

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0143.01 Jed Franklin x5484

HOUSE BILL 26-1223

HOUSE SPONSORSHIP

Woodrow and Boesenecker,

SENATE SPONSORSHIP

Ball and Roberts,

House Committees

Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MODIFYING CERTAIN TAX EXPENDITURES.

Bill Summary

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

Section 2 of the bill creates a new tax credit. The new tax credit allows taxpayers to claim a refundable tax credit, in addition to the child tax credit and the family affordability tax credit, in an amount determined by the amount and age of the taxpayer's children and the taxpayer's income. The total amount of the new tax credit is adjusted annually based on legislative council staff projections, such that the total amount of the new tax credit claimed in an income tax year is projected to be the same as the amount of revenue raised in **sections 3 and 4**.

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

Beginning January 1, 2027, the bill also repeals the downloaded software sales and use tax exemption so that all software that is available for repeated sale and license qualifies as tangible property and thus is subject to sales and use tax. The bill exempts from sales and use tax downloaded software governed by a negotiable license agreement or developed for use by a particular user.

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

2 **SECTION 1. Legislative declaration.**

3 (1) The general assembly finds and declares that:

4 (a) The general assembly has an ongoing responsibility to review,
5 evaluate, and update the state tax code within constitutional limitations
6 to ensure that the state code is effective, equitable, and aligned with
7 Colorado's priorities;

8 (b) (I) The downloaded software sales and use tax exemption
9 exempts certain software that is downloaded at the time of purchase from
10 sales and use tax by modifying the definition of tangible personal
11 property to not include certain types of software;

12 (II) Unlike Colorado, thirty-four states subject the sale and use of
13 downloadable software to state sales and use tax;

14 (III) At the local level in Colorado, unlike the state level, many
15 home rule municipalities subject the sale and use of downloadable
16 software to a local sales and use tax. Therefore, the sales and use tax
17 treatment of the sale and use of downloadable software is not consistent
18 across the state.

19 (IV) The primary purpose of the downloaded software sales and
20 use tax exemption tax expenditure was to resolve taxpayer confusion and
21 decrease administrative burden by clarifying the definition of tangible
22 personal property as it relates to software; and

1 (V) The primary purpose of modifying the downloaded software
2 sales and use tax exemption tax expenditure is to further resolve taxpayer
3 confusion and decrease administrative burden by clarifying that all
4 computer software available for repeated sale and governed by a
5 nonnegotiable license agreement qualifies as tangible personal property
6 and is subject to sales and use tax;

7 (c) (I) Colorado state income tax is determined based on the
8 amount of a person's federal taxable income;

9 (II) Recent federal law modified the computation of federal
10 taxable income and so impacted Colorado state income tax revenue;

11 (III) The recent federal modification to the computation of federal
12 taxable income reduced state income tax revenue;

13 (IV) The amount and availability of the family affordability tax
14 credit is determined in part by the amount of state income tax revenue;

15 (V) Therefore, by modifying the computation of federal taxable
16 income, federal law impacted the amount and availability of the family
17 affordability tax credit; and

18 (VI) At least in part due to the enactment of recent federal law, the
19 family affordability tax credit will not be available for the 2026 state
20 income tax year and will be available in a reduced amount for income tax
21 years 2027 and 2028;

22 (d) (I) In establishing the family affordability tax credit, the
23 general assembly found and declared that:

24 (A) Colorado families struggle to afford many necessary goods
25 and services, such as child care, housing, and health care. Eighty-three
26 percent of Colorado parents worry that their children won't be able to
27 afford to live in the state in the future.

8 (C) According to the Institute on Taxation and Economic Policy,
9 "[t]o cut child poverty rates by half, the majority of states would require
10 a base credit value of between three thousand dollars and four thousand
11 five hundred dollars per child plus a twenty percent boost for young
12 children." When coupled with the state and federal earned income tax
13 credit and the state and federal child tax credit, the additional investment
14 provided by the family affordability tax credit would establish Colorado
15 as a national leader in equitable economic policy.

16 (D) Colorado is dealing with rising costs and funding shortfalls in
17 many areas across our state, and it is necessary to provide tax credits to
18 the people who need it most in a way that will do the most good.
19 Establishing the family affordability tax credit is a proven way to do that;
20 and

25 (II) Therefore, it is a priority of Colorado to provide a tax credit
26 that targets the same taxpayers that the family affordability tax credit
27 targeted, to offset the reduction in the family affordability tax credit.

