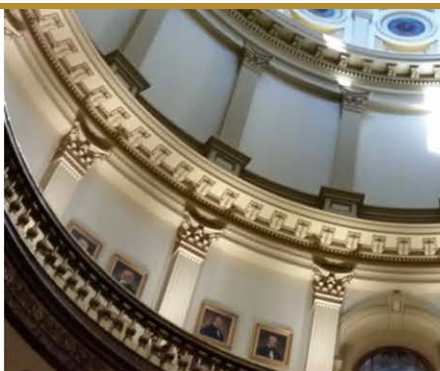


Final Report to the General Assembly

Legislative Oversight Committee Concerning Tax Policy
December 2024 | Research Publication 818



Legislative Oversight Committee Concerning Tax Policy

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December 2024

To Members of the Seventy-fourth General Assembly:

Submitted herewith is the final report of the Legislative Oversight Committee Concerning Tax Policy. This committee was created pursuant to Article 21 of Title 39, Colorado Revised Statutes. The purpose of this committee is to review the state's current tax policy and the tax expenditure reports from the Office of the State Auditor.

At its meeting on October 15, 2024, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2025 session was approved.

Sincerely,

/s/ Rep. Julie McCluskie
Chair

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This report is also available online at:

<https://leg.colorado.gov/committees/committeename/2024-regular-session>

Committee Charge

The Legislative Oversight Committee Concerning Tax Policy (committee) is charged with reviewing the state's current tax policy and the evaluations of tax expenditures that are statutorily completed by the Office of the State Auditor. The committee is also charged with oversight of the Task Force Concerning Tax Policy (task force). For purposes of the committee's work, tax policy includes:

- decisions by the state or local governments regarding taxes that have or may be levied; and
- analysis of the benefits and burdens of the state's overall tax structure with respect to the promotion of certainty, fairness, adequacy, transparency, and administrative ease.

In addition, the committee must annually define in writing the scope of tax policy to be considered for the committee and the task force. The scope of tax policy to be considered by the committee is:

- tax expenditure evaluations produced by the Office of the State Auditor, and the policy considerations contained therein;
- recommendations, proposals, and studies arising from the work of the task force; and
- other tax expenditure policy considerations arising during the work of the committee.

The scope of tax policy to be considered by the task force is:

- options for facilitating the construction of affordable housing units through tax policy as well as options for addressing the affordability of home ownership and rental housing through tax policy; and
- the creation of a "permanent fund" associated with the state's levy and collection of severance tax.

The task force plans to submit its report on the assigned scope in late 2024 or early 2025.

Committee Activities

The committee held four meetings during the 2024 interim. Briefings and presentations were made by the Office of the State Auditor (OSA), the Division of Insurance, the Department of Revenue (DOR), the Colorado Chamber of Commerce, and the Division of Property Taxation on a wide range of subjects, including:

- the Office of the State Auditor's tax expenditure evaluations;
- insurance premium tax;
- alternative transportation tax credit; and
- business personal property tax.

The following sections discuss the committee's activities during the 2024 interim.

Office of the State Auditor — Tax Expenditure Evaluation Reports

OSA presented to the committee on several of their tax expenditure evaluation reports with policy considerations. OSA highlighted several categories of expenditures. In total, the OSA presented evaluation reports or memorandums on 23 tax expenditures to the committee:

- film incentive tax credit;
- child care expenses credit;
- low-income child care expenses credit;
- deduction for wages and salaries under IRC 280C;
- tax-exempt organization insurance premium tax deduction;
- credit for insolvency assessments paid;
- alternative transportation options credit for employers;
- business personal property tax income tax credit;
- contaminated land redevelopment credit (“Brownfields credit”);
- state income tax refund deduction for individuals, estates and trusts, and C corporations;
- credit for unsalable alcohol;
- two-percent loss allowance (fuel excise tax);
- bad debt and administrative allowances (fuel excise tax);
- lost and destroyed fuel credit;
- agricultural inputs sales tax exemption;
- farm equipment and parts sales tax exemption;
- special fuel for use in farm vehicles sales tax exemption;
- residential energy storage credit;
- organ donor employer credit;
- dyed special fuels exemption;
- off-road fuel use refund;
- fraternal society exemption; and
- wholesale sales tax exemption.

Committee recommendations. As a result of its discussions, the committee recommends Bill A, which makes adjustments to several tax expenditures based on the recommendations of the OSA.

Discussion of Specific Tax Issues: Insurance Premium Tax, Alternative Transportation Tax Credit, and Business Personal Property Tax

The committee heard from the Division of Insurance in the Colorado Department of Regulatory Agencies about the insurance premium tax and several tax credits. The committee discussed the credit for insolvency assessments paid and its relation to health insurance as well as the fraternal society exemption.

