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COLORADO TAX EXPENDITURE MODIFICATIONS, 2023:

SPECIAL INTEREST TAX BENEFITS VS. BROAD-BASED TAX RELIEF

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EXECUTIVE SUMMARY

- By fully implementing the tax reform agenda Jared Polis proposed on the campaign trail and as governor, Colorado could lower its income tax rate to 3.25% without impacting state spending. This amounts to an annual tax savings of over $1,000 per income tax filer.[*]

- To execute Governor Polis's stated tax reform agenda, lawmakers would need to eliminate $1.8 billion in special interest tax giveaways for FY2024-25, using the proceeds and the current $1.79 billion TABOR surplus to lower the income tax rate.[1]

- Unfortunately, Polis has made no progress in advancing either part of his tax reform agenda through the legislature, neither reducing special interest tax benefits nor cutting the income tax rate using TABOR surpluses. On the contrary, his policies have increased special interest tax benefits on net, diminishing the state's ability to cut taxes for all.

- In Taxpayer's Bill of Rights (TABOR) surplus years, increases in tax benefits for special interests reduce the TABOR surplus by the same amount. This in turn reduces TABOR refunds and the state's ability to reduce tax rates for all Coloradans without impacting spending on state programs.

- In 2023 alone, Polis and lawmakers increased special interest tax handouts by about 2.5 times more than they did in the previous four years combined.

- Legislation adopted in 2023 alone expanded special interest tax benefits on net by $1.64 billion over the next decade, reducing total TABOR refunds by an estimated $465.[†]

- All legislation passed since Polis took office has expanded special interest tax benefits on net for the current fiscal year (FY2023-24) by an estimated

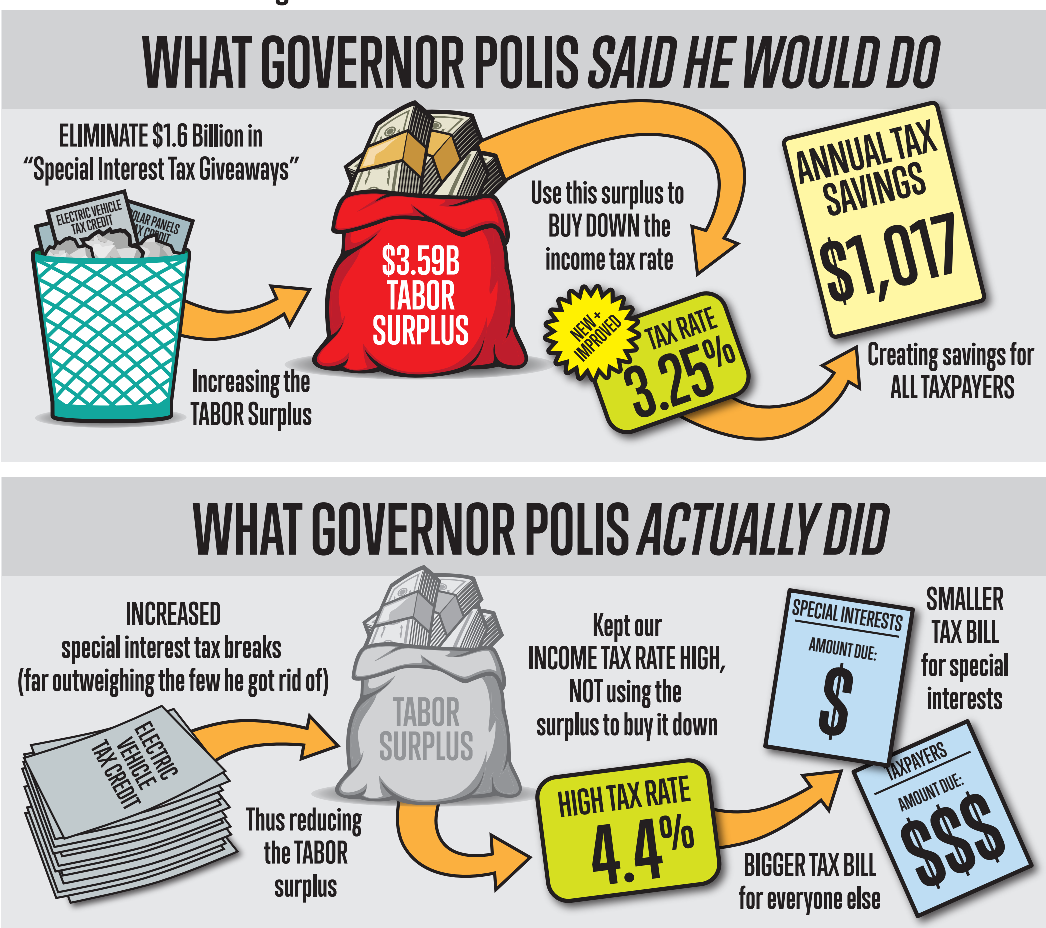
* See "Recommendations for the 2024 Legislative Session."

† See "Tax expenditure modifications, 2023."

$450 million, or $130 per income tax filer.* Legislation adopted in 2023 alone expanded special interest tax benefits on net for FY2023-24 by about $320 million, or about $90 per income tax filer.†

- Legislation adopted in 2023 expanded special interest tax benefits on net for FY2024-25 by about $200 million, or about $56 per income tax filer.
- Despite reductions in TABOR revenue from recent expansions in special interest tax benefits, the current projected FY2024-25 TABOR surplus could buy down the income tax rate from 4.40% to 3.82%—a tax savings of about $510 per filer—without impacting state spending.‡
- Had the legislature not modified any tax expenditures in 2023, the FY2024-25 TABOR surplus could buy down the state income tax rate by an additional 0.06% to 3.76% without impacting state spending—a tax savings of about $565 per filer.§

Figure 1. Governor Polis's record on tax reform



* See "Polis's Record on Special Interest Tax Benefits: 2019-2023."
† See "Tax expenditure modifications, 2023."
‡ See figure 2.
§ See "Taxpayer cost of 2023 tax expenditure modifications in FY2024-25" and figure 17.

INTRODUCTION

Colorado's governor, Jared Polis, has consistently defied his party by advocating for conservative tax and fiscal policies, earning himself the reputation as a limited-government, libertarian Democrat.[2] When John Stossel of Fox News interviewed the governor in the summer of 2023, he teased the interview, saying, "Is there a Democratic governor who actually stands up for economic freedom? Yes!"[3] Other outlets have called him a "libertarian Democrat" and "the most libertarian Democrat in America."[4] The right-leaning organization, American Legislative Exchange Council (ALEC), named him the fourth best governor in the nation in 2021, in part for his positions on tax policy. The report explains, "Polis exemplifies the importance of placing pro-growth income tax policy over partisanship."[5] Most notably, he has gained national recognition as a libertarian Democrat who supports eliminating Colorado's state income tax. He has maintained, however, that the state should accomplish this without cutting state spending. Eliminating tax loopholes—the focus of this report—is a key component of his explicated strategy for achieving this.

"Governor Polis champions increasing state revenue by eliminating provisions of the tax code that benefit special interests [and] use[ing] the revenue to provide tax relief for all Colorado taxpayers."

Governor Polis champions increasing state revenue by eliminating provisions of the tax code that benefit special interests—what state budgeters call "tax expenditures." Rather than use the new money to grow government or redistribute surplus revenue through tax handouts and Taxpayer's Bill of Rights (TABOR) refunds, however, the governor argues the state should use the revenue to provide tax relief for all Colorado taxpayers. In other words, instead of carving out tax benefits for special interests, the state should eliminate such carveouts and maintain a broad-based tax code. Then, it should use the increased revenue from the broader tax base to lower tax rates for all Coloradans. As far back as 2018, Polis campaigned on this tax reform approach. During an October 2018 9News gubernatorial candidates debate, Polis explained:

> "At the state level, we've looked at going after special interest tax giveaways—about $1.6 billion a year—reining them in and using the proceeds to reduce people's income tax by 3 to 5 percent, so families aren't paying 4.63 percent. We'd love to get that to 4.3 or 4.2…I'd rather that we have a broader tax base and bring down tax rates for Colorado residents."[6]

Republicans, libertarians, and right-leaning non-governmental political organizations often advocate for this idea of broadening the tax base by cutting special interest tax benefits and using the revenue from those reforms to lower tax rates for everyone.[7] Indeed, the landing page for ALEC's "Tax Reform" issues page argues, "Low, competitive tax rates on a broad tax base offer a level playing field to all."[8] Prior to 2022, however, no report had ever evaluated Polis's record on broadening the tax base by eliminating special interest tax benefits.

In September 2022, Independence Institute published a report, *Tax Expenditure Modifications, 2019-2022: Governor Polis's Record on Special Interest Tax Benefits*, which assessed the progress the governor made during his first term in accomplishing the first part of his tax reform platform—reducing special interest tax benefits. It concluded, "[B]ills signed into law by Polis caused a net increase rather than decrease in the amount of money the state will spend on special interest tax benefits."[9] Nonetheless, the governor erroneously maintains that his policies have advanced his campaign pledge to reduce special interest tax benefits in order to cut the income tax rate for all Coloradans. In his January 2023 State of the State address, he said:

> "It's no secret that I, and most economists, despise the income tax. I was proud to have supported two successful income tax cuts at the ballot, and since I took office our income tax rate has gone from 4.63% to 4.44% [sic]… We have worked together to close special interest tax loopholes to pay for the income tax cut and provided even greater tax relief to Colorado families, seniors, and small businesses."[10]

Governor Polis claimed to have advanced his campaign pledge on tax reform but the facts and data do not bear that out. In fact, Colorado voters through the citizen initiative process lowered the income tax rate twice between 2020 and 2022 despite the expansion in special interest tax giveaways over the same period. Independence Institute's 2022 report found that while the bills Polis signed into law during his first term reduced some tax expenditures, they expanded them on net. The changes he, together with a Democrat-majority legislature, made to the tax code over the prior four years reduced rather than increased the state's ability to provide broad-based tax relief to all Coloradans.

> "Governor Polis claimed to have advanced his campaign pledge on tax reform but the facts and data do not bear that out."

This report follows up on the 2022 report by evaluating new tax expenditure changes from the 2023 regular and extraordinary legislative sessions. To assess the extent to which Polis accomplished this part of his agenda on tax reform—reducing special interest tax benefits—Independence Institute's fiscal policy center conducted research in three parts for this report:

1. The center identified all bills passed in 2023 that repealed existing tax expenditures, reduced existing tax expenditures, extended or expanded existing tax expenditures, or created new tax expenditures.

2. Using fiscal note estimates for each bill, the center compiled the revenue impacts of each tax expenditure provision within those bills.

3. The center calculated the changes in state revenue resulting from tax expenditure modifications in every bill to determine whether they caused a net increase or decrease in special interest tax handouts.

In its evaluation, the report uses the 3-year revenue forecasts provided by Legislative Council Staff (LCS) to show the short-term increase or decrease in tax expenditures. It then extrapolates those forecasts to produce 10-year revenue projections for each tax expenditure policy change. The report then calculates the cumulative net result of the bills—whether they increased or decreased special interest tax benefits on net.[*]

Increases in tax expenditures narrow the tax base, leaving less revenue from which to reduce income tax rates for all Coloradans. Likewise, decreasing or eliminating tax expenditures broadens the tax base, increasing the revenue available to lower the income tax rate in a revenue-neutral manner. Because LCS expects the state to continue experiencing TABOR surpluses through the forecast period, every change in state revenue due to a tax expenditure modification is presumed to impact the TABOR surplus. Every dollar of revenue reduction for special interests is a dollar that will not be refunded to all taxpayers and cannot be used to lower the income tax rate for all taxpayers. Likewise, every dollar decrease in tax expenditures is one more dollar that will be returned to all taxpayers or that can be used to lower the income tax rate to the benefit of all taxpayers. This report, therefore, considers tax expenditure increases to come at a cost to all taxpayers, and it reports that cost. In addition, every reduction in tax expenditures increases the state surplus and thus increases the state's ability to buy down the income tax rate in a revenue-neutral manner without impacting the state budget or spending. This report calculates the income tax rate reduction that would have been possible in lieu of each tax expenditure increase and that is made possible by each tax expenditure reduction.[†]

"Increases in tax expenditures narrow the tax base, leaving less revenue from which to reduce income tax rates for all Coloradans. Likewise, decreasing or eliminating tax expenditures broadens the tax base, increasing the revenue available to lower the income tax rate in a revenue-neutral manner."

In effect, this report evaluates Governor Polis's progress in advancing his stated tax reform goals. By calculating the revenue impact of each tax expenditure modification, it determines whether legislation broadened the tax base by eliminating tax loopholes or narrowed the tax base by handing out more special interest tax benefits. Calculating the equivalent state income tax rate change using revenue from tax expenditure modifications displays whether Polis and the legislature's tax expenditure policies

* See *Appendix A* for methodology.

† See especially tables 2 and 3 under *Appendix B* and the sections "Broad-based Tax Relief" and "Recommendations for Tax Reform."

increased or diminished the state's ability to provide broad-based tax relief to all Colorado taxpayers.

This report does not attempt to evaluate the merits of creating, expanding, reducing, or eliminating specific tax expenditures. It aims simply to identify and provide quantitative and qualitative analysis of tax expenditure modifications and explore how those changes impact TABOR revenues and the state's ability to provide broad-based tax relief.

OVERVIEW

This report consists primarily of four parts:

1. Background

   a. Summary of the scope of legislation surveyed
   b. Relationship between tax expenditures and TABOR
   c. Tax expenditure modifications and broad-based tax relief

2. Tax expenditure modifications, 2023

   a. High-level findings and figures on tax expenditures and the bills that promulgated tax expenditure increases and decreases in 2023
   c. Details regarding specific tax expenditure modifications

3. Options for broad-based tax relief

   a. Review of the cumulative impact of all 2023 tax expenditure modifications on state revenue and the state's capacity to provide broad-based tax relief to all Coloradans via income tax rate reductions using TABOR surpluses
   b. Brief assessment of Governor Polis's record on advancing broad-based tax relief throughout his tenure in office

4. Recommendations for tax reform

Appendices containing pertinent data and information used in assembling the central findings are included at the end of the report. *Appendix A* justifies the report's findings by explaining its methodologies and assumptions. *Appendix B* includes three data tables presenting quantitative impacts of all 2023 tax expenditure modifications and options for broad-based tax reductions. *Appendix C* includes two qualitative tables to provide information on the same tax expenditure modifications and bills found in tables 1 through 3 and in the section of this report entitled "Tax expenditure modifications, 2023." The tables include an "Additional Notes" column used, in part, to show how this report interprets the effects of a bill. These tables also reference the relevant section of the tax code associated with each modified tax expenditure. Finally, *Appendix D* lists additional resources on tax expenditures and other topics discussed in this report.

BACKGROUND

WHAT ARE TAX EXPENDITURES?

The terms "tax loopholes" or "tax benefits"—and other similar terms—commonly refer to what state budgeters and the Colorado Department of Revenue call "tax expenditures." These include tax deductions, tax exemptions, tax credits, and other special tax benefits.[11] Tax deductions allow taxpayers to deduct certain income or expenses from their total taxed income (i.e. "taxable income"). Tax exemptions exempt certain income, expenses, or activities from taxation. Tax credits directly reduce a taxpayer's tax liability. These and other types of tax expenditures result in qualifying taxpayers having a lower effective tax burden than they would otherwise have.

By creating benefits for certain taxpayers, tax expenditures reduce tax receipts to the state as the state collects less revenue through taxation. The Colorado tax code defines a tax expenditure as "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."[12] Put differently, a tax expenditure creates negative revenue for the state just as a tax generates positive revenue. It reduces revenue by reducing taxes owed. When lawmakers eliminate a tax expenditure from the tax code, state revenues generally increase.[*] Economists commonly refer to this type of policy change as "broadening the tax base," because the amount of money subject to taxation in the economy—or the "tax base"—increases.

Unlike other tax expenditures that simply reduce taxes owed, refundable tax credits can result in a negative tax liability for a taxpayer. As a result, someone who pays no state income tax may receive a payment from the state when they file their taxes. As a practical matter for the taxpayer, this is no different than a direct subsidy from the state. From the state's perspective, however, a tax policy resulting in such a scenario counts neither as a budget item in the annual Long Bill nor as state spending under TABOR in the state constitution. As with all tax expenditures, the state accounts for such credits

* In some cases, the state legislature may eliminate a tax expenditure that reduces local revenue, for example.

as reductions in state revenue. This distinction between state expenditures via the Long Bill—the Colorado General Assembly annual budget bill—and state expenditures via the tax code becomes most significant in years when the state experiences a TABOR surplus.

TAX EXPENDITURES REDUCE TABOR REVENUE

The whole of Colorado's tax code determines the state's total revenue from tax receipts. The Taxpayer's Bill of Rights sets a limit on the growth of certain spending—known as "fiscal year spending"—to population growth plus inflation, adjusted for voter-approved revenue changes. When the tax code generates more revenue from taxpayers than the state may keep and spend, TABOR requires the state to refund the excess to taxpayers. The state may keep and spend the excess only with voter approval. The constitutional amendment reads, "If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset."[13]

"During years in which the state experiences a TABOR surplus, tax expenditures reduce TABOR refunds by the amount of lost revenue resulting from the tax expenditure."

