COMMERCIAL TRUCKS AND TRAILERS LICENSED OUT-OF-STATE AND NONRESIDENT MOTOR VEHICLE EXEMPTIONS

EVALUATION SUMMARY

JULY 2020
2020-TE18

THIS EVALUATION WILL BE INCLUDED IN COMPILATION REPORT SEPTEMBER 2020

	COMMERCIAL TRUCKS AND TRAILERS LICENSED OUT-OF-STATE EXEMPTION	NONRESIDENT MOTOR VEHICLE EXEMPTION
YEAR ENACTED	1976	1977
REPEAL/ EXPIRATION DATE	None	None
REVENUE IMPACT	Could not determine	Could not determine
NUMBER OF TAXPAYERS	Could not determine	Could not determine
AVERAGE TAXPAYER BENEFIT	Could not determine	Could not determine
IS IT MEETING ITS PURPOSE?	Yes	Yes

WHAT DO THESE TAX EXPENDITURES DO?

COMMERCIAL TRUCKS AND TRAILERS LICENSED OUT-OF-STATE EXEMPTION (COMMERCIAL TRUCKS AND TRAILERS EXEMPTION)—exempts the sale or long- term lease of commercial trucks and trailers from sales and use tax if they are used exclusively outside of Colorado or in interstate commerce, removed from the state within 30 days, and permanently licensed and registered outside of Colorado.

NONRESIDENT MOTOR VEHICLE EXEMPTION—exempts from sales and use tax motor vehicle sales and long term leases to nonresidents of Colorado when the vehicle is registered outside of the state.

WHAT IS THE PURPOSE OF THESE TAX EXPENDITURES?

Statute does not explicitly state the purpose for these exemptions. Based on statutory language and their operation, we inferred that the purpose of both is to avoid double taxation. In most states, including Colorado, sales and use tax is assessed in the jurisdiction in which a truck, trailer, or motor vehicle is registered. Therefore, if the exemptions were not in place, the sale would be taxed in Colorado and potentially again when it is registered in another state.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

We did not identify any policy considerations regarding these tax expenditures.

WHAT DID THE EVALUATION FIND?

We determined that these expenditures are meeting their purpose because they appear to be applied as intended by commercial truck and trailer and motor vehicle dealers.

COMMERCIAL TRUCKS AND TRAILERS LICENSED OUT-OF-STATE AND NONRESIDENT MOTOR VEHICLE EXEMPTIONS

EVALUATION RESULTS

WHAT ARE THE TAX EXPENDITURES?

Statute provides two similar sales and use tax exemptions for commercial trucks and trailers and motor vehicles registered outside the state.

COMMERCIAL TRUCKS AND TRAILERS LICENSED OUT-OF-STATE SALES AND USE TAX EXEMPTION (COMMERCIAL TRUCKS AND TRAILERS EXEMPTION). In 1976, House Bill 76-1077 [Section 39-26-712, C.R.S.] created the Commercial Trucks and Trailers Exemption, which exempts the sale of certain new and used commercial trucks and trailers from the state sales and use tax. To qualify for the exemption, the eligible property must be:

- Used exclusively outside of Colorado or in interstate commerce;
- Removed from the state within 30 days; and
- Be permanently licensed and registered outside of Colorado.

In addition, Section 39-26-712(2)(c), C.R.S., established in 2010, exempts trucks and trailers from use tax if they were previously used in interstate commerce and registered in another state for at least 6 months before being relocated to Colorado and registered in the state. County clerks apply this exemption when qualifying trucks and trailers are registered in Colorado, at which time the State's use tax is not collected. Statute does not include an expiration date for this exemption.

NONRESIDENT MOTOR VEHICLE EXEMPTION. In 1977, House Bill 77-1187 [Section 39-26-113(5)(a), C.R.S.] created the Nonresident Motor Vehicle Exemption to exempt from sales and use tax motor vehicle sales to nonresidents of Colorado when the vehicle is registered outside of the state. Any motor vehicle purchased by a nonresident is exempt from state sales and use taxes if the purchase of such a vehicle is for use outside of Colorado and licensed in another state.

To claim the Commercial Trucks and Trailers Exemption or Non-resident Motor Vehicle Exemption, the purchaser must provide an affidavit to the seller stating that the truck, trailer, or motor vehicle will be removed from the state within 30 days, and, in the case of commercial trucks or trailers, that it will be used in interstate commerce. The seller then does not collect sales or use tax at the time of the sale and reports the value of exempt sales to the Department of Revenue using either its Retail Sales Tax Return (Form DR 0100) or Retailer's Use Tax Return (Form DR 0173). Sellers aggregate the amount for the exemptions with several other sales tax exemptions on these forms and sellers are not required to report how much is specifically attributable to the Commercial Trucks and Trailers and the Nonresident Motor Vehicles Exemptions. To document the exemption, the Department of Revenue recommends the seller complete the Statement of Colorado Sales Tax Exemption for Motor Vehicles Purchase Form (Form DR 0780), which contains information about the type of vehicle sold and the purchaser. The seller must retain the document for their records but is not required to submit it to the Department of Revenue.

