



COLORADO FISCAL
POLICY INSTITUTE

Legislative Issue Brief: Tax and Revenue May 2009

In 2009, the Colorado General Assembly took significant steps to improve and strengthen state tax and fiscal policy. A conservative interpretation of legislative prerogative has limited tax policy options available to the Legislature since the passage of TABOR in 1992. On March 16, 2009, the Colorado Supreme Court rendered a decision in the Mill Levy Stabilization case (Mesa County Bd. of Commissioners Comm'rs v. State of Colorado) that restored the role of the Legislature in decision-making on tax policy. In this decision the Supreme Court found that a "tax policy change directly causing a net tax revenue gain" only requires voter approval when the revenue gain exceeds the limits dictated by subsection (7)". This finding has clarified that the General Assembly has the authority to close tax loopholes so long as the revenue gain does not cause state revenue to exceed the TABOR revenue limit. The General Assembly exercised this restored authority twice during the 2009 Session (**HB 1366** and **HB 1342**). These revenue enhancements were part of the package of measures required to balance the budget based on the March Legislative Council revenue projections.

At the same time, the Legislature was closing loopholes and eliminating tax credits, they also approved many tax credits and subsidies this session. The new credits and subsidies mean additional cuts to safety net services including those available to families struggling with the current economic circumstances. There is the potential that General Revenue decreases will reach \$54 million dollars during FY 2009-2010 due to these new tax credits. While the Colorado Fiscal Policy Institute (COFPI) agrees that job creation is critical to a strong recovery from the current recession, most studies indicate that state taxes are not a determining factor in whether businesses decide to relocate or expand in a particular state. The cost of materials, labor, and land as well as condition of and quality of the education, higher education, and transportation systems are some of the most important factors in the decision-making process.

Not every tax credit bill that was passed ended up being funded by General Fund dollars. Two of the tax credit bills were amended (Colorado Innovation Tax Credit & Tax Credit Donations to Research Institutions) to become funded by gifts and grants. A tax credit for film production in Colorado was amended to become a performance-based incentive program that is funded primarily with gifts, grants and donations. A cash fund was created to administer the performance-based incentives, and up to \$600,000 of Limited Gaming Fund money that would otherwise be transferred to the General Fund will be transferred to the cash fund. The transfer of the Limited Gaming Fund is contingent upon the financial performance of the state.

During the legislative break, there will be an interim commission and a task force that will be examining issues related to tax and fiscal policy. A bill that would have eliminated the business personal property tax was amended to become a task force to study the issue. An interim committee to study fiscal stability has been established. COFPI hopes that this interim committee will be proactive in crafting solutions that will focus on closing tax loopholes to fix the budget gaps that will inevitably occur during the next legislative session.

COFPI feels that the General Assembly deserves a B this session for tax policy. While great strides were made in the process of attempting to strike tax loopholes, the General Assembly took steps back by giving away General Fund dollars to businesses for decisions that would have been made regardless of a tax policy change.

REVENUE DECREASES ADOPTED BY LEGISLATURE

1. Tax Increment Financing (TIF) for Regional Tourism Projects (**SB 09-173**) - Allows developers of large scope tourism projects (a NASCAR racetrack or mountain venues to host the Winter Olympics) to use 100% of the new state sales tax revenue generated as a result of the venue up to pay off bonds used to build the facilities. The state sales tax revenue that is allowed to be diverted is capped at \$50 million dollars per year all projects. The Colorado Economic Development Commission may only authorize two projects. The potential impact on the FY 2009-2010 budget would be a reduction in the General Fund of \$50 million.

This bill creates the first statewide TIF in Colorado and while COFPI opposes this kind of tax give-away, the bill was amended to include significant accountability and reporting measures. Hopefully, these protections will better allow the General Assembly and the public to evaluate the efficacy of this and any future statewide economic development tax incentives.