When the state reduces state revenues by creating or expanding tax expenditures, the loss of revenue typically reduces the amount of state revenue subject to the TABOR limit.* During years in which the state experiences a TABOR surplus, tax expenditures reduce TABOR refunds by the amount of lost revenue resulting from the tax expenditure. If revenues were projected to exceed the TABOR limit by $500 million in a particular year, for example, taxpayers could expect the state to return that amount to them via TABOR refunds. If the state created a tax credit that reduced state revenues by $100 million in the same year, however, TABOR refunds would only equal $400 million. For this reason, lawmakers often prefer to create, expand, or extend tax expenditures when the state anticipates TABOR surpluses. This allows them in effect to "spend" additional money on politically-favored special interests via the tax code after the state has already reached its spending limit under TABOR. A December 2023 opinion editorial co-authored by Jared Polis and economist Art Laffer explained:

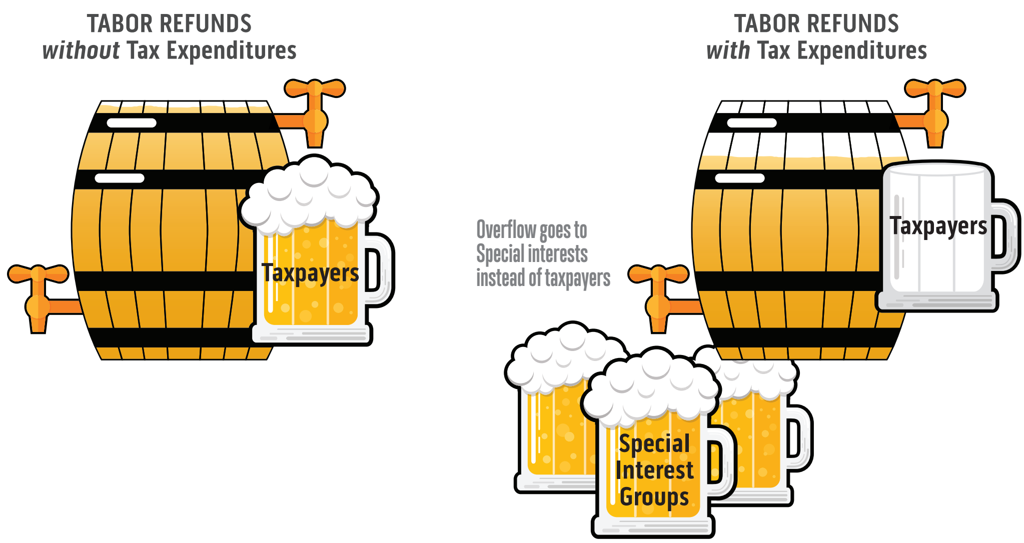
> "Knowing that TABOR focuses on tax collections, not on tax rates, legislators of both parties are enticed to increase their use of tax expenditures, such as increased deductions, tax credits, tax exemptions, and tax deferrals. There are more than 100 tax credits on the books in Colorado. Good, bad, or indifferent, they are revenue expenditures that are the economic equivalents of government outlays."[14]

For illustration, imagine a barrel of beer where the beer represents TABOR revenue, and the size or volume of the barrel represents how much revenue the state may keep and spend. As Coloradans pay taxes and tax receipts come into the state, the barrel fills. If the beer begins to overfill the barrel, the excess flows back to taxpayers. Imagine now that lawmakers put a tap at the bottom of the barrel. They allow certain special interests

* This is not true in cases where a tax expenditure reduces revenue that is not subject to the state TABOR limit, such as a tax expenditure that reduces local revenue.

to hold their cups under the tap as lawmakers open the spigot, causing some of the beer to flow into the cups of selected special interest groups. The state does not retain any more revenue whether the beer flows from the top of the barrel or is released out of the tap at the bottom, however, it does affect who benefits.

Figure 2. Effect of tax expenditures on TABOR refunds



Any year in which the tax code results in an over-collection of taxes, the state legislature must determine how to refund the excess to taxpayers. Notably, TABOR gives the legislature—or citizens via a ballot initiative—broad discretion to determine the mechanism or mechanisms for refunding the money. If lawmakers do nothing, the excess beer will flow out of the top of the barrel and be returned to all taxpayers in a manner dictated by statute. Because a TABOR refund means the state over-collected taxes, refunds ought to be issued in a manner that returns money back to taxpayers in proportion to each's personal share of the over-collection. No mechanism does this perfectly, but some come closer than others.

> "Because a TABOR refund means the state over-collected taxes, refunds ought to be issued in a manner that returns money back to taxpayers in proportion to each's personal share of the over-collection."

Coloradans have received a TABOR refund in four of the last five fiscal years. The latest state revenue forecasts predict TABOR refunds for at least the next three fiscal years based on current law, including FY2023-24.[15] For FY2021-22 and FY2022-23 (refunded in FY2022-23 and FY2023-24, respectively), the legislature dictated TABOR surpluses would be returned in equal nominal dollar amounts to every filer. For FY2022-23, state economists project each filer will receive the same $800 refund when they file their 2023 taxes.[16] This means a taxpayer who contributed $2,000 to the state surplus will see only 40% of their overpayment returned while a Coloradan who paid no income taxes will receive a cash payment of $800 as a "refund." For this reason, such a refund mechanism creates gross inequities, though it ensures every taxpayer sees some benefit from TABOR refunds.

Prior to 2022, the statutory refund mechanisms caused the surplus to be returned more closely in proportion with the amount by which each filer personally overpaid.[17]

While the legislature has used many different refund mechanisms, TABOR refunds have generally benefited all taxpayers.[18] In contrast, creating or expanding tax expenditures, as a rule, benefits only a select few Coloradans. In surplus years, the creation or expansion of tax expenditures also reduces the amount refunded to taxpayers through the promulgated statutory mechanism. In effect, tax expenditures reduce TABOR refunds for all Coloradans and instead send that money to the politically favored interest groups selected for special treatment by politicians.

> "[T]ax expenditures reduce TABOR refunds for all Coloradans and instead send that money to the politically favored interest groups selected for special treatment by politicians."

TAX EXPENDITURES VS. BROAD-BASED TAX RELIEF

Governor Polis observed during an October 2023 9News debate over Proposition HH that a "TABOR [refund] is an indicator that our tax rate is too high."[19] This is a useful way to understand the relationship between tax policy and TABOR. The Taxpayer's Bill of Rights limits state spending, but it does not limit state tax receipts. In years when the tax code is projected to cause tax receipts to exceed the TABOR spending limit, the state has two options: it can allow the overcollection to take place and refund the excess to taxpayers, or it can change the tax code to prevent over-collection. The previous subsection of this background entitled "Tax expenditures reduce TABOR revenue" explains how TABOR refunds function and how lawmakers can reduce the state's refund obligation by creating or increasing tax expenditures. This subsection explores how the state can provide broad-based tax relief for all taxpayers by eliminating special interest tax giveaways and preventing the overcollection of taxes by reducing tax rates, as Polis suggests.

Governor Polis articulates his tax reform agenda

During the October 9News debate, Polis went on to describe the option he believes the state should choose for handling TABOR surpluses. He said, "Rather than keep redistributing more and more money, let's just cut taxes."[20] He specifically named property taxes and income taxes. Because the state does not collect property taxes, reducing property tax rates would have no impact on state revenue and would do nothing to prevent over-collection. Reducing the income tax rate, however, does reduce state revenue. The position Polis repeated during the Proposition HH debate aligns with the views he consistently articulated on this issue while campaigning for office and has continued to espouse throughout his tenure as governor.[21] On the campaign trail in 2018 and 2019, Polis proposed and campaigned on tax reform that would do two things:

1. Reduce special interest tax benefits, especially those that benefit corporate interests.

2. Use the resultant revenue to lower taxes for all Coloradans, specifically income tax rates, making the reform revenue-neutral on net.

In TABOR surplus years, reducing tax expenditures increases the revenue surplus and thus the amount of money required to be refunded to taxpayers. To prevent this, Polis supports following tax expenditure reductions with income tax rate cuts resulting in revenue-neutral tax reform. He made his position clear in a 2018 gubernatorial debate when he said, "I'd rather that we have a broader tax base and bring down rates for Colorado residents."[22] He added, "This would be revenue neutral. We're not talking about increasing or decreasing the size of government. We're talking about how we pay for government."[23] In a December 2019 opinion editorial for the Colorado Sun after taking office, Polis reminded Coloradans of his campaign platform for tax reform: "Last year I called for a revenue neutral tax reform proposal that would have eliminated deductions and loopholes that benefit special interests in order to cut taxes for all."[24] Eliminating tax expenditures broadens the tax base and increases tax receipts. If such reforms are followed by income tax rate reductions, the state can provide broad-based tax relief to all taxpayers without impacting the state budget or state spending.

Polis's message has remained clear and consistent: eliminate tax "giveaways" that benefit special interests and lower income tax rates equally for everyone. In his 2020 State of the State address, Polis said, "I am enthusiastic about working to deliver permanent income tax relief, and we should continue down the path of eliminating tax breaks for special interests so that we can lower rates for everyone without reducing state revenue."[25] Paradoxically, Polis has recently called for increasing tax benefits for certain special interests, though he has never done so with the express purpose of reducing the TABOR surplus.[26] On the contrary, he has consistently called for increasing the TABOR surplus by eliminating tax expenditures to create opportunities for broad-based tax relief through income tax rate reductions.

"Like Independence Institute, Polis argued that Colorado should use the state TABOR surplus to buy down the income tax rate."

He went a step further in his 2023 State of the State Address. After praising recent income tax rate reductions put on the ballot by Independence Institute president Jon Caldara, Polis said, "With healthy budget surpluses from our strong economy, we should further reduce the income-tax rate for everybody."[27] This statement echoed the Path to Zero income tax plan launched by Independence Institute after the first successful citizen-led income tax rate reduction in November 2020.[28] Like Independence Institute, Polis argued that Colorado should use the state TABOR surplus to buy down the income tax rate. He explained that rather than over-collect taxes and redistribute the excess via TABOR refunds or special interest tax benefits, the state should reduce the income tax rate by the same amount for all taxpayers.[29] He has said he ultimately hopes to eliminate Colorado's income tax entirely in a way that does not reduce state spending, including by eliminating tax expenditures.[30] This report includes calculations to show the broader-based income tax rate reductions that either are possible because of tax expenditure reductions or that would have been possible in lieu of tax expenditure increases. It also reports the amount by which the current TABOR surplus could buy down the income tax rate.[*]

* See tables 2 and 3 under *Appendix B* and the sections "Broad-based tax relief" and "Recommendations for tax reform." See *Appendix A.4* for methodology on calculation.

TABOR surpluses can buy down Colorado's income tax rate

Based on the most recent state economic forecast by LCS, state revenues will exceed the TABOR cap at least through FY2025-26. If these projections prove accurate, the state will have six consecutive years in which it over-collected taxes. Recent changes to the tax code, however, have impacted the amount the state is expected to over-collect. Before the most recent citizen-initiated income tax cut in 2022, LCS expected the state to generate $2.28 billion more in tax revenue than it can constitutionally keep and spend for FY2023-24.[31] When voters lowered the rate from 4.55% to 4.40%, LCS revised its forecast to reflect an expected over-collection of $1.53 billion.[32] An improved economic outlook and other factors increased the forecast to just over $2 billion in TABOR surpluses for the next two forecasts.[33] After the state expanded tax expenditures during the 2023 regular legislative session, LCS once again revised the projected TABOR surplus down to $1.7 billion in the September 2023 forecast.[34] Finally, the December forecast revised surplus expectations up to $1.78 billion for FY2023-24 and $1.79 for FY2024-25.[35] Based on this forecast, the state could further reduce the income tax rate from 4.40% to a new rate of 3.82% right now without impacting the amount of revenue available for the state to keep and spend, at least through the forecast period.[*] All the money from the rate reduction would simply reduce the state's over-collection of taxes by reducing the amount of taxes withheld from all income taxpayers.

> "[T]he state could further reduce the income tax rate from 4.40% to a new rate of 3.82% right now without impacting the amount of revenue available for the state to keep and spend."

In his January 2023 State of the State Address, Polis said he worked with the legislature "to close special interest tax loopholes to pay for the income tax cut and provided even greater tax relief to Colorado families, seniors, and small businesses."[36] This is unequivocally false. The bills he signed during his first term as governor had a net effect of expanding special interest tax benefits by $130.1 million for the current fiscal year and $640 million over 10 years.[37] Without this expansion in tax expenditures, the state could reduce the income tax rate by an additional 0.04%, providing broad-based tax relief for all taxpayers. This report investigates the cost of additional tax expenditure changes promulgated in 2023 and over Polis's tenure as governor.

WHAT IS REVENUE NEUTRAL TAX REFORM?

Revenue-neutral tax reform happens when a set of changes to the tax code results in neither a revenue increase nor a revenue decrease. When lawmakers eliminate tax expenditures, the tax liabilities of those who enjoyed those tax benefits increase, thus increasing state tax receipts and revenue. To make those reforms revenue-neutral to the state, lawmakers would need to use all the new revenue from eliminating tax benefits to decrease the tax burden elsewhere. To accomplish this, the governor has said that after eliminating tax loopholes, he would use the new revenue to "bring down tax rates for Colorado residents" or "cut taxes for all," thus making the reforms revenue-neutral on net.[38] During the 2018 9News gubernatorial debate, he specifically suggested cutting income taxes.[39] Revenue neutral tax reform requires no cuts to the state budget or to state spending.

* See *Appendix A.4* for methodology used for this and similar calculations.

TAX EXPENDITURE MODIFICATIONS, 2023

In 2023, Governor Polis signed 13 bills into law that repealed, amended, or created 23 different tax expenditures.* Of the bills, 12 are expected to increase special interest tax benefits on a net revenue basis; one is approximately revenue neutral. Cumulatively, the bills are expected to increase special interest tax benefits by $1.81 billion, or about $514 per tax filer, and reduce them by $170.1 million over a 10-year forecast period. On net, the legislature increased special interest tax benefits by a projected $1.64 billion over the period, or about $465.35 per tax filer.†

For FY2023-24 alone, the bills are expected to increase tax expenditures by an estimated $336.33 million and decrease them by $18.65 million for a net increase of $317.68 million, or about $90 per filer.

For the upcoming FY2024-25, these same bills are expected to increase tax expenditures by $235.97 million and decrease them by $39.4 million for a net increase of $196.57 million, or about $56 per filer. The governor did not veto any tax expenditure bills in 2023.

Figure 4 shows the revenue impact in each of the first three fiscal years. To determine the 10-year impact of tax expenditure changes, this report projects LCS fiscal note revenue estimates forward when necessary, as their fiscal notes generally only provide exact estimates for the first three years after a bill goes into effect.‡ In figure 5, "Out-Years" shows the cumulative impact from FY2026-27 through the end of the 10-year forecast window. The first two sections in *Appendix A* describe in greater detail how the report arrives at cumulative and 10-year impacts of the bills enacted in 2023 and how it handles impacts for bills with a sunset clause versus those without.

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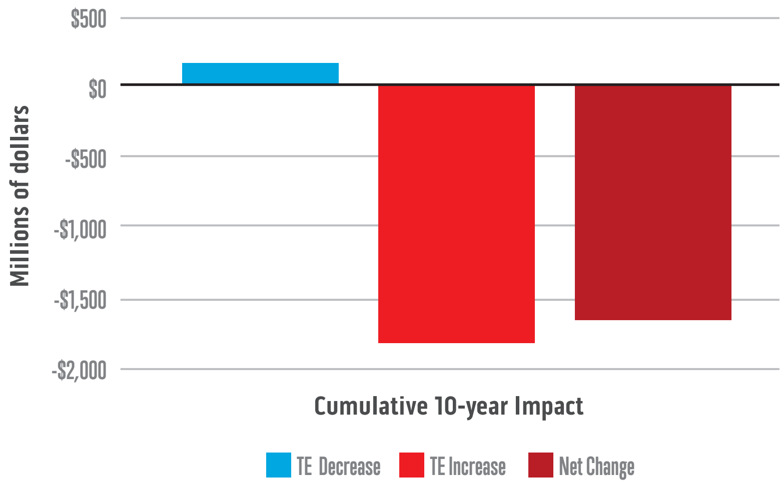
* See tables 1 through 5 under *Appendix B* and *Appendix C* for the full list of bills and tax expenditure modifications with summaries of quantitative and qualitative findings from this section of the report associated with each bill. Table 5 includes hyperlinks to each bill with access to the bill text and fiscal note on the General Assembly's website.

† See *Appendix A* for methodology used for calculating the figures here and similar figures throughout the report. See tables 1 through 3 in *Appendix B* for all bills and data referenced within this section.

‡ See *Appendix A.2*.

