Business Personal Property Tax Income Tax Credit

Tax Expenditure Evaluation • June 2024 • 2024-TE5

OFFICE OF THE STATE AUDITOR
COLORADO

The Business Personal Property Tax Income Tax Credit allows taxpayers who paid local business personal property taxes in the state during the income tax year to claim a refundable income tax credit for a portion of those taxes. Statute provides that the purpose of the credit is "to minimize the negative impact of the business personal property tax on businesses."

We found that the credit has only provided a small reduction to the overall tax burden of business personal property taxpayers in the state because relatively few eligible businesses claim it and the benefit it provides varies substantially depending on the total value of taxable business personal property. Additionally, many taxpayers attempt to claim it when they are not eligible or miscalculate their credit amount when they are eligible.

Policy Consideration

The General Assembly may want to consider repealing the Business Personal Property Credit. If the General Assembly repeals the credit but would like to provide property tax relief to business personal property taxpayers impacted by the credit's repeal, it could consider making changes to the Business Personal Property Tax Exemption to target who benefits. Specifically, it could consider exempting the first $52,000 (or another amount) of business personal property actual value rather than only exempting businesses with that amount or less in actual value of business personal property.

Tax Type:	**Income**	Year Enacted:	**2019**
Expenditure Type:	**Credit**	Repeal/Expiration Date:	**None**
Statutory Citation:	**Section 39-22-537.5, C.R.S.**	Revenue Impact (2021):	**$169,818**

Purpose given in statute or enacting legislation? **Yes**

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Business Personal Property Tax Income Tax Credit

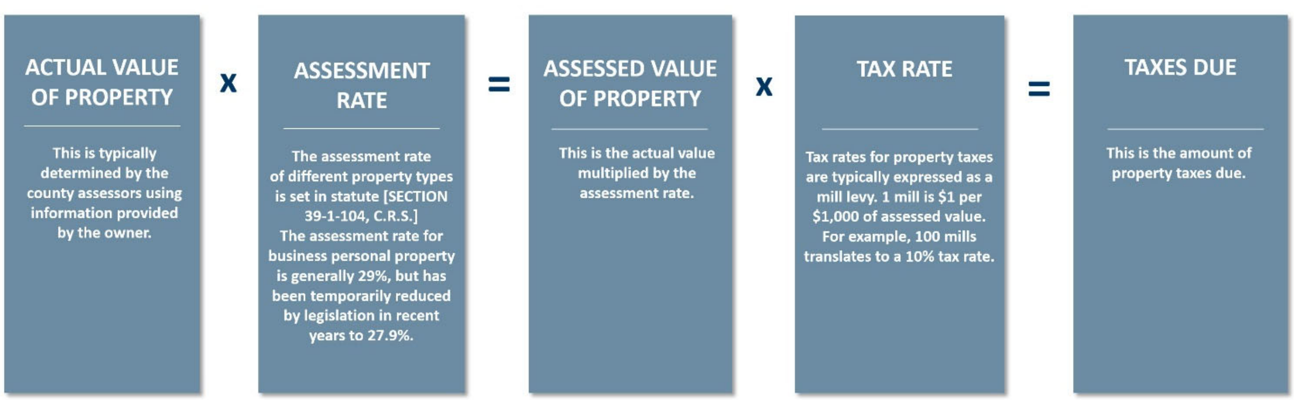
Background

The Business Personal Property Tax Income Tax Credit (Business Personal Property Credit) [Section 39-22-537.5, C.R.S.] allows taxpayers who paid local business personal property taxes during the income tax year to claim a refundable income tax credit for a portion of those taxes.

Business Personal Property Tax and Exemption

The Colorado Constitution imposes property tax, which is paid annually, on the value of business personal property located in the state [Article X, Section 3]. Business personal property is property that is used in a business, such as equipment, machinery, security systems, and furnishings, and is not real property, such as land and commercial buildings. Business personal property taxes are local taxes and do not provide tax revenue for the State. Property taxes are based on the property's value, which is generally determined by local county assessors using information provided by businesses on a Personal Property Declaration Schedule that they file each year—though some personal property, such as public utility property like gas lines and wind farms, is valued by the state (referred to as "State assessed" property). After the property value has been determined each year, the property taxes to be assessed are then calculated as shown in Exhibit 1. Property taxes are calculated during the valuation year and paid in the next year. For example, property taxes for Property Tax Year 2023 will be paid during Calendar Year 2024.