If a nonresident purchases a motor vehicle through a private-party sale, the seller is not required to collect sales tax or report the exemption to the Department of Revenue. However, the buyer would effectively receive the exemption because they would not register the vehicle in the state, which would be the point at which sales taxes would otherwise be collected for these sales.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURES?

Statute does not explicitly identify the intended beneficiaries of either exemption. Based on the statutory language, we inferred that the direct beneficiaries are buyers of commercial trucks and trailers that intend to register them out-of-state and use the property in interstate commerce and nonresident buyers of motor vehicles. The Colorado Motor Carriers Association, which represents the trucking industry, reported that larger trucking operations often have multiple bases in several different states. Therefore, these businesses may be more likely to register trucks and trailers outside of the state and benefit from the exemption. Additionally, stakeholders, including the Colorado Automobile Dealers Association, reported that it is relatively common for nonresidents to purchase non-commercial vehicles at dealerships in the state, though we lacked data necessary to quantify how often this occurs. In particular, residents of bordering states may be more likely to make purchases in Colorado and in recent years, as online vehicle sales have further facilitated purchases by nonresidents.

In addition, Colorado truck, trailer and motor vehicle dealers, manufacturers and sellers are indirect beneficiaries of the exemptions because without these exemptions Colorado sales and use tax could be applied to the sales, in addition to sales and use tax in the state in which the vehicle is ultimately licensed and registered. This would create a disincentive for residents of bordering states to make their vehicle purchases in Colorado, as opposed to other states that offer a similar exemption.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURES?

Statute does not explicitly state the purpose of these exemptions. Based on statutory language and their operation, we inferred that the purpose of both is to avoid double taxation. In most states, including Colorado, sales and use tax is assessed in the jurisdiction in which a truck, trailer, or motor vehicle is registered. Therefore, if the exemptions were not in place, the sale would be taxed in Colorado and potentially again when it is registered in another state. For this reason, most states with a sales and use tax have similar, structural provisions to avoid this type of double taxation.

ARE THE TAX EXPENDITURES MEETING THEIR PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We determined that the Commercial Trucks and Trailers Exemption and Nonresident Motor Vehicle Exemption are meeting their purpose because they appear to result in commercial trucks, trailers, and motor vehicles not being subject to Colorado sales and use tax when licensed out of the state.

Statute does not provide quantifiable performance measures for these expenditures. Therefore, we created and applied the following performance measure to determine the extent to which these tax expenditures are meeting their purpose:

PERFORMANCE MEASURE: *To what extent are the Nonresident Motor Vehicle Exemption and the Commercial Trucks and Trailers Exemption being used by taxpayers?*

RESULTS:

COMMERCIAL TRUCKS AND TRAILERS

We determined that most eligible commercial truck and trailer sales receive the exemption as intended, though we lacked data from the Department of Revenue to quantify its use. Commercial vehicle dealers that we contacted said they exempt sales of commercial trucks and trailers that will be registered out-of-state, which is a common practice in the industry. Additionally, they said that almost all of the new trucks they sell, whether registered in-state or not, are exempted from sales tax because of another exemption, the Low-Emitting Vehicles Exemption [Section 39-26-719(2)(a), C.R.S.]. Therefore, it appears that in practice, most purchases of newer trucks are exempt from sales tax in the state.

NONRESIDENT MOTOR VEHICLE EXEMPTION

We determined that the majority of motor vehicle sales to nonresidents are likely exempted from sales and use tax as intended, though we lacked data to quantify the extent to which the exemption is used. Department of Revenue guidance is clear that a motor vehicle purchased by a nonresident of Colorado is exempt from state and state-administered local sales and use taxes if the vehicle is purchased for use outside of Colorado and registered outside the state. In addition, motor vehicle dealers and automotive associations in Colorado that we contacted said that they exempt sales from sales tax if the purchaser is not planning to register the vehicle in Colorado and applying the exemption appears to be common practice in the industry.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURES?

COMMERCIAL TRUCKS AND TRAILERS EXEMPTION

We determined that this exemption is likely reducing state revenue, because stakeholders indicated that they apply it. However, we lacked sufficient data to quantify this impact.