1 (e) (I) This House Bill 26-_____ constitutes a single
2 comprehensive tax policy change that emphasizes a high-quality, fair tax
3 system based on principles of horizontal and vertical equity. Horizontal
4 equity holds that similarly situated taxpayers who engage in the same
5 activity should be treated equally. Repealing the downloadable software
6 sales tax exemption promotes horizontal equity by treating the taxation of
7 all software purchasers the same whether the purchaser downloads the
8 software or purchases it at a physical retail location. Vertical equity holds
9 that taxpayers who can pay more in taxes should pay more in taxes.
10 Creating a tax credit that prioritizes low- and middle-income families
11 with children reduces the tax burden on the families who can afford to
12 pay the least in taxes.

13 (II) The income tax credit created in this House Bill 26-_____
14 reduces state tax revenue in an amount equal to or greater than the
15 amount of state revenue gain attributable to the changes made in this
16 House Bill 26-_____;

17 (III) Any net district revenue gain resulting from the tax policy
18 change in this House Bill 26-_____ is incidental and de minimis; and

19 (IV) Therefore, consistent with the Colorado Supreme Court's
20 holding in *TABOR Found. v. Reg'l Transp. Dist.*, 2018 CO 29, that a tax
21 policy change that causes either no net district tax revenue gain or a net
22 district tax revenue gain that is only incidental and de minimis does not
23 require voter approval under section 20 (4)(a) of article X of the state
24 constitution, this House Bill 26-_____ is not a tax policy change that
25 requires voter approval.

26 **SECTION 2.** In Colorado Revised Statutes, **add** 39-22-131 as
27 follows:

1 **39-22-131. Family affordability credit - tax preference**
2 **performance statement - legislative declaration - definitions.**

3 (1) (a) IN ACCORDANCE WITH SECTION 39-21-304 (1), WHICH
4 REQUIRES EACH BILL THAT CREATES A NEW TAX EXPENDITURE TO INCLUDE
5 A TAX PREFERENCE PERFORMANCE STATEMENT AS PART OF A STATUTORY
6 LEGISLATIVE DECLARATION, THE GENERAL ASSEMBLY HEREBY FINDS AND
7 DECLARES THAT THE PURPOSES OF THE INCOME TAX CREDIT CREATED IN
8 THIS SECTION ARE THE SAME AS THE FAMILY AFFORDABILITY TAX CREDIT:
9 TO SUBSTANTIALLY REDUCE CHILD POVERTY, MAKE COLORADO MORE
10 AFFORDABLE FOR FAMILIES, AND HELP FAMILIES AFFORD EXPENSES
11 ASSOCIATED WITH HAVING CHILDREN BY PROVIDING TAX RELIEF FOR
12 CERTAIN INDIVIDUALS.

13 (b) THE GENERAL ASSEMBLY AND THE STATE AUDITOR, IN
14 CONSULTATION WITH THE DEPARTMENT, SHALL MEASURE THE
15 EFFECTIVENESS OF THE INCOME TAX CREDIT CREATED IN THIS SECTION IN
16 COMBINATION WITH THE FAMILY AFFORDABILITY TAX CREDIT AND, IN THE
17 SAME MANNER AS THE GENERAL ASSEMBLY AND THE STATE AUDITOR
18 MEASURE THE EFFECTIVENESS OF THE FAMILY AFFORDABILITY TAX CREDIT
19 BY DETERMINING THE NUMBER OF COLORADO FAMILIES THAT, AFTER
20 CLAIMING A CREDIT PURSUANT TO THIS SECTION AND THE FAMILY
21 AFFORDABILITY TAX CREDIT, NO LONGER FALL BELOW THE FEDERAL
22 POVERTY LEVEL IN THE TAX YEAR IN WHICH THEY CLAIMED THE CREDITS.

23 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
24 REQUIRES:

25 (a) "CREDIT" MEANS THE CREDIT AGAINST INCOME TAX CREATED
26 IN THIS SECTION.

27 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

1 (c) "ELIGIBLE CHILD" MEANS A QUALIFYING CHILD, AS DEFINED IN
2 SECTION 152 (c) OF THE "INTERNAL REVENUE CODE OF 1986"; EXCEPT
3 THAT THE AGE REQUIREMENTS ARE AS SET FORTH IN SUBSECTIONS
4 (3)(a)(I), (3)(a)(II), (3)(b)(I), AND (3)(b)(II) OF THIS SECTION.

