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May 26, 2021

VIA EMAIL

Colorado Senate Finance Committee
Senator Brittany Pettersen, Chair
Senator Jeff Bridges, Vice Chair

Re: House Bill 21-1311 – Opposition to Tax Haven List

Dear Chair Pettersen, Vice Chair Bridges and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing to oppose certain provisions of House Bill 21-1311 (H.B. 1311), which would require corporate taxpayers to include affiliates incorporated in certain foreign jurisdictions in their combined group income. Under House Bill 1311, taxpayer affiliates are presumptively incorporated in these jurisdictions (tax havens) for purposes of tax avoidance.

COST has a long-standing policy position in opposition to state tax haven legislation. The tax haven “blacklist” approach is arbitrary and misleading and fraught with Constitutional infirmities. Further, in light of Colorado’s current conformity with the federal provision under the Tax Cuts and Jobs Act of 2017 (TCJA) to include 50% of global intangible low taxed income (GILTI) in the Colorado tax base adopting a tax haven list would lead to double taxation and is severely out-of-step with federal and state tax policy.

About COST

COST is a non-profit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business, many of which directly do business in Colorado. COST’s objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities.

Misguided Tax Policy

The COST Board of Directors has approved a policy position opposed to all state tax haven provisions which provides in part:

State “tax haven” designations are arbitrary and overly broad, reflect a discarded “worldwide” approach to state taxation, and are inappropriate to address income shifting or other tax avoidance concerns. Punitive treatment of multinational businesses with affiliates in countries designated by states as “tax havens” interferes with the U.S. Government’s ability to “speak with one voice” on foreign affairs and is constitutionally suspect. States should limit their income tax base to the domestic “water’s-edge” and not tax foreign income with little or no connection with the United States.¹

In addition to the policy position, the State Tax Research Institute (STRI), a 501(c)(3) research organization founded by COST, undertook a significant research project relating to state tax haven legislation. In 2016, STRI published its report, entitled “State Tax Haven Legislation: A Misguided Approach to a Global Issue,” that provides a detailed analysis of why states should not adopt tax haven legislation.²

Detrimental Impact on the State’s Economy

The blacklisting of foreign countries as tax havens and inclusion in the state tax base of income from businesses operating in these countries contravenes the approach taken by virtually all other U.S. states and nations in the world.³ Branding foreign nations as tax havens has been widely rejected as an arbitrary and illegitimate means for dealing with tax avoidance. The U.S. federal government has never adopted the tax haven list approach as a means for defining its income tax base. Neither state legislatures nor state revenue departments are equipped to make determinations the U.S. federal government has declined to exercise. A tax haven provision will clearly deter international businesses from operating in Colorado, undermining the State’s ability to attract jobs and capital investment that would improve the State’s overall economy. To date, only Montana maintains a blacklist approach to the inclusion of foreign income in the corporate income tax base, as similarly contemplated under this bill.

Further, when a state arbitrarily penalizes taxpayers for doing business in specific countries - that state also violates the foreign Commerce Clause. The constitutional standard set forth in *Japan Line, LTD v. County of Los Angeles*, 441 U.S. 434 (1979), is clear: state tax measures may not impose a risk of multiple taxation at the international level and may not prevent the federal government from “speaking with one voice” on international policy matters.

¹ COST’s policy position on this issue is available at: <https://cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/cost-state-tax-haven-policy-statement-final-4-16-15.pdf>

² Karl Frieden and Ferdinand Hogroian, State Tax Haven Legislation: A Misguided Approach to a Global Issue, State Tax Research Inst. (Feb. 2016), <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/coststudies-articles-reports/state-tax-haven-legislation--a-misguided-approach-to-a-global-issue.pdf>.

³ COST recognizes that six states (Alaska, Connecticut, Kentucky, Montana, Rhode Island and West Virginia) continue to maintain tax haven provisions in their state tax laws. All of these states, but for Montana, however, have rejected the blacklist approach and instead utilize a criteria approach.

Arbitrary and Overly Broad Approach

Branding foreign nations as tax havens has been widely rejected as a legitimate means for dealing with tax avoidance. The tax haven lists (such as that proposed in H.B. 1311) are derived largely from a list created over 15 years ago by the Organization for Economic Cooperation and Development (OECD) to encourage countries to adopt greater transparency and information sharing about tax issues, not to broaden the tax base of member countries. Presently, no countries remain on the OECD's list of uncooperative tax jurisdictions. Moreover, no country, including the United States, has ever adopted the tax haven list approach as a means for defining their income tax base. Rather than providing a viable solution to the issue of foreign income sourcing, the adoption of a tax haven list creates new problems by arbitrarily targeting sovereign nations.

