



Joint Budget Committee Staff

Memorandum

To: Members of the Joint Budget Committee
From: Mitch Burmeister, JBC Staff (303-866-3147)
Date: Wednesday, March 26, 2025
Subject: [Decarbonization Tax Credits Administration Cash Fund](#)

The Committee previously denied the entirety of the Statewide BA-05 Severance Tax Revenue Balancing request, submitted on March 17, 2025. One piece of that request was to transfer \$2.5 million General Fund to the Decarbonization Tax Credits Administration Cash Fund and make statutory changes that would adjust how that fund interacts with severance taxes. This memo seeks to address the issues with the statutory mechanisms that dictate how severance tax revenue flows into the Decarbonization Tax Credits Administration Cash Fund (Decarb cash fund).

What is the Decarb Cash Fund and How is it Funded?

The Decarbonization Tax Credit Administration Cash Fund was created through H.B. 23-1272 (Tax Policy That Advances Decarbonization). The fund provides funding to the Colorado Energy Office (CEO) and the Department of Revenue (DOR). In CEO, the approximately \$1.0 million appropriation in FY 2024-25 is used to review applications, evaluate initiatives, and audit programs related to the tax credits created in the legislation. Those tax credits are awarded through the following programs:

- Innovative Motor Vehicle program;
- Innovative Trucks program;
- Industrial Clean Energy program;
- Geothermal Energy Expenditure program;
- Geothermal Energy Production program;
- Heat Pump Installation and Development program;
- Electric Bicycles program; and
- Sustainable Aviation Fuels program.

In DOR, the FY 2024-25 appropriation of approximately \$1.5 million is used for GenTax programming to get the tax credits into their database, and for forms updates. In future years this appropriation is much smaller.

The Decarb cash fund is funded through a mechanism that alters the *ad valorem* tax credit structure such that the amount of the *ad valorem* credit that can be claimed in FY 2023-24 through FY 2026-27 is reduced, and the difference (increase) in severance tax revenues as a result of this reduction is disbursed to the Decarb Cash Fund.

What is the Problem?

The problem in the current year is that a singular, large *ad valorem* credit has been redeemed, which has taken the net severance tax revenues down to approximately \$9.0 million according to the OSPB March forecast. This has brought to light a flaw in the construction of this funding mechanism, which is that when taxes are paid, DOR credits the difference described above to the Decarb Cash Fund, however when there is a need to pay a rebate, there is no way to get those same funds out of the Decarb Cash Fund. Essentially, the situation that the fund is currently in is that it has accrued more severance tax dollars in it than the projected net severance tax revenue collection.

Because there is no way to “claw back” the funds from the Decarb Cash Fund, it is not possible to use those funds to pay for any rebates in a given year. As such, General Fund must be used to pay for the *ad valorem* rebates. In the current year, OSPB estimates that the General Fund will need to pay somewhere in the range of \$25.0-\$30.0 million from the General Fund to cover the rebate payments.

What are the Implications?

The implication of this is that absent a statutory change and a transfer to the Decarb Cash Fund, there will be a General Fund obligation to cover the cost of the severance tax rebates. This would be a significant issue in the current year, however the legislation included a stipulation that any amount above \$300,000 in the Decarb Cash Fund on June 30 of every year that this legislation is in effect automatically reverts to the General Fund.

So, the General Fund would need to cover the cost of the *ad valorem* rebates, but would then be “backfilled” by the amount in the Decarb Cash Fund. The difference between the amount that the General Fund covers and the amount of the backfill is \$2.5 million. This is the same \$2.5 million that OSPB asked for in the BA-05 request submitted on March 17.

What is the solution?

To solve this problem, and smooth out the accounting of it, OSPB has proposed a solution that includes making statutory changes to:

1. Require that if net revenue from the tax on severance of oil and gas in a fiscal year is negative, then no cash is accrued in the Decarb Cash Fund; and
2. Require that the total cash accrued in the fund in a fiscal year cannot exceed the net revenue from the oil and gas severance tax collection.

The other thing that OSPB recommends is to transfer \$2.5 million from the General Fund to the Decarb Cash Fund in the current year to allow for the administration of the fund in CEO and DOR.

What happens if no Action is Taken?

If the Committee takes no action, staff believes that this is all essentially a wash, with a \$2.5 million General Fund impact in FY 2024-25.

In fact, staff believes this will be a wash even if it does take action. Essentially, because of the way that the funds are set to move around, the only thing that will actually hit the GF in the current year is \$2.5 million for administration of the fund.

If the Committee transfers \$2.5 million from the General Fund and makes statutory changes, that is the most straightforward path, and will allow the fund to administer the various programs under its purview while also allowing the funds currently in the Decarb Cash Fund to be used to pay for the *ad valorem* refunds.

If the Committee does not transfer the \$2.5 million from the General Fund but does make the statutory change, this seems to staff to be the worst – and most uncertain option, because essentially there would be appropriations of approximately \$2.5 million in CEO and DOR but no money to spend from the Decarb Cash Fund.

If the Committee chooses to do nothing, the Decarb Cash Fund will retain enough funds to fulfill the current year appropriations, the rebates for the *ad valorem* taxes will be paid from the General Fund, and the amount greater than \$300,000 will revert to the General Fund on June 30, 2025. As mentioned, the amount that would revert to the General Fund would be approximately \$2.5 million less than the amount paid out of the General Fund for the *ad valorem* rebate. In this scenario, the General Fund would absorb the same amount that would be transferred under the option where the Committee approves a \$2.5 million transfer.

Staff recommends that the Committee take no action at this time, but to give staff permission to work with OLLS to draft legislation to adjust this funding mechanism to allow a clawback from the Decarb Cash Fund.