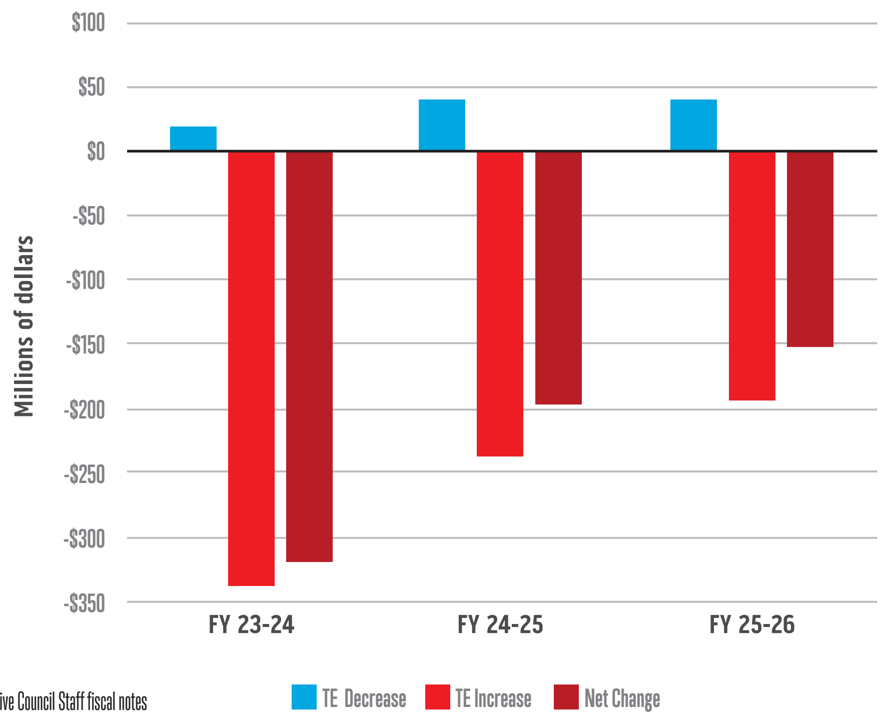
Over the LCS forecast period from FY2023-24 to FY2025-26, the cumulative effect of legislation enacted and signed into law by Polis in 2023 is to increase tax benefits on net by an estimated $666.3 million. That includes $764.9 million in tax expenditure increases and $98.6 million in tax expenditure reductions."

Figure 3. Cumulative 10-year revenue impact of all 2023 tax expenditure bills enacted 2023



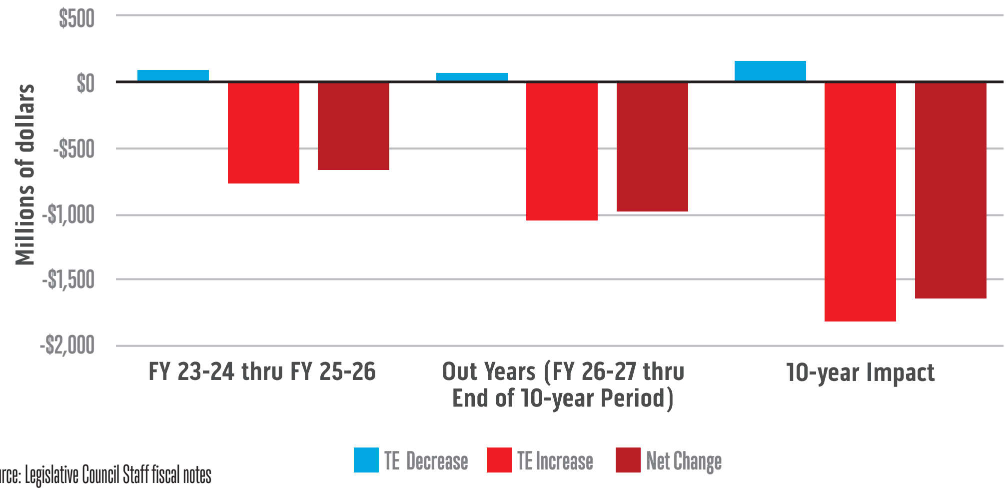
Source: Legislative Council Staff fiscal notes

Figure 4. Revenue impact within LCS forecast period for all 2023 tax expenditure bills



Source: Legislative Council Staff fiscal notes

Figure 5. Revenue impact by timeframe for all 2023 tax expenditure bills



Source: Legislative Council Staff fiscal notes

Figure 5 shows the net effect of all tax expenditure changes promulgated in 2023 broken out by revenue impacts over three periods. The first period represents the cumulative projected revenue impact over the 3-year forecast period provided by LCS. The second period shows the "out years," or the rest of the 10-year revenue impact beyond the LCS forecast. The first two sets of columns together equal the 10-year impact shown in the third set of columns.*

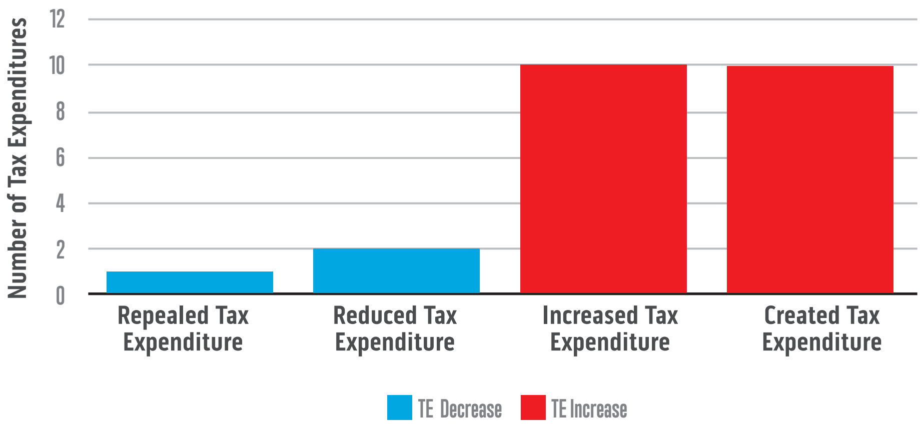
This report investigates tax expenditure changes by analyzing each bill that modified tax expenditures and each tax expenditure modified. For reference, table 1 in *Appendix B* lists each tax expenditure provision repealed, amended, or created in 2023 and the corresponding bills with quantitative impacts. Table 4 and table 5 list each tax expenditure again, but with qualitative impacts.

Through legislation, Colorado lawmakers repealed, amended, or created 23 different tax expenditures. They repealed one, reduced the benefits for two, created 10, and increased or extended the benefits for another 10. One expenditure, the state Earned Income Tax Credit (EITC), was expanded twice. All but one of the tax expenditures increased in 2023 sunsets within 10 years. Only the expansion in the state Child Tax Credit (CTC) will have ongoing annual impacts without a defined sunset date.

Figure 6 shows the total number of tax expenditure modifications enacted in 2023 by type. Simply showing the number of tax expenditures that were modified, however, lacks precision and obscures the true impact of the changes. While one in six tax expenditure bills last year included some reduction or elimination of tax benefits, all decreases were offset by equal or greater increases in other tax benefits in the same bills. Of the three tax expenditures repealed or reduced, none will meaningfully increase state revenue. This report, therefore, focuses primarily on the revenue impacts of the tax expenditure changes rather than the number of changes. This approach provides a more useful measure of Polis and the legislature's record on special interest tax benefits.

* Figures showing the revenue impact of tax expenditure modifications represent tax expenditure reductions as having a positive revenue effect, and vice versa.

Figure 6. Number of tax expenditures by nature of change for all tax expenditure bills enacted 2023



Source: Legislative Council Staff fiscal notes

Based on revenue impacts, increases in decarbonization incentives and expansions to the state CTC and EITC make up most tax expenditure increases from 2023 legislation. For FY2023-24 only, the CTC and EITC expansions make up most of the forecasted revenue loss.

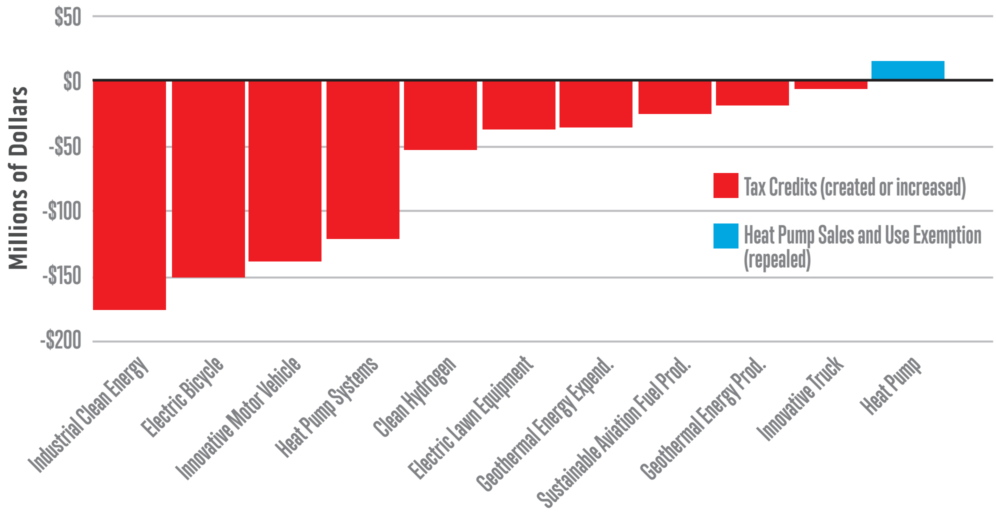
1. Of the FY2023-24 revenue impact from 2023 tax expenditure modifications, decarbonization incentives account for nearly 20% of the anticipated net revenue loss and expansions to the CTC and EITC account for just over 80%.
    a. All other tax expenditures modifications netted out to a projected $9.3 million revenue increase for FY2023-24.
2. Of the FY2024-25 revenue impact from 2023 tax expenditure modifications, decarbonization incentives and expansions to the CTC and EITC each account for nearly 50% of the expected net revenue loss.
    a. All other tax expenditures modifications netted out to an expected $5.6 million revenue loss for FY2023-24.
3. Of the total projected 10-year net revenue loss from 2023 tax expenditure modifications, 45.5% is attributable to expansions in decarbonization tax incentives and 45.4% is attributable to expansions in the CTC and EITC.
    a. Less than 10% is attributable to all other tax expenditure modifications.*

DECARBONIZATION TAX INCENTIVES

Lawmakers enacted three separate bills in 2023 intended to advance decarbonization: SB23-016, HB23-1272, and HB23-1281. On net, these three bills will increase tax expenditures by an estimated $652.95 million over 10 years. Only two provisions in any of these bills increase state revenue. The first was part of a restructuring of energy

* See figure 11 for comparison of 10-year revenue impacts between these three categories.

Figure 7. Net 10-Year revenue impact of each 2023 decarbonization tax expenditure modification



Source: Legislative Council Staff fiscal notes

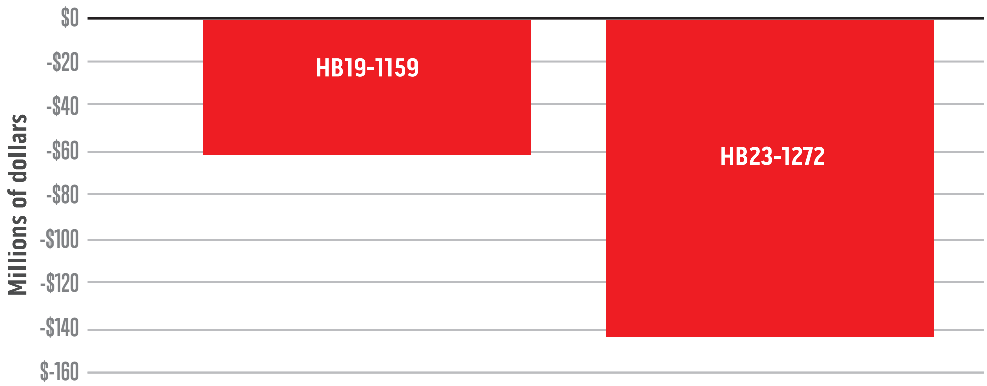
efficient heat pump credits, which resulted in a large overall increase in tax incentives for such pumps. The second was a reduction in an unrelated credit, discussed in further detail in the next section, "Oil & gas ad valorem tax credit," or "AV" credit. The three bills are expected to increase decarbonization incentives—not including changes to the AV credit—by $738.95 million through 2032, an impact nearly six times that of all decarbonization-related tax expenditure bills enacted over the preceding 4-year period.[40] Cumulatively, this amounts to $210.13 per income tax filer.

House Bill 23-1272 created or modified nine decarbonization-related tax expenditures and contained the largest cumulative increase and decrease in tax expenditures of any single bill passed into law in 2023. It created five new tax expenditures, extended or expanded the benefits for three, and eliminated one. Over 10 years, the bill is expected to increase decarbonization incentives by $666.1 million and decrease them by $15.9 million. On net, it is expected to increase decarbonization tax incentives by $650.2 million. Including the offset from the reduction in the Oil & Gas AV Credit, HB23-1272 will still increase tax expenditures by a net total of $564.2 million over 10 years, constituting the largest increase in special interest tax handouts of any bill promulgated last year.[41] For more information on the cost of decarbonizing Colorado, see Independence Institute's May 2023 report, *Colorado's Energy Future: The High Cost of 100% Renewable Electricity by 2040.*

Extension of electric vehicle credits costs $143.3 million

House Bill 23-1272 extended and expanded two credits related to the purchase of electric vehicles: the Innovative Motor Vehicle Tax Credit and the Innovative Truck Tax Credit. These credits were originally created in 1992 and were significantly modified in 2014, 2016, and 2019.[42] Cumulatively, the increases to both credits in 2023 are expected to reduce state revenue by $143.3 million over 10 years, or by about $40 per filer. Because these credits are refundable, a taxpayer with zero income tax liability will receive money

Figure 8. Cumulative net revenue impact of all changes to innovative vehicle credits, 2019-2022 vs. 2023



Source: Legislative Council Staff fiscal notes

from the state upon tax filing if they qualify and claim either credit. The state counts this as a revenue reduction rather than a state expenditure.[43]

The bill extended the credit for electric passenger vehicles from 2025 to 2028 and increased the size of the base credit beginning July 2023. It also disqualified vehicles costing over $80,000 MSRP from eligibility and increased the credit for vehicles under $35,000 MSRP. The changes to the Innovative Motor Vehicle Tax Credit are projected to increase tax expenditures by a total of $138 million, assuming lawmakers do not extend the credit again before it sunsets.

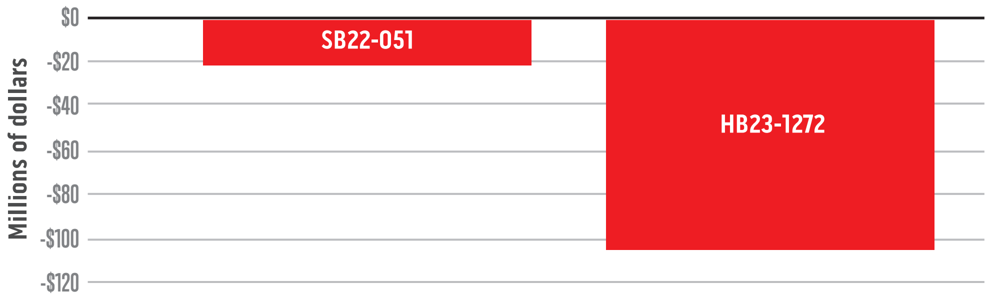
House Bill 23-1272 also extended the electric truck credit from 2025 to 2028 for light-duty electric trucks and to 2032 for medium and heavy-duty trucks. The credit for trucks that run on natural gas, hydrogen, and other fuels will continue to be phased out. The expansion to the Innovative Truck Tax Credit increases tax expenditures by a total of $5.3 million over 10 years.

Additionally, the bill reduced specific ownership taxes for electric fleet trucks by decreasing their taxable value for tax years 2024 through 2032.[44] This report does not include the revenue impacts from this tax expenditure because the modification only reduces local revenue.[45]

In 2019, the legislature extended the credits for electric cars and trucks from 2022 to 2025 with HB19-1159, reducing state revenue by an estimated $61.1 million.[46] Figure 8 compares the cumulative revenue impact of the extension of both motor vehicle credits in 2019 versus the expansions in 2023.

The Innovative Motor Vehicle Credits are expected to reduce the FY2023-24 TABOR surplus by $53.6 million—a $15 million impact from the extension in HB19-1159 and a $38.6 million impact from HB23-1272. This is the equivalent state revenue impact of reducing the income tax rate from 4.40% to a new rate of 4.38%, or $15.24 per tax filer this year. From FY2024-25 onward, the credits impact revenue at a decreasing rate. For more information on this topic, see Independence Institute's September 2023 report, *Colorado's Energy Future: The High Cost of 100 Percent Electric Vehicles*.[47]

Figure 9. Cumulative net 10-year revenue impact of all heat pump credit expansions, 2019-2022 vs. 2023



Source: Legislative Council Staff fiscal notes

Lawmakers expanded energy efficient heat pump incentives by $104.6 million

After tax year 2023, HB23-1272 terminates the Heat Pump Income Tax Credit and the Heat Pump Sales and Use Tax Exemption created in SB22-051 and replaces them with a new, larger credit. This report considers these changes as an expansion of the Heat Pump Income Tax Credit and a repeal of the sales and use exemption. The new legislation restructured the income tax credit such that taxpayers qualify for a fixed dollar amount credit against their tax liability for purchasing a heat pump water heater, an air-source heat pump, or another source heat pump. It also extends the credit from 2025 through 2032.[48] Cumulatively, the expansion is expected to decrease revenue by $120.5 million.[*] Over the same period, the repeal of the sales tax exemption is expected to increase revenue by $15.9 million. On net, the modifications to the heat pump tax expenditures enacted in 2023 will decrease revenue by an estimated $104.6 million.[49] Figure 9 compares the cumulative expected 10-year state revenue impact of changes to heat pump tax expenditures in 2022 with those in 2023.