Exhibit 1
How Business Personal Property Tax is Calculated



Source: Office of the State Auditor analysis of Section 39-1-104, C.R.S., and Art. X, Sec. 3 Colorado Constitution.

For example, if a business owner has business personal property worth $100,000 in a location with a combined tax rate of 85 mills, their business personal property taxes would be calculated as shown in Exhibit 2.

Exhibit 2
Example of Business Personal Property Taxes Due on $100,000 of Property

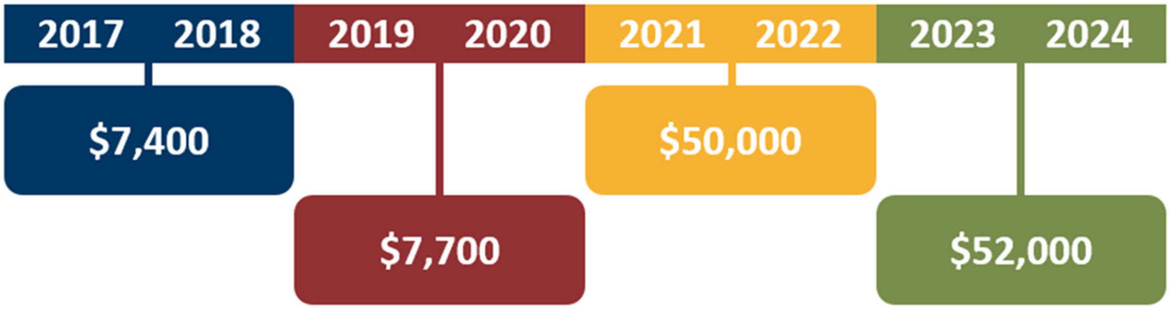
ACTUAL VALUE OF PROPERTY		ASSESSMENT RATE		ASSESSED VALUE OF PROPERTY		TAX RATE		TAXES DUE
$100,000	x	29%	=	$29,000	x	85/1,000 = 0.085 = 8.5%	=	$2,465

Source: Office of the State Auditor analysis of Section 39-1-104, C.R.S., Art. X, Sec. 3 Colorado Constitution, and Division of Property Taxation mill levy data.

Statute provides an exemption from filing the Personal Property Declaration Schedule and paying the business personal property tax for businesses with an actual value of business personal property located in a county that is under a certain amount [Section 39-3-119.5, C.R.S.]. This Business Personal Property Exemption applies at the county level and is a threshold, meaning that businesses with property values above the exemption amount in a county owe business personal property tax on the entire value of their business personal property, not on the difference between the exemption amount and their total value of business personal property in the county. Exemption thresholds are common in states with business personal property taxes. There are 36 states in addition to Colorado that impose business personal property tax, and 12 of those states (as well as Colorado) provide a business personal property tax exemption. Of the 12 states with a business personal property tax exemption, 5 structure their local business personal property tax exemptions as a threshold.

Prior to 2021, the exemption amount was periodically adjusted either by the General Assembly or per statute to account for inflation. In 2021, the General Assembly passed House Bill 21-1312, which significantly increased the exemption amount from $7,700 to $50,000. Beginning in Property Tax Year 2023, the $50,000 exemption amount will be automatically adjusted biennially to account for inflation and rounded per statute, and the new exemption amount will be published online by the Division of Property Taxation, which is within the Department of Local Affairs. For example, for Property Tax Years 2023 and 2024, the exemption amount increased to $52,000. Exhibit 3 shows the exemption amount for recent years.

Exhibit 3
Business Personal Property Exemption Amounts from 2017-2024



Source: Office of the State Auditor analysis of Section 39-3-119.5(2), C.R.S.

Beginning in Property Tax Year 2021, which was the first year that the larger exemption amount went into effect, the State is required by statute to reimburse local governments for the annual revenue lost due to the increased exemption amount [Section 39-3-119.5(3)(d) and (e), C.R.S.]. In 2022, the State reimbursed local governments for $16.7 million in lost revenue due to the larger exemption amount (for 2021 taxes payable in 2022), and in 2023, the State reimbursed local governments for $16.6 million (for 2022 taxes payable in 2023).

Business Personal Property Tax Income Tax Credit

Statute allows taxpayers to claim an annual refundable income tax credit for the business personal property taxes they paid on up to $18,000 of the actual value of the taxpayer's business personal property. Since the Business Personal Property Exemption was increased to $50,000 (or higher) beginning in 2021, all taxpayers who claim the credit will have $18,000 in actual value of business personal property on which to calculate their Business Personal Property Credit, although their credit amounts will vary based on the mill levy at the property's location. To determine the credit amount, the taxpayer multiplies the business personal property taxes paid by $18,000 divided by the taxpayer's total actual value of taxable business personal property in the state. For example, a business with $100,000 in total actual value of business personal property that owes $2,465 in business personal property taxes would have a Business Personal Property Credit of $444, calculated as shown in Exhibit 4.