5 (d) "FEDERAL POVERTY LEVEL" MEANS THE POVERTY LINE THAT
6 IS REQUIRED TO BE UPDATED ANNUALLY WITHIN THE FEDERAL POVERTY
7 GUIDELINES ADOPTED BY THE UNITED STATES DEPARTMENT OF HEALTH
8 AND HUMAN SERVICES PURSUANT TO 42 U.S.C. SEC. 9902 (2).

9 (e) "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE
10 UNITED STATES DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS
11 CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKewood FOR ALL
12 ITEMS PAID BY ALL URBAN CONSUMERS, OR ITS APPLICABLE SUCCESSOR
13 INDEX.

1 PERCENT OF THE AMOUNT ALLOWED IN SUBSECTION (3)(a)(I) OF THIS
2 SECTION.

3 (b) IN ADDITION TO THE CHILD TAX CREDIT ALLOWED BY SECTION
4 39-22-129 AND, FOR INCOME TAX YEARS COMMENCING ON AND AFTER
5 JANUARY 1, 2027, BUT BEFORE JANUARY 1, 2034, THE FAMILY
6 AFFORDABILITY TAX CREDIT ALLOWED BY SECTION 39-22-130, FOR
7 INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2027, TWO
8 RESIDENT INDIVIDUALS WHO FILE A JOINT RETURN ARE ALLOWED A FAMILY
9 AFFORDABILITY TAX CREDIT AGAINST THE INCOME TAXES DUE IMPOSED
10 PURSUANT TO THIS ARTICLE 22 FOR:

11 (I) EACH ELIGIBLE CHILD OF THE RESIDENT INDIVIDUAL WHO IS
12 FIVE YEARS OLD OR YOUNGER AT THE CLOSE OF THE INCOME TAX YEAR IN
13 AN AMOUNT DETERMINED BY STAFF OF THE LEGISLATIVE COUNCIL
14 PURSUANT TO SUBSECTION (5)(b) OF THIS SECTION; AND

15 (II) EACH ELIGIBLE CHILD OF THE RESIDENT INDIVIDUAL WHO IS SIX
16 YEARS OLD OR OLDER BUT LESS THAN SEVENTEEN YEARS OLD AT THE
17 CLOSE OF THE INCOME TAX YEAR IN AN AMOUNT THAT IS SEVENTY-FIVE
18 PERCENT OF THE AMOUNT ALLOWED IN SUBSECTION (3)(b)(I) OF THIS
19 SECTION.

20 (4) (a) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, FOR
21 INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2027, THE
22 CREDIT AMOUNTS IN:

23 (I) SUBSECTION (3)(a)(I) OF THIS SECTION ARE REDUCED, BUT NOT
24 BELOW ZERO, BY AN AMOUNT EQUAL TO SIX AND EIGHT HUNDRED
25 SEVENTY-FIVE ONE-THOUSANDTHS PERCENT FOR EACH FIVE THOUSAND
26 DOLLARS BY WHICH A RESIDENT INDIVIDUAL'S ADJUSTED GROSS INCOME
27 EXCEEDS FIFTEEN THOUSAND DOLLARS; AND

6 (b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
7 1, 2028, THE DEPARTMENT SHALL ADJUST THE FEDERAL ADJUSTED GROSS
8 INCOME AMOUNTS SET FORTH IN THIS SUBSECTION (4) TO REFLECT
9 INFLATION FOR EACH INCOME TAX YEAR IN WHICH THE CREDIT DESCRIBED
10 IN THIS SECTION IS ALLOWED IF CUMULATIVE INFLATION SINCE THE LAST
11 ADJUSTMENT, WHEN APPLIED TO THE CURRENT LIMITS, RESULTS IN AN
12 INCREASE OF AT LEAST ONE THOUSAND DOLLARS WHEN THE ADJUSTED
13 LIMITS ARE ROUNDED TO THE NEAREST ONE THOUSAND DOLLARS.