Cumulatively, the heat pump tax expenditures will reduce the TABOR surplus by a projected $3 million in FY2023-24, $7.5 million in FY2024-25, and increasing amounts in future years.[50] At first, this amounts to a dollar or two per tax filer per year. From FY2026-27 through sunset, however, the Heat Pump Income Tax Credit will reduce the surplus by $16.3 million annually on average. This equates to $4.64 per filer per year on average. For more information on this topic, see Independence Institute's August 2023 report, *Colorado's Energy Future: The High Cost of 100 Percent Electric Home Heating*.[51]

Four new renewable energy incentives cost $252.5 million

Four credits created in HB23-1272 relate directly to renewable energy production or consumption: The Industrial Clean Energy Tax Credit, the Geothermal Energy Expenditure Tax Credit, the Geothermal Energy Production Tax Credit, and the Sustainable Aviation Fuel Production Facility Tax Credit. Together, these credits are forecasted to increase tax expenditures by $252.5 million through 2032.[52]

* Beginning in FY2025-26, if state revenues are not forecast to increase by at least 4% for the next fiscal year, then the amount of the electric vehicle and heat pump credits are reduced by half in the next tax year.

HB23-1281 created another renewable energy incentive through 2032, the Clean Hydrogen Tax Credit. Cumulatively, all five new credits related to clean energy production or consumption passed into law in 2023 are expected to decrease revenue by $304.5 million.[53]

These incentives will reduce the FY2023-24 TABOR surplus by an estimated total of $14 million and the FY2024-25 surplus by $28 million. Had the legislature not created them, the state income tax rate could have been reduced by 0.005% and 0.01% each year respectively, or by approximately $4 and $8 per filer for each of the first two fiscal years they are in effect. From FY2025-26 through sunset, the credits reduce state revenue by $35 million per year on average, or about $10 per filer per year.

New electric-powered lawn equipment and electric bike credits cost $186.5 million

The legislature created two additional decarbonization-related tax expenditures in 2023. Senate Bill 23-016 created the Electric-Powered Lawn Equipment Tax Credit for tax years 2024-2026, and HB23-1272 created the Electric Bicycle Tax Credit for 2024-2032. Cumulatively, the credits are expected to increase tax expenditures $36.75 million and $149.75 million, respectively.[54] The electric bicycle credit could arguably be included with the electric vehicle credits. Together with the expansions of the electric car and truck credits, changes in all electric vehicle credits in 2023 are expected to reduce revenue by $293 million through their sunset dates, assuming the legislature does not extend them.

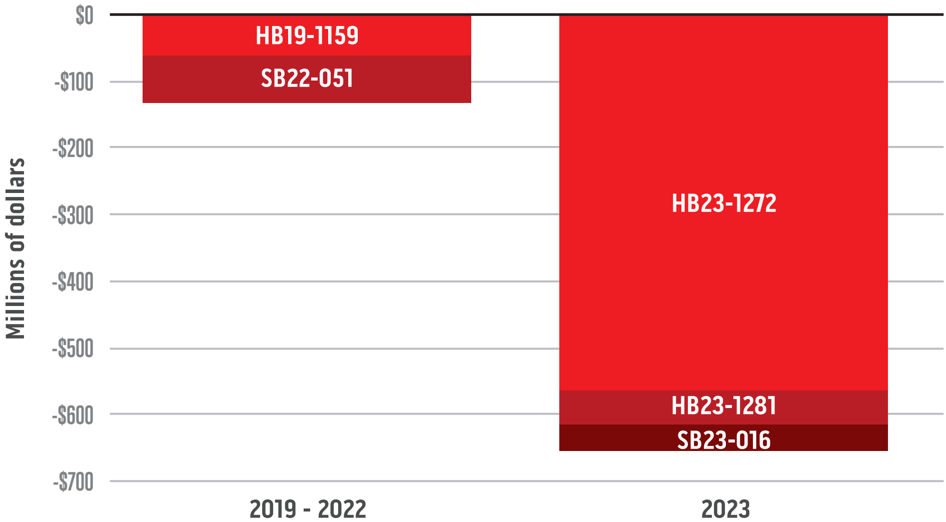
> "The Electric-Powered Lawn Equipment Tax Credit will lower revenue subject to TABOR by about $12.3 million per fiscal year while it remains in effect. This amounts to $3.50 per filer each year on average."

The Electric-Powered Lawn Equipment Tax Credit will lower revenue subject to TABOR by about $12.3 million per fiscal year while it remains in effect. This amounts to $3.50 per filer each year on average. The Electric Bicycle Tax Credit is expected to have a similar impact in FY2025-26 as the lawn equipment credit. The revenue impact of the bicycle credit will start at just $2.6 million in FY2023-24 but will increase each year. From FY2026-27 through sunset, the Electric Bicycle Tax Credit is projected to increase special interest tax benefits by an average of $19.1 million per year. This equates to $5.43 per filer per year.

Decarbonization incentives passed under Polis cost $250 per taxpayer

The decarbonization bills enacted in 2023 expanded on efforts during Polis's first term as governor to incentivize the reduction of carbon emissions. As mentioned under the subsection "Lawmakers extend electric vehicle credits through 2028," the legislature passed HB19-1159 into law in 2019 to expand on existing electric vehicle credits, reducing state revenue by a projected $61.1 million. Additionally, as mentioned under the subsection "Lawmakers restructure and expand energy efficient heat pump incentives," legislators passed SB22-051 in 2022 to incentivize the purchase of energy-efficient heat pumps. This bill also included incentives for purchasing residential energy storage systems and decarbonizing building materials. House Bill 19-1159 and SB22-051 were the only substantial decarbonization-related tax incentive bills enacted during

Figure 10. Cumulative net revenue impact of all decarbonization tax expenditure bills passed 2019-22 vs. 2023



Source: Legislative Council Staff fiscal notes

Polis's first term.[55] Together, they caused a projected combined revenue decrease of $130.4 million.[56]

At a projected net $738.95 million reduction in revenue, increases in decarbonization tax incentives promulgated in 2023 alone far exceed all such increases enacted from 2019 through 2022. Figure 10 compares the projected state revenue impact of all decarbonization bills passed from 2019-2022 versus those passed in 2023.[*]

For FY2023-24 and FY2024-25, all decarbonization incentives promulgated from 2019 through 2023 will reduce the state TABOR surplus by $80.6 million and $115.8 million, respectively. Expanding these special interest credits had the equivalent state revenue impact of reducing the income tax rate from 4.40% to 4.372% and 4.363%, which amounts to $22.92 and $32.93 per tax filer.[†] On net, all decarbonization incentives created or expanded under Governor Polis are expected to decrease revenue by $869.3 from FY2021-22 through FY2032-33, which amounts to $247.22 per filer.

The cumulative totals in this section exclude the relatively small impact of the expansion of the Renewable Energy Enterprise Zone Investment Tax Credit in HB22-1418. This bill was intended to extend the carry forward period of unused enterprise zone credits for "industries disproportionately impacted by the COVID-19 pandemic" and the revenue of impact of extending just the renewable energy credit in this bill is not specified in its fiscal note.[57] Data from 2016 suggests that the cumulative state revenue impact of extending this specific credit will not exceed $4 million.[58]

* Figure 10 includes the revenue increase from the reduction in the Severance Tax AV Credit in the impact of HB23-1272. While the reduction does not incentive decarbonization, it still affects the bill's net impact on tax expenditures.

† See *Appendix A.4.*

OIL & GAS AD VALOREM TAX CREDIT

House Bill 23-1272 slightly offset the increases in tax expenditures intended to incentive decarbonization by reducing the Oil & Gas Ad Valorem (AV) Severance Tax Credit. In 2022, HB 22-1391 expanded the Oil & Gas AV Credit starting in tax year 2025, causing an ongoing annual state revenue reduction of between $3.1 million and $14.7 million.[59] In 2023, legislators unwound those changes with HB23-1272. Under current law, this will remain in effect from tax year 2024 through 2027, reducing the amount of the state credit and increasing state revenue by $86 million. This change accounts for the largest tax expenditure reduction in 2023, though it differs from other tax expenditures designed to benefit particular special interests.

> "[T]he largest single reduction in tax expenditures from 2023 will merely pay the administrative costs of expanding other special interest tax benefits."

Oil and gas production is subject to an entirely unique tax system in Colorado.[60] Changes to the credit, therefore, cannot provide a "special interest tax benefit" to oil and gas, as no other taxpayers are subject to the same tax system. The tax system was designed in the 1970s to ensure most tax revenue from oil and gas companies benefits local governments where development occurs. According to the Colorado Oil & Gas Association, "The [AV] credit normalizes a company's combined local-state tax requirement."[61] That is, the state credit is not about handing out special interest benefits, but rather about maintaining balance between state and local revenue within Colorado's entirely unique oil and gas tax system. Nonetheless, the changes to the AV credit in HB23-1272 constitute the largest single tax expenditure reduction of any bill passed in 2023.

In FY2024-25, the first full fiscal year that the reduction is in effect, it is expected to increase state revenue by $28.3 million. With this new revenue, the state could lower the income tax rate by 0.01%, or by $8.05 per filer, however, HB23-1272 requires the state to use the additional severance tax revenue to cover administration costs related to the expansion of the bill's decarbonization tax credits. That means the largest single reduction in tax expenditures from 2023 will merely pay the administrative costs of expanding other special interest tax benefits.

EARNED INCOME AND CHILD TAX CREDITS

Two bills enacted in 2023, HB23-1112 and HB23B-1002, expanded the state Earned Income Tax Credit (EITC). The former also expanded the state Child Tax Credit (CTC).[62] Together, these bills are expected to increase special interest tax benefits by $257.3 million for FY2023-24 and by $742.5 million over 10 years. Neither contained any offsetting revenue increases, meaning the expansions in these special interest credits will come entirely from a reduction in TABOR refunds for all taxpayers.* Also, because these credits are refundable, a taxpayer with zero income tax liability will receive payment from the state upon tax filing if they qualify and claim either credit.

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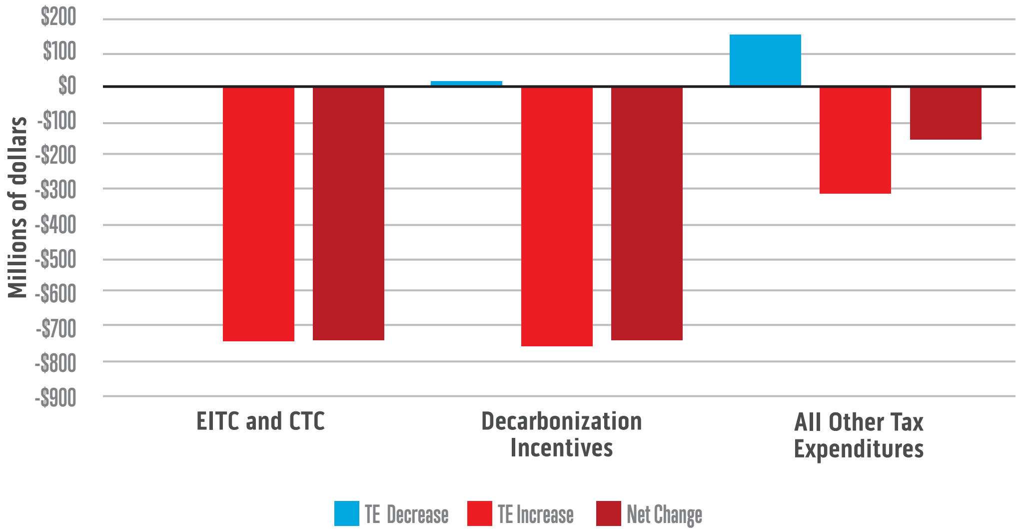
* This remains true so long as TABOR revenue continues to exceed the TABOR limit by more than the amount of the credits, as LCS revenue forecasts currently project to be the case at least through the forecast period.

Figure 11. Cumulative 10-year revenue impact of tax expenditures modifications by type, 2023



Source: Legislative Council Staff fiscal notes

Since these credits are targeted at low earners, they can result in a negative tax liability for the recipients.[63] Because of this, in practice they often function more like direct subsidy payments funded out of the TABOR surplus. Issuing direct welfare subsidies out of the General Fund would not reduce the TABOR surplus. Rather, it would count as a regular state expenditure in the annual Long Bill, reducing the amount of money the state could spend on other programs. Administering welfare subsidies via the tax code by issuing refundable tax credits, however, means the welfare subsidies count as tax expenditures, or revenue reductions, rather than as regular state expenditures. That means every dollar of negative tax liability produced by these credits comes directly from the TABOR refunds of taxpayers with a positive tax liability rather than out of the state budget.

> "This is the only 2023 tax expenditure modification that does not include a sunset provision. The CTC accounts for the largest 10-year increase in tax benefits of any single tax expenditure created or expanded in 2023."

HB23-1112 expanded the EITC and made the CTC permanent

House Bill 23-1112 expanded the EITC and the CTC and accounts for the second largest net increase in special interest tax benefits from 2023, after HB23-1272. It is expected to increase tax handouts by $560 million over 10 years. The first drafts of the bill allocated for much larger increases for both credits, but committee amendments reduced the amount of the credits to their current levels.[64]

The bill expanded the state CTC originally created by HB21-1311 by indexing the income eligibility thresholds to inflation starting with tax year 2025. Starting in tax year 2022, any tax filer who qualified for the federal CTC could also claim a state credit at a percentage of the federal credit, depending on income. Individual filers with a federal Adjusted Gross Income (AGI) under $25,000—or $35,000 for joint filers—qualify for the maximum state credit of 60% of the federal credit, or $1,200. The credit phases down at three different income ranges and phases out entirely for individual and joint filers with a federal AGI above $75,000 and $85,000, respectively. The change is expected to lower state revenue by $45.6 million on an ongoing annual basis, or by $456 million over 10 years. This is the only 2023 tax expenditure modification that does not include a sunset provision. The CTC accounts for the largest 10-year increase in tax benefits of any single tax expenditure created or expanded in 2023.

The same bill expanded the existing state EITC for the fourth time since Polis took office.[65] Under previous law, eligible individuals could receive a state credit equal to 25% of the federal credit for tax years 2023 through 2025.[66] The original, unamended draft of HB23-1112 would have expanded the credit to 40% of the federal credit and made the expansion permanent starting in tax year 2024. This would have reduced state revenue by an estimated $120.1 million every year indefinitely. After receiving pushback in the media, legislators amended the bill to its current and final form.[67] The final version of the bill adopted by the General Assembly and signed into law by Governor Polis increased the credit to 38% of the federal credit for tax year 2024 only, decreasing state revenue by $104 million.[68]

HB23B-1002 expanded the EITC by another $182.5 million for tax year 2023

In November 2023, Governor Polis called an extraordinary legislative session for the purpose of providing property tax relief after voters rejected Proposition HH.[69] The executive order defining the scope of legislative business during the session, however, allowed for the expansion of special interest tax benefits paid for from TABOR refunds. To that end, the legislature passed HB23B-1002, expanding the state EITC for the second time in one year and for the fifth time since Polis took office. The bill increased the value of the state credit from 25% to 50% of the Federal EITC for tax year 2023 only. The change will cost $182.5 million.[70]

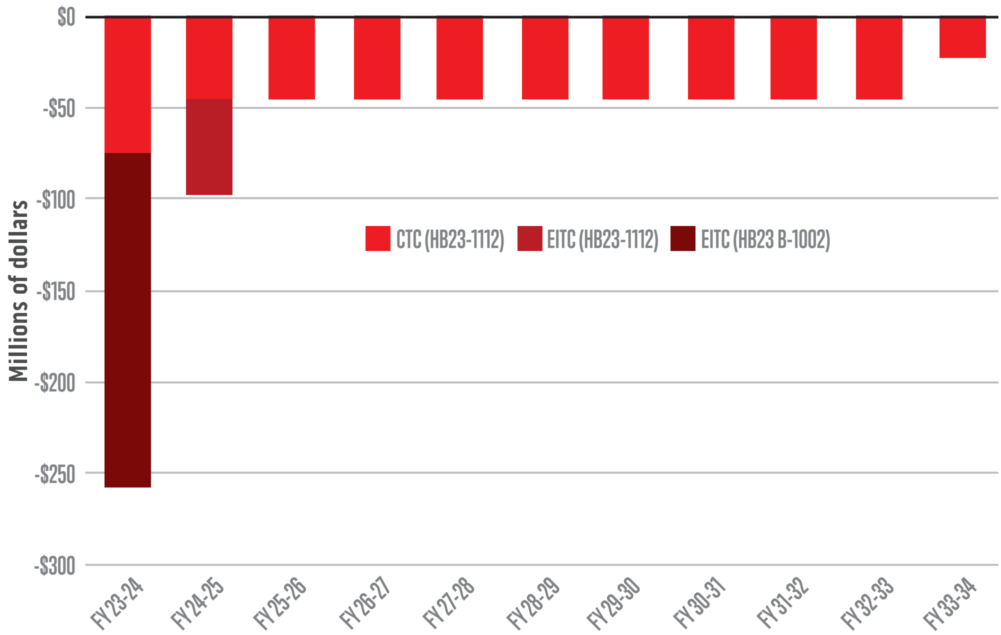
> "The bill expanded special interest tax benefits for FY2023-24 more than any other single tax expenditure change enacted in 2023."