Exhibit 4
Example Calculation of the Business Personal Property Credit

Source: Office of the State Auditor analysis of Sections 39-1-104 and 39-22-537.5, C.R.S.; Art. X, Sec. 3 Colorado Constitution; and Division of Property Taxation mill levy data.
[1] Assumes a mill levy of 85, which was the statewide county total average mill levy in 2022, and a 29 percent assessment rate.

To claim the credit, taxpayers report the credit amount on the designated line of their Colorado income tax returns and must also attach a copy of their property tax statement from the county assessor showing the business personal property taxes paid.

The Business Personal Property Credit was created in 2017 by Senate Bill 17-267 and was first available in Income Tax Year 2019. The Business Personal Property Credit replaced a similar income tax credit that was available from Tax Years 2015 to 2018. We did not identify any other states that offer both a business personal property tax exemption and a broad income tax credit for business personal property taxes paid. We only identified one state (West Virginia) with a credit that is relatively similar to Colorado's credit. In West Virginia, businesses that have $1 million or less in actual value of all property in the state are allowed to claim a refundable income tax credit for 50 percent of the property taxes paid on personal property, so small businesses in West Virginia get back about half of the business personal property taxes they paid.

Technical Note

The credit is not available for the graduated annual specific ownership taxes imposed on motor vehicles, wheeled trailers, semi-trailers, trailer coaches, and mobile and self-propelled construction equipment, or the property taxes imposed on public utilities that are State assessed; public utilities are entities that are doing business in the state as railroad companies, airline companies, electric companies, small or low impact hydroelectric energy facilities, geothermal energy facilities, biomass energy facilities, wind energy facilities, solar energy facilities, energy storage systems, clean energy resources, rural electric companies, telephone companies, telegraph companies, gas companies, gas pipeline carrier companies, domestic water companies selling at retail except nonprofit domestic water companies, pipeline companies, coal slurry pipelines, or private car line companies.

Statute provides that the credit's purpose is "to minimize the negative impact of the business personal property tax on businesses" [Section 39-22-537.5(1), C.R.S.].

Statute does not provide performance measures for the Business Personal Property Credit nor does it explain what is specifically meant by "negative impact" of the business personal property tax.

When organizations critique business personal property taxes, in general, their critiques focus on two aspects of the tax: (1) the financial burden of paying tax on depreciable assets used in a business, and (2) compliance costs, since businesses typically must track all or most of their personal property and report that information to local governments by filing or updating forms annually. Since the credit was not designed in a way to address the compliance costs associated with filing business personal property taxes, we developed the following performance measure to evaluate the credit based on the first factor listed related to financial burden: To what extent does the Business Personal Property Credit reduce the financial burden of businesses that pay business personal property tax?

Evaluation Results

The Business Personal Property Credit has only provided a small reduction to the overall tax burden of business personal property taxpayers in the state because relatively few eligible businesses claim it and the benefit it provides varies substantially depending on the total value of taxable business personal property.

The Business Personal Property Credit does not appear to be claimed by most eligible taxpayers and many taxpayers claim it incorrectly. In Income Tax Year 2021—the most recent year for which we have data—425 taxpayers claimed the Business Personal Property Credit for a total of about $170,000, according to Department of Revenue (Department) data. We estimate that this is less than 1 percent of business personal property taxpayers in the state.

To estimate the proportion of eligible taxpayers who used the credit, we compared the number of credits claimed with the number of personal property declaration schedules businesses filed with counties to report their taxable business personal property, which we used as a proxy for business personal property taxpayers (i.e., potentially eligible credit claimants). Of the 425 taxpayers who claimed the credit, the majority (373) were individuals, many of whom likely received the credit from a pass-through entity, such as a partnership, so the number of businesses that benefited from the credit is likely less than 425. According to Division of Property Taxation data, in Property Tax Year 2020, businesses filed about 150,700 personal property declaration schedules statewide. However, this data may include personal property declaration schedules filed by public utilities that are State assessed and are not eligible for the credit. Additionally, businesses are required to file the personal property declaration on a county basis, so a business operating in multiple counties would file a personal property declaration schedule in each county in which they have taxable business personal property even though they are considered one taxpayer for income tax purposes. For those reasons, the 150,700 figure likely represents fewer than 150,700 businesses and, thus, may overestimate the number of businesses eligible for the credit. We compared credits claimed in Income Tax Year 2021 to declaration schedules filed in Property Tax Year 2020 because (1) property taxes are paid in arrears so 2020 property taxes were paid in 2021, and (2) the credit is allowed for property taxes *paid* during the income tax year; therefore, Business Personal Property Credits claimed in 2021 are based on 2020 property taxes. Although we encountered several data limitations in conducting this analysis, the data indicate that the credit may be under-utilized by potentially eligible taxpayers.