Out-of-Step with the State Trends for Taxing Foreign Source Income

Prior to 2018, Oregon imposed a blacklist approach similar to the bill's proposal for determining foreign income included in its corporate income tax base. During its 2018 legislative session, however, Oregon repealed its tax haven blacklist provision and created a credit for taxpayers previously subject to tax haven provisions.⁴ Oregon realized that the passage of the TCJA provided an opportunity to abandon its tax haven provisions and align itself more closely with the approach taken by the federal government. The TCJA forced the Oregon Legislature to deal with the potential of double taxation of income previously taxed under its tax haven provisions that would now be included in Oregon taxable income pursuant to the TCJA, including both the repatriation transition tax (for tax years prior to 2018) and GILTI (for tax years 2018 and forward). To avoid double taxation, the Legislature opted to fully repeal its tax haven provisions in light of the complexities and potential litigation that would result from retaining the provisions. The Oregon legislature required a report by the department of Revenue to compare the efficacy of the listed jurisdiction provisions previously in place in Oregon to the GILTI provisions adopted by Oregon. Among other things, the most recent Oregon report found that "On early analysis, it appears that GILTI would generally be easier for the department to administer than the listed jurisdiction law. All other things being equal, a law that is easier to administer and enforce is more likely to accomplish the goals of the law in question".⁵

Colorado is in a similar position to Oregon. Colorado has also conformed to the provision in the TCJA that includes 50% of GILTI in the Colorado corporate tax base. While COST does not endorse a state conforming to GILTI, if it does, it should definitely not also adopt the arbitrary, and constitutionally infirm blacklist approach that is utilized by Montana alone.

Out-of-Step with the Proposed Federal Tax Plan for Taxing Foreign Source Income

On March 31, President Biden presented the American Jobs Plan—a more than \$2 trillion infrastructure spending plan. Although still in flux, the current proposal raises revenue through a tax reform plan, the Made in America tax plan, that would significantly increase corporate income taxes, in part by expanding the GILTI tax base. This is accomplished partly by applying

⁴ Oregon S.B. 1529 (2018), <https://olis.leg.state.or.us/liz/2018R1/Downloads/MeasureDocument/SB1529/Enrolled>.

⁵ Oregon Department of Revenue 2020 Executive Summary, GILTI Report, [Global intangible low-taxed income, or GILTI, Report \(oregon.gov\)](https://www.oregon.gov/Revenue/Pages/Global-intangible-low-taxed-income-or-GILTI-Report.aspx).

GILTI on a country-by-country basis, and partly by eliminating the qualified business asset investment (QBAI) deduction.⁶ The Biden administration proposals, if enacted, may significantly impact Colorado's corporate income tax system such that adoption of a tax haven list will exacerbate existing concerns over double taxation and protracted litigation.

Conclusion

COST urges Colorado to reject the tax haven provisions in H.B. 1311. Please let us know if we can provide additional information or assistance.

Respectfully,



Erica S. Kenney
West Coast Tax Counsel

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

⁶ The plan also proposes to increase the tax rate on GILTI to 21%.



May 26, 2021

Senator Brittany Pettersen
200 E. Colfax Ave, Room 346
Denver, CO 80203

Subject: GBA Opposition to Tax Haven Language in HB 1311

Dear Chair Pettersen, Vice Chair Bridges and Members of the Senate Finance Committee:

On behalf of the Global Business Alliance (GBA), I am writing to express opposition to Section 6 of HB 1311, which essentially creates a tax haven blacklist that is arbitrary, raises constitutional concerns, and misaligns with international and U.S. tax norms.

GBA represents nearly 200 American companies with a global heritage. International companies employ 121,300 jobs in Colorado with over a third of the jobs in manufacturing. Over the past five years, employment from international companies has grown by 38 percent, which out-paced the state's overall private-sector growth of 15 percent.¹ Nationally, on average, these firms pay American workers nearly \$83,000 annually in wages and benefits. You can find out more information about [our members](#) as well as the ways they are contributing to the state and demonstrating leadership in [sustainable solutions](#) on our website at globalbusiness.org.

This legislation's listing of certain jurisdictions as "tax havens," and its inclusion of income from businesses operating in these countries, would quickly make Colorado an economic outlier in the global race for jobs. Only six states currently have anything resembling a tax haven provision and, of those, only Montana has a tax haven jurisdiction list.

