

2008 Legislative Developments Affecting State and Local Taxation

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Income Tax

Alzheimer's Association Fund Check-off. HB 08-1028 amends C.R.S. § 39-22-2901 to continue the income tax form donation check-off through tax year 2011.

Historic property preservation tax credits extended. HB 08-1033 amends C.R.S. § 39-22-514, effective August 6, 2008, to extend the tax credits for expenses incurred in preserving historic structures to January 1, 2020. The provision would have expired in 2010. Funds must still be available in excess of TABOR limits each fiscal year to fund the credit.

New business-facility-employees for tax credits includes employee leasing company workers. HB 08-1034 amends C.R.S. § 39-30-105, effective immediately, to clarify that workers provided through an employee leasing company pursuant to § 8-70-114 also qualify to earn credits for wage expenses for qualified projects.

Military Family Relief Fund Check-off. HB 08-1035 amends C.R.S. § 39-22-3001 to continue the income tax form donation check-off through tax year 2011.

Child Care facilities contribution tax credits extended. HB 08-1049 amends C.R.S. § 39-22-121, effective August 6, 2008, to extend the tax credits for donations to qualified child care facilities to January 1, 2020. The provision would have expired in 2010. Funds must still be available in excess of TABOR limits each fiscal year to fund the credit.

Deductions for approved fire mitigation costs. HB 08-1110 adopts C.R.S. § 39-22-104(N)(I)(a), effective this tax year, to authorize an income tax deduction of up to \$2500 per year for expenses incurred in an approved forest-fire mitigation program. The deduction is per home site, not per married or joint title holder.

Tax credits for hiring developmentally disabled in some counties. HB 08-1127 adopts C.R.S. § 39-22-530, effective January 1, 2009, to authorize an income tax credit for employers located in Adams, Arapahoe, Jefferson, Logan, Montrose and Morgan counties who hire developmentally disabled employees after January 1, 2009. The act defines such a worker. The credit equals 50% of the actual wages paid to such employee

in the first three months and 30% of wages paid in the next nine months. Funds must still be available in excess of TABOR limits each fiscal year to fund the credit. The program is only currently authorized through year-end 2010.

Paid tax-return preparers' penalty. HB 08-1138 adopts C.R.S. §§ 39-21-113 and 39-22-621, effective July 1, 2008, to require ("shall assess") the Department of Revenue to assess a \$500 penalty upon paid tax preparers who prepare tax returns that understate the tax liability "due to willful or reckless disregard" of applicable tax laws due to repeated filings that they know or should have known "have no realistic possibility of being sustained on the merits". If the preparer is instructed to, or the employer has knowledge of the offense and fails to correct it, then both the employer and the employee are subject to the (separate) fine. This makes it a total of \$1,000 in fines, not joint liability on the first \$500 fine. There appears to be no discretion to waive or reduce the penalty. The act contains an exemption for certified public accountants under Article 2 of Title 12. For CPA preparers, an infraction by a CPA is reported to the State Accountancy Board by the Department of Revenue. The act does not mandate what the Board is required to do with that information. Persons who only type, print or copy returns are not subject to the provision.

Additional regulations for conservation easements. HB 08-1352 adopts C.R.S. § 12-61-702 and 12-61-719, effective July 1, 2008, creating the Conservation Easement Oversight Commission, a body of nine members appointed by the governor including one member each of Outdoors Colorado Trust Fund, the Natural Resources Department, the Department of Agriculture, a member of a state or federal land trust, a member of a local land trust, a member of a local open space association, an historic preservation group member, a Colorado certified general appraiser, and a past conservation donor. Appraisers who perform a signed conservation easement report must file a copy of such report together with a disclosure report containing information required by the act with the Commission. The Commission is also authorized to adopt a filing fee not to exceed \$600.

The Commission will maintain a report and statistical data base that is available to the Department of Revenue. The Commission is empowered to investigate complaints about nonconforming appraisal reports. The act also allows the Commission to set educational standards for preparers of such appraisal reports. Lastly, the act allows the Commission to set qualifications and standards for qualified holders (grantees) of tax qualified conservation easements.

Conversion to single sales factor apportionment. HB 08-1380, effective January 1, 2009, repeals the long-standing three factor Multistate Tax Compact procedure for apportioning multi-state income and adopts C.R.S. § 39-22-303.5 that will apportion income based upon a ratio of sales in Colorado divided by all sales everywhere. There are some specific provisions for the mutual fund industry.

This act was a corner piece of the Governor's economic development plan but it was opposed by some significant Colorado business interests. The act also contains a

number of key definitions of business and non-business income. This type of legislation typically benefits head-quarter and manufacturing companies and increases taxes on retail and some service sectors, particularly those with significant investments in infrastructure and payroll located elsewhere. The bill was claimed to be revenue neutral but that has not always been the experience of other states adopting such apportionment formulas that experienced overall tax revenue increases. This might present an interesting TABOR challenge.

Property Taxes

Increase de minimus filing exclusion. HB 08-1225 amends C.R.S. § 29-3-119.5, effective January 1, 2009, to increase the exclusion that exempts a filing requirement for a personal property declaration schedule for business personal property owners whose total location assets are valued less than:

- a. \$4000 in 2009 and 2010;
- b. \$5,000 for 2011 and 2012;
- c. \$7,000 for 2013 and 2014
- d. Indexed for inflation after 2014.