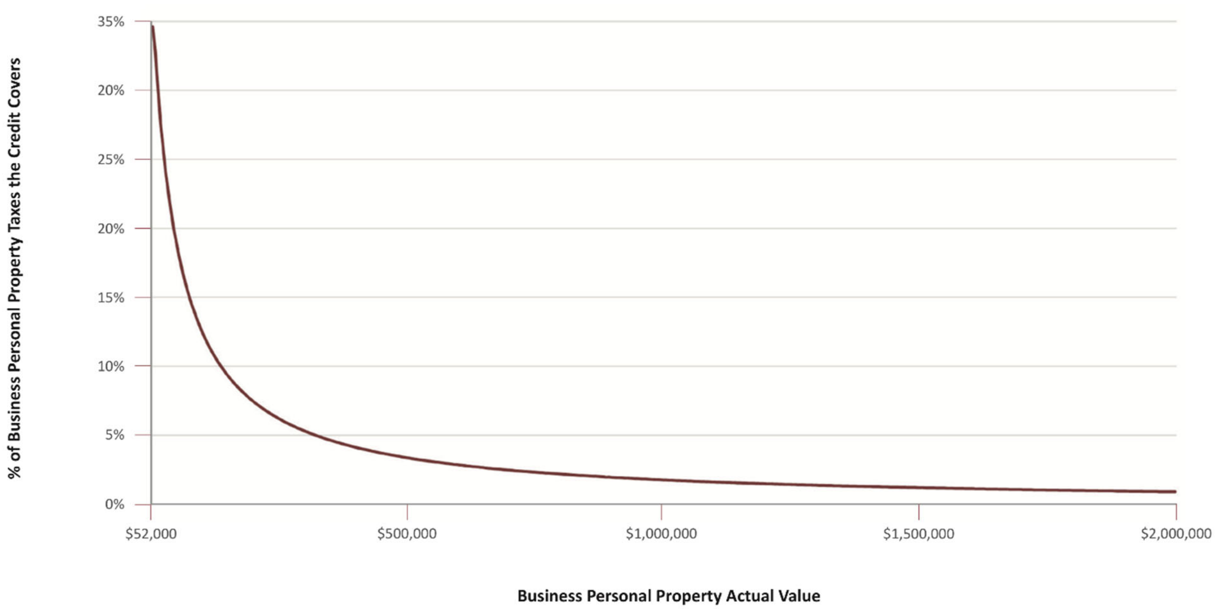
We found that few eligible taxpayers may have claimed the credit because many taxpayers and CPAs do not appear to be aware of the credit. We spoke with three trade organizations that represent businesses in the state, and they reported that businesses are likely not aware of the credit, and they suggested speaking with CPAs since many businesses use CPAs to file their taxes. We surveyed CPAs who are members of the Colorado Society of Certified Public Accountants (COCPA) and prepare Colorado tax returns for businesses. Of the 20 CPAs who answered the survey question "Are you aware of the business personal property credit in 39-22-537.5, C.R.S.?", 12 (60 percent) responded that they were not aware of the credit. In the survey, we also asked CPAs "Do your clients ever ask you about the business personal property credit or mention it to you?" Seventeen CPAs responded to this question and all of them said no.

Additionally, it is possible that many of the taxpayers who claimed the credit claimed it incorrectly. Department staff reported that taxpayers commonly make errors in claiming this credit, but they do not have any data available on how frequently errors occur. Staff said that errors can only be determined through a tax examiner manually reviewing the claim. Since the Department is aware that errors are common for this credit, it reported that staff place some emphasis on reviewing Business Personal Property Credit claims, but due to resource limitations, they are not able to manually review every claim for the Business Personal Property Credit. We reviewed 20 Business Personal Property Credit claims filed in Tax Year 2020 in GenTax, the State's accounting system; all of these credits were over $1,000 and collectively represented almost 40 percent of the credit's total revenue impact in 2020. Based on our review, it appears that many of these credits were claimed erroneously or miscalculated. For example, it appears that several taxpayers attempted to claim the credit for real property rather than business personal property, and several taxpayers attempted to claim the credit for the property tax paid on the first $18,000 of actual value of multiple properties rather than the first $18,000 of their total actual value of all business personal property in the state. If the Department reviews these credits and determines taxpayers made errors, it could result in even fewer taxpayers receiving the credit.