In addition, the DOR and the Colorado Chamber of Commerce presented to the committee on the [Alternative Transportation Options Credit for Employers](#) as highlighted by the OSA. DOR discussed the implementation of the credit. A representative from the Colorado Chamber of

Commerce discussed several policy issues for the committee to consider related to the continuation of the credit including:

- clarifying application of credit to an organization’s volunteers;
- clarifying the definition of “substantially equivalent” in statute;
- application of per-employee cap when employer purchases a capital asset; and
- whether an employer can claim depreciation on a capital asset.

Finally, the Division of Property Taxation in the Department of Local Affairs and the Colorado Chamber of Commerce presented to the committee on the business personal property tax and the [Business Personal Property Income Tax Credit](#) as highlighted by OSA. The Division of Property Taxation discussed an overview of the business personal property tax and its administration. A representative from the Colorado Chamber of Commerce discussed feedback from its members related to the tax and income tax credit. Feedback included that many businesses were unaware of the credit, the complexity of the credit versus the benefits of the credit, and the need for possible updated guidance. The Chamber also discussed the possibility of changing the exemption to the first \$52,000 of value rather than only exempting businesses with a total value of \$52,000.

Committee recommendations. The committee recommended that two bills related to the business personal property tax and income tax credit be drafted, but the draft bills were not approved by the committee. However, the committee discussed addressing the business personal property tax in Bill A, possibly via amendment, in the 2025 legislation session.

Additional Committee Recommendations

The committee also drafted several bills related to tax policy topics.

Senior housing income tax credit extension. In 2023, the committee recommended a bill creating the senior housing income tax in income tax year 2024. That bill, [House Bill 24-1052](#), became law. The committee recommends Bill B to extend the means-tested, refundable tax credit for income tax years 2025 and 2026.

Modifications to long-term care insurance income tax credit. In 2023, the committee drafted, but did not recommend a bill on the income tax credit for the purchase of long-term care insurance. The committee now recommends Bill C, which modifies the state income tax credit for purchasing long-term care insurance policies beginning in tax year 2025. The bill increases both the federal taxable income threshold for taxpayers to be eligible to claim the tax credit, and the maximum credit amount allowable per taxpayer per year.

Income tax credit for service members. Under current law, an active-duty military service person who reacquires Colorado residency, has a home of record in Colorado on their military record, and was a resident of a state other than Colorado since 2016, may deduct their military pay when calculating their Colorado income tax liability. Based on a 2022 [report](#) from OSA, the deduction applied to about 60 taxpayers in the tax year 2018.

The committee recommends Bill D, which eliminates this existing income tax deduction for certain active-duty military service members who reacquire Colorado residency, and creates a new refundable income tax credit that expands available tuition assistance for eligible members of the Colorado National Guard.

State tax expenditure and grants database. [House Bill 24-1287](#) would have created a state grant database and a program to help local governments identify and apply for grants, but was deemed lost in House Appropriations. The committee recommends Bill C, which creates an online database for all qualifying state tax expenditures and state grant opportunities.

Additional tax expenditures and topics for study. [House Bill 24-1053](#) allows the committee to request the review of up to three additional tax expenditures for OSA review by June 30, 2025, and request OSA study two specific, discrete topics related to tax policy. At the committee's meeting on October 31, 2024, the committee requested that the OSA study two tax topics:

- business incentives in Colorado tax policy; and
- a review of best practices for states to promote tax incentives.

The committee also asked the OSA to review the tax expenditures for:

- sustainable aviation fuel; and
- downloadable software.

Report from the Task Force Concerning Tax Policy

On December 8, 2023, the task force submitted a report to the committee on options for expanding the sales and use tax to apply to services and issues concerning using Federal Adjusted Gross Income or Federal Taxable Income as the basis of the state's income tax. The report may be found here:

https://leg.colorado.gov/sites/default/files/images/committees/2023_task_force_concerning_tax_policy_report_0.pdf

Summary of Recommendations

As a result of the committee's activities, the committee recommended five bills to the Legislative Council for consideration in the 2025 session. At its meeting on October 15, 2024, the Legislative Council approved all five recommended bills for introduction. The approved bills are described below.

