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*West Coast Tax Counsel*  
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May 26, 2021

**VIA EMAIL**

Colorado Senate Finance Committee  
 Senator Brittany Pettersen, Chair  
 Senator Jeff Bridges, Vice Chair

**Re: Comments on House Bill 21-1312**

Dear Chair Pettersen, Vice Chair Bridges and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing to oppose certain provisions of House Bill 21-1312 (H.B. 1312), which would include digital goods in the definition of tangible personal property for purposes of the sales and use tax, include “mainframe computer access, photocopying, and packing and crating” in the taxable purchase price for purposes of the sales and use tax, and would repeal the vendor allowance for retailers with taxable sales greater than one million dollars.

**About COST**

COST is a non-profit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business, many of which directly do business in Colorado. COST’s objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities.

**Inclusion of “Digital Gods” as Tangible Personal Property Subject to Sales Tax**

The inclusion of digital goods within the definition of tangible personal property to include services not previously subject to tax creates ambiguities related to taxation of goods and services, including how those digital goods which are not physically delivered to a customer are sourced. Additionally, the inclusion of digital goods within the tangible personal property definition raises concerns with the legislation attempting to avoid the application of Colorado’s Taxpayer Bill of Rights (TABOR).

Further, COST has long advocated for simplification and uniformity in state sales and use tax systems. Uniformity is essential to substantially reducing the burden of tax compliance and improving sales and use tax administration. To that end, to the extent the General Assembly intends to impose sales and use tax on new products, we

encourage using the SSUTA definitions and sourcing rules which have been adopted by other states and multiple Colorado cities.<sup>1</sup>

Specifically, adopting the “specified digital products” definition and general sourcing rules will create more certainty over sales and use tax imposition and alleviate some of the risks of multiple taxation. If Colorado wishes to tax digital products, it should do so by adopting the “specified digital products” definition and general sourcing rules will create more certainty over sales and use tax imposition and alleviate some of the risks of multiple taxation. There should also be clear prospective effective date (at least 90 days at the beginning of a calendar month) before this goes into effect to give sellers time to set up their systems to collect the tax.

### **COST Opposes Sales Tax on Business Inputs**

The COST Board of Directors has adopted a policy position opposing the imposition of state taxation on business inputs, which provides in part:

*Imposing sales taxes on business inputs violates several tax policy principles and causes significant economic distortions. Taxing business inputs raises production costs and places businesses within a State at a competitive disadvantage to businesses not burdened by such taxes. Taxes on business inputs, including taxes on services purchased by businesses, must be avoided.<sup>2</sup>*

With the rapid growth of the services sector in recent decades, it is understandable why a jurisdiction would want to expand its sales tax base to include more service categories. However, the proposed expansion of the sales tax base contained in Section 8 of H.B. 1312 directly violates the economic principle that an ideal sales tax should tax household consumption and not business inputs. The proposal to include “mainframe computer access, photocopying, and packing and crating” in the purchase price for purposes of the sales tax primarily targets services consumed by businesses, not those consumed by households. Importantly, if the tax base is expanded, a broad exemption should be provided for business inputs. Compounding matters, some of these services such as “mainframe computer access”, are undefined and are difficult to “source” to a specific location because they may be simultaneously provided to multiple regional, national and international markets.

Imposing sales tax on business inputs causes a number of economic distortions. These distortions result primarily from pyramiding, which occurs when a tax is imposed at multiple levels and results in a hidden effective tax rate that exceeds the retail sales tax rate. Pyramiding forces companies to either pass these increased costs on to consumers or reduce their economic activity in the State to remain competitive with other producers who do not bear the burden of such increased taxes. Because of these choices, the economic burden of taxes on business inputs

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<sup>1</sup> The Agreement is available at: <http://www.streamlinedsalestax.org/index.php?page=modules>. See sections 332 and 333 of the SSUTA.

<sup>2</sup> COST’s policy position on this issue is available at: <https://cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/sales-taxation-of-business-inputs.pdf>

inevitably shifts to labor in the State (through lower wages and employment) or consumers (through higher prices).

