

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 11-0829.01 Ed DeCecco

SENATE BILL 11-184

SENATE SPONSORSHIP

Steadman, Bacon, Boyd, Carroll, Giron, Guzman, Hodge, Hudak, Johnston, Morse, Nicholson, Shaffer B., Tochtrop

HOUSE SPONSORSHIP

Ferrandino, Duran, Fields, Hullinghorst, Kagan, Kefalas, Labuda, McCann, Pabon, Pace

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING TAX REPORTING.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill establishes a tax amnesty program that is similar to the tax amnesty program conducted in June 2003. The tax amnesty program will be conducted during August and September 2011 and apply to taxes for which a return was required to be filed before December 31, 2010. Eligible taxpayers who owe specified taxes are able to report the taxes owed and pay such amount plus 1/2 of the interest owed thereon or enter into an agreement with the department of revenue (department) to pay the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

taxes and all interest owed. A taxpayer who pays the full amount owed pursuant to the tax amnesty program would not be subject to any fines or civil or criminal penalties. Moneys received prior to January 1, 2012, pursuant to the tax amnesty program related to the income tax and the sales and use tax that would otherwise be deposited in the general fund shall instead be deposited in the tax amnesty cash fund.

The bill requires the department to prepare an annual tax expenditure report (report). The report includes information for every state tax and federal income tax regarding each tax expenditure, which is a tax provision that provides a gross or taxable income definition, deduction, exemption, credit, or rate for certain persons, types of income, transactions, or property that results in reduced tax revenue for the state. Among the information that will be included in the report is the decrease in revenue that results from the tax expenditure and the effect of the tax expenditure on the distribution of the tax burden by various income and business classes.

The department is required to:

- ! Provide copies of the report to each member of the general assembly;
- ! Present the report to the finance committees of the house of representatives and the senate;
- ! Make the report available for public inspection; and
- ! Publish the report on the department web site.

On and after January 1, 2012, any bill that creates a new tax expenditure or extends an expiring tax expenditure shall include a legislative declaration stating the intended purpose of the tax expenditure.

The moneys in the tax amnesty cash fund are to be used to pay for the department's costs in administering the tax amnesty program and for the department's costs in preparing the first tax expenditure report. Any leftover moneys will be transferred primarily to the state education fund.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 39-21-201 (1), (2), (3) (a), (3) (b), (3) (d), and (4),
3 Colorado Revised Statutes, are amended to read:

4 **39-21-201. Program established.** (1) Notwithstanding any other
5 provision of this title, title 29, title 32, or title 42, C.R.S., the executive
6 director shall conduct a tax amnesty program for any taxpayer liable for
7 the payment of any of the taxes specified in subsection (2) of this section
8 for which a return was required to be filed before ~~December 31, 2002~~

1 DECEMBER 31, 2010, including returns for which the department has
2 granted an extension beyond said date. The taxpayer amnesty program
3 shall be conducted during ~~June 2003~~ AUGUST AND SEPTEMBER 2011 and
4 shall not extend to any other period.

5 (2) A taxpayer eligible to participate in the tax amnesty program
6 shall include any taxpayer liable for payment of income taxes imposed
7 pursuant to article 22 of this title, ~~estate taxes imposed pursuant to article~~
8 ~~23.5 of this title, inheritance taxes imposed pursuant to article 24 of this~~
9 ~~title, gift taxes imposed pursuant to article 25 of this title,~~ sales and use
10 taxes imposed pursuant to article 26 of this title, gasoline and special fuel
11 taxes imposed pursuant to article 27 of this title, cigarette taxes imposed
12 pursuant to article 28 of this title, taxes on tobacco products imposed
13 pursuant to article 28.5 of this title, severance taxes imposed pursuant to
14 article 29 of this title, ~~waste tire fees collected by the department pursuant~~
15 ~~to section 25-17-202, C.R.S.,~~ county or municipal sales taxes collected by
16 the executive director pursuant to article 2 of title 29, C.R.S., local
17 marketing and promotion taxes collected by the department pursuant to
18 section 29-25-112, C.R.S., county lodging taxes collected by the
19 department pursuant to section 30-11-107.5, C.R.S., county rental taxes
20 collected by the department pursuant to section 30-11-107.7, C.R.S., local
21 improvement district sales taxes collected by the department pursuant to
22 section 30-20-604.5, C.R.S., regional transportation district sales and use
23 taxes imposed pursuant to article 9 of title 32, C.R.S., Denver
24 metropolitan scientific and cultural facilities district sales and use taxes
25 imposed pursuant to article 13 of title 32, C.R.S., ~~Denver metropolitan~~
26 ~~major league baseball stadium district sales and use taxes imposed~~
27 ~~pursuant to article 14 of title 32, C.R.S.,~~ metropolitan football stadium

1 district sales and use taxes imposed pursuant to article 15 of title 32,
2 C.R.S., and regional transportation authority sales and use taxes collected
3 by the department pursuant to section 43-4-605 (1) (j), C.R.S.