Bill A — Adjusting Certain Tax Expenditures

The bill adjusts several tax expenditures as follows:

- disallows the income tax credit for unsalable alcohol after December 31, 2025, and repeals the credit on December 31, 2030;
- reduces the allowable deduction from 2 percent to 1 percent for taxable gallons of fuel removed from a fuel terminal to account for fuel lost in transit, beginning January 1, 2026;
- extends the income tax credit for a purchaser who installs an energy storage system in a residential dwelling, currently available through tax year 2024, by two years, through tax year 2026;
- extends the reducing emissions from lawn equipment income tax credit, currently available through tax year 2026, by two years, through tax year 2028;
- expands the sales and use tax exemption for wholesale sales by amending the definition of "agricultural compounds" beginning January 1, 2026;
- clarifies the purpose of the insolvency assessments paid insurance premium tax credit;
- clarifies the purpose of the state refund income tax deduction;
- clarifies the purpose of the dyed special fuels and off-road fuel tax excise tax exemption;
- clarifies the purpose of the off-road fuel use refund; and
- clarifies the purpose of the wholesale sales exemption from sales tax.

Bill B — Senior Housing Income Tax Credit Extension

For income tax years 2025 and 2026, the bill extends a means-tested, refundable income tax credit currently available in tax year 2024 to Colorado taxpayers who are at least 65 years old as of the end of the tax year, whose adjusted gross income (AGI) falls below a cap, and who have not claimed a homestead property tax exemption for the 2025 and 2026 property tax years. The amount of the credit depends on income and taxpayer filing status. For taxpayers with income up to \$25,000, the maximum credit amount is \$800. For taxpayers who may file jointly but choose to file separately, the maximum credit amount is \$400. For every \$500 of income above the specified threshold for single taxpayers, the credit is reduced by \$8 (\$4 for married taxpayers filing jointly or separately). The amount by which the credit exceeds a taxpayer's income tax liability is refunded to the taxpayer. Regardless of income, a taxpayer who also qualifies for the property tax, rent, and heat rebate during 2025 or 2026 is eligible to receive the maximum credit.

Bill C — Modification Long-Term Care Insurance Income Tax Credit

The bill modifies the state income tax credit for purchasing long-term care insurance policies beginning in tax year 2025. The bill increases both the federal taxable income (FTI) threshold for taxpayers to be eligible to claim the tax credit, and the maximum credit amount allowable per taxpayer per year. Under current law, to be eligible for this credit, single and joint taxpayers claiming a single insurance policy must have FTI of less than \$50,000, and joint filers claiming two insurance policies (one for each individual) must have FTI of less than \$100,000. The bill doubles these FTI thresholds to \$100,000 for single and joint taxpayers claiming one insurance policy, and \$200,000 for joint filers claiming two insurance policies. The bill also doubles the maximum credit amount allowable per taxpayer per year from \$150 per policy claimed to \$300 per policy claimed, and adjusts this amount for inflation annually beginning in 2026.

Bill D — Income Tax Expenditures for Service Members

The bill eliminates an income tax deduction for certain active-duty military service members reacquiring Colorado residency beginning with tax year 2027. The bill creates a new refundable income tax credit for tax years 2027 to 2031 for tuition assistance for actively serving members of the Colorado National Guard who are eligible for tuition assistance under an existing statutorily-authorized program administered by the Department of Military and Veterans Affairs (DMVA).

To claim the credit, eligible National Guard members are required to obtain a tax credit certificate from DMVA each semester or quarter. Credit certificates are limited by the number of members eligible for the current tuition assistance program, and may not exceed \$1 million for any income tax year.

By the end of calendar year, beginning with 2028, the DMVA is required to report the number of credit certificates issued, the amount of tuition assistance provided through the tax credits, the average amount per recipient, and the amount of any credit recaptured if a credit was revoked.

Bill E — State Tax Expenditure and Grant Database

The bill requires the DOR to create and maintain an online database that includes information on all qualifying state tax expenditures and state grant opportunities, including any grant funded by state money or administered by the state. A qualifying tax expenditure is any state tax expenditure that meets at least one of the following criteria:

- a limited amount of dollars or credits is available;
- a discretionary determination made by a state agency is necessary to qualify; or
- a person must submit an application to and receive a certificate or other designation of approval from a state agency to qualify.

The database must be created by December 31, 2026, and be reviewed and updated on an annual basis.

Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<https://leg.colorado.gov/content/committees>

Meetings and Topics Discussed

July 29, 2024

- Staff update
- Office of the State Auditor tax expenditure evaluations
- Updates per House Bill 24-1053

August 15, 2024

- Division of Insurance: Insurance Premium Tax
- Alternative Transportation Tax Credit
- Business Personal Property Tax
- Committee discussion: additional tax expenditures and tax topics
- Bill draft requests

September 27, 2024

- Public testimony
- Bill draft request approval
- Other business

October 31, 2024

- Committee discussion: additional tax expenditures and tax topics