HB 1311 improperly assumes all business activity in certain jurisdictions are an effort to minimize a company's tax obligation. The mere fact that a foreign affiliate is incorporated in one of these countries does not equate to aggressive tax planning but rather underscores the realities of our 21st century economy. Companies operate in markets around the world to service local customers. To arbitrarily categorize certain countries as tax havens simply because they do not align with our nation's corporate income tax rate fails to recognize obvious and legitimate commercial activity.

¹ Figures based on the Bureau of Economic Analysis (BEA), Survey of Current Business, Activities of U.S. Affiliates of Foreign Multinational Enterprises in 2018, released November 2020.

Even proponents of the legislation recognize its indiscriminate approach, as evidenced by the inclusion of a subjective exception built on circumstantial federal economic substance requirements. This bill may impose punitive taxation on Colorado employers that have significant operations and investment in the state, quickly making it an economic outlier and jeopardizing the state's ability to attract future employers. Even the Multistate Tax Commission (MTC)² and the OECD³ have rejected the concept of labeling certain jurisdictions as tax havens.

I appreciate the opportunity to express GBA's concerns with HB 1311, and respectfully request the tax haven language within Section 6 be removed. Please let me know if you have any questions. I am happy to serve as a resource in future policy discussions. You can contact me at mbeeson@globalbusiness.org or at 202-770-5141.

Sincerely,



Meredith Beeson
Director, State Affairs
Global Business Alliance

² COST State Tax Research Institute "[State Tax Haven Legislation: A Misguided Approach to a Global Issue](#)" (Feb. 2016)

³ [OECD Tax Haven Policy History](#)



**GLOBAL
BUSINESS
ALLIANCE**

Investing in America

Foreign Direct Investment Strengthens **COLORADO'S ECONOMY**

QUALITY JOBS



121,300 workers in Colorado are employed as a result of international investment.

MANUFACTURING



39,400 workers in Colorado - **33 percent** of all FDI jobs in the state - are in the **manufacturing sector**.

GLOBALLY CONNECTED



Among all international employers, those from the **United Kingdom, Canada** and **France** support the largest number of jobs in Colorado.

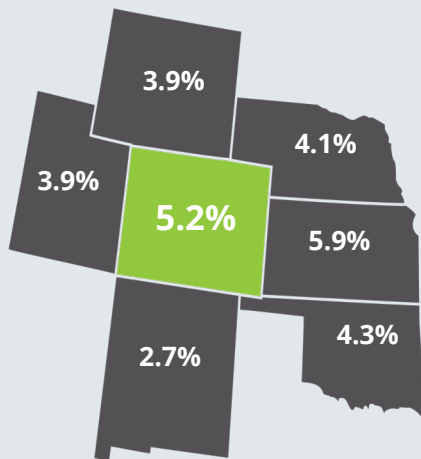
MANY EMPLOYERS



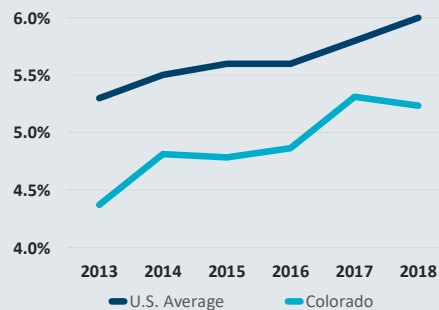
More than **875 international employers** have operations in Colorado.

INTERNATIONAL INVESTMENT CONTRIBUTES TO COLORADO'S ECONOMY

Colorado vs. Its Neighbors
FDI Jobs as a % of Total Employment

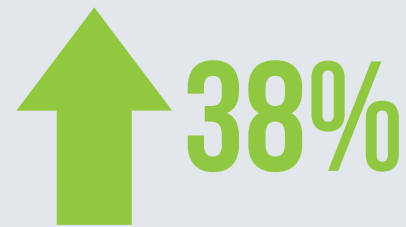


Colorado vs. USA
FDI Jobs as a % of Total Employment



Colorado remains near the national average in its portion of jobs supported by international investment.

From 2013 to 2018, Colorado's FDI employment...



while the state's overall private-sector employment



DISCOVER THE FULL LIST OF GBA MEMBERS

More than 200 international companies comprise GBA's membership, representing a slice of the U.S. economy that provides over seven million high-quality jobs that pay an average of 20 percent higher compensation than the economy-wide average. Our members are some of the largest international employers in the country. Browse through our membership list using the QR code.





GLOBAL
BUSINESS
ALLIANCE

Investing in America

Foreign Direct Investment Strengthens AMERICA'S ECONOMY

MANUFACTURING



International companies supported **80%** of the new manufacturing jobs created in the past five years.