Although we lacked data to reliably estimate the proportion of sales that qualify for this exemption, to provide a sense of the potential scope of the exemption's revenue impact, we calculated the revenue impact of the exemption if between 20 and 40 percent of total commercial truck sales qualified for the exemption. For Calendar Year 2017, the American Truck Dealers (ATD), a national commercial truck dealers association, reported $1.5 billion in total truck sales in Colorado. Based on these total sales, if between 20 and 40 percent of the total sales qualified for the exemption, the total revenue impact to the State would have been between $8.7 million and $17.4 million. We calculated these totals by multiplying the hypothetical percentages of sales that may have been eligible for the exemption by the total sales figure provided by ATD, and then multiplied that amount by the State's 2.9 percent sales tax rate.

NONRESIDENT MOTOR VEHICLE EXEMPTION

We determined that this exemption is likely reducing state revenue, because stakeholders indicated that they apply it. However, we lacked sufficient data to quantify the impact.

Although we lacked data to reliably estimate the proportion of sales that qualify for this exemption, to provide a sense of the potential scope of the exemption, we calculated the revenue impact of the exemption if between 1 and 5 percent of total vehicle sales qualified. According to the Colorado Automobile Dealers Association (CADA), new and used motor vehicle sales totaled about $15.2 billion in Colorado in Calendar Year 2017. Based on these total sales, if between 1 and 5 percent of the total sales were for vehicles that qualified for the exemption from sales tax, this exemption would have a revenue impact of between about $4.4 million and $22.1 million respectively. We calculated these totals by multiplying the hypothetical percentages of sales that were eligible for the exemption by the total sales figure provided by CADA, and then multiplied that amount by the State's 2.9 percent sales tax rate.

Because companies in the trucking industry may be headquartered in one state, purchase equipment from vendors located in a different state, and then register or garage the vehicle in yet another state, it is likely that a higher percentage of all truck and trailer sales would be eligible for the Commercial Trucks and Trailers Exemption than for the Nonresident Motor Vehicles Exemption. Therefore, we used higher percentages in our hypothetical examples for Commercial Trucks and Trailers Exemption than for the Nonresident Motor Vehicle Exemption, as discussed below.

In addition, statute [Section 29-2-105(1)(d)(I), C.R.S.] mandates that statutory cities and counties apply most of the State's sales tax exemptions, including both the Commercial Trucks and Trailers Exemption and the Nonresident Motor Vehicle Exemption. Therefore, these local governments may experience an impact to their revenues to the extent that sales eligible for the exemptions occur within their jurisdictions. However, we lacked data necessary to estimate the eligible sales and total amount exempted in these jurisdictions. Home-rule cities established under Article XX, Section 6 of the Colorado Constitution have the authority to set their own tax policies independent from the State and are generally not required to provide the same exemptions.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURES HAVE ON BENEFICIARIES?

If these exemptions were eliminated, currently eligible buyers of commercial trucks and trailers or motor vehicles would potentially have to pay sales tax on the purchase twice: once in Colorado and again in the state in which the vehicle is registered. EXHIBIT 1.1 shows the after-tax cost of a purchase in Colorado, based on the average purchase price of a new semi-truck and non-commercial motor vehicle in the state, with and without the exemptions, assuming the property is registered in a hypothetical state that assesses a 4 percent sales tax rate.

EXHIBIT 1.1. HYPOTHETICAL AFTER-TAX COST OF A MOTOR VEHICLE OR SEMI-TRUCK PURCHASE

	AVERAGE PURCHASE PRICE	COLORADO SALES TAX (2.9 PERCENT)	HYPOTHETICAL OTHER STATE SALES TAX (4 PERCENT)	AFTER-TAX COST WITH THE EXEMPTIONS	AFTER-TAX COST WITHOUT THE EXEMPTIONS
New Semi-Truck	$150,000	$4,350	$6,000	$156,000	$160,350
New Motor Vehicle	$33,531	$972	$1,341	$34,872	$35,844

SOURCE: Office of the State Auditor analysis of the Commercial Trucks and Trailers and Nonresident Motor Vehicles Exemptions.

As shown, if the exemptions were eliminated, the average after-tax price would increase by $4,350 for a new semi-truck and increase by $972 for a new motor vehicle. Therefore, eliminating the exemptions could create a disincentive for current beneficiaries to make purchases in Colorado, which would likely reduce sales revenues for dealers in the state.