### **Repeal of the Vendor Allowance is Arbitrary and Inequitable**

The provisions of H.B. 1312 that would repeal the vendor allowance for retailers that have taxable sales greater than one million dollars is not needed because the vendor allowance is subject to a cap that went into effect last year. Further, the repeal of the vendor allowance as proposed in H.B. 1312 creates an inequitable division of retailers subject to sales tax reporting requirements in Colorado. The purpose of the vendor allowance is to acknowledge expenses incurred by the retailer to collect and remit Colorado sales tax. All retailers, regardless of size, incur expenses related to sales tax collection and remittance. Elimination of this provision for a single group of retailers among all retailers that are all subject to sales tax compliance responsibilities has no sound policy basis other than penalize those taxpayers that account for a large source of sales and use tax revenue for the Colorado. All retailers should continue to be permitted to utilize the vendor allowance.

### **Conclusion**

For the foregoing reasons, COST urges this committee to reject these provisions of H.B. 1312. Please let us know if we can provide additional information or assistance.

Respectfully,



Erica S. Kenney  
West Coast Tax Counsel

cc: COST Board of Directors  
Douglas L. Lindholm, COST President & Executive Director



May 26, 2021

Members of the Colorado State Senate

Re: Hb 21-1312, Insurance Premium Property Sales Severance Tax  
Representatives Weissman and Sirota/Senators Hansen and Morino

On behalf on the membership of NFIB Colorado we submit this written testimony supporting Hb 21-1312 and requesting a YES vote.

NFIB is an incorporated nonprofit association with nearly 300,000 members across America. NFIB protects and advances the ability of individuals to own, operate, and grow their businesses and ensures that the Congress of the United States and all 50 states hear the voice of small business as they formulate public policy.

While NFIB Colorado does have concerns with Sections 7 and 8 and believes changes to these two sections constitutes a definite change in tax policy requiring further discussion. We encourage the sponsors to strike Section 9 of the bill concerning changes to the Vender Fee. A small company selling a unique or highly technical product such as certain medical devices would be harmed by the loss of the vender fee.

Taxes on business personal property make up a small share of state and local tax collections, but create high compliance costs, distort investment decisions, and are an archaic mode of taxation.

NFIB Colorado supports Section 6 of the bill which increases the exemption from \$7900 to \$50,000 on business personal property.

House bill 21-1312 raises the current exemption from \$7900. To \$50,000. For tax years 2021 2021 and 2022. Beginning with the property tax year January 1, 2023, the amount of the exemption is readjusted biennially to account for inflation since the amount of inflation since the amount of the exemption last changed pursuant to Section 2.

NFIB Colorado fully supports Section 6 and encourages a Yes vote on Hb 21-1312.

Contact: A.F. Tony Gagliardi, 303-831-6099

HB21-1311 & HB21-1312  
Wednesday, May 26, 2021  
Senate Finance Committee  
Opposition Testimony, Laura Rizzo, Denver Metro Chamber of Commerce  
Committee Chair: Sen. Brittany Petterson

Thank you, Madame Chair and members of the committee, for the opportunity to provide this written testimony today. My name is Laura Rizzo and I am the senior vice president of external affairs for the Denver Metro Chamber of Commerce. I submit this testimony on behalf of the Chamber, our 3,000 members and their 400,000 employees, to express our opposition of House Bills 1311 and 1312.

We are grateful to bill sponsors Sen. Hansen and Sen. Moreno for their willingness to listen to our concerns and their openness to potential changes. They've engaged us in conversations, and we appreciate that stakeholder process. While we've agreed on improvements in the House, we continue to be concerned about the policy, priority and timing in these bills.

Let me be clear, there is great value in expanding and enhancing both the Child Tax Credit as well as the Earned Income Tax Credit (EITC). My comments aren't about the merits of either.

But the reality is working families need tax relief AND good jobs, which is why we are in opposition to these bills.