The bill expanded special interest tax benefits for FY2023-24 more than any other single tax expenditure change enacted in 2023. Before the legislature enacted HB23B-1002 during the November special session, legislation enacted in 2023 was expected to increase tax expenditures in FY2023-24 by $135.2 million on net. With the enactment of this bill, however, that total is now $317.68 million.* In other words, for FY2023-24, this one bill from the extraordinary session expanded special interest tax benefits by 135% over the net effect of tax expenditure bills passed during the regular session alone.

Notably, the legislature designated this expansion of the EITC as a TABOR refund mechanism. As explained in the "Background" section of this report under "Tax expenditures reduce TABOR revenue," any increase in tax expenditures that reduces state revenue during a fiscal year in which the state experiences a TABOR surplus effectively functions as a TABOR refund mechanism for that year even if the legislature does not explicitly designate it as such. During surplus years, tax expenditures reduce

* The expansion of the EITC in HB23B-1002 will reduce FY2023-24 revenue, though the legislature prescribed it as a FY2022-23 refund mechanism. See *Appendix A.4* for more information.

Figure 12. 10-year revenue impact of changes to the EITC and CTC in HB23-1112 and HB23B-1002



Source: Legislative Council Staff fiscal notes

TABOR refunds for all taxpayers to the benefit of whatever special interests qualify for the tax benefit. The state does not consider the EITC expansion from HB23B-1002 a revenue reduction, but in practice it functions the same as any tax expenditure increase impacting the current fiscal year. For that reason, this report treats HB23B-1002 the same as any tax expenditure expansion. In relevant sections of the report, the $182.5 million expansion in the EITC from this bill counts as a state revenue reduction for FY2023-24.[*]

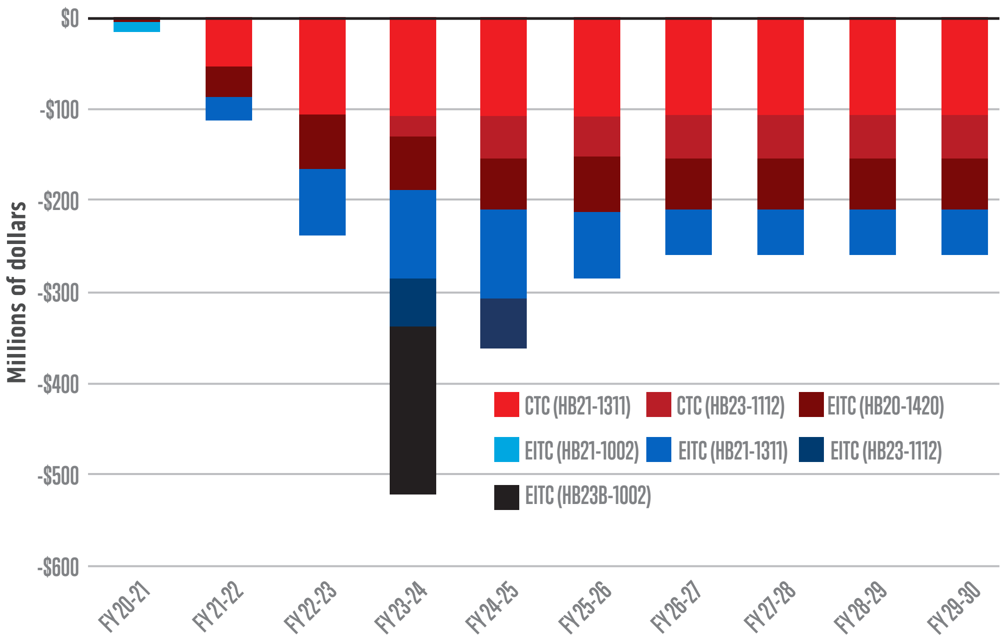
The governor may argue that expanding the EITC serves as an execution of his promise to cut taxes for all. This report, however, views the EITC as a special interest tax benefit; only a specific and defined group of taxpayers may take advantage of it. Expanding the EITC, therefore, amounts to a tax policy change in direct conflict with the promise to cut special interest tax benefits. Furthermore, it fulfills neither his promise "to cut taxes for all," as it reduces the tax burden only for a defined group, nor his promise to cut income tax rates for all.[71] In fact, the expansion of the EITC constitutes an effective tax increase for everyone who does not receive the credit. Every dollar increase in the tax expenditure equals a dollar reduction in TABOR refunds for all taxpayers, increasing every other taxpayer's total effective tax liability.

Expansions to EITC and CTC cost more than $2.5 billion over 10 years

Expansions of the EITC and CTC enacted in 2023 build on expansions to these credits from Polis's first term as governor. Before he began his first term, the state EITC was a refundable credit worth 10% of the Federal EITC, and the state CTC did not exist. In 2020, HB20-1420 increased the value of the EITC to 15% starting in 2022 and expanded

* See *Appendix A.4.*

Figure 13. 10-year revenue Impact of changes to the EITC and CTC beginning FY20-21



Source: Legislative Council Staff fiscal notes

its eligibility to include those who do not have social security numbers starting in 2021.[72] In 2021, HB21-1002 moved forward the eligibility expansion one year to take effect in 2020 rather than 2021.[73] The same year, HB21-1311 further increased the credit to 20% of the federal credit for tax year 2022, 25% for 2023-2025, and 20% on an ongoing basis starting in 2026.[74] House Bill 21-1311 also created the state CTC, which went into effect starting in tax year 2022, as described under the subsection "House Bill 23-1112 expanded the EITC and made the CTC permanent."

Cumulatively, expansions to the EITC and CTC since 2020 are expected to decrease state revenue by $2.58 billion over the 10-year period from FY2020-21 through FY2029-30, or about $733 per tax filer. State revenue is estimated to have fallen more than $521.1 million in FY2023-24 alone because of the expansions to these credits since Polis took office. This is state revenue equivalent to lowering the income tax rate from 4.40% to 4.22%, or by $148.18 per taxpayer that year.

CHILD CARE CONTRIBUTION TAX CREDIT

House Bill 23-1091 extended the existing Child Care Tax Credit, currently set to expire after 2024, by three years through 2027.[75] The legislature first created the credit in 1998 "to promote child care in the state."[76] This extension is expected to decrease state revenue by an additional $118.6 million through its sunset, assuming the legislature does not continue to extend the credit beyond 2027. Because the credit is nonrefundable, it can only reduce the amount of taxes owed to the state; it cannot result in a negative tax liability for the claimant. The credit, however, does result in a dollar-for-dollar reduction in TABOR surpluses and thus TABOR refunds for all taxpayers.

During Polis's first term, the legislature expanded two other childcare-related tax expenditures: the Low-Income Child care Expenses Credit and the Child Care Center Property Tax Exemption.[77] House Bill 19-1013 extended the sunset date of the former by eight years through tax year 2028.[78] House Bill 22-1006 expanded the latter's eligibility to include rented or leased property.[79] The extension of the Low-Income Childcare Expenses Credit is expected to reduce state revenue by an additional $28.4 million over the life of the credit. The expansion of the property tax exemption is expected to reduce local revenue by $33.1 million over 10 years, with an ongoing annual reduction of about $3 million. A third childcare-related expenditure, the tax credit for Child Care Center Investments, was slightly reduced during Polis's first term with HB22-1025.[80] The effect of this change was negligible, as it will only increase state revenue by a few thousand dollars in total.

"During Polis's first term, the legislature expanded two other childcare-related tax expenditures: the Low-Income Child care Expenses Credit and the Child Care Center Property Tax Exemption."

All changes to childcare credits promulgated since Polis took office are expected to reduce state revenue by $42 million for FY2025-26, the first full fiscal year in which all three childcare credits impact state revenue.* This is the equivalent revenue impact of reducing the state income tax rate from the current 4.40% to 4.387%, or reducing taxes by $11.94 per tax filer that year.

ADDITIONAL 2023 TAX EXPENDITURE BILLS

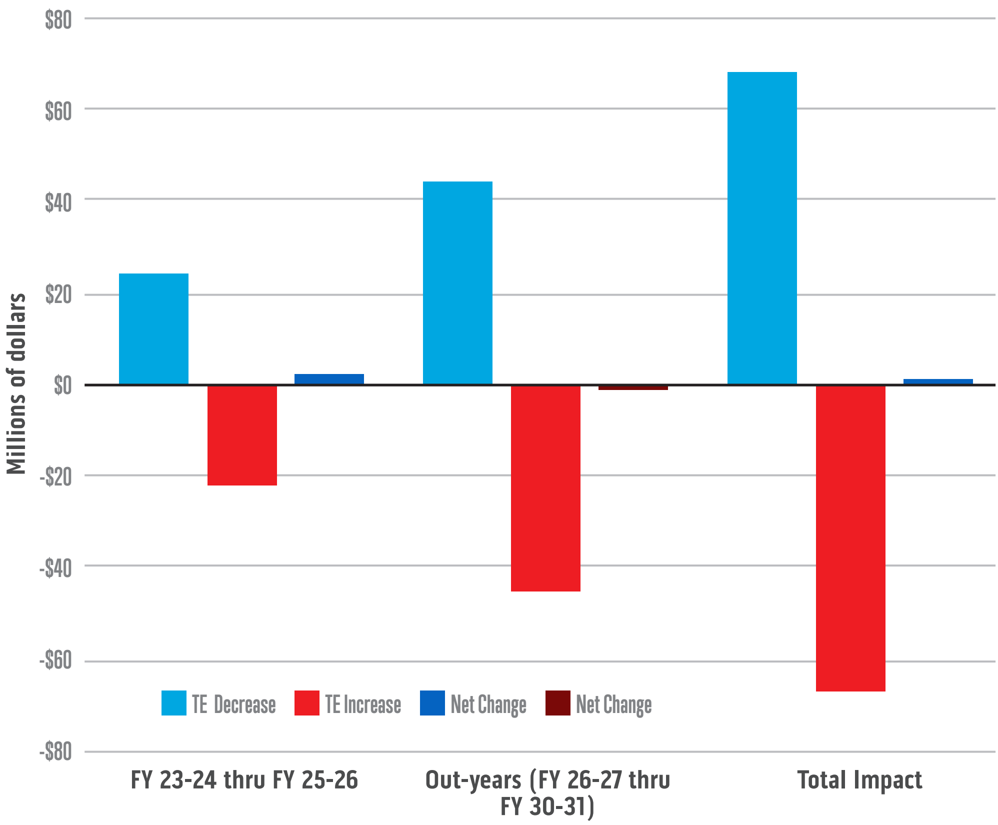
The remaining seven bills enacted in 2023 that impact tax expenditures have a combined net effect of reducing state revenue by a projected $122.4 million. This includes $190.6 million in increases and $68.2 million in decreases. All these tax expenditure changes sunset within 10 years. Of these bills, only two include more than $60 million in changes to tax expenditures:

1. House Bill 23-1260, the "Advanced Industry Semiconductor MFG Incentives" bill, expanded the eligibility of existing enterprise zone tax credits to include semiconductor manufacturers for FY2023-24 through FY2028-29. It also makes the credit refundable for certain taxpayers. The bill is expected to increase state tax expenditures at an increasing rate, up to a total of $75 million.[81]

2. House Bill 23-1008, the "Food Accessibility" bill, contains the only other reduction in tax expenditures not previously mentioned. It requires taxpayers to add back their federal tax deduction for business meals to their state income tax liability from 2024-2030, increasing state revenue by $68.2 million. It uses this additional revenue to create a refundable tax credit for small food retailers and family farms over the same period, increasing expenditures by $67 million.[82] On net, it is expected to decrease tax expenditures by just $1.2 million. It appears the legislature intended the bill to be approximately revenue-neutral. While this bill contains a reduction and an increase in tax expenditures, the purpose of the bill is not to decrease or increase tax expenditures. Rather, the bill serves to change which taxpayers may enjoy the approximately $67 million in tax benefits.

* This number excludes the $3 million impact on local government revenue from HB22-1006.

Figure 14. Revenue impact by timeframe for HB23-1008



Source: Legislative Council Staff fiscal notes

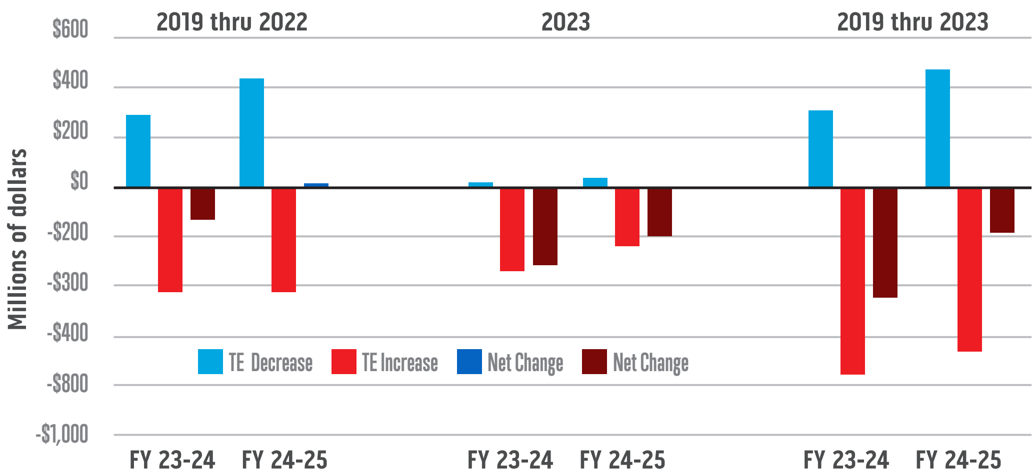
Figure 14 shows the cumulative revenue impact of the tax expenditure changes in HB23-1008, showing the first two-and-a-half fiscal years for which the bill has a revenue impact, the last four-and-a-half fiscal years of revenue impacts, and its total impact over the full seven years it is in effect.

Details on the other five bills (HB23-1081, HB23-1084, HB23-1189, HB23-1240, and HB23-1309) and their fiscal impacts can be seen in tables 1 through 5 in *Appendix B* and *Appendix C*. Cumulatively, all tax expenditure bills enacted in 2023 that are not related to decarbonization, EITC, CTC, or the Child Care Tax Credit are expected to reduce the FY2023-24 TABOR surplus by $13 million and the FY2024-25 surplus by $15.3 million, or about $4 per filer each year.

GOVERNOR POLIS'S RECORD ON SPECIAL INTEREST TAX BENEFITS: 2019-2023

Independence Institute's 2022 report, *Tax Expenditure Modifications, 2019-2022: Governor Polis's Record on Special Interest Tax Benefits*, found that during his first term, Polis failed to deliver policy results for the tax reform agenda he campaigned on. It found, "[T]he tax expenditure changes made during Polis's first term in office had a cumulative net impact of increasing special interest tax benefits by approximately $640 million over ten years."[83] In 2023 alone, the governor—together with the Democrat-controlled legislature—expanded special interest tax benefits on net by two-and-a-half times what he did during the previous four years combined.

Figure 15. Revenue impacts from tax expenditure modifications enacted over three periods



Source: Legislative Council Staff fiscal notes

All tax expenditure changes promulgated from 2019 through 2023 are forecasted to increase tax expenditures by $756 million for FY2023-24 and reduce them by $308 million for a net increase of $448 million, or about $127 per filer. For FY2024-25, all tax expenditure changes adopted during Polis's tenure to date are expected to increase tax expenditures by $660 million for FY2024-25 and reduce them by $474 million for a net increase of about $186 million, or about $53 per filer.

While legislation during Polis's first term increased tax expenditures on net, reductions in other tax expenditures offset most of the increases. The 2022 report, therefore, concluded, "[H]is tax reform policies effectively shuffled tax benefits around, transferring them from certain groups of special interests to others."[84] In contrast, 2023 tax expenditure legislation included very little in the way of tax expenditure reductions to offset increases.

While the governor has overseen tax policy changes that directly and increasingly contradict his stated tax reform agenda, he is not solely responsible for tax policy changes. He must work with the legislature to advance his tax reform agenda. Polis's failure to accomplish his goals could be primarily the result of legislative Democrats' refusal to cooperate with their state party leader. The conclusion of the previous report gave the governor the benefit of the doubt on this, explaining:

> "It is possible and even likely that Polis could have accomplished more in terms of reducing special interest tax benefits had he possessed the power to enact legislation unilaterally. It is likewise possible that Polis felt compelled by legislators, particularly those within his own party, to compromise on his tax reform platform for the sake of accomplishing other priorities."[85]

The findings in this report refute this conclusion and eliminate all doubt as to the governor's role in counteracting his espoused tax reform agenda. In 2023, the governor was an active and engaged partner with the legislature in expanding special interest tax benefits. In addition to signing tax expenditure bills that contradicted the tax reform platform he campaigned on, Executive Order D 2023 024 evidences this. After voters rejected the governor's property tax reform proposal—Proposition HH—at the ballot, Coloradans beseeched him to call the legislature into a special session to provide property tax relief.[86] On November 9, 2023, Polis issued the executive order "to convene the Seventy-Fourth General Assembly of this State and summon the members of the Seventy-Fourth General Assembly to meet in Special Session at 9:00 AM on November 17, 2023."[87] Under his authority as governor, however, he chose not to limit the scope of the special session to property tax relief. Rather, he designated "for consideration, appropriate legislative action, and funding…adjustments to the Earned Income Tax Credit."[88] In other words, he explicitly directed the legislature to expand special interest tax benefits. Polis's annual State of the State addresses reveal the gradual pivot away from his campaign promises toward this new agenda.