4 (3) (a) Subject to the provisions of subsection (4) of this section,
5 the tax amnesty program shall permit any taxpayer liable for payment of
6 any taxes specified in subsection (2) of this section to ~~pay~~ REPORT the full
7 amount of the taxes for which the taxpayer is liable AND TO PAY THE FULL
8 AMOUNT OF SUCH TAXES, including one-half of any interest due, as
9 computed without the reduction pursuant to section 39-21-109 (1.5), on
10 or before ~~June 30, 2003~~ SEPTEMBER 30, 2011, without the imposition of
11 any fine or other civil or criminal penalty otherwise provided by law.

12 (b) Subject to the provisions of subsection (4) of this section, the
13 tax amnesty program shall permit any taxpayer liable for payment of any
14 taxes specified in subsection (2) of this section to REPORT THE AMOUNT
15 OF THE TAXES FOR WHICH THE TAXPAYER IS LIABLE AND TO sign an
16 agreement to pay that shall be printed on the tax amnesty application form
17 and deliver the application and signed agreement to pay to the department
18 on or before ~~June 30, 2003~~ SEPTEMBER 30, 2011, without the imposition
19 of any fine or other civil or criminal penalty otherwise provided by law.
20 If the taxpayer fails to pay the full amount of taxes owed and all interest
21 for which the taxpayer is liable pursuant to the terms of the tax amnesty
22 agreement to pay, the waiver provision of this paragraph (b) is void.

23 (d) If a taxpayer fails to pay the full amount of the tax liability by
24 ~~June 30, 2003~~ SEPTEMBER 30, 2011, or fails to sign and file the agreement
25 to pay on the tax amnesty application by ~~June 30, 2003~~ SEPTEMBER 30,
26 2011, and remain in compliance with the agreement to pay, or commits
27 willful fraud in filing pursuant to the terms of the tax amnesty program,

1 the taxpayer shall be subject to civil or criminal penalty, or both.

2 (4) (a) A taxpayer liable for the payment of any taxes specified in
3 subsection (2) of this section shall not be permitted to satisfy such
4 liability through the tax amnesty program if a notice of deficiency for the
5 liability has been mailed to the taxpayer before ~~June 1, 2003~~ AUGUST 1,
6 2011.

7 (b) A taxpayer who is under investigation or being prosecuted for
8 criminal or fraudulent activity as of ~~June 1, 2003~~ AUGUST 1, 2011, for
9 crimes related to any taxes collected by the department is not eligible to
10 participate in the tax amnesty program, regardless of whether the taxes
11 owed for which the taxpayer seeks amnesty are the taxes on which the
12 investigation or prosecution is based.

13 **SECTION 2.** Part 2 of article 21 of title 39, Colorado Revised
14 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
15 read:

16 **39-21-202. Tax amnesty cash fund - creation - uses - repeal.**

17 (1) THERE IS HEREBY CREATED IN THE STATE TREASURY THE TAX
18 AMNESTY CASH FUND, REFERRED TO IN THIS SECTION AS THE "FUND".
19 NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ANY
20 PAYMENT RECEIVED BY THE DEPARTMENT PRIOR TO JANUARY 1, 2012, FOR
21 INCOME TAX OR SALES AND USE TAX FROM A TAXPAYER THAT IS MADE IN
22 ACCORDANCE WITH SECTION 39-21-201 THAT WOULD OTHERWISE BE
23 REQUIRED TO BE DEPOSITED IN THE GENERAL FUND SHALL INSTEAD BE
24 DEPOSITED IN THE FUND.

25 (2) (a) THE MONEYS IN THE FUND SHALL BE SUBJECT TO
26 APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT FOR
27 THE 2011-12 FISCAL YEAR FOR THE DIRECT AND INDIRECT COSTS

1 ASSOCIATED WITH THE ADMINISTRATION OF THIS PART 2 AND PART 3 OF
2 THIS ARTICLE. ANY MONEYS IN THE FUND NOT EXPENDED FOR SUCH
3 PURPOSES MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY
4 LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND
5 DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND.