INNOVATION



International companies spend more than **\$67 billion** on U.S. R&D activities, or **15%** of all R&D performed by U.S. companies.

EXPORTS



U.S. workers of international companies produce **24%** of U.S. exports, shipping **\$395 billion** in goods to customers around the world.

SUPPLY CHAINS



For every U.S. job at an international company, **three more** are supported in the U.S. economy.

TAX



International companies pay **17%** of all federal corporate income taxes.

Record Number of FDI Jobs

7.8 MILLION

Nationally, 7.8 million U.S. workers are employed by international companies.

Good Paying Jobs

\$82,600

Across the nation, U.S. workers at international companies earn 20 percent higher compensation than the economy-wide average - making \$82,600 annually.

Building Stronger Communities

↑ 123%

International companies increased their charitable contributions by 123 percent in the past decade, while the economy-wide average grew by 19 percent.

From 2013 to 2018, America's FDI employment...



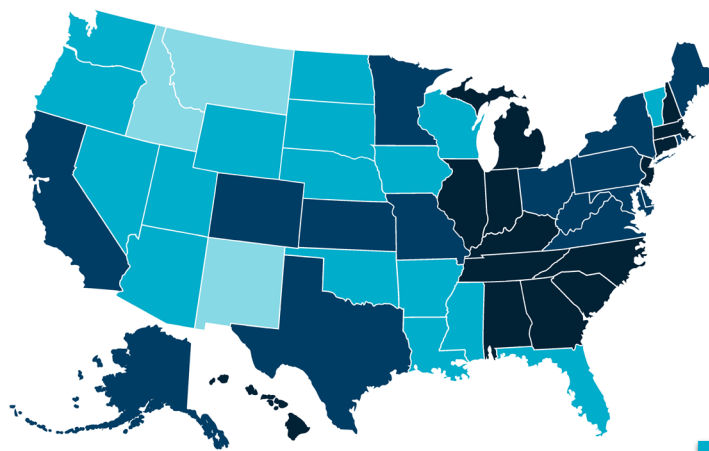
26%

while the country's overall private-sector employment



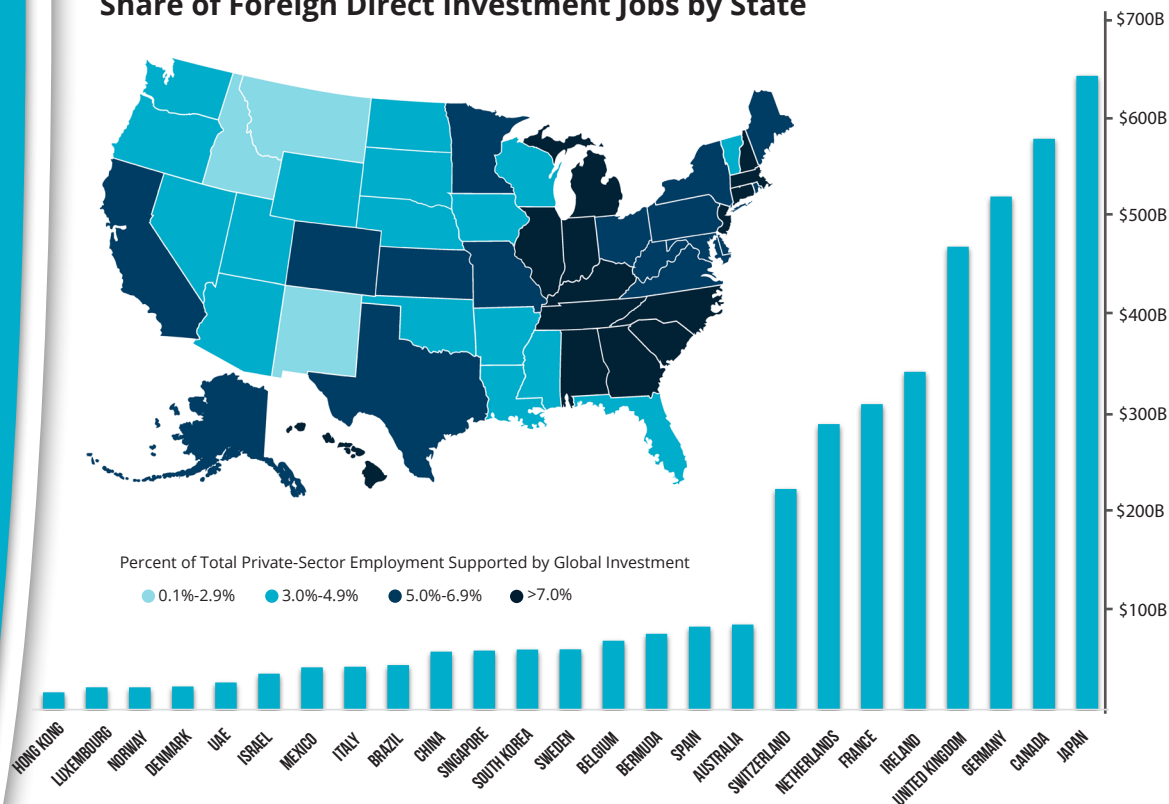
10%

Share of Foreign Direct Investment Jobs by State



Percent of Total Private-Sector Employment Supported by Global Investment

● 0.1%-2.9% ● 3.0%-4.9% ● 5.0%-6.9% ● >7.0%



Foreign Direct Investment in America by Country

Figures based on the Bureau of Economic Analysis (BEA), Survey of Current Business, Activities of U.S. Affiliates of Foreign Multinational Enterprises in 2018, released November 2020, and IRS Foreign-Controlled Domestic Corporations (1994-2013), Corporation Complete Report (Pub 16).

HB21-1311 & HB21-1312
Wednesday, May 26, 2021
Senate Finance Committee
Opposition Testimony, Laura Rizzo, Denver Metro Chamber of Commerce
Committee Chair: Sen. Brittany Petterson

Thank you, Madame Chair and members of the committee, for the opportunity to provide this written testimony today. My name is Laura Rizzo and I am the senior vice president of external affairs for the Denver Metro Chamber of Commerce. I submit this testimony on behalf of the Chamber, our 3,000 members and their 400,000 employees, to express our opposition of House Bills 1311 and 1312.

We are grateful to bill sponsors Sen. Hansen and Sen. Moreno for their willingness to listen to our concerns and their openness to potential changes. They've engaged us in conversations, and we appreciate that stakeholder process. While we've agreed on improvements in the House, we continue to be concerned about the policy, priority and timing in these bills.

Let me be clear, there is great value in expanding and enhancing both the Child Tax Credit as well as the Earned Income Tax Credit (EITC). My comments aren't about the merits of either.

But the reality is working families need tax relief AND good jobs, which is why we are in opposition to these bills.