Despite these potential tax increases, some current beneficiaries of the Commercial Trucks and Trailers Exemption would still be able to purchase trucks without paying sales tax due to the Low-Emitting Vehicles Sales and Use Tax Exemption [Section 39-26-719(2)(a), C.R.S.]. According to stakeholders, newer large commercial trucks (over 26,000 pounds gross vehicle weight) generally qualify for this exemption. Therefore, eliminating the Commercial Trucks and Trailers Exemption would have a less significant impact on beneficiaries and would only affect sales of older used trucks that do not qualify for the Low-Emitting Vehicles Sales and Use Tax Exemption and purchases of trailers, which also do not qualify.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

Of the 45 states and the District of Columbia that have a sales and use tax, 36 states (including Colorado) have a sales and use tax exemption for purchases of new or used commercial vehicles used in interstate commerce and 41 states provide either a blanket or partial sales and use tax exemption for motor vehicles purchased by nonresidents.

COMMERCIAL TRUCKS AND TRAILERS EXEMPTION

Although most other states provide a sales and use tax exemption for commercial vehicles used in interstate commerce, only two other states (Arkansas and California) allow a full exemption of sales and use taxes if a nonresident uses the truck or trailer in interstate commerce and the property is removed from the state within 30 days of delivery, which is the requirement in Colorado. For all other states that assess sales and use tax, the requirements for interstate truck and trailer exemptions vary, typically based on eligible vehicle weight and extent of use in interstate commerce. For example, Washington provides a sales tax exemption, regardless of gross vehicle weight, if the vehicle is used "in substantial part" in interstate commerce, defined as at least 25 percent of the time. Idaho requires the vehicle to be over 26,000 pounds gross vehicle weight and requires that the vehicle operate in a fleet with a minimum of 10 percent of fleet miles occurring outside of the state.

Since many trucking companies have multiple terminals and business locations in which they operate vehicles and transport property across state lines, we analyzed the commercial vehicle exemptions of Colorado's seven neighboring states, as shown in EXHIBIT 1.2.

EXHIBIT 1.2. DESCRIPTION OF NEIGHBORING STATES COMMERCIAL VEHICLE EXEMPTION	
STATE	DESCRIPTION
Arizona	Motor vehicle sales will not be taxable if made for vehicles used in interstate commerce or to a common carrier, which requires the vehicle to be both ordered and delivered outside of Arizona.
Kansas	Tangible personal property used in interstate commerce is exempt from sales and use taxes.
Nebraska	Trailers or semi-trailers are exempt from sales and use tax if at least 50 percent of their total use is in interstate commerce. Beneficiaries must apply for the exemption every 5 years.
New Mexico	Vehicles registered in New Mexico are subject to an excise tax at the time of titling and are not subject to a gross receipts tax.
Oklahoma	Vehicles are subject to both an excise tax and sales tax on vehicle sales. Large trucks and trailers titled and registered out of the state are exempt from the excise tax, but are subject to a sales tax of 1.25 percent.
Utah	Vehicles are exempt from sales and use tax if the vehicle operates pursuant to agreements between states and Canadian provinces regarding registration and fuel use reporting. Vehicles not registered or used in Utah for 30 days or less a year are exempt.
Wyoming	Trucks, truck tractors, trailers, semi-trailers and passenger buses are exempt from sales and use tax if purchased by common or contract interstate carriers.
SOURCE: Office of the State Auditor analysis of Bloomberg BNA data.	

NONRESIDENT MOTOR VEHICLE EXEMPTION:

Although most states provide an exemption for nonresident motor vehicle purchases, there are significant differences in other states' eligibility requirements compared to Colorado's. The primary differences relate to the following three criteria:

- **WHETHER THE NONRESIDENT PURCHASER TAKES POSSESSION OF THE VEHICLE IN THE STATE IN WHICH THE PURCHASE IS MADE.** For example, Arizona, California, Iowa, Michigan, Minnesota, and North Carolina in some circumstances require the dealer to ship the vehicle out of the state for first possession.

- **WHETHER THE STATE IN WHICH THE VEHICLE WILL BE TITLED AND REGISTERED ASSESSES AT LEAST THE SAME AMOUNT OF TAX AS THE STATE IN WHICH THE VEHICLE WAS PURCHASED.** For example, Alabama and Florida allow a partial exemption in the amount of sales tax imposed by the purchaser's state of residence only if the tax amount is less than what would be paid in the state the vehicle was purchased.

- **WHETHER THE STATE IN WHICH THE VEHICLE WILL BE TITLED AND REGISTERED PROVIDES A SIMILAR EXEMPTION AS THE STATE WHERE THE VEHICLE WAS PURCHASED OR ALLOWS A CREDIT FOR TAXES PAID IN THE STATE OF PURCHASE.** Alabama, Arizona, Illinois, Kentucky, Ohio, Rhode Island, and South Carolina provide this type of requirement for their exemptions.

