

Tax Expenditure Evaluation Interim Study Committee

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Committee Charge

The Tax Expenditure Evaluation Interim Study Committee (“committee”) was created to study the policy considerations contained in the tax expenditure evaluations prepared by the Office of the State Auditor (OSA) pursuant to Senate Bill 16-203, codified at Section 39-21-305, C.R.S. Issues for study included repealing, clarifying, or otherwise changing current tax expenditures to improve their effectiveness or administration. The committee was authorized to meet up to four times in 2019 and to recommend up to five bills to the Legislative Council.

Committee Activities

The committee held four meetings during the 2019 interim. The committee received briefings on public policy considerations regarding tax expenditures and the scope and procedure of tax expenditure evaluation in other states. Representatives of the OSA presented the committee with the policy considerations identified in all of its evaluations of Colorado tax expenditures completed through July 2019. The committee also received testimony from individual and business taxpayers who benefit from the tax expenditures, and from their advocates.

Tax expenditure evaluation and general policy considerations. The committee received a briefing from the Tax Foundation concerning general principles for tax expenditure legislation, and one from the Pew Charitable Trusts concerning procedures for tax expenditure evaluation in Colorado and other jurisdictions around the country. Legislative Council Staff briefed the committee concerning the relative size of tax expenditures in the state budget, and the Office of Legislative Legal Services presented regarding constitutional constraints on tax expenditure legislation. Finally, the OSA addressed the committee regarding its evaluation process. Staff from the Department of Revenue were available to respond to committee questions concerning the administration of individual tax expenditures.

Policy considerations identified by the OSA. Representatives of the OSA presented evaluations of the 29 tax expenditures for which policy considerations were published between September 2018 and July 2019. Policy considerations were segmented into the categories of “repeal,” “clarify statute,” “effectiveness,” and “administration.”

The committee requested that 19 bills be drafted in response to policy considerations identified by the OSA. Seventeen of these bills related to policy considerations involving specific tax expenditures, while the other two concerned procedures for future tax expenditure evaluation. However, the committee was authorized to recommend only five bills to the Legislative Council.

Committee Recommendations

As a result of committee discussion and deliberation, the committee recommends the following five bills for consideration in the 2020 legislative session.

Bill A – Tax Expenditure Bill Requirements. Bill A requires future legislation that creates a new tax expenditure or extends an expiring tax expenditure to include a tax preference performance statement and a defined repeal date. The tax preference performance statement must explain the reason for the expenditure and identify metrics and data requirements to measure the effectiveness of the expenditure.

Bill B – Long-Term Lodging Sales Tax Exemption. Bill B limits the state’s current sales and use tax exemption for purchases of lodging for more than 30 days such that the exemption applies only to stays by natural persons.

Bill C – Net Operating Loss Deduction Modifications. Bill C modifies the net operating loss deduction for C corporations. It limits the carryforward period for the deduction to 20 years and makes financial institutions subject to the same carryforward period as other C corporations.

Bill D – Legislative Oversight Committee Concerning Tax Policy. Bill D creates a Legislative Oversight Committee Concerning Tax Policy and a Task Force Concerning Tax Policy. The task force is established to study the effectiveness of existing tax expenditures and potential changes to tax policy, while the oversight committee, comprising only legislators, is authorized to sponsor legislation.

Bill E – Sales Tax Exemption for Industrial & Manufacturing Energy Use. Bill E requires that energy sources used for industrial and manufacturing purposes be metered in order to qualify for the existing sales and use tax exemption.

In addition to the legislation recommended above, the committee authored a letter to the Statutory Revision Committee asking that committee to draft, consider, and introduce legislation to repeal the following tax expenditures, four of which are legally obsolete and one of which has never been claimed by any taxpayer:

- the crop hail insurance premium tax exemption;
- the nonprofit transit agency fuel tax exemption;
- the sales tax exemption for residents of bordering states;
- the pre-1987 net operating loss deduction for individuals, estates, and trusts; and
- the corporate income tax deduction for previously taxed income or gain.

Finally, the committee authored a letter to the Joint Agriculture Committee asking that committee to determine whether the current sales and use tax exemptions for agricultural inputs require statutory expansion or clarification, and to introduce legislation to resolve definitional issues as appropriate.