State budget projections are strong and extensive federal assistance is on its way to our state to provide further financial help. We just saw earlier this week that Colorado will receive \$27 billion in federal stimulus, which includes \$2 billion in expanded child tax credits. It doesn't make sense, given strong state budget projections and federal assistance, to provide emergency relief to employers through federal stimulus, while simultaneously rewriting the tax code and making it more expensive to do business and provide jobs in Colorado. This

legislature has acknowledged the importance of job creation through its previous work to provide stimulus to support Colorado's economic recovery.

Today, we have funding that will allow us to both expand these important tax credits for working families and avoid raising taxes for the same employers that keep our working families working by providing jobs.

Proposed state spending for the 2021-22 budget is \$4 billion+ over this year's budget. And the state's reserve fund is at its highest level in two decades.

Why are employers and their employees being asked to increase state revenue when there is such an influx of available funds? We can accomplish both goals of increasing tax credits like the EITC and Child Tax Credits while also helping our businesses get people back to work and helping our economy continue to build.

Beyond our general objection to raising taxes on business during our national recovery, these proposals have some very specific problems:

- They add sales and use taxes on digital goods that make Colorado less attractive for economic development and investment.
- They stand to harm non-profits across the state by discouraging contributions to their causes.
- And finally, they risk hurting the more than 300,000 families who use Colorado's successful CollegeInvest program to save for their children's college.
- Additionally, none of these proposals include indexes that attempt to account for economic conditions in the future, locking in these caps at what will ultimately make little sense in a decade.

While good intentioned in their support for child care tax, EITC and business personal property, we question the timing of these bills and respectfully request a no vote.



JEWISHcolorado

JEWISH COMMUNITY RELATIONS COUNCIL



Senator Julie Gonzales, Chair
Senator Pete Lee, Vice Chair
Senate Finance Committee

May 26, 2021

Requested Changes to HB21-1311: Income Tax

I write to you on behalf of the Jewish Community Relations Council, a policymaking coalition of 38 Colorado nonprofit organizations and 15 at-large members that advocates on the Jewish community's behalf on priority issues.

I wish to raise our serious concerns regarding potential itemized deduction caps. While it is certainly understandable that the state needs to increase revenues as we recover from the economic toll of the pandemic, it should not be at the expense of nonprofits serving in critical roles throughout our state.