In every state of the state address prior to 2024, Polis emphasized eliminating special interest tax benefits, but his tone changed over time. In his 2019 address, he spent a significant amount of time—four paragraphs in the transcript—explaining that "[o]ur tax code gives too much power to the special interests" and urging the legislature to "[l]et people keep more of their hard-earned money rather than give it away to special interests."[89] Starting in 2020, he began to claim a partial victory, saying, "[W]e should continue down the path of eliminating tax breaks for special interests so that we can lower rates for everyone without reducing state revenue."[90] Indeed, bills passed in 2019 alone had the net effect of reducing tax expenditures.[91] In 2021, 2022, and 2023 the governor's State of the State Addresses continued to tout progress on eliminating tax breaks for special interests during the 2020, 2021, and 2022 legislative sessions.[92] In truth, these were the transition years in which lawmakers made significant increases and decreases to various tax expenditures while increasing them on net. In 2023, however, lawmakers did very little to reduce special interest tax breaks and instead expanded them by a record amount. Polis's 2024 State of the State Address marked the first annual address in which he neither called for reducing special interest tax breaks nor claimed to have done so in the prior year.[93]

> "In 2023, the governor was an active and engaged partner with the legislature in expanding special interest tax benefits."

The only session year in which the legislature increased state revenue on net by reducing tax expenditures was also the year in which the legislature set the FY2019-20 budget. Incidentally, that fiscal year is the only year in the 9-year period between FY2017-18 and FY2025-26 where the state has not had or been projected to have a TABOR surplus. Fiscal Year 2019-20 was thus the only year in which tax expenditure reductions increased the amount of money the state had available to keep and spend. In every other year, reducing tax expenditures would only have increased the TABOR surplus and thus TABOR refunds. Put simply, Polis and the legislature reduced tax expenditures in the one year when doing so increased the amount the state could keep and spend. In contrast, when reducing tax expenditures would have increased TABOR refunds and had no impact on the state's ability to spend, they opted to increase tax expenditures, using surplus revenue to expand special interest tax giveaways rather than lower taxes for everyone.

OPTIONS FOR BROAD-BASED TAX RELIEF

Here the report turns its focus to the cumulative impact of all tax expenditure modifications on state revenue and the state's capacity to provide broad-based tax relief to all Coloradans via income tax rate reductions using TABOR surpluses. The first two subsections explore impacts from legislation adopted in 2023 only. They report the amount of income tax relief the state could have provided to all taxpayers in lieu of reducing revenue via tax breaks for special interests. For reference, table 2 and table 3 in *Appendix B* list the income tax rate cuts that would have been possible in lieu of each tax expenditure increase and the possible rate cuts using the new revenue from tax expenditure reductions. They also show the cost of the tax expenditure modifications per tax filer. The third subsection discusses the progress Polis has made on delivering broad-based tax relief during his tenure as governor to date.

TAXPAYER COST OF 2023 TAX EXPENDITURE MODIFICATIONS IN FY2023-24

For FY2023-24, changes to tax expenditures promulgated in 2023 alone reduced the amount of money the state must refund to taxpayers by $317.7 million.[*] The net revenue reductions in FY2023-24 resulting from all 2023 tax expenditure modifications could have reduced the current 4.40% income tax rate by 0.11% to a new rate of 4.29% with no impact on state spending. That amounts to $90.34 per tax filer.[94] If the legislature maintained all tax expenditure reductions promulgated in 2023 but enacted zero tax expenditure increases, the state could still only reduce its income tax rate by 0.11%, as the 2023 legislative session produced very little in the way of tax expenditure reductions.

Based on the December 2023 LCS revenue forecast, the state's projected $1.78 billion TABOR surplus for FY2023-24 could buy down the income tax rate from 4.40% to 3.79% without impacting the state budget or state spending.[95] This number includes the $182.5 million expansion of the EITC in HB23B-1002, which the legislature designated as a TABOR refund mechanism. This report, however, treats this expansion as a state

* See *Appendix A.4* for more on how this report treats HB23B-1002. See "Tax expenditures reduce TABOR revenue" under the "Background" section of this report for more information on how tax expenditures impact TABOR revenue.

revenue reduction, because it is functionally identical to any other tax expenditure and leaves fewer surplus dollars available for income tax rate reductions or to refund to all taxpayers. Backing out this $182.5 million expansion in the EITC, the remaining TABOR surplus could buy down the current 4.40% income tax rate by 0.55% to a new rate of 3.85%.[*]

Had the legislature not modified any tax expenditures in 2023 and instead used the revenue from the broader tax base and existing TABOR surpluses to buy down the state income tax rate, the state could reduce its 4.40% income tax rate by 0.65% to a new rate of 3.75% without impacting the state budget or state spending. Had the legislature adopted all the tax expenditure reductions from 2023 but not increased or created any other tax expenditures, the resulting $1.93 billion state surplus could buy down the current 4.40% income tax rate by 0.66% to a new rate of 3.74%. That amounts to about a $550 reduction in income taxes owed per filer.

TAXPAYER COST OF 2023 TAX EXPENDITURE MODIFICATIONS IN FY2024-25

For FY2024-25, tax expenditures changes adopted in 2023 alone reduced the amount of money the state must refund to taxpayers by $196.57 million. The net revenue reductions in FY2024-25 resulting from all 2023 tax expenditure modifications could buy down the current 4.40% income tax rate by 0.06% to a new rate of 4.34% with no impact on state spending. That amounts to $55.90 per tax filer. If in the 2024 legislative session lawmakers maintain all the tax expenditure reductions promulgated in 2023 but repeal all increases enacted that year, the state could reduce its income tax rate by 0.07% to a new rate of 4.33%—a tax reduction equal to $67.10 per taxpayer.

> "Had the legislature adopted all the tax expenditure reductions from 2023 but not increased or created any other tax expenditures, the resulting $2.03 billion state surplus could buy down the income tax rate by 0.65% to a new rate of 3.75%."

Based on the December 2023 LCS revenue forecast, the state's projected $1.79 billion TABOR surplus for FY2024-25 could buy down the income tax rate from 4.40% to 3.82% without impacting state spending.[96] Had the legislature not modified any tax expenditures in 2023 and it instead used the revenue from a broader tax base and existing TABOR surpluses to buy down the state income tax rate, the state could reduce its income tax rate by 0.64% to a new rate of 3.76% without impacting state spending. Had the legislature adopted all the tax expenditure reductions from 2023 but not increased or created any other tax expenditures, the resulting $2.03 billion state surplus could buy down the income tax rate by 0.65% to a new rate of 3.75%. That amounts to an approximately $575 reduction in income taxes owed per filer.

GOVERNOR POLIS'S RECORD ON BROAD-BASED TAX RELIEF: 2019-2023

In his 2020 State of the State address, Polis claimed as a political accomplishment "eliminating tax breaks for special interests" and "lower[ing] rates for everyone without reducing state revenue."[97] As noted previously, he and the legislature indeed reduced

* See *Appendix A.4*.

and eliminated some tax expenditures during his first term, and reduced others in 2023. When considering all tax expenditure modifications, however, Governor Polis has greatly expanded tax breaks for special interests on net. He could not possibly have reduced the income tax rate with revenue raised through eliminating tax expenditures, as he and the legislature subsequently spent every dollar of revenue raised from tax expenditure reductions to create or increase other tax expenditures. Moreover, because he worked with the legislature to increase tax expenditures on net, his actions reduced the existing TABOR surplus and thus further diminished the state's ability to deliver income tax relief to all taxpayers without impacting state spending.

"[B]ecause [Polis] worked with the legislature to increase tax expenditures on net, his actions reduced the existing TABOR surplus and thus further diminished the state's ability to deliver income tax relief to all taxpayers."

In his address, the governor pointed to income tax rate cuts in 2020 and 2022 as evidence that he used tax expenditure reductions to buy down the income tax rate.[98] In truth, it was the people of Colorado, through two citizen-led ballot initiatives—Proposition 114 and Proposition 121—who used existing TABOR surpluses to buy down the income tax rate from 4.63% to the current 4.40%.[99] Fortunately, the state has maintained large surpluses despite the increases to special interest tax benefits promulgated under Polis's governorship. The people of Colorado were able to reduce income taxes despite Polis and the legislature, not because of them. In fact, Republican legislators have introduced six bills to reduce the income tax rate since Polis took office.[100] The Democrat-controlled legislature has killed every bill in committee. The governor remained silent each time, never publicly pressuring legislative Democrats to adopt the bills or introduce income tax cut bills of their own. He voiced rhetorical support for the citizen initiatives to reduce the income tax rate only after they were approved for the ballot and the media pressed him to take a position.[101]

In short, while the income tax rate has been lowered during Polis's tenure as governor, this happened largely despite his actions, not because of them. He has seen no success in leading his party—which holds a majority in the state senate and a super-majority in the house of representatives—to provide broad-based tax relief by reducing special interest tax giveaways and cutting the income tax rate for all Coloradans. Nonetheless, in his 2024 State of the State Address, he made perhaps the most direct and forceful case to date for lowering Colorado's income tax rate using TABOR surpluses. He challenged "Democrats and Republicans to work together to improve our economic growth" by "cutting the income tax rate."[102] A bill to lower the income tax rate to 4.0% using only surplus revenue has been introduced in the 2024 legislative session.[103] This bill presents a concrete opportunity for the governor to work with the legislature to advance his tax reform agenda. This bill alone, however, would not fully execute the tax reform agenda Polis campaigned on. The next section makes recommendations for more a comprehensive implementation of that agenda.

RECOMMENDATIONS FOR TAX REFORM

To achieve the goals Governor Polis campaigned on and has regularly espoused as governor, during the 2024 legislative session he and the legislature must increase the state tax base and TABOR surpluses by reducing tax expenditures. Then, they must lower the income tax rate by the amount necessary to eliminate the TABOR surplus. This would end the state's practice of over-collecting taxes and then using the tax code to redistribute TABOR surpluses via special interest tax handouts. It would also align with what Polis has advocated for publicly. He explained in a November 2023 editorial for *National Review*:

> "If there is an excess in tax revenues above population growth and inflation, as defined by TABOR, that means tax rates should have been lower but were not. The law serves as a signal that tax rates have been too high. The proper response to this signal is not to have it keep signaling, but to get the message and cut tax rates permanently."[104]

In the editorial, he explained that neither tax expenditures nor TABOR refund mechanisms make taxpayers whole. The argument echoes what he has said consistently since campaigning for governor but has failed to do as governor: the state should reduce tax expenditures and use the resulting TABOR surplus to lower income tax rates for everyone. Sadly, he has not followed through on his rhetoric. Instead, Polis campaigned on a tax reform agenda of "eliminat[ing] deductions and loopholes that benefit special interests in order to cut taxes for all," but instead expanded special interest tax benefits once elected.[*] Figure 16 illustrates the tax expenditure policies enacted under Polis and the income tax rate reduction possible under current law. The 2024 legislative session presents an opportunity to reverse course and follow through on these unfulfilled promises.

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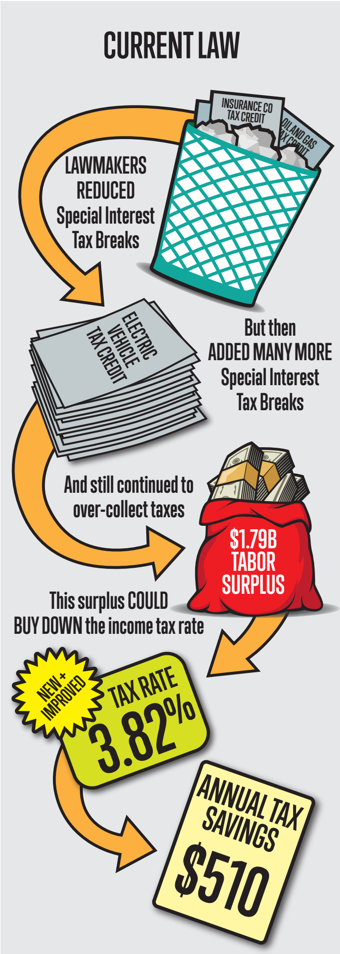
* See the subsection "Governor Polis's record on broad-based tax relief: 2019-2023" in this report for more information.

Figure 16



During the 2024 legislative session, Governor Polis should work with the legislature to deliver on the tax reform agenda he laid out on the campaign trail and while serving as governor by making the necessary modifications to the tax code starting in tax year 2024. At a minimum, lawmakers should return to the current law baseline from when Polis took office and stop expanding special interest tax benefits moving forward, as illustrated in figure 17. This would increase FY2024-25 state revenue by $197 million, resulting in a $1.98 billion TABOR surplus. Lawmakers could use that surplus to reduce the income tax rate to 3.76% without reducing the amount of revenue available for the state to keep and spend. This, however, falls short of what Polis proposed when campaigning for the office of governor. Complete fulfillment of his tax reform agenda would require $1.6 billion in additional tax expenditure reductions after unwinding recent increases.

To follow through entirely on his campaign proposal and statements he has made as governor, Polis must first work with legislators to walk back the $197 million increase in FY2024-25 tax expenditures since he took office and then reduce them by the $1.6 billion he initially proposed. That means lawmakers will need to identify and pass a total of about $1.8 billion in tax expenditure reductions for FY2024-25 relative to current law. Together with the current $1.79 billion in projected TABOR surpluses, these changes will increase the TABOR surplus to $3.59 billion for FY2024-25, assuming no additional changes to the tax code. To prevent this over-collection from occurring, lawmakers then need to lower the current 4.40% state income tax rate by 1.15%, resulting in a new rate of 3.25%. Figure 18 illustrates what it would mean to implement Polis's tax reform proposal fully during the 2024 legislative session. Based on the latest LCS forecast, the state can safely make the new income tax rate permanent starting with tax year 2024 without impacting current or future state spending, at least through the forecast period.[105] This assumes lawmakers maintain tax expenditure reductions into future years without creating or expanding other tax expenditures.

Figure 17

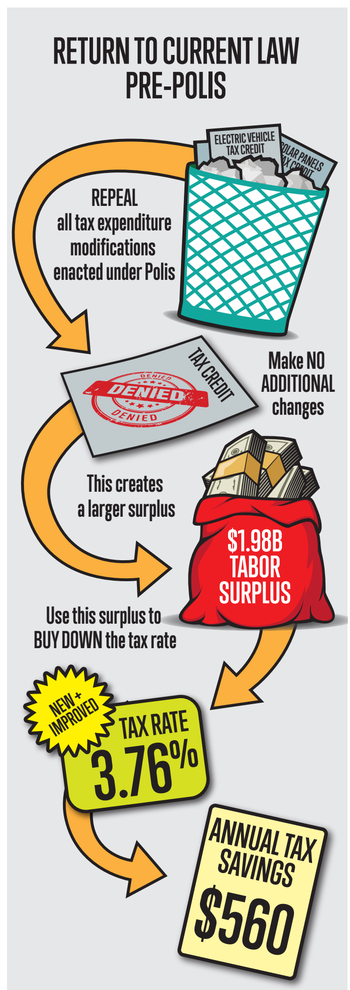
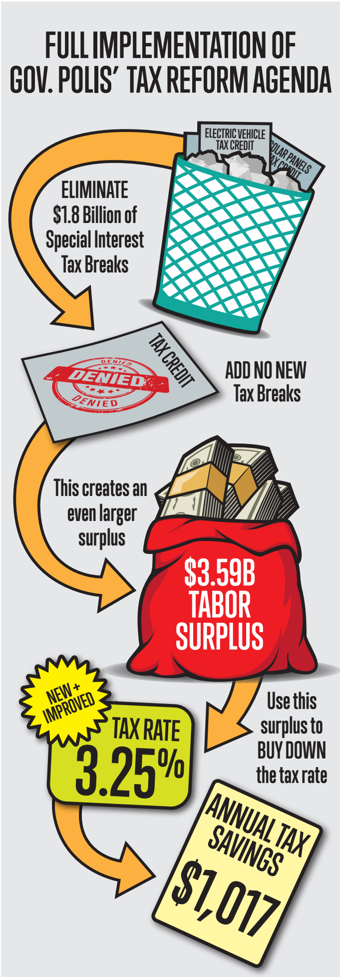


Figure 18



To accomplish this, lawmakers could start by unwinding all increases in special interest tax benefits enacted since 2019 while retaining all decreases. This would increase FY2024-25 revenue by $660 million. The resulting $2.45 billion TABOR surplus could buy down the income tax rate to 3.61%. Lawmakers would then need to raise an additional $1.14 billion in revenue through tax expenditure reductions to meet the governor's goal. Combined with the current projected FY2024-25 TABOR surplus, this would allow the state to lower the current 4.40% state income tax rate to 3.25% to make the changes revenue-neutral with no impact on state spending. Again, lawmakers must then maintain those reductions moving forward without creating or expanding other tax expenditures.

If lawmakers reduce the income tax rate starting in tax year 2024, that will have a half-fiscal-year impact in FY2023-24. In that fiscal year, each 0.01% reduction in the income tax rate would reduce state revenue by an estimated $29.1 million.* Reducing the income tax rate by 1.15% starting with tax year 2024 would thus reduce FY2023-24 revenue by half of $3.35 billion, or $1.67 billion. The existing $1.78 billion TABOR surplus currently projected for FY2023-24 would allow for the state to make the recommended changes to the tax code starting in tax year 2024 without impacting FY2023-24 state spending. The first full-year impact would begin in FY2024-25.