2. Tax Credit for CO Job Growth (**HB 09-1001**) - The governor proposed this tax credit as a key piece of his jobs growth economic development agenda. Taxpayers that create 20 or more jobs (10 jobs for taxpayers in rural areas) are eligible for a tax credit of 50% of the employer expense for FICA employment taxes of the new jobs created. Taxpayers must submit an extensive application to the Colorado Economic Development Commission for approval in order to receive the credit. This bill will decrease FY 2009-2010 General Fund revenues by \$2.9 million.

Again, while COFPI opposed this tax subsidy, the bill was drafted with more accountability and reporting requirements than other tax credit bills we've seen before at the state level. For instance, HB 1001 contains a provision that would require that in order to be eligible for the credit; the jobs must pay a wage exceeding the local median wage and another that requires applicants to demonstrate that at least one other state is being considered for the project and but for the credit it would not locate in Colorado.

3. Tax Refund/ Credits for Economic Development of the Trucking Industry (**HB 09-1298**) – Trucking companies may claim a refund for a percentage of all sales and use tax paid in connection to the sale, storage, use of semi-trucks and tractors. This bill also creates a tax credit for 3 percent of an investment in trucking property that is used or stored in an enterprise zone. Additionally there is a green trucking grant program allowing for reimbursement of up to the lesser of \$50,000 or 25% of the cost of installing fuel efficient technologies and emission

control devices to reduce fuel consumption and emissions. Due to the gradual phase-in of this credit/ refund the FY 2010- 11 estimated fiscal impact decreases General Fund revenues by \$373,828. However, by the end of the forecast period (FY 2012-2013), Legislative Council staff estimates that this bill will reduce general fund revenue by \$1.9 million.

4. Tax Refund for Clean Technology or Medical Devices (**HB 09-1035**) – Allows clean technology companies and medical device companies a refund of state sales and use tax paid on equipment that is used for research and development. Limits the amount of the tax refunds that may be claimed by clean technology and medical device companies to \$50,000 per company per year. The company must have less than 50 employees to be eligible for the refund. This bill will not have a fiscal impact until 2011, when it is projected to decrease General Fund revenues by \$3.025 million.
5. Tax Credit in Exchange for Donation of Water Rights (**HB 09-1067**) – For income tax years beginning on or after January 1, 2009, but prior to January 1, 2015, establishes an income tax credit in exchange for the donation of water rights to the Colorado water conservation board. The income tax credit allowed will be up to 50% of the appraisal value of the water rights and is also refundable. General Fund revenues will decrease by \$1 million in FY 09-10 due to this legislation.

REVENUE INCREASES ADOPTED BY LEGISLATURE

1. Elimination/Cap of the Sales Tax Vendor Fee- (**SB 09-212 & SB 09-275 & HB 09-1101**)- Temporarily eliminates the amount of sales tax that retail business are allowed to retain to cover the costs of collecting and remitting sales tax. These bills have been combined because earlier in the legislative session the vendor fee amounts were capped and also those who were delinquent in remitting sales tax no longer were able to retain the vendor fee. After reduced revenue projections in March, the vendor fee was completely eliminated through June 30, 2011. Collectively the three bills will raise \$69.4 million for FY 09-10.
2. Eliminate Colorado Capital Gain Income Tax Modification (**HB 09-1366**) – Since 1994, Colorado taxpayers have been eligible for a subtraction from taxable income of capital gains earned on real or tangible personal property located in Colorado, and the sale of stock or the sale of an ownership interest in a Colorado company. To qualify for the deduction the owner must hold the property for 5 years. This bill eliminates this deduction with the exception of a \$100,000 exemption per transaction for tangible personal property. Post January 1, 2010, there is also a grandfather exemption available for up to \$100,000 per transaction of capital gain for those who purchased real property prior to January 1, 2010. Revenue is estimated to increase up to \$7.1 million during FY 09-10.
3. Eliminate Cigarette Sales Tax Exemption (**HB 09-1342**) - This bill would remove the state sales and use tax exemption on cigarettes. It would not affect the sales tax exemption for local municipalities. In FY 2009-2010 this bill would raise revenue by \$31 million.
4. Suspend Property Tax Exemptions (Homestead Exemption) (**SB 09-276**) – For calendar years 2009 and 2010, the property tax exemption for qualifying seniors and disabled veterans has been eliminated. The FY 2009-2010 impact would be an effective increase in general fund revenue of roughly \$90 million.