That is why request a change to exempt charitable deductions from this cap.

Nonprofit organizations played a critical role during the pandemic in supplementing the assistance that federal, state, and local governments provided to people in need. JEWISHcolorado, which convenes the JCRC, distributed more than \$1 million to aid individuals and organizations in the Jewish community. Jewish Family Service of Colorado saw a ten-fold increase in financial assistance requests and visits to its food pantry from the Jewish community as well as outside of the Jewish community, and continues to support individuals in returning to work and ensuring they have food and other necessities.

Nonprofit organizations are integral to Colorado's recovery and make it a great place to call home.

This amendment will ensure that all Colorado nonprofits are able to play this important role. Rick Cohen, spokesman and chief operating officer for the National Council of Nonprofits, recently told [MarketWatch](#), "It's not motivation to give. It's what gives people the ability to give more. Right now, every dollar counts. It doesn't matter if it's \$300, three dollars or \$30,000. Nonprofits need every penny right now."

Please adopt this amendment exempting charitable deductions so that our member organizations and others can continue to play this critically important role.

Thank you for your consideration.

Rabbi Jay Strear
JEWISHcolorado President & CEO



Written testimony as prepared for delivery in support of HB21-1311 (Income Tax) to the Senate Finance Committee by Sarah Barnes, Manager of Special Policy Initiatives at the Colorado Children's Campaign

- Madam Chair and members of the committee, my name is Sarah Barnes and I am the Manager of Special Policy Initiatives at the Colorado Children's Campaign.
- Thank you for the opportunity to testify in support of HB 1311, and thank you Senators Hansen and Moreno for your leadership on this bill.
- The Children's Campaign supports HB 1311 because tax reforms that prioritize kids are a crucial step toward eliminating child poverty and increasing economic, health, and overall well-being for families.
- Research and our communities' lived experience show that the Earned Income Tax Credit and the Child Tax Credit are two of the most effective tools to we have to fight child poverty. These tax credits together lift more kids out of poverty than any other program available.
- Expanding our state EITC and funding our state CTC in HB 1311 will place money directly back into families' pockets. This helps with necessities like housing, food, school supplies and clothing. It will also help families with young children afford the cost of child care, which supports children's healthy development and allows parents to work.
- And lifting kids and families out of poverty not only helps them make ends meet, it also improves outcomes for kids - now and in the future. Elementary and middle-school students do better in school when their family income is increased through tax credits like the EITC and CTC, and they are also more likely to finish high school and go on to college. Studies also show that increased income for low-income families with young children is associated with increased work hours and earnings in adulthood for those kids.
- Policies like the Earned Income Tax Credit and the Child Tax Credit that place money directly back in the hands of families help support the well-being of kids. They also show our collective commitment to providing the best chance for every kid to thrive and demonstrate our values of equity for every Colorado family. We urge your support of HB 1311. Thank you.



Madame Chair and Members of the Senate Finance Committee,

My name is Jordan Smith, Strategic Initiatives Manager at Illuminate Colorado. Illuminate is a statewide nonprofit working to strengthen families, organizations, and communities to prevent child maltreatment. Illuminate serves as the Colorado Chapter of Prevent Child Abuse America. I am providing testimony in strong support of HB21-1311.

The Earned Income Tax Credit and Child Tax Credit are two of the most well-researched mechanisms for reducing childhood poverty.¹ Children living in poverty are significantly more likely to be reported to the child welfare system and are overrepresented in foster care.² According to a study analyzing 16 years of recent data (2000-2016), **states with a refundable EITC, compared to states without, experienced an 11% reduction in foster care entry rates.**² If states without a current EITC implemented a refundable EITC, they are estimated to save more than \$19 million per year in foster care costs.² Putting that data into context, expanding Colorado's EITC and funding the CTC are approaches to a **more racially equitable tax code and child welfare system** considering that 1. Because of historical racism and ongoing discrimination and bias, on average, people of color have less wealth and income³, and 2. Children of color are overrepresented in Colorado's child welfare system.⁴

Simply put, money allows parents to meet their children's basic needs for food, housing, health care, and other essentials.⁵ The bill will offset these costs, as well as the cost of child care, for working parents. High-quality child care reduces parental stress and isolation.⁶ In another study, it was found that **EITC reduces physical child abuse.**⁷ Abusive head trauma, formerly known as shaken baby syndrome, is one of the leading causes of fatal physical child abuse in the U.S.⁷ The study reviewed nonfatal abusive head trauma hospital admission rates from 27 states across 18 years (1995-2013) and revealed that **states with a refundable EITC had 13% fewer abusive head trauma admissions than states without a refundable EITC.**⁷ This reduction was likely due to decreased parental stress.⁷