In addition, some states do not impose sales and use tax on the purchase of a vehicle, but impose an excise tax. For most of these states, the nonresident buyers are exempt from the excise tax. However, Oklahoma imposes both a motor vehicle excise tax and a sales tax. For nonresident purchasers, only the excise tax is exempt, but sales tax is still applied at the rate of 1.25 percent.

Of the states that impose a sales and use tax or an excise tax, there are three states that do not allow an exemption to nonresident purchasers: Indiana, Louisiana, and Massachusetts.

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

LOW-EMITTING VEHICLES SALES AND USE TAX EXEMPTION [SECTION 39-26-719(2)(a), C.R.S.]. For sales after July 1, 2014, motor vehicles greater than 26,000 pounds gross vehicle weight that are certified by the U.S. Environmental Protection Agency as meeting the emissions and fuel mileage efficiency standards of the federal heavy-duty national program are exempt from state sales and use tax. Typically, trucks that are model year 2010 or newer are manufactured to meet the certification. This exemption also applies to vehicles with a 10,000-pound or greater gross vehicle weight that meet one of the following criteria:

- Is equipped to operate on compressed natural gas or liquefied petroleum gas;
- Is equipped to operate on liquefied petroleum gas or hydrogen; or
- Is an electric truck or plug-in hybrid electric truck.

COMMERCIAL VEHICLES USED IN INTERSTATE COMMERCE SALES AND USE TAX REFUND [SECTION 39-26-113.5, C.R.S.]. Since 2011, Colorado has allowed a refund of state sales and use tax paid for purchases of a 2010 or newer trucks, tractors, or semi-trailers with gross vehicle weight ratings of 54,000 pounds or more that are used in interstate commerce and registered in Colorado. The refund amount is based on the specific ownership tax of the vehicles and is issued over 3 years, at one third of the amount of sales and use tax each year. The availability of a refund is dependent on the availability of funds allocated to the Commercial Vehicle Enterprise Tax Fund according to Section 42-1-225, C.R.S.

ENTERPRISE ZONE COMMERCIAL VEHICLE INVESTMENT TAX CREDIT [SECTION 39-30-104(1)(b), C.R.S.]. Enacted in 2009, the Commercial Vehicle Enterprise Zone Investment Tax Credit provides an income tax credit equal to 1.5 percent of investments made in commercial trucks, truck tractors, or semi-trailers. To be eligible for the credit, the vehicle must be 2010 model year or newer with a gross vehicle weight rating of at least 16,000 pounds. Vehicles are required to be licensed and registered in Colorado and housed or based in an enterprise zone for 1 year after purchase. Since July 1, 2011, taxpayers have been allowed to claim both the Commercial Vehicle Enterprise Zone Investment Tax Credit and the Commercial Vehicles Used in Interstate Commerce Refund if they are eligible.

We previously evaluated this tax credit in our *Enterprise Zone Tax Expenditures* report, which was released in January 2020. Here, we reported that in Tax Year 2016, the Commercial Vehicle Enterprise Zone Investment Tax Credit resulted in 15 claims worth $21,000 in tax credits, for an average credit amount of $1,400.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURES?

The Department of Revenue does not collect information necessary to quantify the revenue impact and usage of the Commercial Trucks and Trailers Exemption or the Nonresident Motor Vehicle Exemption. Specifically, dealers that sell trucks, trailers, and motor vehicles eligible for the exemptions subtract the exempt sales from their net sales on the Colorado Retail Sales Tax Return

(Form DR 0100) or Retailer's Use Tax Return (Form DR 0173). These exemptions are typically reported on the form on lines for either "sales out of the taxing area" or "other" exemptions, which are aggregated with several other exemptions. For private party sales, the Department of Revenue does not collect any data because the seller is not required to report that the buyer will register the vehicle outside of the state. Therefore, the Department of Revenue does not capture this information in GenTax, its tax processing information system. In addition, the Department of Revenue does not require taxpayers who claim the exemption to submit an affidavit (Form DR 0780) or any other documentation to the Department of Revenue in order to claim the exemptions.

If the General Assembly wants to know how many taxpayers claim the exemptions or how much they claim, the Department of Revenue would need to add separate reporting lines to Forms DR 0100 and DR 0173 and capture the data in GenTax. However, according to the Department of Revenue, this type of change would require additional resources to change the forms and complete the necessary programming in GenTax to capture and extract the data (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 costs of addressing the limitations).

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

We did not identify any policy considerations related to these tax expenditures.