Finally, the legislature should follow the Sustainable Colorado Budget (SCB) described in Independence Institute's December 2023 report, *Sustainable Colorado Budget to Help Eliminate State Income Taxes*, and use the difference between the TABOR limit and the SCB limit to buy down the income tax rate even further.[106]

* See *Appendix A.4*.

CONCLUSION

Jared Polis won Coloradans' votes for governor, in part, by proposing to eliminate special interest tax loopholes and use the resulting revenue increases to lower income tax rates. In 2018, he campaigned on tax reform that would do two things: reduce special interest tax benefits, especially those benefiting corporate interests, and use new revenue from those reductions to lower taxes for all Coloradans, particularly by reducing income tax rates. This would make the reform revenue-neutral on net.

Since then, Polis has signed dozens of bills into law that both increased and reduced special interest tax benefits. On the net, however, he has obstinately expanded tax benefits for special interests, diminishing the state's ability to deliver broad-based tax relief for all Coloradans through income tax rate reductions. Tax expenditure legislation promulgated in 2023 accelerated this trend.

> "Unfortunately, the evidence does not suggest Polis will follow through on his promises on tax reform in 2024 anymore than he did in the first five years of his governorship."

Unfortunately, the evidence does not suggest Polis will follow through on his promises on tax reform in 2024 anymore than he did in the first five years of his governorship. First, a good indicator of future behavior is past behavior, which this report lays out thoroughly. Second, Polis has publicly announced plans to increase special interest tax benefits further in 2024. On December 12, 2023, the Polis administration released its *Roadmap to a Future Colorado: 2026*, which "outlines a bold vision for housing, transit, and more affordable, sustainable communities across the state," according to the press release accompanying the report.[107] The plan touts existing tax expenditures created during his tenure as governor. It also proposes expanding existing tax credits and creating new ones.

Additionally, the political landscape suggests the legislature will further extend and expand some of the state's most costly tax expenditures. Democrats hold majority control of both chambers of the state legislature and the governor's office. Their party platform lists as a priority, "Extend and expand tax credits for children, families, seniors and public education opportunities for those in need."[108] Expanding and extending the EITC has been top of the list since the party regained a "trifecta" of control over state government in 2019. Since then, current Democratic leadership has sponsored or co-sponsored every bill to expand the state EITC. Because one expansion of the credit is set to expire after tax year 2023 and another after 2024, legislators will likely renew and extend the credit's expansion again during the 2024 session.

The future also looks bleak for income tax rate reductions. As mentioned under "Polis's record on broad-based tax relief: 2019-2023" earlier in this report, the legislature has killed in committee every bill to reduce the income tax rate since 2019. *Forbes* contributor Patrick Gleason pointed out in a December 2023 article, "Governor Polis acknowledges the economic benefits of lowering income tax rates in his recent column, yet he did not support [the latest income tax cut bill], which was killed in committee along party lines."[109] The governor has remained silent while his Democratic colleagues in the legislature killed every income tax reduction bill introduced since his tenure as governor began. Given the makeup of the legislature and the governor's apparent unwillingness to work with the legislature to advance income tax cuts, any income tax rate reductions will likely have to come via citizen-led ballot initiatives. Unfortunately, recent legislation has made that more difficult to achieve.

On July 7, 2021, Governor Polis signed HB21-1321, requiring for citizen ballot initiatives "that reduce state tax revenue through a tax change, the ballot title must begin" with language telling voters the tax change will cut funding for state government programs.[110] In a ruling on March 15, 2023, the Title Board determined the statute required Initiative #13, an income tax cut measure, to include language telling voters the measure would cut funding for state programs. The Title Board set the ballot title beginning with this language:

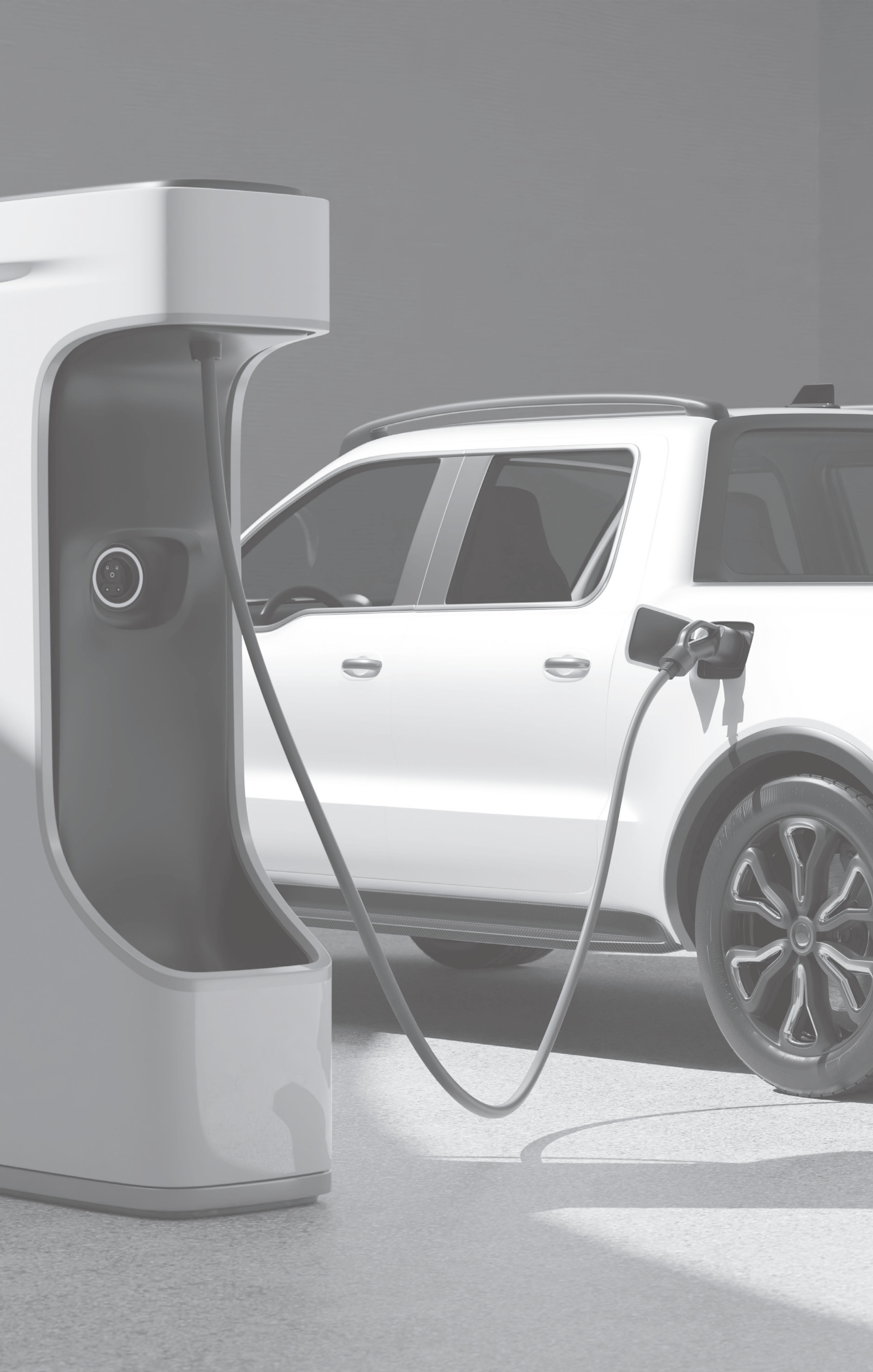
"Given the makeup of the legislature and the governor's apparent unwillingness to work with the legislature to advance income tax cuts, any income tax rate reductions will likely have to come via citizen-led ballot initiatives."

"A reduction to the state income tax by 1.14% thereby reducing state revenue, which will reduce funding for state expenditures that include but are not limited to education, health care policy and financing, and higher education by an estimated $155,700,000 in tax revenue, by a change to the Colorado Revised Statutes to reduce the state income tax rate from 4.40% to 4.35%..."[111]

This ballot title objectively misrepresents the impact of the measure. An income tax rate cut that results in a revenue reduction of a dollar amount less than the TABOR surplus would only reduce the TABOR surplus. It would not impact state funding or state expenditures for any programs. The initiative's proposed 0.05% reduction in the state income tax rate would have reduced state TABOR revenue by an estimated $75.1 million in FY2024-25 and by $155.7 million in FY2025-26, according to the LCS fiscal summary of the initiative.[112] At the time of the ruling, the latest LCS forecast projected a $1.37 billion surplus for FY2024-25 and had not yet forecasted FY2025-26.[113] Currently, LCS expects a $1.79 billion and $2.01 billion TABOR surplus for each of those years, respectively.[114] The measure, therefore, would have resulted in less than a 10% reduction in the TABOR surplus. Thus, it would have had zero impact on state expenditures or funding for state programs such as education and healthcare. That means the Title Board believes the statute created by HB21-1321 compels them to set a misleading ballot title. The petitioners for Initiative #13—Independence Institute president Jon Caldara and Ben Murrey, one of the authors of this report—were forced to withdraw their initiative because of voter reluctance and often refusal to sign a ballot petition for a measure with the misleading ballot language. Consequently, unless a court strikes down the new law or the legislature repeals it, lowering the income tax rate through a citizen-led initiative will prove much more challenging than in the past.

> "The 2024 legislative session serves as an opportunity for Governor Polis and the legislature to change course and follow through on the governor's stated tax reform agenda."

Like last year's report, this report concludes that the governor has failed to deliver on the first part of his tax reform agenda: reducing special interest tax giveaways. On the contrary, his actions in 2023 mostly contradicted the tax reform platform upon which voters elected him in 2018. Because of his failure to raise revenue by eliminating special interest tax giveaways, Polis necessarily also failed to deliver on the second part of his tax reform agenda: using revenue from broadening the tax base to reduce income tax rates for all taxpayers. Indeed, he has even failed to deliver income tax rate reductions using the TABOR surpluses that remain after the revenue reductions caused by the expansions in special interest tax benefits he approved. The 2024 legislative session serves as an opportunity for Governor Polis and the legislature to change course and follow through on the governor's stated tax reform agenda. The evidence suggests they will continue to do the opposite.



APPENDICES

APPENDIX A: METHODOLOGY, ASSUMPTIONS, AND TERMS

This report aims to determine the amount by which 2023 legislation increased and decreased tax expenditures and the impact of those changes on the tax base and on TABOR revenue. This requires certain discretions and assumptions. First, to determine the impact of tax expenditure changes, it must rely on a consistent data source where no perfect source exists. Subsection *A.1* of this appendix explains how and where this report sources data on tax expenditures. The authors also needed to establish a reasonable timeframe from which to measure outcomes for the purpose of determining net impacts. Some policies affected only one tax year while others contain effects that will continue indefinitely if not altered in future legislative sessions. Determining how to measure such policies presents a particularly challenging problem. Subsection *A.2* explains how this report calculated total or cumulative impacts over different periods. Subsection *A.3* describes how the report handles policies with ongoing effects. Finally, subsection *A.4* provides the methodology for determining the cost of tax expenditure changes per tax filer and the amount by which the state income tax rate could be reduced using lost or gained revenue from tax expenditure modifications.

A.1. Source of data

For each tax expenditure modification, the report looks to the relevant bill's fiscal note estimates provided by LCS to determine expected revenue impacts. Generally, the report cites a bill's fiscal note in an endnote the first time it mentions that bill. It derives all future revenue impacts from the relevant bill's fiscal note using the methodology described in this appendix. Notably, for HB23B-1002 this report treats the "TABOR Refund" impact in the fiscal note as the revenue impact. See *Appendix A.4* for more information.

Legislative Council Staff forecasts usually provide estimates for the first three fiscal years impacted by a bill. Sometimes a fiscal note will provide an estimate for the annual revenue impact beyond the initial 3-year revenue forecast. Where LCS does not provide complete estimates—either through the expiration date of bills that sunset or for the entire 10-year window for those with ongoing effect—the report assumes a static continuation of the figures from the last fiscal year for which the fiscal note provides estimates. For cases in which a bill's fiscal note provides a range of possible estimated effects, this report assumes the top of the range for purposes of calculating cumulative figures. The report uses the amount of lost or increased state revenue estimated in fiscal notes to determine the increase or decrease in tax benefits in dollars. Fiscal notes reflect that a tax expenditure decrease creates an equal revenue increase, and a tax expenditure increase creates an equal revenue decrease; this report reflects that also. House Bill 23B-1002 is the exception to this rule.*

* See *Appendix A.4*.

Other state publications such as the Department of Revenue *Tax Profile and Expenditure Report*, Office of the State Controller (OSC) tax expenditure evaluations, and the *Annual Comprehensive Financial Report* published by OSC provide more reliable and accurate data than LCS fiscal notes on the actual effects of tax expenditures on state revenues. Because these provide backward-looking information and data published at least one to two years after new tax expenditure changes became law, this report could not rely on them for consistent up-to-date information for all tax expenditure bills passed in 2023. The report instead references legislative bill texts and LCS fiscal notes for the timeliest information and fiscal impact estimates on newly enacted changes to tax expenditures.

At times, this report compares the revenue impacts of 2023 legislation to that of previous years' legislation. For tax expenditure changes made prior to 2023, other state publications may provide actual backward-looking revenue impacts. For consistency's sake, however, this report relies exclusively on fiscal notes for all estimates of revenue impacts, even if more up-to-date or accurate data may exist in other state publications. Moreover, other publications do not parse out the amount of revenue gained or lost due to a tax expenditure change from a particular bill. Neither do they include the revenue gained from repealing or reducing tax expenditures. The choice to rely on fiscal notes for data solves these problems and provides data uniformity, but it necessarily sacrifices accuracy.

A.2. How this report calculates total or cumulative impacts

This report shows revenue impacts over various time periods but generally splits them up between the 10-year impacts and the annual impacts during the 3-year LCS forecast period. The 10-year impact begins the first fiscal year in which a tax expenditure change impacts state revenue. That may begin on different years for different tax expenditure changes, depending on when each change takes effect and when its impact begins. When the report refers to the 10-year impact of a bill or provision of law, the reader should understand that as the impact over 10 fiscal years. Because bills set some tax expenditure changes to sunset or expire and others to continue their impact indefinitely, this report handles these two cases differently when generating 10-year impacts for each change.

As mentioned in the previous paragraph, because this report uses the 10-year impact of changes to tax expenditures, impacts start and end at different points for different tax expenditure provisions. For example, HB23-1272 created an Electric Bicycle Tax Credit beginning in FY2023-24. This report shows the cumulative net effect of the tax expenditure provision in that bill as increasing tax expenditures by $149,746,000 over 10 years, starting in FY2023-24 and ending in FY2032-33. Incidentally, this bill's revenue effects span exactly 10 fiscal years. Conversely, HB23-1091 extends a tax credit beginning in FY2024-25, so its 10-year impact begins a year later.

Some expenditure provisions with a sunset clause impact revenue for less than 10 years. In such cases, the report provides the total impact through expiration and assumes the continuation of current law. For example, HB23-1112 expanded the state Earned Income Tax Credit, which reduces revenue for FY2023-24 and FY2024-25 only. Its two-year impact constitutes the entire 10-year impact for the bill. Such temporary effects could last up to a decade, as in some provisions of HB23-1272, or as few as one year, as in HB23B-1002.

This report must sometimes project forward fiscal note revenue forecasts to estimate the full impact of a bill. House Bill 23-1084, for example, extended the state Military Retirement Benefits Deduction and sunsets the credit after tax year 2028. Because the credit was previously set to expire at the end of 2023, its fiscal note shows a half-year impact of $2.2 million for FY2023-24. The fiscal note provides an estimate of $4.4 million in decreased General Fund revenue for FY2024-25, the first full-year impact. It estimates a $4.5 million impact for FY2025-26 and "similar amounts in future years."[115] The report thus assumes a $4.5 million impact for FY2026-27 and FY2027-28. Because the bill sunsets at the end of 2028, this report reflects another half-year impact for FY2028-29. The bill extended the credit for five tax years; the revenue impact will span six fiscal years; and the 10-year impact represents four full fiscal years plus two half-fiscal years, for a total of five years. This report assumes a half-year impact of $2.25 million for FY2028-29, bringing the total impact to $22.35 million in reduced General Fund revenue, or the same increase in tax expenditures.[116]

For bills without a sunset date (i.e., those with ongoing effects), the report projects the impact out over its first 10 fiscal years in effect. The report uses this timeframe for various reasons explained in more detail in subsection *A.3* of this appendix. (10 years is also the longest effect seen for any provision that includes a sunset signed in 2023.) For example, HB23-1112 expanded the existing state Child Tax Credit, but the expansion does not sunset. Because the bill impacts half of a fiscal year in the first fiscal year, the 10-year impact spans eleven fiscal years, showing half-year impacts for the first and last fiscal years. The bill's fiscal note estimates a half-year loss of $22.8 million in general fund revenue from the increased tax credit for FY2023-24, $46.5 million for FY2024-25, and $46.5 million for FY2025-26. This report assumes a continuation of the last estimated year's impact for another seven-and-a-half years for a total $456 million reduction in state revenue over 10 years.[117] Of all tax expenditure bill passed in 2023, this is the only bill that contains a tax expenditure change without a sunset clause.