When families have access to meet their basic needs, we strengthen the foundations of families and communities. Please vote yes on HB21-1311. It is a **critical and effective investment in preventing child maltreatment, increasing equity, and creating the conditions in which children and families thrive.**

Sincerely,

Jordan Smith
Strategic Initiatives Manager, Illuminate Colorado
jsmith@illuminatecolorado.org

¹ Center on Budget and Policy Priorities (2015). EITC and Child Tax Credit Promote Work, Reduce Poverty, and Support Children's Development, Research Finds:

<https://www.cbpp.org/research/federal-tax/eitc-and-child-tax-credit-promote-work-reduce-poverty-and-support-childrens>

² Rostad, W.L., Ports, K.A., Tang, S., & Klevens, J. (2020). Reducing the number of children entering foster care: Effects of state earned income tax credits. Child Maltreatment. [www.doi.org/10.1177/1077559519900922](https://doi.org/10.1177/1077559519900922)

³ Colorado Fiscal Institute (2020). The Earned Income Tax Credit: An effective economic and public health intervention and racial justice tool:

https://drive.google.com/file/d/1mFnHPWcrSZOFyLx_-GyXKaf0Bgdogxjv/view?usp=sharing

⁴ Child Trends. (2020). State-level Data for Understanding Child Welfare in the United States: <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>

⁵ Child Trends (2021). To Reduce Child Poverty, Increase Family Incomes: <https://www.childtrends.org/blog/to-reduce-child-poverty-increase-family-incomes>

⁶ Prevent Child Abuse America. (2016). Child care and its role in abuse and neglect prevention. Retrieved from:

<https://preventchildabuse.org/resource/child-care-and-its-role-in-prevention/>

⁷ Klevens, J., Schmidt, B., Luo, F., Xu, L., Ports, K. A., & Lee, R. D. (2017). Effect of the earned income tax credit on hospital admissions for pediatric abusive head trauma, 1995-2013. Public Health Reports, 132(4):505-511: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5507428/>



Amend HB 21-1311 to prevent reductions in charitable giving!

Colorado Nonprofit Association requests that the legislature amend HB 21-1311 to prevent charitable giving from being unintentionally reduced due to the proposed itemized deduction cap of \$30K individuals/\$60K joint filers for incomes over \$400K.

Since 1917, the charitable deduction has incentivized U.S. taxpayers to give annually by reducing the price of donating. Taxpayers at the 37% rate, for example, can deduct \$3,700 for a \$10,000 gift and pay \$6,300 total. Taxpayers give almost \$3 for every \$1 saved on taxes. This is a longstanding, successful tax incentive that ought to be expanded to all U.S. taxpayers including non-itemizers.

Although we support the goal of enhancing the Earned Income Tax Credit and Child Tax Credit, we are concerned that 1311 also decreases resources for nonprofits to help people via the itemized deduction cap, including families that would be supported most by the EITC and CTC enhancements.

We estimate that 1311 will tax \$1.6 billion of giving and raise nearly \$74 million for CO. (Figure 1) and will reduce giving by \$18.6 million to \$95.7 million (Figure 2 & 3). We propose amending the bill to:

1. Allow taxpayers to annually “carry forward” their charitable deduction amount up to 5 years.
2. Review the bill after five tax years to determine how giving has been affected by the cap.

What are the Association’s concerns with the itemized deduction cap?

Giving incentives should not be reduced because donations are reinvested in the community.

- The charitable deduction helps people give their income to causes for public benefit.
- Other itemized deductions privately and financially benefit taxpayers.

Taxpayers will likely reduce donations to fit their itemized deductions under the cap.

- Taxpayers with income over \$500,000 gave \$1.9B (51% of charitable giving) in 2018.¹
- 76% of Coloradans with higher incomes consider tax benefits when donating.²
- Per the CBO: “...empirical studies have generally found that the amount of giving is responsive to changes in the after-tax price of giving.”³
- Other deductions depend on factors like tax rates, home values, and medical expenses.
- Donors decide giving amounts and may reduce giving to fit under the cap (Figures 3&4).

Giving often responds negatively to reduced charitable giving incentives

- KS, MN, OR, NC, & VT exempted giving from dollar caps on itemized deductions.⁴
- HI exempted giving in 2013, two years after adopting an itemized deduction dollar cap.