State budget projections are strong and extensive federal assistance is on its way to our state to provide further financial help. We just saw earlier this week that Colorado will receive \$27 billion in federal stimulus, which includes \$2 billion in expanded child tax credits. It doesn't make sense, given strong state budget projections and federal assistance, to provide emergency relief to employers through federal stimulus, while simultaneously rewriting the tax code and making it more expensive to do business and provide jobs in Colorado. This

legislature has acknowledged the importance of job creation through its previous work to provide stimulus to support Colorado's economic recovery.

Today, we have funding that will allow us to both expand these important tax credits for working families and avoid raising taxes for the same employers that keep our working families working by providing jobs.

Proposed state spending for the 2021-22 budget is \$4 billion+ over this year's budget. And the state's reserve fund is at its highest level in two decades.

Why are employers and their employees being asked to increase state revenue when there is such an influx of available funds? We can accomplish both goals of increasing tax credits like the EITC and Child Tax Credits while also helping our businesses get people back to work and helping our economy continue to build.

Beyond our general objection to raising taxes on business during our national recovery, these proposals have some very specific problems:

- They add sales and use taxes on digital goods that make Colorado less attractive for economic development and investment.
- They stand to harm non-profits across the state by discouraging contributions to their causes.
- And finally, they risk hurting the more than 300,000 families who use Colorado's successful CollegeInvest program to save for their children's college.
- Additionally, none of these proposals include indexes that attempt to account for economic conditions in the future, locking in these caps at what will ultimately make little sense in a decade.

While good intentioned in their support for child care tax, EITC and business personal property, we question the timing of these bills and respectfully request a no vote.

Mrs. Barbara Christensen  
507 S. Broadway #C  
Grand Junction, Colorado  
81507

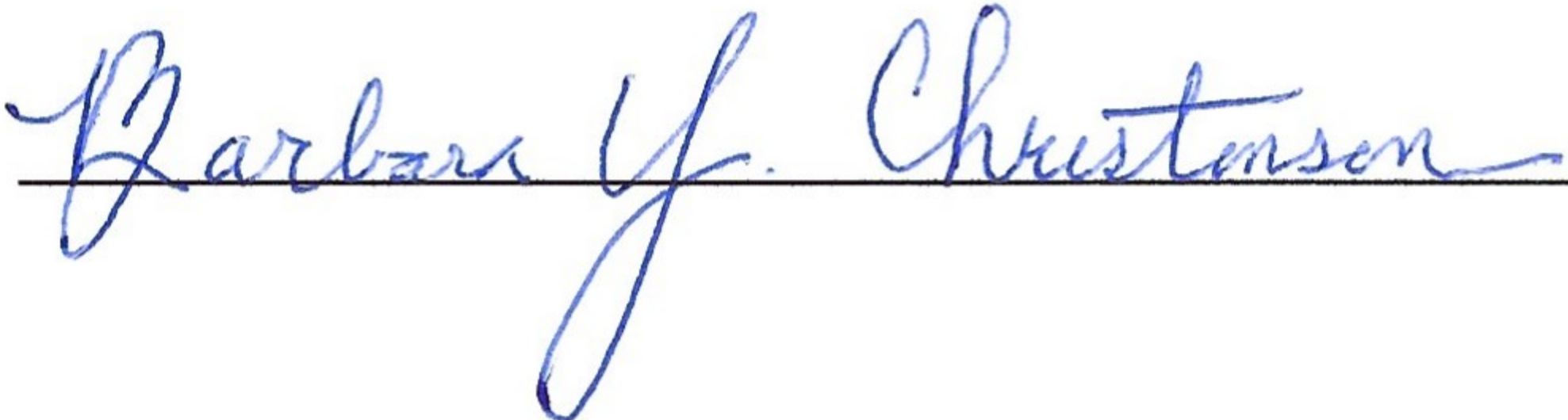
Senators,

My name is Barbara Christensen I am 85 years old this year. Thank you for your time today and service to our state. In writing this letter I would like to ask you to remove the language limiting which annuities from HB -1312 are exempt from the bills premium tax.