6 (b) THE STATE TREASURER SHALL TRANSFER THE BALANCE OF THE
7 FUND AS OF DECEMBER 31, 2011, MINUS THE AMOUNT APPROPRIATED TO
8 THE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2),
9 AS FOLLOWS:

10 (I) AN AMOUNT EQUAL TO THE MONEYS EXPENDED FROM THE
11 GENERAL FUND BY THE DEPARTMENT FOR THE ADMINISTRATION OF
12 SECTION 39-21-201 SHALL BE TRANSFERRED TO THE GENERAL FUND.

13 (II) ANY MONEYS REMAINING AFTER THE TRANSFER SET FORTH IN
14 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL BE TRANSFERRED TO
15 THE STATE EDUCATION FUND CREATED IN SECTION 17 (4) OF ARTICLE IX
16 OF THE STATE CONSTITUTION.

17 (c) THE STATE TREASURER SHALL TRANSFER THE UNEXPENDED
18 AND UNENCUMBERED MONEYS IN THE FUND AS OF JUNE 30, 2012, TO THE
19 GENERAL FUND.

20 (3) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2013.

21 **SECTION 3.** Article 21 of title 39, Colorado Revised Statutes, is
22 amended BY THE ADDITION OF A NEW PART to read:

23 PART 3

24 TAX EXPENDITURE REPORT

25 **39-21-301. Legislative declaration.** (1) THE GENERAL
26 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

27 (a) THE GENERAL ASSEMBLY USES BOTH DIRECT EXPENDITURE OF

1 GOVERNMENT FUNDS AND SPECIAL OR SELECTIVE TAX RELIEF, WHICH IS
2 KNOWN AS A TAX EXPENDITURE, TO FURTHER VARIOUS PUBLIC POLICY
3 GOALS;

4 (b) A TAX EXPENDITURE DIFFERS FROM A DIRECT SPENDING
5 PROGRAM BECAUSE A DIRECT SPENDING PROGRAM CONTINUES ONLY IF
6 FUNDS ARE APPROPRIATED FOR EACH BUDGET PERIOD, WHILE THE
7 CONTINUATION OF A TAX EXPENDITURE GENERALLY DOES NOT REQUIRE
8 ANY LEGISLATIVE ACTION;

9 (c) IN ADDITION, A DIRECT SPENDING PROGRAM IS GENERALLY
10 DETAILED ON THE EXPENDITURE SIDE OF THE BUDGET, BUT A TAX
11 EXPENDITURE IS SIMPLY INCLUDED ON THE REVENUE SIDE OF THE BUDGET
12 WITHOUT ITEMIZATION;

13 (d) A TAX EXPENDITURE SHOULD RECEIVE A PERIODIC AND
14 COMPREHENSIVE REVIEW AS TO ITS TOTAL COST AND EFFECTIVENESS IN
15 ACHIEVING ITS OBJECTIVES; AND

16 (e) IT IS IMPORTANT THAT STATE GOVERNMENT BE ACCOUNTABLE
17 AND TRANSPARENT IN SUCH A WAY THAT THE GENERAL PUBLIC CAN
18 UNDERSTAND THE VALUE OF TAX EXPENDITURES GIVEN BY THE STATE.

19 (2) IN ENACTING THIS PART 3, IT IS THE INTENT OF THE GENERAL
20 ASSEMBLY TO CREATE A MEANS FOR PROVIDING THE GENERAL ASSEMBLY
21 AND THE PUBLIC WITH THIS VITAL TAX-RELATED INFORMATION IN AN
22 ANNUAL TAX EXPENDITURE REPORT.

23 **39-21-302. Definitions.** AS USED IN THIS PART 3, UNLESS THE
24 CONTEXT OTHERWISE REQUIRES:

25 (1) "TAX EXPENDITURE" MEANS A TAX PROVISION THAT PROVIDES
26 A GROSS OR TAXABLE INCOME DEFINITION, DEDUCTION, EXEMPTION,
27 CREDIT, OR RATE FOR CERTAIN PERSONS, TYPES OF INCOME,

1 TRANSACTIONS, OR PROPERTY THAT RESULTS IN REDUCED TAX REVENUE.

2 (2) "TAX EXPENDITURE REPORT" OR "REPORT" MEANS THE ANNUAL
3 REPORT THAT THE DEPARTMENT IS REQUIRED TO PREPARE PURSUANT TO
4 SECTION 39-21-303 (1).

5 (3) "TAX OF INTEREST" MEANS THE FEDERAL INCOME TAX AND
6 ANY TAX LEVIED AND COLLECTED BY THE STATE.

7 **39-21-303. Tax expenditure report.** (1) ON OR BEFORE JULY 1,
8 2012, AND EACH JULY 1 THEREAFTER, THE DEPARTMENT SHALL PREPARE
9 A TAX EXPENDITURE REPORT FOR THE STATE THAT INCLUDES THE
10 INFORMATION SET FORTH IN SUBSECTION (2) OF THIS SECTION.