5. **FASTER/ Fee Increase for Transportation System (SB 09-108)**- Fee increases on vehicle registration fees is the primary source of funding that will help Colorado fix dilapidated bridges and pay for road maintenance. The vast majority of vehicles will see average increase in registration fees of \$32 in 2009 and \$41 in 2010 and beyond. Vehicle weight will be the determining factor in the amount of actual fee increase. There are additional fees for rental cars, late registrations, and oversize/ overweight vehicles. This bill also makes it possible to toll existing roads with voter approval. This bill will raise \$200 million dollars for transportation cash funds in FY 2009-2010

BILLS CONSIDERED AND NOT ADOPTED

1. **Eliminate Vending Machine Sales Tax Exemption (HB 09-1355)** - Food and beverages sold in vending machines are currently exempt from taxation. This bill would have eliminated that exemption. Food purchased in grocery stores for home consumption is also not subject to sales tax. However, food that is purchased for immediate consumption in restaurants and other fast/ casual settings is subject to sales tax. Business owners that own and operate vending machines testified that this bill would put them out of business because they are already operating on slim profit margins. It is likely that next session will bring more legislation to remove sales tax exemptions. This bill would have raised revenue by \$8.7 million dollars in FY 2009-2010
2. **Business Personal Property Tax Exemption (HB 09-1068)** – This bill proposed to exempt a percentage of business personal property tax based on the percentage of a taxpayer’s out-of-state sales, and would slowly increase the amount of that percentage exemption. As mentioned previously, there will be an interim task force to study the issue of business personal property tax. There have been many attempts to eliminate this tax, however because it brings local governments revenue of approximately \$732 million statewide, it will be difficult to eliminate without replacement revenue. A similar bill (**SB 09-85**) which would have phased out the BPPT, was amended to create a committee to study the BPPT and alternative sources of revenue.
3. **Private School Tuition Income Tax Credit (HB 09-1195)**- An income tax credit would have been available under this proposal for anyone who had a dependent child enrolled in a private school or who offered a scholarship for a child to attend a private school. The amount of the credit would have been half of the state average per pupil school finance funding or the amount of the scholarship, whichever is less. The bill would have cost the state nearly \$900 million dollars when the credit was fully phased in during FY 2021-2022.
4. **Temporary Income Tax Credit for New Home Buyers (HB 09-1212)** - This proposal would have allowed purchasers of homes that are built during 2010 an income tax credit for 3% of the purchase price up to \$10,000. This tax credit would have cost the state \$80 million dollars in revenue over two fiscal years. The Federal government is offering an income tax credit (up to \$8,000) for first-time homebuyers who purchase before December of 2009. Due to the Federal income tax credit that is already available and the estimated cost of the proposal, it may not be likely that we will similar legislation next session.
5. **Decrease Fossil Fuel Consumption (SB 09-1268)** – This proposal would have granted a state sales and use tax credit for fuel efficient vehicles under certain circumstances. Legislative

Council staff estimated that this bill would have reduced general fund revenues by \$2.4 million in FY 2010-11.

6. Greyhound Race Lower Tax Expand Simulcast Days (**HB09-1095**) – This proposal would have lowered the pari-mutuel tax on greyhound racing from 4.5% to 0.75% but increased the number of days allowed per year from 250 to 360. This bill would have reduced general fund revenue by \$900,000 in FY 09-10 and \$1.8 million in FY 2010-2011.
7. Economic Development Incentives (**HB-1127**) – This proposal would have implemented an income tax credit for small businesses that create jobs in Colorado. This bill was estimated to reduce general fund revenue by \$8 million in FY10-11 and by \$16 million in FY 2011-2012.
8. Telephone Machinery Sales Tax Exemption (**SB09-81**) – This bill would have phased-in a sales and use tax exemption for machinery and equipment used to provide telecommunications services in Colorado. It was estimated to reduce general fund revenue by \$2.2 million in FY 10-11 and roughly \$4.4 million in FY 2011-2012.

For more information, please contact:

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