My late husband John worked as a maintenance supervisor for hotels in Denver and I ran a day-care. We moved to Grand Junction almost 50 years ago as we had opportunities to work here. During our lives we saved our money the best that we could. John died 3 years ago. He was sick for several years. The money that we saved helped pay for his health issues and care. I now live on these funds as well as social security. We used our annuity funds to live on in retirement. We have been taxed on the money we put into our accounts. I do pay tax on the interest that I earn. I know that is the law. I don't like being taxed twice. I live a comfortable life because John and I saved what we could. I have a small apartment home and visit my grandchildren and serve with the ladies at the church. I don't like my money, or anyone's money taken. This money not yours to take. I can't afford to have more money taken out of my account.

Senators and Governor, thank you for your time and service,

Sincerely,

  
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Mrs. Patricia Jones  
19421 Fallgold St.  
Parker, Colorado  
80134

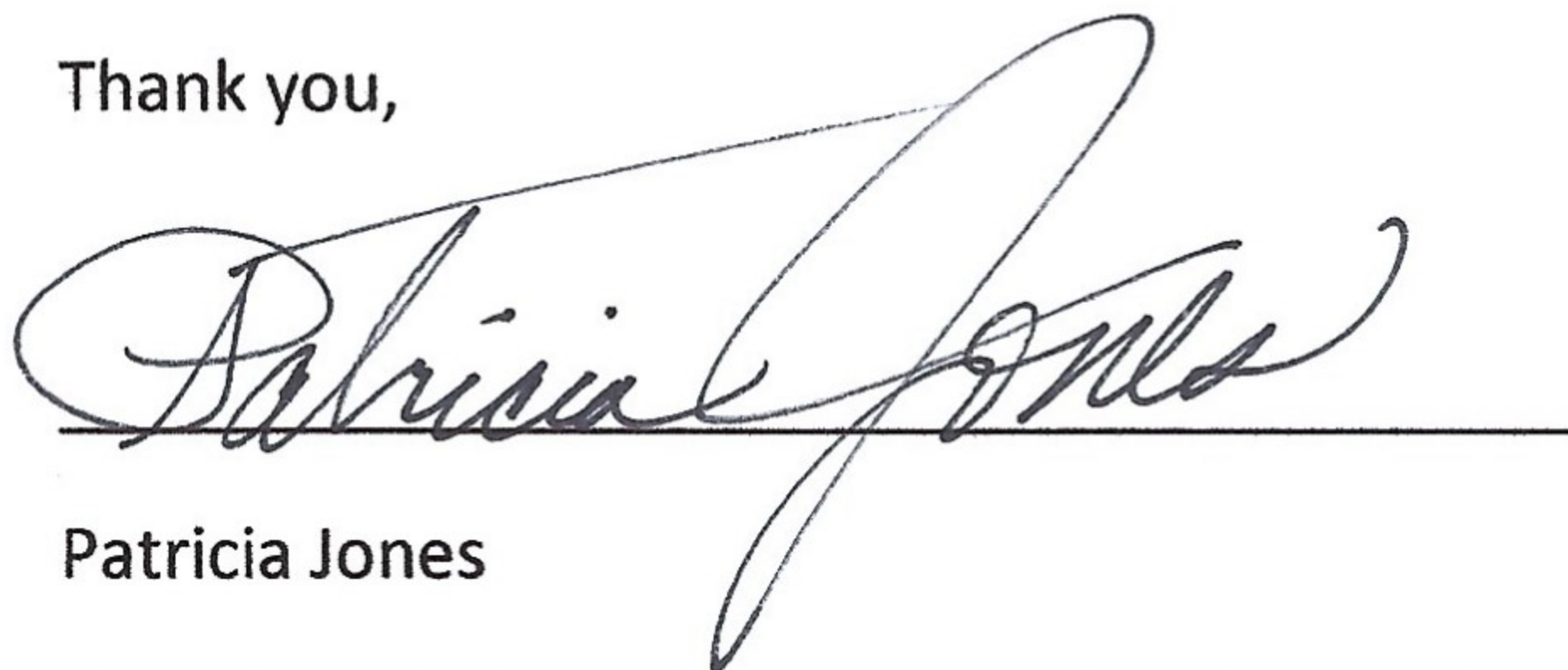
State of Colorado - General Assembly  
The House and Senate

Honorable Members:

My name is Patricia Jones. I am a retired public-school teacher of 40 plus years. During my career I was a leader with the Aurora Education Association serving as a board member. My purpose in writing this letter to you is to ask you to remove the language limiting which annuities from HB21-1312 are exempt from the bills premium tax.