11 (2) (a) TO THE EXTENT DATA OR INFORMATION IS AVAILABLE, A
12 TAX EXPENDITURE REPORT MUST INCLUDE THE FOLLOWING INFORMATION
13 FOR EACH TAX EXPENDITURE FOR EACH TAX OF INTEREST:

14 (I) A CITATION OF THE STATUTORY OR OTHER LEGAL AUTHORITY
15 FOR THE TAX EXPENDITURE;

16 (II) THE YEAR THAT THE TAX EXPENDITURE WAS ENACTED;

17 (III) A DESCRIPTION OF THE TAX EXPENDITURE;

18 (IV) AN ESTIMATE OF THE DECREASE IN STATE REVENUE THAT
19 RESULTS FROM THE TAX EXPENDITURE FOR THE CURRENT TAX YEAR AND
20 FOR THE NEXT THREE TAX YEARS;

21 (V) FOR A TAX EXPENDITURE THAT IS SUBJECT TO THE
22 REQUIREMENT SET FORTH IN SECTION 39-21-304, A STATEMENT OF THE
23 INTENDED PURPOSE OF THE TAX EXPENDITURE;

24 (VI) THE EFFECT OF THE TAX EXPENDITURE ON THE DISTRIBUTION
25 OF THE TAX BURDEN BY INCOME CLASS AND INDUSTRY OR BUSINESS CLASS,
26 AS APPROPRIATE; AND

27 (VII) THE EFFECT OF THE TAX EXPENDITURE ON TOTAL INCOME BY

1 CLASS.

2 (b) THE INCOME CLASSES TO BE INCLUDED IN THE REPORT
3 PURSUANT TO SUBPARAGRAPHS (VI) AND (VII) OF PARAGRAPH (a) OF THIS
4 SUBSECTION (2) SHALL:

5 (I) AT A MINIMUM, USE QUINTILES OF THE INCOME DISTRIBUTION,
6 WITH THE HIGHEST QUINTILE OR OTHER PROPORTIONAL CATEGORY
7 SUBDIVIDED INTO THE TOP ONE PERCENT OF INCOME, THE NEXT FOUR
8 PERCENT OF INCOME, AND THE REMAINDER OF THE INCOME WITHIN THE
9 QUINTILE OR CATEGORY; AND

10 (II) SEPARATELY CONSIDER CORPORATE AND INDIVIDUAL INCOME
11 TAXPAYERS.

12 (c) THE REPORT SHALL ALSO INCLUDE AN ESTIMATE OF THE TOTAL
13 DECREASE IN STATE REVENUE THAT RESULTS FROM ALL TAX
14 EXPENDITURES FOR EACH SEPARATE TAX OF INTEREST FOR THE CURRENT
15 TAX YEAR AND FOR THE NEXT THREE TAX YEARS.

16 (3) (a) THE DEPARTMENT SHALL PROVIDE A COPY OF THE REPORT
17 TO ALL MEMBERS OF THE GENERAL ASSEMBLY IN ACCORDANCE WITH
18 SECTION 24-1-136 (9), C.R.S.

19 (b) NO LATER THAN FEBRUARY 1, 2013, AND EACH FEBRUARY 1
20 THEREAFTER, THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL
21 PRESENT THE ANNUAL TAX EXPENDITURE REPORT TO THE FINANCE
22 COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR
23 ANY SUCCESSOR COMMITTEES.

24 (c) THE DEPARTMENT SHALL MAKE THE TAX EXPENDITURE REPORT
25 AVAILABLE FOR PUBLIC INSPECTION AND SHALL PUBLISH THE REPORT ON
26 THE DEPARTMENT WEB SITE.

27 (4) THE REPORTING REQUIREMENT SET FORTH IN THIS SECTION IS

1 EXEMPT FROM THE PROVISIONS OF SECTION 24-1-136 (11), C.R.S., AND
2 THE ANNUAL REPORTING REQUIREMENT SHALL REMAIN IN EFFECT UNTIL
3 CHANGED BY THE GENERAL ASSEMBLY ACTING BY BILL.

4 **39-21-304. Tax expenditure - statement of intended purpose.**
5 ON AND AFTER JANUARY 1, 2012, ANY BILL THAT CREATES A NEW TAX
6 EXPENDITURE OR EXTENDS AN EXPIRING TAX EXPENDITURE SHALL
7 INCLUDE A LEGISLATIVE DECLARATION STATING THE INTENDED PURPOSE
8 OF THE TAX EXPENDITURE.

9 **SECTION 4. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.