The Department provides information about the Business Personal Property Credit in its tax return instruction booklets for all taxpayer types but it has not published any taxpayer guidance documents on its website, such as an FYI, Income Tax Topic, or Income Tax Guide, or promulgated formal rules about this credit specifically. Trade organizations that we spoke with stated that having a premade pamphlet about the credit that they could distribute to their members may help increase awareness. It is also possible that having this kind of information available may help reduce erroneous claims.

For businesses that claim it, the Business Personal Property Credit reduces the financial impact of the business personal property tax to some extent, but the relative benefit from the credit varies substantially depending on the total value of business personal property that a business owns. Since the Business Personal Property Credit is refundable, it effectively reimburses businesses that do not qualify for the Business Personal Property Exemption (in Section 39-3-119.5, C.R.S.) for the business personal property taxes they paid on $18,000 of actual value of their business personal property. We estimated how much the credit reimburses businesses as a percentage of the total business personal property taxes they paid as total business personal property value increases. For purposes of our example, we used the 2022 statewide total average county mill levy of 85 mills. As shown in Exhibit 5, businesses with just over the Business Personal Property Exemption threshold amount of $52,000 receive the highest percentage (about 35 percent) of their business personal property taxes back through the Business Personal Property Credit, with the amount diminishing substantially as businesses' value of personal property increases; in our example, businesses with over $1.9 million in actual value of business personal property receive less than 1 percent of their business personal property taxes back through the Business Personal Property Credit.

Exhibit 5
Business Personal Property Credit Decreases as Total Business Personal Property Values Increase



Source: Office of the State Auditor analysis.

As mentioned earlier, a credit for taxes paid on $18,000 of business personal property in a location with a mill levy of 85 mills would generate a credit of around $450. This is compared to business personal property taxes of about $1,300 if they have just over the exemption amount ($52,001) or about $24,700 if they have $1 million worth of business personal property. Additionally, because of the credit's design, businesses with the same value of business personal property in different areas of the state with different mill levies receive a proportionate reimbursement of their business personal property taxes through the credit. For example, a business with $52,001 in a location with a total mill levy of 20 mills and a business with $52,001 in a location with a total mill levy of 150 mills each receive about 35 percent of their business personal property taxes back through the Business Personal Property Tax Credit—though the nominal value of the credit will be higher for the taxpayer with property in the higher taxing jurisdiction. On average, mill levies are lower in rural areas than in urban and front range areas, so, generally, businesses in rural areas may receive smaller credits than businesses in front range and urban areas.

Further, the degree to which the credit minimizes the negative impact of the business personal property tax for a business likely depends on how capital-intensive a business is relative to its profit margins. For example, we spoke with trade organizations that represent different types of businesses in the state, and several mentioned that restaurants tend to have a lot of high-value equipment but low profit margins and, therefore, the credit may be helpful in particular to those types of businesses since they often do not qualify for the Business Personal Property Tax Exemption because the value of their equipment exceeds the exemption threshold amount. CPAs that we surveyed also mentioned that restaurants tend to have high value of property and low profit margins, along with several other industries, including construction, manufacturing, breweries, and agriculture processing facilities. One trade organization that we spoke with as well as a CPA who responded to our survey mentioned that the age of the business may also impact whether they qualify for the Business Personal Tax Property Exemption, which also impacts whether they need/qualify for the Business Personal Property Credit. For example, older businesses may have depreciated most of their business personal property and qualify for the Business Personal Property Tax Exemption (and thus not need the credit) whereas startups or new business locations may have high values of business personal property and not qualify for the exemption and thus be able to use the Business Personal Property Credit to recoup some of the property taxes they paid.

In addition to the credit, businesses can deduct property taxes as ordinary and necessary business expenses on their federal income tax returns. The State does not require businesses to add back the property taxes deducted at the federal level when calculating Colorado taxable income; therefore, since Colorado uses federal taxable income as the starting point for calculating Colorado taxable income, businesses receive a deduction at the state level for property taxes deducted at the federal level. We did not account for the benefit taxpayers receive from deducting their property taxes in the analysis above, but receiving both a credit for a portion of the property taxes paid as well as a deduction for all property taxes paid increases the overall benefit businesses receive from the State.

