SALES TO RESIDENTS OF BORDERING STATES

EVALUATION SUMMARY

SEPTEMBER 2018
2018-TE11

THIS EVALUATION IS INCLUDED IN COMPILATION REPORT SEPTEMBER 2018

YEAR ENACTED	1963
REPEAL/EXPIRATION DATE	None
REVENUE IMPACT	None
NUMBER OF TAXPAYERS	None
AVERAGE TAXPAYER BENEFIT	None
IS IT MEETING ITS PURPOSE?	No, because it likely cannot be used

WHAT DOES THIS TAX EXPENDITURE DO?

This tax expenditure creates a sales tax exemption at the time of sale for residents of adjoining states that do not impose a retail sales tax. The sale must occur within 20 miles of the Colorado border, and be made by an individual for the sole purpose of making purchases and not as a tourist.

WHAT IS THE PURPOSE OF THIS TAX EXPENDITURE?

Statute does not explicitly state the purpose of the sales tax exemption. We inferred the purpose to be to eliminate the disincentive to making purchases in Colorado for residents of states with no sales tax.

WHAT DID THE EVALUATION FIND?

Currently, all states bordering Colorado impose a retail sales tax or an equivalent tax on retail sales; thus, this exemption is most likely no longer applicable and its purpose no longer exists.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly could consider repealing or clarifying the applicability of this exemption.

SALES TO RESIDENTS OF BORDERING STATES EXEMPTION

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

Statute [Section 39-26-704(2), C.R.S.] created the Sales to Residents of Bordering States Exemption to exempt from sales tax retail sales to residents of adjoining states that do not impose a retail sales tax. The sale must occur within 20 miles of the Colorado border, and be made to a non-corporate resident of an adjoining state that does not impose a retail sales tax who is in Colorado for the sole purpose of making purchases and not as a tourist. The consumer need not take any affirmative steps to obtain the exemption. If the retailer determines the purchaser qualifies for the exemption, then the retailer would not charge Colorado state sales tax. This exemption was enacted in 1963 [House Bill 63-157] and has remained substantially unchanged since that time.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not explicitly identify the intended beneficiaries of the sales tax exemption. Based on the statutory language of the expenditure and Colorado's tax structure, we inferred that the intended beneficiaries of this exemption were retailers located near the Colorado border, specifically the Colorado-Nebraska border. Nebraska did not have a sales tax when this expenditure was enacted.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute does not explicitly state the purpose of this exemption. We inferred that the purpose is to remove the disincentive to making purchases in Colorado that would otherwise exist for residents of bordering states with no retail sales tax.

To determine the purpose of the exemption, we researched retail sales tax provisions in states bordering Colorado (i.e., Wyoming, Nebraska, Kansas, Oklahoma, New Mexico, Arizona, and Utah), the legislative history of the exemption, and similar sales tax exemptions in other states. We found that at the time the exemption was enacted, all the bordering states had a retail sales tax, or an equivalent tax, with the exception of Nebraska, which did not impose a sales tax, therefore we infer that the exemption was likely targeted to businesses within 20 miles of the Colorado-Nebraska border.

IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We determined that this exemption is not meeting its inferred purpose since all of the states bordering Colorado currently impose a sales tax, or an equivalent tax on retail sales, and retailers likely do not receive a financial benefit from the exemption.

Statute does not provide quantifiable performance measures for this exemption. Therefore, we created and applied the following performance measure to determine the extent to which the exemption is meeting its inferred purpose:

PERFORMANCE MEASURE: *Does the Sales to Residents of Bordering States Exemption provide a financial benefit to Colorado retailers located near Colorado's border?*

RESULT: When this exemption was first enacted in 1963, only one bordering state, Nebraska, did not impose a retail sales tax. At that time Colorado sales tax would have been an added cost and disincentive for Nebraska residents to make purchases in Colorado. However, in 1967, Nebraska began assessing a retail sales tax and all other adjoining states have continued to assess a retail sales tax, or equivalent taxes, which include a transactional privilege tax in Arizona and gross receipts tax in New Mexico. Therefore, it appears that the exemption is likely not providing a financial benefit to retailers located near the Colorado border.

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

We did not identify any economic costs or benefits of the exemption since Colorado retailers have most likely not been able to apply it for the past 51 years.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

If the exemption were eliminated there would be very little, if any, impact on beneficiaries.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES OR THROUGH OTHER PROGRAMS?

Of the 44 other states that have a sales tax, only 13 states share a border with a state that does not have a sales tax. Therefore, this type of expenditure is not applicable to most states. Although we did not complete an extensive analysis of other states with similar exemptions, we did identify one state that has a similar exemption. Washington, which shares a border with Oregon that does not have a state sales tax, has a provision that is available to residents of *any* State or Canadian province, with a sales tax of less than 3 percent. Washington's Joint Legislative and Audit Review Committee performed an assessment of the provision in 2011 and determined that the exemption was meeting its inferred purpose of encouraging nonresidents from regions with low or no retail sales tax (particularly Oregon) to make retail purchases in Washington. Thus, it appears that this type of exemption is potentially effective, when there are bordering states that do not impose a tax on purchases of tangible personal property.

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

We did not encounter any data constraints that impacted our ability to evaluate the tax expenditure.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly could consider repealing or amending this exemption since its original purpose no longer applies and statute is unclear regarding whether residents of states that impose taxes that are similar to sales taxes may qualify. Specifically, Wyoming, Nebraska, Kansas, Oklahoma and Utah all currently levy a state retail sales tax that is higher than Colorado's 2.9 percent rate. In addition, Arizona levies a transactional privilege tax on retail sales transactions and New Mexico levies a gross receipts tax. Although the taxes in Arizona and New Mexico are not technically "sales taxes" because the seller, instead of the buyer, is responsible for paying the tax, in practice they operate similarly to a sales tax because sellers typically pass these costs on to buyers and in either case, sellers are typically responsible for remitting the tax to the state. The rates of both of these taxes in Arizona and New Mexico's are higher than Colorado's sales tax rate. Therefore, Colorado's sales tax no longer creates a disincentive for any bordering states' residents to make purchases in Colorado. Further, it appears unlikely that any of the states bordering Colorado would choose to abolish their sales tax. Specifically, according to the U.S. Census Bureau's 2014 *State Government Tax Collections Summary*, which is the most recent year available, sales tax collections, on average, comprise approximately a third of all states' revenue, and specifically sales tax revenue for bordering states ranges from $800 million in Wyoming to $3 billion in Kansas. Compensating for this loss in revenue would be difficult for most states. Furthermore, no state has repealed a retail sales tax (or equivalent tax) once it has been imposed. Therefore, the General Assembly may wish to repeal this expenditure.

Alternatively, if the General Assembly does not choose to repeal this expenditure, it may wish to amend statute to clarify which types of taxes in other states would disqualify their residents from the exemption. Specifically, statute [Section 39-26-704(2), C.R.S.] allows residents of states without a "retail sales tax" to qualify and does not indicate whether this term is intended to include similar taxes, such as Arizona's transactional privilege tax or New Mexico's gross receipts tax. Although it does not appear that, in practice, Colorado retailers are applying the exemption, the statutory language could create confusion for retailers if residents of other states attempt to claim the exemption.