Why am I asking for this? First, this bill will hurt a lot of teachers and retired people of any income in our state. I have non-qualified annuities that my husband and I placed funds into to help us retire on. I have PERA from the state and these other funds. We used these plans because they are safe, we can get funds out when we need them, and we get income from them for life. Second, my husband and I have paid TAX on this money up front when we put money into them. I pay tax now on the growth earned when it comes out for me in retirement each year. I don't need to pay a second tax. This bill is called double dipping. Third, there is no reason for the State House or the State Senate to have this bill as it is created. This bill will hurt families, anyone that has a non-qualified annuity, single women, and older people in retirement.

Thank you,

A handwritten signature in cursive script that reads "Patricia Jones". The signature is written in black ink and is positioned above a horizontal line.

Patricia Jones

*"Teaching is the only profession that builds all others"*

Mrs. Patricia Jones  
19421 Fallgold St.  
Parker, Colorado  
80134

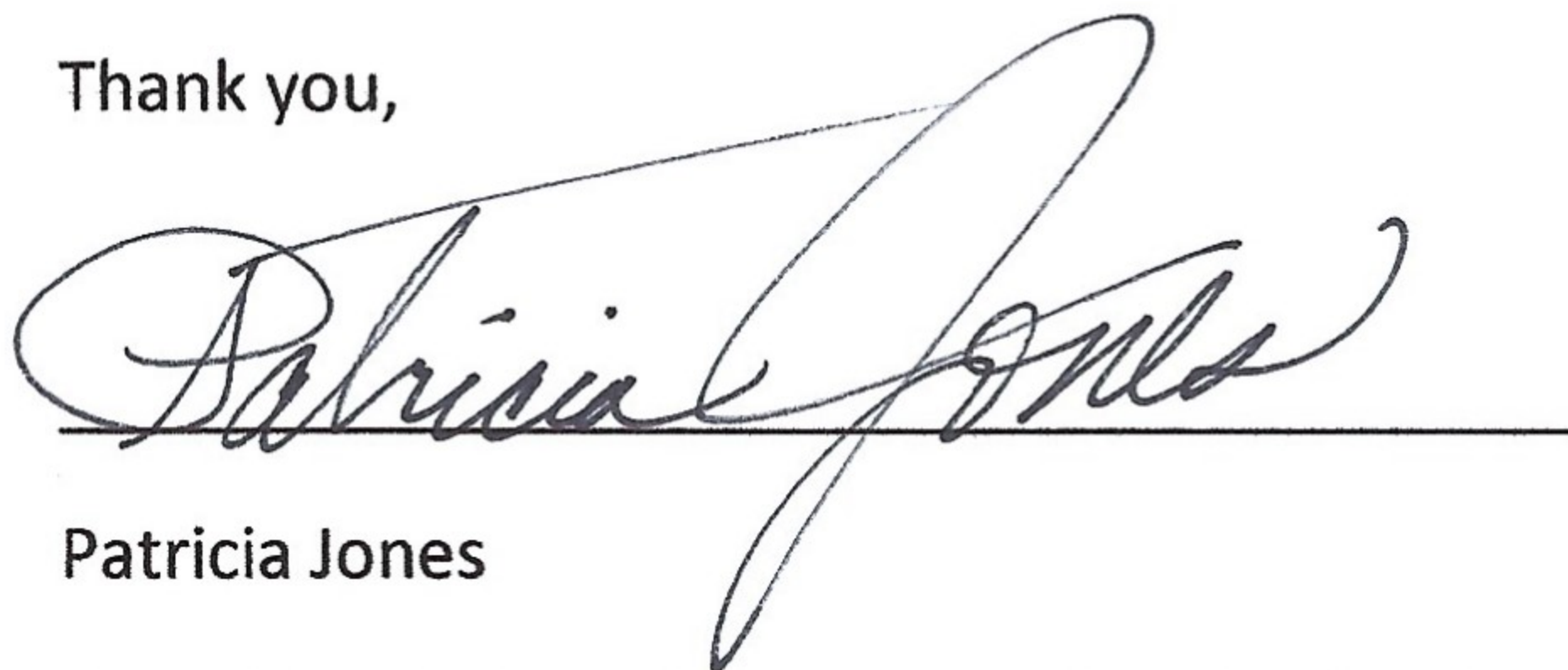
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Patricia Jones