CPAs reported administrative issues with claiming the credit. Some CPAs who we surveyed reported several administrative issues with the credit, including that the instructions are insufficient for claiming the credit on the return, the Department is inconsistent with what documentation it requires taxpayers to provide in order to claim the credit, and the Department disallows the credits despite proper documentation being provided. One trade organization that we spoke with as well as two CPAs who responded to our survey also reported that the value of the credit often is not worth the time to claim it.

Policy Consideration

The General Assembly may want to consider repealing the Business Personal Property Credit. As discussed, we found several issues with the credit. First, the credit does not appear to be used by most eligible taxpayers, likely due to the lack of awareness by businesses and CPAs. Second, for many taxpayers, the benefit the credit provides is very small relative to the total business personal property taxes they paid. Finally, many taxpayers attempt to claim it when they are not eligible or miscalculate their credit amount when they are eligible. Consequently, the Department must spend time reviewing the credit claims since taxpayers commonly make errors in claiming it; however, the Department stated that it has limited resources and cannot review every claim.

Additionally, the larger Business Personal Property Exemption amount may be minimizing the negative impact of the business personal property tax for many taxpayers, so the credit may no longer be necessary to achieve that purpose. As discussed, the Business Personal Property Credit provided about $170,000 in benefits to taxpayers in Tax Year 2021, compared to at least $16.7 million in tax benefits provided by the Business Personal Property Exemption. When the General Assembly created the current Business Personal Property Credit in 2017 (to go into effect beginning in Tax Year 2019), the Business Personal Property Tax Exemption amount was $7,400. When the General Assembly passed the credit in 2017, they discussed that creating the credit was a better option at the time than increasing the Business Personal Property Exemption because if they increased the exemption, there was a downstream impact on the Gallagher Amendment formula, which required the taxable value of property in the state to be balanced at 45 percent residential and 55 percent commercial, including business personal property; it maintained that ratio by adjusting the residential assessment rate while holding the nonresidential (commercial) rate constant at 29 percent for most types of property. In 2020, Coloradans voted to repeal the Gallagher Amendment, so the Gallagher Amendment formula is no longer a factor that needs to be considered. When the General Assembly increased the exemption threshold from $7,700 in 2020 to $50,000 in 2021, there was a decrease of about 44,400 (29 percent) personal property declarations schedules filed statewide, with the largest decreases in San Juan County (99 percent decrease), Logan County (85 percent decrease), Chaffee County (80 percent decrease), Park County (75 percent decrease), and Fremont County (71 percent decrease); 21 counties had at least a 50 percent reduction in business personal property schedules filed between 2020 and 2021. It is possible that some of the reduction in schedules filed was due to other causes besides the increased exemption amount, such as businesses closing (particularly due to the COVID-19 pandemic) or moving outside the taxing jurisdiction, but Division of Property Taxation staff reported that most of the decrease could be attributable to the larger exemption amount.

However, if the General Assembly repeals the Business Personal Property Credit, business personal property taxpayers with property valued over the exemption amount will no longer receive relief since they are not eligible for the exemption. The extent to which this would impact businesses depends on how much they currently benefit from the credit. As shown in Exhibit 5, businesses with total actual value of business personal property worth just over the exemption threshold amount currently receive the largest relative benefit from the credit, whereas businesses with higher amounts of business personal property receive a credit that is small relative to the total property taxes they pay.

If the General Assembly repeals the credit but would like to provide property tax relief to business personal property taxpayers impacted by the credit's repeal, it could consider making changes to the Business Personal Property Tax Exemption to target who benefits. Specifically, it could consider exempting the *first* $52,000 (or another amount) of business personal property actual value rather than only exempting businesses with that amount or less in actual value of business personal property. As discussed, we found that 7 of the 12 states we identified with a business personal tax exemption structure their exemptions in this way. Depending on the amount exempted, this policy could have a substantial impact on local government revenue but would ensure that all business personal property taxpayers receive some property tax relief. Based on 2022 business personal property declaration schedules filed and 2022 total average county mill levies, we estimated that providing the $52,000 exemption to all businesses could reduce local government revenues by about $127.4 million annually (in addition to the approximately $17 million the State already annually reimburses local governments for the increased exemption amount), and the General Assembly would need to consider whether the State should backfill this amount as it currently does for the higher exemption amount.

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