14 (5) BEGINNING WITH THE QUARTERLY DECEMBER REVENUE
15 FORECAST THAT LEGISLATIVE COUNCIL STAFF PRESENTS IN DECEMBER OF
16 2026, AND FOR EACH DECEMBER REVENUE FORECAST THEREAFTER, AS
17 PART OF THE QUARTERLY DECEMBER REVENUE FORECAST, LEGISLATIVE
18 COUNCIL STAFF SHALL DETERMINE:

23 (b) A DOLLAR AMOUNT OF THE CREDIT AVAILABLE PURSUANT TO
24 SUBSECTIONS (3)(a)(I) AND (3)(b)(I) OF THIS SECTION, WHICH DOLLAR
25 AMOUNT MUST BE THE SAME FOR BOTH SUBSECTIONS (3)(a)(I) AND
26 (3)(b)(I) OF THIS SECTION, SUCH THAT THE STAFF OF THE LEGISLATIVE
27 COUNCIL PROJECTS, FOR THE CURRENT CALENDAR YEAR, THAT THE TOTAL

1 DOLLAR AMOUNT OF CREDITS CLAIMED PURSUANT TO SUBSECTION (3) OF
2 THIS SECTION WILL EQUAL THE DOLLAR AMOUNT THAT STAFF OF THE
3 LEGISLATIVE COUNCIL DETERMINES PURSUANT TO SUBSECTION (5)(a) OF
4 THIS SECTION.

5 (6) IN THE CASE OF A PART-YEAR RESIDENT, THE CREDIT IS
6 APPORTIONED IN THE RATIO DETERMINED UNDER SECTION 39-22-110 (1).

7 (7) THE CREDIT IS NOT CONSIDERED TO BE INCOME OR RESOURCES
8 FOR THE PURPOSE OF DETERMINING ELIGIBILITY FOR THE PAYMENT OF
9 PUBLIC ASSISTANCE BENEFITS AND MEDICAL ASSISTANCE BENEFITS
10 AUTHORIZED UNDER STATE LAW OR FOR A PAYMENT MADE UNDER ANY
11 OTHER PUBLICLY FUNDED PROGRAM.

12 (8) THE AMOUNT OF THE CREDIT THAT EXCEEDS THE RESIDENT
13 INDIVIDUAL'S INCOME TAXES DUE IS REFUNDED TO THE INDIVIDUAL.

14 (9) THE DEPARTMENT IS AUTHORIZED AND ENCOURAGED TO
15 DEVELOP A MEANS OF REFUNDING THE CREDITS TO RESIDENT INDIVIDUALS
16 WHO QUALIFY FOR THE CREDITS IN TWELVE EQUAL MONTHLY REFUNDS
17 RATHER THAN ANNUALLY.

18 (10) NOTWITHSTANDING SECTION 39-21-304(4), THE CREDIT DOES
19 NOT REPEAL AFTER A SPECIFIED PERIOD OF TAX YEARS.

20 **SECTION 3.** In Colorado Revised Statutes, 39-26-102, **amend**
21 (5.7) and (15)(c) as follows:

22 **39-26-102. Definitions - repeal.**

23 As used in this article 26, unless the context otherwise requires:

24 (5.7) "Mainframe computer access" means the provision of access
25 to computer equipment for the purpose of storing or processing data.
26 "Mainframe computer access" does not include the provision of access to
27 computer equipment for the purpose of examining or acquiring data

1 maintained by the vendor. "Mainframe computer access" does not include
2 the provision of access to computer equipment incident to electronic
3 computer software delivery, as defined in subsection (15)(c)(II)(C) of this
4 section, or incident to the use of computer software hosted by an
5 application service provider, as defined in subsection (15)(c)(II)(A) of
6 this section.

7 (15) (c) (I) "Tangible personal property" commencing July 1,
8 2012, shall include ~~INCLUDES~~ computer software. ~~if the computer~~
9 ~~software meets all of the following criteria:~~

10 (A) ~~The computer software is prepackaged for repeated sale or~~
11 ~~license;~~

12 (B) ~~The use of the computer software is governed by a tear-open~~
13 ~~nonnegotiable license agreement; and~~

14 (C) ~~The computer software is delivered to the customer in a~~
15 ~~tangible medium. Computer software is not delivered to the customer in~~
16 ~~a tangible medium if it is provided through an application service~~
17 ~~provider, delivered by electronic computer software delivery, or~~
18 ~~transferred by load and leave computer software delivery.~~

19 (II) As used in this paragraph (c) SUBSECTION (15)(c), unless the
20 context otherwise requires:

21 (A) "Application service provider" or "ASP" means an entity that
22 ~~retains custody over or hosts computer software for use by third parties.~~
23 ~~Users of the computer software hosted by an ASP typically will access the~~
24 ~~computer software via the internet. The ASP may or may not own or~~
25 ~~license the computer software, but generally will own and maintain~~
26 ~~hardware and networking equipment required for the user to access the~~
27 ~~computer software. Where the ASP owns the computer software, the ASP~~

1 may charge the user a license fee for the computer software or a fee for
2 maintaining the computer software or hardware used by its customer.