¹ IRS SOI Table 2. Individual Income and Tax Data, by State and Size of Adjusted Gross Income, Tax Year 2018.

² https://coloradononprofits.org/sites/default/files/attachments/UnderstandingGiving_2014_WEB_0.pdf P.10

³ <https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/charitablecontributions.pdf>

⁴ <https://thehill.com/blogs/congress-blog/economy-a-budget/312611-the-lab-results-are-in-on-tax-reform>



- \$500K - \$1M: Giving fell by 3.4% in HI in 2011 & grew by 4.3% nationally
- \$1M: Giving grew by 4.4% in HI in 2011 & grew by 6.7% on average nationally.⁵
- HI Governor: “after having taken a close look at the impact this particular section of the law is having on charitable donations...we support carving out this portion of the law.”⁶

Figure 1: Amount of giving affected by HB 21-1311

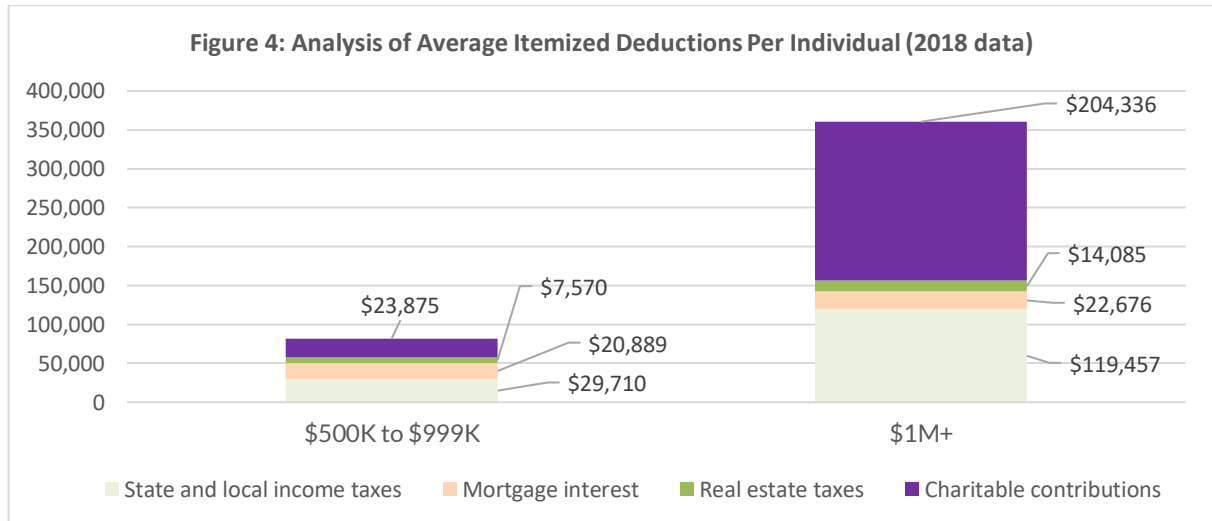
	# of taxpayers > \$500k (2018 IRS data)	# of taxpayers affected by cap	\$ amount deductions (2018 IRS data)	Tax revenue from cap	\$ amount of deductions with cap (4.55% CO tax)	Average amount over cap
Itemized Deductions	23,420	10,200 (fiscal note)	\$3.2B	\$121M (fiscal note)	\$2.65B	\$225,000 (fiscal note)
Charitable deduction	22,250	9,690 (estimate)	\$1.96B	\$73.7M (estimate)	\$1.62B	\$137,250 (estimate)

Figure 2: Elasticity of change in price of giving

	Price of giving \$1	Price of giving \$1 with 1311	% change price of giving	Elasticity	Elasticity	Elasticity
35% rate	\$0.65	\$0.6955	7%	-0.2	-0.035	-0.07
37% rate	\$0.63	\$0.6755	7.2%	-0.0144	-0.036	-0.072

Figure 3: Estimated changes in price of giving

	Average amount over cap (Figure 1)	# of taxpayers (Figure 1)	Change in giving (elasticity -0.2)	Change in giving (elasticity -0.5)	Change in giving (elasticity -1.0)
35% rate	\$137,250	9,690	-\$18,619,335	-\$46,548,337	-\$93,096,675
37% rate	\$137,250	9,690	-\$19,151,316	-\$47,878,290	-\$95,756,580



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⁵ N.C. Center for Nonprofits. “Capping State Itemized Deductions Would Reduce Charitable Giving In North Carolina.”

⁶ Tax Reform Lessons Learned from State Experiments. https://www.huffpost.com/entry/charitable-tax-deductions_b_3643849