*"Teaching is the only profession that builds all others"*



May 26, 2021

**Written Testimony Seeking to Amend CO H.B. 1312  
Regarding the Taxation of Annuities and Structured Settlements**

Members of the Senate Finance Committee:

We are writing on behalf of Pacific Life Insurance Company<sup>1</sup> and our customers to express concerns related to H.B. 1312. Specifically, Pacific Life is concerned with Section 2 of H.B. 1312, which seeks to limit the types of annuities that are currently exempt from state premium tax. Respectfully, we encourage you to remove the relevant provisions of Section 2 to ensure that non-qualified annuity products, including structured settlements, are not subject to a new tax.

In some civil lawsuits, a claimant can opt to receive their monetary settlement over time—called a structured settlement—instead of a lump sum. To fund such a settlement, the defendant or their insurance companies generally purchase a non-qualified annuity. Pacific Life is one of the largest providers of these types of annuities. Over the past few years, Pacific Life has written around \$1 billion in annuity premium out of a Colorado-based company to fund structured settlements so that seriously injured individuals and their families across the country can receive a steady stream of income.

Structured settlements are commonly used in wrongful death and serious injury claims resulting from medical malpractice claims, product liability lawsuits, or workplace injuries. In cases involving minor children or those with severe disabilities, a structured settlement is often required by the court to ensure money is spent and disbursed appropriately. Structured settlements are an important tool to help ensure that seriously injured individuals and their families can receive a steady stream of income.

H.B. 1312 would effectively result in a 2% sales tax on those who have suffered a serious injury or the death of a loved one and who opt to or are mandated by the court to receive their lawsuit or settlement awards via a structured settlement. Those who have suffered an injury or the death of a loved one should remain entitled to tax-free payments. This position is reaffirmed by federal tax policy which excludes damages received on the account of personal injury from income to benefit the injured party.

In addition to the tax this bill would impose on injured individuals and their families, Pacific Life is also concerned that this bill will negatively impact retirement savings for middle class families, small business owners, and self-employed individuals who do not have access to employer-provided retirement options. A major risk in retirement is running out of income. Annuities, like those that would be taxed by H.B. 1312, are the only private market product that offer guaranteed income for life.

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<sup>1</sup> Pacific Life is a Fortune 300 company that helps people with their financial and retirement needs. Pacific Life offers a wide range of life insurance products, annuities, and mutual funds, and offers a variety of investment products and services to individuals, businesses, and pension plans.

Finally, Pacific Life understands the purpose of H.B. 1312 is to eliminate tax loopholes that unfairly benefit the few to the detriment of the many. This is an important public policy goal. However, imposing a 2% tax on products that are purchased to guarantee income for life either in retirement or because you cannot provide for yourself or your family due to a serious injury, will not accomplish this goal.

We thank you for consideration of Pacific Life's views on H.B. 1312 and respectfully urge you to remove the relevant provisions of Section 2 to ensure that non-qualified annuity products, including structured settlements, are not subject to a new tax. Please do not hesitate to reach out should you wish to discuss this legislation further.

Regards,

Jennifer M. Webb, JD  
Assistant Vice President, Government Relations  
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