This provision is still a filing exclusion, not an exemption for the threshold dollar amount. Once the threshold is exceeded, the first dollar of value is subject to tax assessment.

Tax forgiveness for charitable reporting defaults. HB 08-1275 adopts C.R.S. § 39-3-137, effective August 6, 2008, that allows for forgiveness of taxes due on property that becomes taxable due to the failure of a formerly tax exempt organization to file an annual report or files a defective report, if the organization takes subsequent steps to correct the error or failure to file and the State Board of Equalization reinstates the exemption status to the organization.

Special valuation of small renewal energy production facilities. HB 08-1368 adopts C.R.S. § 39-5-104.7, effective January 1 2008, that allows for the special valuation of facilities that produce less than 2 megawatts of power from renewable sources. The Property Tax Administrator is charged with developing appropriate methodologies that take into account the procedures applicable to large commercial suppliers of similar forms of energy.

Property leased to government is exempt. HB 08-1395 amends C.R.S. § 39-3-124, effective August 6, 2008, to clarify that property that is leased to a governmental entity for governmental use is exempt from property tax. The governmental entity must inform the assessor of the lease and if (when) the lease is later terminated. Such governmental exemptions become automatic upon reporting, there is no application requirement typical of charitable and religious exemptions.

Sales and Use Tax

State Exemptions must be approved by DOR-state collected entities. HB 08-1013 amends C.R.S. § 29-2-105, effective August 6, 2008, to clarify that the definitions of taxable transactions and exemptions applicable to the state also apply for entities authorizing the Department of Revenue to administer its tax programs except that the following exemptions must be specifically adopted by the entities either in the proposal to approve a sales tax or by another specific voter proposal:

1. Manufacturing machinery or tools;
2. Electricity, coal, wood, gas, fuel oil or coke;
3. Food;
4. Vending machine sales;
5. Sales by qualified charitable organizations;
6. Farm equipment;
7. Low-emission vehicles and power sources;
8. Pesticides;
9. Sales by schools.

The act also amends C.R.S. § 39-26-725 to expand the definition of qualified sellers for the school exemption to include support organizations. See also, HB 08-1358 that amends C.R.S. § 39-26-718 to allow an exemption for booster organizations if the funds are used for schools or school purposes.

Federal truck excise tax not part of sales price. HB 08-1138 adopts C.R.S. §§ 39-26-102(7)(c), effective September 1, 2008, to amend the definition of the “sales price” for motor vehicles to exclude the federal excise tax paid on the first sale of such vehicle from the consideration paid to the seller of the vehicle.

Exempt aircraft sales if plane leaves the state. HB8-1261 adopts C.R.S. §§ 39-26-711.5, effective August 6, 2008, to exempt from the sales tax the sale of new or used aircraft to nonresidents who remove the aircraft within 120 days of the sale and who do not either hangar or over-night park it in this state for more 73 total days in the three years following the sale.

Economic Development

Use of gaming taxes for biotechnology grants. HB 08-1001 amends C.R.S. § 24-48.5-108, effective immediately, to authorize the Department of Economic Development to issue grants to Colorado based entities developing bioscience projects for medicine, biofuels and agriculture. The applicants must have other sources for matching funds to receive a grant. The act contains definitions for key terms and qualifying entities. Grant limits have been increased from \$100,000 to \$250,000 per applicant. Funds in the program must be allocated at least in the following formula:

(a) 30% to bioscience research support entities for computer support, nanotechnology, engineering, photonic, life sciences and material sciences projects;

(b) 30% to early stage production companies licensing technology from research entities for producing products for human health products or instruments, bioscience agricultural products or biofuels;

(c) funds are also available for full production commercialization projects in these same defined science segments.

Funds for the programs are allocated to the Department annually from the gaming tax fund under C.R.S. § 12-47.1-701 in the following amounts:

(a) \$4,500,000 for fiscal 2008-2009;

(b) \$5,500,000 for fiscal 2009-2010;

(c) \$5,500,000 for fiscal 2010-2011;

(d) \$5,500,000 for fiscal 2011-2012.

Miscellaneous Fees

Allocation of traffic fines. HB 08-1010 amends C.R.S. § 42-1-217, effective August 6, 2008, to specify that fines from traffic infractions occurring on state or federal roads are shared 25% with local government, 75% with the state road fund. Prior law was a 50-50 split.

Food wholesalers' fees increased. HB 08-1054 amends C.R.S. § 25-5-426, effective August 6, 2008, to increase the various application and certificate fees required of food wholesalers and storage facilities. Fees increase from \$40 to \$85 depending on the program license.

Criminal justice records fees. HB 08-1076 amends C.R.S. § 24-72-306, effective August 6, 2008, to authorize custodians of criminal justice records to charge per page fees of \$.25 or the actual cost of the record production which ever is higher.

Overweight vehicle fees. HB 08-1257 amends C.R.S. § 42-4-510, effective immediately, to increase fees for overweight vehicle permits. Fees increase per the schedule in the act. Fines now double if prior permits are not obtained.