additional computer and user acceptance testing are required to ensure programming changes are tested and functioning properly, resulting in an additional \$58,425 in expenditures by the department.
- **Tax form changes.** For FY 2022-23 only, the bill requires \$12,194 in expenditures to implement tax form changes and document management. These expenditures will take place in the Department of Personnel and Administration using reappropriated funds from the DOR.

- **Data reporting.** Beginning in FY 2023-24, the Office of Research and Analysis within DOR will expend \$1,600 each year to collect and report data on the new tax credit.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 3.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, decreased General Fund revenue will lower the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by \$14,064 in FY 2022-23 and \$956 in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

Effective Date

The bill was signed into law by the Governor on June 7, 2022, and takes effect on January 1, 2023, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the bill requires and includes a General Fund appropriation of \$93,758 and 0.2 FTE to the Department of Revenue. From this amount, \$12,194 should be reappropriated to the Department of Personnel and Administration.

State and Local Government Contacts

Information Technology

Personnel

Revenue