



# SALES AND USE TAX EXEMPTION FOR LOANS OF HISTORIC AIRCRAFT TO MUSEUMS

EVALUATION SUMMARY | APRIL 2022 | 2022-TE21

TAX TYPE	Sales and Use	REVENUE IMPACT	Could not determine
YEAR ENACTED	2017	NUMBER OF TAXPAYERS	Could not determine
REPEAL/EXPIRATION DATE	None		

**KEY CONCLUSION:** The exemption appears to encourage owners of historic aircraft in other states to loan aircraft to museums in Colorado, as intended.

## WHAT DOES THE TAX EXPENDITURE DO?

The Sales and Use Tax Exemption for Loans of Historic Aircraft to Museums exempts historic aircraft loaned to museums from state sales and use tax. In order to qualify, the aircraft must be on loan for public display, demonstration, educational, or museum promotional purposes to a publicly owned or nonprofit museum in the state. A historic aircraft is defined in statute as “any original, restored, or replica of a heavier-than-air aircraft that is at least thirty-five years old.”

## WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

The legislative declaration in the enacting legislation for the exemption [House Bill 17-1103] states that its purpose is “to encourage the owners of historic aircraft to loan the historic aircraft to museums in the state for public display, demonstration, educational, or museum promotional purposes.”

## WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

We did not identify any policy considerations related to the exemption.



# SALES AND USE TAX EXEMPTION FOR LOANS OF HISTORIC AIRCRAFT TO MUSEUMS

## EVALUATION RESULTS

### WHAT IS THE TAX EXPENDITURE?

The Sales and Use Tax Exemption for Loans of Historic Aircraft to Museums (Historic Aircraft Exemption) [Section 39-26-711.9, C.R.S.] exempts historic aircraft loaned to museums from state sales and use tax. The exemption was established by House Bill 17-1103 in 2017, and has remained unchanged since that time. In order to qualify, the aircraft must be on loan for public display, demonstration, educational, or museum promotional purposes by a publicly owned or nonprofit museum in the state that is open at least 20 hours a week. A historic aircraft is defined in statute [Section 39-26-711.9(2), C.R.S.] as “any original, restored, or replica of a heavier-than-air aircraft that is at least thirty-five years old.”

In practice, the exemption operates primarily to exempt owners of historic aircraft from incurring the State’s use tax when they loan aircraft to museums. Prior to the creation of the exemption, if a collector wanted to loan an aircraft to a museum in Colorado, and they had purchased the aircraft out of state, they may have been required to pay either the full use tax in Colorado (if the aircraft had not previously been subject to sales or use tax in another state) or the difference between the sales or use tax in the state in which the aircraft was purchased and Colorado’s use tax (if the aircraft was previously subject to sales or use tax in another state). For example, if a private collector purchased a historic aircraft for \$500,000 in a state that exempts aircraft from sales tax and then loaned that aircraft to an eligible

museum in Colorado, without the exemption, the collector would owe \$14,500 in use tax when the plane was brought into the state to be exhibited, calculated as \$500,000 multiplied by the state use tax rate of 2.9 percent.

According to Department of Revenue (Department) staff, aircraft owners are not required to report this exemption on any form; they receive the benefit of the exemption by not needing to remit use tax for aircraft loaned to museums in the state.

#### WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

The legislative declaration in House Bill 17-1103, the enacting legislation for the Historic Aircraft Exemption, indicates that the intended beneficiaries are owners of historic aircraft who loan their aircraft to museums. Publicly owned and nonprofit museums are also intended beneficiaries since aircraft owners may be more likely to lend them historic aircraft to display if they are not subject to use tax.

#### WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

The legislative declaration in House Bill 17-1103 states that the purpose of the exemption is “to encourage the owners of historic aircraft to loan the historic aircraft to museums in the state for public display, demonstration, educational, or museum promotional purposes.” This purpose was also supported by testimony from witnesses from aviation museums during committee hearings concerning the exemption.

#### IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We found that the exemption is meeting its purpose because beneficiaries are aware of the exemption and are using it, with some stakeholders reporting an increase in aircraft loans to their museums.

Statute does not provide quantifiable performance measures for this exemption. Therefore, we created and applied the following performance measure(s) to determine the extent to which the exemption is meeting its purpose:

PERFORMANCE MEASURE: *To what extent does the Historic Aircraft Exemption encourage owners to loan historic aircraft to museums?*

RESULT: Overall, it appears that the exemption is encouraging owners to loan historic aircraft to museums, although we lacked data necessary to quantify this impact. The Department lacks comprehensive information on this exemption because aircraft owners are not required to report their use of the exemption when they loan aircraft to museums in the state. However, Department staff reported that taxpayers are likely using the exemption. Specifically, as part of its audit process, the Department uses third-party information and leads to identify unreported transactions that could be subject to use tax and requests that taxpayers submit documentation to support the transactions being exempt from use, if applicable. As part of this process, Department staff said that since 2017, potentially 15 to 20 aircraft have provided documentation for the Historic Aircraft Exemption when requested by the Department.

