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## Alternative Transportation Options Credit for Employers Memo

The Alternative Transportation Options Credit allows employers to claim an income tax credit for amounts they spend to provide alternative transportation options to their employees. Statute requires us to issue an evaluation prior to the legislative session before a tax expenditure expires [Section 39-21-305(1)(d), C.R.S.]. The credit is only available for Tax Years 2023 and 2024, so data on taxpayer use of the credit will not be available before the General Assembly would need to take legislative action during the 2024 legislative session if it would like to extend the credit. Therefore, we are issuing this memo to provide a summary of the credit, preliminary data on the use of the credit, and some issues that we noted in speaking with stakeholders and the Department of Revenue (Department) about the credit.

The General Assembly created the Alternative Transportation Options Credit for Employers in 2022 “to increase the use of alternative transportation options by employees in going to and returning from their places of employment by providing an incentive to employers to provide alternative transportation options to employees.” Statute defines alternative transportation options as “free or partially subsidized generally accepted transportation demand management strategies provided to employees working in Colorado” such as mass transit passes; provision of ridesharing vans, bicycles, and electric bicycles; and shared micromobility options such as bikesharing and electric scooter sharing programs. Additionally, the employer may only claim the credit for alternative transportation options that are available to all of its Colorado employees regardless of their job position, whether they are full- or part-time, and whether they are salaried, paid hourly, or tipped. If it is not feasible to offer a particular alternative transportation option to certain employees, an employer may offer a substantially equivalent alternative transportation option to those employees.

The credit, which is refundable, is equal to 50 percent of the amount spent by the employers to provide alternative transportation options to its employees, and the maximum credit that may be claimed by an employer is \$125,000 per tax year. Additionally, the maximum amount spent in any tax year for any one employee for which an employer may claim a credit is \$2,000. The credit is available to most types of employers, as long as they have at least three employees in Colorado. This includes for-profit businesses, such as corporations, partnerships, and limited liability companies, as well as nonprofit organizations and certain local governments; since the credit is refundable, tax exempt entities can benefit from the credit if they meet its requirements and file a corporate return with the Department to claim the credit.

Before making qualifying expenditures and claiming the credit, the employer has to provide the Department with a copy of its plan (Form DR 1323) for notifying its employees about the

availability of the alternative transportation options that it offers and information on what steps the employer plans to take to encourage employees to use the options. Statute also requires that employers report to the Department information on its alternative transportation options program, including the specific alternative transportation options offered, the number of employees offered an alternative transportation option, and, to the extent feasible, the number of employees actually using the options and the number of trips taken by employees using the options; this information is reported on Form DR 1323. Employers then claim the credit on their income tax returns.

Department staff indicated that, as of September 2023, they have received plans (Form DR 1323) from three employers. According to Department staff, this indicates that three employers have established their intent to develop a program to offer alternative transportation options to their employees that would qualify for the credit. However, until these taxpayers file their income tax returns for Tax Year 2023 in Calendar Year 2024, the Department will not know whether any of these taxpayers have completed the investments that qualify for the credit and, subsequently, claim the credit. The Department reports that complete data about the credit for Tax Year 2023 will be included within its Fiscal Year 2025 Annual Report, published in January 2026.

## Policy Considerations

**If the General Assembly decides to extend the credit beyond 2024, it could consider clarifying four potential issues in statute.** We identified four potential issues based on our research, conversations with stakeholders in the industry, and discussions with Department staff. The Department has commenced rulemaking on this credit and indicated to us that it was considering whether to address some of these issues through rulemaking. However, the Department indicated that it would be helpful if the General Assembly clarifies these issues in statute. The issues identified include:

*Whether expenses incurred for providing alternative transportation options to volunteers are eligible for the credit.* Statute [Section 39-22-509(3)(a), C.R.S.] provides, "...there is allowed a credit to each employer in an amount equal to fifty percent of the amount spent by the employer to provide alternative transportation options to its employees..." Statute does not define "employee" for purposes of the credit, but volunteers are not typically employed by organizations so it is unclear whether expenses paid to offer alternative transportation options to volunteers qualify for the credit. Since this credit is refundable and available to nonprofit organizations and local governments, it may be beneficial for the General Assembly to clarify whether expenses incurred by employers to offer alternative transportation options to volunteers qualify for the credit.

*Whether the "substantially equivalent" requirement applies to the mode of transportation or can be interpreted more broadly.* Statute [Section 39-22-509(3)(d), C.R.S.] provides, "An employer may claim a credit only for amounts spent by the employer for alternative transportation options that it makes available to all of its employees who are employed in Colorado; except that, if it is not feasible to offer a particular alternative transportation option to certain employees, an employer may offer a *substantially equivalent* [emphasis added] alternative transportation option to such employees. The requirement that an

alternative transportation option be offered to all employees who are employed in Colorado applies regardless of the position that an employee holds, whether the employee is employed on a full-time or part-time basis, or whether an employee is salaried, compensated in whole or in part through commissions or tips, or paid on an hourly basis.”

It is unclear whether the “substantially equivalent” requirement applies to the transportation mode or could be interpreted more broadly. For example, it is unclear if a company offers electric bike passes in the Denver area whether it must offer something similar to an electric bike pass to all employees, regardless of where in the state they are located, or if employees in rural areas of the state where electric bike share programs are not available or practical could be offered the option to work remotely to satisfy that requirement. Therefore, the General Assembly could consider clarifying how the substantially equivalent provision applies in the case of employers who have employees throughout the state.

*How the per-employee cap applies in cases in which the employer purchases a capital asset (e.g., a van or fleet of electric bicycles).* Statute provides limitations for the maximum amount spent in any income tax year for which an employer may claim a credit [Section 39-22-509(3)(a), C.R.S.]. The maximum for the company is \$250,000 annually, and there is also a per-employee maximum amount spent of \$2,000. When a company purchases a capital asset, such as a van or a fleet of electric bikes, it is unclear how the per-employee cap should be calculated. For example, if a company with 100 total employees purchases a van with a capacity of 20 people for \$50,000 but only 15 employees use the van regularly for commuting, it is unclear how the company should determine the per-employee cap (e.g., \$50,000/100; \$50,000/20; or \$50,000/15). Therefore, the General Assembly could consider clarifying how it intends for the per-employee cap to be applied when an employer is purchasing a capital asset.

*When an employer purchases a capital asset, whether the employer can claim the credit for the cash out amount or the depreciation expense.* When an employer purchases a capital asset it is unclear whether the employer may claim the credit for the actual cash amount spent (e.g., \$50,000 for a van) or the depreciation expense for the tax year. If the credit can be claimed only for the depreciation expense for the tax year for an asset that is depreciated beyond 2024, which is when the credit is currently set to expire, there is a question of whether the employer can continue to claim the credit beyond 2024 for the remaining depreciation expense.