3 (B) "Computer software" means a set of coded instructions THAT
4 ARE BOTH designed to cause a computer or automatic data processing
5 equipment to perform a task OTHER ELECTRONIC DEVICE TO PERFORM A
6 TASK AND ARE DELIVERED BY ANY MEANS, INCLUDING COMPACT DISC,
7 DOWNLOAD, OR REMOTE ACCESS THROUGH THE INTERNET. "COMPUTER
8 SOFTWARE" INCLUDES APPLICATIONS INSTALLED ON CELLULAR PHONES,
9 TABLETS, OR OTHER MOBILE DEVICES.

10 (C) "Electronic computer software delivery" means computer
11 software transferred by remote telecommunications to the purchaser's
12 computer, where the purchaser does not obtain possession of any tangible
13 medium in the transaction.

14 (D) "Load and leave computer software delivery" means delivery
15 of computer software to the purchaser by use of a tangible medium where
16 the title to or possession of the tangible medium is not transferred to the
17 purchaser, and where the computer software is manually loaded by the
18 vendor, or the vendor's representative, at the purchaser's location.

19 (E) "Prepackaged for repeated sale or license" means computer
20 software that is prepackaged for repeated sale or license in the same form
21 to multiple users without modification, and is typically sold in a
22 shrink-wrapped box.

23 (F) "Tangible medium" means a tape, disk, compact disc, card, or
24 comparable physical medium.

25 (G) "Tear-open nonnegotiable license agreement" means a license
26 agreement contained on or in the package, which by its terms becomes
27 effective upon opening of the package and accepting the licensing

1 agreement. "Tear-open nonnegotiable license agreement" does not
2 include a written license agreement or contract signed by the licensor and
3 the licensee.

4 (III) The internalized instruction code that controls the basic
5 operations, such as arithmetic and logic, of the computer causing it to
6 execute instructions contained in system programs is an integral part of
7 the computer and is not normally accessible or modifiable by the user.
8 Such internalized instruction code is considered part of the hardware and
9 considered tangible personal property that is taxable pursuant to section
10 39-26-104 (1)(a). The fact that the vendor does or does not charge
11 separately for such code is immaterial.

12 (IV) If a retailer sells computer software to a Colorado purchaser
13 that is considered tangible personal property taxable pursuant to section
14 39-26-104 (1)(a) and the Colorado purchaser pays the retailer for a
15 quantity of computer software licenses with the intent to distribute the
16 computer software to any of the purchaser's locations outside of
17 Colorado, the measure of Colorado sales tax due is the total of the license
18 fees associated only with the licenses that are actually used in Colorado.
19 The Colorado purchaser shall provide a written statement to the retailer,
20 attesting to the amount of the license fees associated with Colorado and
21 with points outside of Colorado. The written statement shall relieve the
22 retailer of any liability associated with the proration.

23 SECTION 4. In Colorado Revised Statutes, 39-26-713, add (3)
24 as follows:

25 **39-26-713. Tangible personal property.**

26 (3) THE SALE, STORAGE, USE, OR CONSUMPTION OF COMPUTER
27 SOFTWARE, AS DEFINED IN SECTION 39-26-102 (15)(c)(II)(B), IS EXEMPT

1 FROM TAXATION UNDER THE PROVISIONS OF PARTS 1 AND 2 OF THIS
2 ARTICLE 26 IF THAT SALE, STORAGE, USE, OR CONSUMPTION OF COMPUTER
3 SOFTWARE IS:

4 (a) GOVERNED BY A NEGOTIABLE LICENSE AGREEMENT; OR
5 (b) DEVELOPED FOR USE BY A PARTICULAR USER.

6 **SECTION 5. Effective date - applicability.** This act takes effect
7 on passage, except sections 3 and 4 are effective January 1, 2027, and
8 apply to the sale, storage, use, and consumption of tangible personal
9 property on and after January 1, 2027.

10 **SECTION 6. Safety clause.** The general assembly finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, or safety or for appropriations for
13 the support and maintenance of the departments of the state and state
14 institutions.