Additionally, museums we contacted indicated that the exemption has encouraged aircraft owners to loan aircraft to museums in the state. For example, one museum reported that the exemption has allowed historic aircraft that would not have been in Colorado before the exemption to be brought into the state. This stakeholder noted that prior to the creation of the exemption, very rare aircraft worth millions of dollars did not come to Colorado due to the high use tax the owner would incur. The stakeholder reported that because of the exemption, their museum was able to secure five airplanes in 2019. Another stakeholder said that the exemption is likely working as intended, although their museum more commonly receives donations of aircraft as opposed to loans that could be subject to use tax.

## WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE?

As discussed, we lacked data on the use of the exemption, and therefore, could not quantify the exemption's revenue impact to the State. However, we determined that its revenue impact is likely small because it would apply to relatively few aircraft brought into the state. We used information from stakeholders on the value of historic aircraft that have recently been loaned to museums in the state to demonstrate the possible revenue impact of the exemption. Specifically, stakeholders indicated that aircraft they bring in on loan can have a value between \$50,000 and \$6 million, depending on the rarity and type of aircraft. Assuming the owners of these planes had not already paid sales or use tax on the aircraft to Colorado or another state, without the exemption, they would owe between \$1,450 to \$174,000 in use tax per aircraft. Although we lacked information on the number of aircraft brought into the state, assuming that five aircraft with an average value of \$1 million are brought into Colorado each year, the State would potentially forgo \$145,000 annually in use tax.

However, the revenue impact of the exemption is likely further limited since Colorado allows a credit against its use tax equivalent to the sales and use taxes paid in another state, meaning that, generally, owners would only owe use tax if they paid less than Colorado's 2.9 percent sales and use tax on their purchase of the aircraft in another state. Because Colorado has the lowest use tax rate of states that employ sales and use tax, owners bringing in aircraft from a majority of states would likely not incur a use tax if they loaned their aircraft to a museum in Colorado, since their credit for sales and use taxes already paid would be higher than their use tax obligation in Colorado. We identified 14 states, which either do not have a sales and use tax or provide a specific exemption for purchases of aircraft. If owners purchased their aircraft in these states prior to loaning them to museums in the state, they could owe use tax to Colorado in the absence of the exemption.

### WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

Elimination of the tax expenditure could result in some historic aircraft owners paying use tax to loan their aircraft to museums in Colorado. However, owners who would be subject to use tax would likely be less willing to loan their aircraft to museums in the state. For example, when discussing the exemption with stakeholders, one noted that if the exemption was eliminated, their aircraft would be immediately removed from the state to avoid having to pay the tax. Another stakeholder said that elimination of the exemption could result in inhibited or reduced exhibit potential, which would result in fewer visitors to their museum. However, as discussed, even without the exemption, the imposition of use tax in Colorado on historic aircraft may be limited since the State allows a credit against the State's use tax for sales taxes paid in another state. Therefore, some lenders of historic aircraft may be unaffected, depending on the state in which the aircraft is coming from.

### ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

Of the 44 states (excluding Colorado) that impose sales and use tax, none appeared to have an exemption that specifically exempts historic aircraft on loan to museums like Colorado's exemption.

### ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

We did not identify any tax expenditures or programs with a similar purpose in the state.

### WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURE?

According to Department staff and the Department's *2020 Tax Profile & Expenditure Report*, taxpayers are not required to report this exemption on any form. Therefore, we could not determine the exemption's revenue impact to the State or determine how many taxpayers claimed it.

If the General Assembly determines that additional information on the exemption's revenue impact is necessary, it could direct the Department to add additional reporting lines on its Consumer's Use Tax Return and make changes in GenTax, its tax processing and information system, to capture and extract this additional information. Additionally, owners of historic aircraft would need to be required to begin reporting the exemption when they make eligible loans to museums. According to the Department, this type of change would require additional resources to revise its form and complete the necessary programming in GenTax (see the Tax Expenditures Overview section of the Office of the State Auditor's *Tax Expenditures Compilation Report* for additional details on the limitations of Department of Revenue data and the potential cost of addressing these limitations). However, this may not be a practical or cost effective response to the lack of data for the exemption since there appear to be only a few aircraft owners that use the exemption, and the revenue impact to the state appears small.

#### WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

We did not identify any policy considerations related to the Historic Aircraft Exemption.