For bills with changes to multiple tax expenditure provisions, including some that expire and others that do not, the report uses both methods described in this section as appropriate. In this year's report, this applies only to HB23-1112.

A.3. Bills with sunset clauses vs. those with ongoing effects

Some of the changes made to tax expenditures in 2023 included sunset clauses and some did not. If a particular provision or legislative change in a bill takes effect for only a limited period before expiring, this report refers to this as the bill having a "sunset" or an "expiration." If a provision or effect of a bill does not sunset, this report, like fiscal notes, says the bill has "ongoing effects." It may also refer to such a bill as not having a sunset or not expiring. In addition to showing the 10-year impact of ongoing bills, this report shows effects of such bills on an annual ongoing basis.*

Using 10-year impacts, this report finds that tax expenditure increases are set to outweigh decreases, as explained in the "Tax expenditure modifications, 2023" section of this report. Were the report to measure a longer time horizon for impacts, the ongoing effect of bills without a sunset clause would increase expenditures by $45.6 million

* See table 1 in *Appendix B.*

annually on an ongoing basis even after the final tax expenditure changes from 2023 bills expire in the early 2030s. Under current law, all tax expenditure changes enacted in 2023—excepting the Child Tax Credit expansion in HB23-1112—are set to expire or sunset in the 2020s or early 2030s.

If history is any guide, however, lawmakers will almost certainly extend tax expenditures currently set to expire before the end of the 10-year forecast window. Legislation passed over the last five years illustrates how this has played out in the past. Several of the increases in tax expenditures enacted in 2023 were extensions of existing tax expenditures previously set to expire. At least a couple of those were extensions to tax expenditures set to expire until they were extended by bills enacted over the previous four years, and so on. The Innovative Cars and Trucks Credit, for example, was first created in 1992 and has been modified and extended countless times since then. In 2019, HB19-1159 extended the credit through tax year 2025. In 2023, HB23-1272 extended the credit through 2028. All data in the report reflect the credit expiring in 2028, though the legislature will likely extend it again.

Lawmakers more often prefer to put an expiration date on provisions that increase tax expenditures than those that decrease them. Though lawmakers often renew or extend tax benefits before they expire, including sunset clauses comes with several benefits. First, including a sunset encourages special interests to continue voting for the politicians or political party that gave them the tax benefits in hopes of having them renewed in the future. Second, allowing tax benefits to expire can provide an easier and less politically-costly way to raise future revenue than repealing or reducing permanent tax benefits. When reducing tax expenditures, in contrast, lawmakers stand to benefit more by making those reductions permanent. Because reducing or eliminating tax expenditures increases state revenue, if lawmakers make such changes permanent, they can always use the revenue in future years to renew or increase the same tax benefits again or to hand out new favors to special interests via other tax expenditures.

Because this report cannot account for future extensions of tax expenditures currently set to expire over the next decade, the 10-year forecast in this report will most likely understate the expansion of tax expenditures Colorado will experience over the 10-year forecast window. This report, however, only captures what has been done. It does not and cannot predict future legislation. Using 10-year impacts thus provides a conservative but fair picture of the impact of tax expenditure modifications.

A.4. Calculating cost per filer and income tax rate reductions

This report provides estimates of the “cost” or “savings” per tax filer from tax expenditure modifications and the income tax rate reductions that would be possible using the revenue lost or saved from tax expenditure modifications. To calculate the former, the report simply divides the expected revenue impact of the tax expenditure by the number of tax filers. The number of tax filers comes from page 57 of the most recent *2022 Annual Report* by the Colorado Department of Revenue.[118] Unfortunately, the latest reported year is 2020, so the number used to make the calculation is somewhat outdated.

This report includes calculations to show the possible base-broadening and income tax rate reductions that either are possible because of tax expenditure reductions or that would have been possible in lieu of tax expenditure increases. This report relies on revenue impacts from LCS fiscal notes for each tax expenditure modification and the LCS *Economic & Revenue Forecast, December 2023*. Calculations begin with an estimate of the cost per basis point (0.01%) reduction in the income tax rate using the current income tax rate and projected total income tax collections from the forecast for the applicable fiscal year. To find this number for FY2023-24, for example, divide $12.806 billion in projected income tax collections by 440 basis points for Colorado's 4.40% income tax rate. Each basis point reduction in the state income tax rate, therefore, costs $29.1 million in FY2023-24 revenue. That means a new tax expenditure that reduces FY2023-24 state revenue by $145.5 million could have been used to reduce the income tax rate by five basis points from 4.40% to 4.35%. Likewise, eliminating a tax expenditure that would otherwise reduce FY2023-24 revenue by $145.5 million would broaden the tax base and allow for a revenue neutral 0.05% reduction in the income tax rate that has no impact on the state budget or state spending. Each basis point reduction in the state income tax rate costs $31.07 million.

The report uses the same method for determining how much the current TABOR surplus could buy down the income tax rate. For FY2023-24, for example, the LCS December forecast estimates a $1.78 billion TABOR surplus.[119] Using the calculation method described in the previous paragraph, the surplus could buy down the income tax rate by 0.61% without impacting the state budget or state spending. Broadening the tax base by eliminating or reducing special interest tax benefits would allow for additional rate reductions. An Independence Institute report, *Sustainable Colorado Budget to Help Eliminate State Income Taxes*, published in December 2023, estimates the TABOR surplus could buy down the income tax rate by 0.59%.[120] That report used the September LCS forecast, which forecasted a smaller TABOR surplus.[121]

Notably, HB23B-1002 expanded the state Earned Income Tax Credit (EITC) by $182.5 million for tax year 2023 only, but unlike most tax expenditures that simply reduce the state's TABOR revenue, the legislature designated this special interest tax benefit as a mechanism to refund a portion of the FY2022-23 TABOR surplus. From the perspective of this report and what it aims to accomplish, HB23B-1002 functions the same as any tax expenditure increase. It narrows the tax base and reduces the amount of revenue available to buy down the income tax rate for all taxpayers. For that reason, this report treats the expansion of the EITC in HB23B-1002 the same as any tax expenditure increase. While the state may consider the 2023 EITC expansion from this bill a FY2022-23 refund mechanism on paper, in practice it will reduce revenue during the 2023-24 fiscal year when taxpayers claim the credit in first half of 2024. This report therefore counts the $182.5 million cost as a tax expenditure increase and equal revenue reduction for FY2023-24, including in tables 1 through 3 of *Appendix B*. This departure from LCS's representation of the bill's fiscal impact, however, creates a challenge when calculating possible income tax rate reductions.

Where this report calculates the total income tax rate reduction possible using both the TABOR surplus and lost revenue from 2023 tax expenditure modifications, the calculation counts the $182.5 million as a revenue reduction from an increase in a tax expenditure. It then subtracts the $182.5 million from the FY2023-24 TABOR surplus—

as opposed to the FY2022-23 surplus—to prevent double counting. Where the report calculates the total income tax rate reduction possible using only the TABOR surplus, however, it counts the $182.5 million as part of the surplus. This report aims to evaluate tax expenditure modifications and the broad-based tax relief possible under different scenarios. The state income tax rate could have been lowered by a greater amount without impacting state spending had the legislature not passed HB23B-1002. Applying its impact to FY2023-24 reflects when the revenue impact takes place, as is appropriate for the purposes of this report. Applying the fiscal impacts to FY2023-24 in all instances ensures consistency across the various sections of the report, namely those discussing tax expenditure revenue impacts and those exploring the possibility for broad-based tax relief via income tax rate reductions. The adjustment furthers rather than jeopardizes the object of the report. Notably, Representative Scott Bottoms (R-HD15) filed a lawsuit with the Denver County District Court on December 28, 2023, alleging HB23B-1002 is illegal and void.[122]

APPENDIX B: QUANTITATIVE TABLES, ALL TAX EXPENDITURE BILLS, 2023

The three tables in this appendix provide detailed quantitative information on all 13 bills and 23 tax expenditures cited in this report as having created, eliminated, or otherwise modified tax expenditures in 2023.

Table 1 shows expected revenue increases, decreases, and net change due to tax expenditure modifications for each bill enacted in 2023. The data in the column labeled "Cumulative 10-year Revenue Impact" and "Filer over 10 Years" was derived using the methodology described under *Appendix A*. The table shows impacts that continue after the 10-year forecast window in the column labeled "Ongoing Annual Impacts." These figures are not included in the 10-year impacts.

Table 2 and table 3 repeat the revenue data presented in table 1 for each of the first two fiscal years, FY2023-24 and FY2024-25, respectively. Column 4 of both tables show the reduction or increase in TABOR refunds available per income tax filer as a result of each tax expenditure modification. The green section of each table represents possible income tax rate reductions associated with each tax expenditure modification. The first green column displays the amount by which the state could reduce its income tax rate had the legislature not created, extended, or expanded the tax expenditure represented in each row. The second green column displays the income tax rate reduction made possible by the tax expenditure reduction represented in each row. The final green column shows the new income tax rate corresponding with each row.

Table 1. Revenue impact by timeframe: all tax expenditure modifications, 2023

Expenditure	Bill	FY23-24	FY24-25	FY25-26	Out Years	"Cumulative 10-Year Revenue Impact"	"Cost/Savings Per Filer over 10 Years"	"Ongoing Annual Impacts"
Healthy Eating Program Tax Credit	HB23-1008	3,500,000	8,500,000	10,000,000	45,000,000	67,000,000	$19.05	0
Business Meal Expenses Income Tax Deduction	HB23-1008	4,750,000	9,600,000	9,750,000	44,100,000	68,200,000	$19.39	0
Earned Income Tax Credit	HB23-1112	52,000,000	52,000,000	0	0	104,000,000	$29.57	0
Child Tax Credit	HB23-1112	22,800,000	45,600,000	45,600,000	342,000,000	456,000,000	$129.67	45,600,000
Employee Ownership Tax Credit	HB23-1081	717,500	1,400,000	1,500,000	750,000	4,367,500	$1.24	0
Military Retirement Benefits Deduction	HB23-1084	2,200,000	4,400,000	4,500,000	11,250,000	22,350,000	$6.36	0
Child Care Tax Credit	HB23-1091	0	18,600,000	38,400,000	61,600,000	118,600,000	$33.73	0
Home Purchase Tax Credit	HB23-1189	413,000	874,000	978,000	489,000	2,754,000	$0.78	0
Electric Lawn Equipment Tax Credit	SB23-016	6,000,000	12,300,000	12,300,000	6,150,000	36,750,000	$10.45	0
Enterprise Zone Tax Credits	HB23-1260	0	1,500,000	3,000,000	70,500,000	75,000,000	$21.33	0
Wildfire Disaster Construction Sales/Tax Exemption	HB23-1240	8,400,000	5,700,000	0	0	14,100,000	$4.01	0
Innovative Motor Vehicle Tax Credit	HB23-1272	38,300,000	36,500,000	26,700,000	36,512,000	138,012,000	$39.25	0
Innovative Truck Tax Credit	HB23-1272	300,000	500,000	600,000	3,900,000	5,300,000	$1.51	0
Industrial Clean Energy Tax Credit	HB23-1272	8,000,000	16,000,000	16,000,000	136,000,000	176,000,000	$50.05	0
Geothermal Energy Expenditure Tax Credit	HB23-1272	2,500,000	5,000,000	5,000,000	22,500,000	35,000,000	$9.95	0
Geothermal Energy Production Tax Credit	HB23-1272	0	0	0	17,500,000	17,500,000	$4.98	0
Heat Pump Systems Tax Credit	HB23-1272	100,000	6,700,000	7,800,000	105,941,360	120,541,360	$34.28	0
Electric Bicycle Tax Credit	HB23-1272	2,600,000	10,900,000	12,200,000	124,046,000	149,746,000	$42.58	0
Sustainable Aviation Fuel Production Facility Tax Credit	HB23-1272	1,000,000	2,000,000	2,000,000	19,000,000	24,000,000	$6.82	0
Heat Pump Sales and Use Tax Exemption	HB23-1272	0	1,500,000	1,600,000	12,800,000	15,900,000	$4.52	0
Severance Tax Ad Valorem Credit	HB23-1272	13,900,000	28,300,000	29,200,000	14,600,000	86,000,000	$24.46	0
Clean Hydrogen Tax Credit	HB23-1281	2,500,000	5,000,000	6,000,000	38,500,000	52,000,000	$14.79	0
Film Incentive Tax Credit	HB23-1309	2,500,000	2,500,000	0	0	5,000,000	$1.42	0
Earned Income Tax Credit	HB23B-1002	182,500,000	0	0	0	182,500,000	$51.90	0
Total Revenue Decrease		**-336,330,500**	**-235,974,000**	**-192,578,000**	**-1,041,638,360**	**-1,806,520,860**	**-513.72**	**-45,600,000**
Total Revenue Increase		**18,650,000**	**39,400,000**	**40,550,000**	**71,500,000**	**170,100,000**	**48.37**	**0**
Net Revenue Change		**-317,680,500**	**-196,574,000**	**-152,028,000**	**-970,138,360**	**-1,636,420,860**	**-465.35**	**-45,600,000**

Source: Legislative Council Staff Fiscal Notes and *December 2023 Economic & Revenue Forecast*

Table 2. Impact of 2023 tax expenditure modifications on FY23-24 state TABOR surplus

Tax Expenditure	Bill	"FY23-24 TABOR Surplus Change"	"TABOR Refund Change Per Filer"		"Potential Income Tax Rate Change w/o Modification"	"Possible New Income Tax Rate"	Potential New Rate with TABOR Surplus
Healthy Eating Program Tax Credit	HB23-1008	3,500,000	$1.00		0.001%	4.399%	3.788%
Business Meal Expenses Income Tax Deduction	HB23-1008	4,750,000	$1.35		0.002%	4.402%	3.791%
Earned Income Tax Credit	HB23-1112	52,000,000	$14.79		0.018%	4.382%	3.772%
Child Tax Credit	HB23-1112	22,800,000	$6.48		0.008%	4.392%	3.782%
Employee Ownership Tax Credit	HB23-1081	717,500	$0.20		0.000%	4.400%	3.789%
Military Retirement Benefits Deduction	HB23-1084	2,200,000	$0.63		0.001%	4.399%	3.789%
Child Care Tax Credit	HB23-1091					4.400%	3.789%
Home Purchase Tax Credit	HB23-1189	413,000	$0.12		0.000%	4.400%	3.789%
Electric Lawn Equipment Tax Credit	SB23-016	6,000,000	$1.71		0.002%	4.398%	3.787%
Enterprise Zone Tax Credits	HB23-1260					4.400%	3.789%
Wildfire Disaster Construction Sales/Tax Exemption	HB23-1240	8,400,000	$2.39		0.003%	4.397%	3.787%
Innovative Motor Vehicle Tax Credit	HB23-1272	38,300,000	$10.89		0.013%	4.387%	3.776%
Innovative Truck Tax Credit	HB23-1272	300,000	$0.09		0.000%	4.400%	3.789%
Industrial Clean Energy Tax Credit	HB23-1272	8,000,000	$2.27		0.003%	4.397%	3.787%
Geothermal Energy Expenditure Tax Credit	HB23-1272	2,500,000	$0.71		0.001%	4.399%	3.789%
Geothermal Energy Production Tax Credit	HB23-1272					4.400%	3.789%
Heat Pump System Tax Credits	HB23-1272	100,000	$0.03		0.000%	4.400%	3.789%
Electric Bicycle Tax Credit	HB23-1272	2,600,000	$0.74		0.001%	4.399%	3.789%
Sustainable Aviation Fuel Production Facility Tax Credit	HB23-1272	1,000,000	$0.28		0.000%	4.400%	3.789%
Heat Pump Sales and Use Tax Exemption	HB23-1272					4.400%	3.789%
Severance Tax Ad Valorem Credit	HB23-1272	13,900,000	$3.95		0.005%	4.405%	3.794%
Clean Hydrogen Tax Credit	HB23-1281	2,500,000	$0.71		0.001%	4.399%	3.789%
Film Incentive Tax Credit	HB23-1309	2,500,000	$0.71		0.001%	4.399%	3.789%
Earned Income Tax Credit	HB23B-1002	182,500,000	$51.90		0.063%	4.337%	3.727%
Total Reduction		**-336,330,500**	**-95.64**	**Total Reduction**	**-0.116%**	**4.284%**	**3.674%**
Total Increase		**18,650,000**	**5.30**	**Total Increase**	**0.006%**	**4.406%**	**3.796%**
Net Change		**-317,680,500**	**-90.34**	**"Net Possible Income Tax Rate Reduction"**	**-0.109%**	**4.291%**	**3.680%**

Source: Legislative Council Staff Fiscal Notes and *December 2023 Economic & Revenue Forecast*

Table 3. Impact of 2023 tax expenditure modifications on FY24-25 state TABOR surplus

Tax Expenditure	Bill	“FY24-25 TABOR Surplus Change”	“TABOR Refund Change Per Filer”		“Potential Income Tax Rate Change w/o Modification”	“Potential New Income Tax Rate”	Potential New Rate with TABOR Surplus
Healthy Eating Program Tax Credit	HB23-1008	8,500,000	$2.42		0.003%	4.397%	3.820%
Business Meal Expenses Income Tax Deduction	HB23-1008	9,600,000	$2.73		0.003%	4.403%	3.826%
Earned Income Tax Credit	HB23-1112	52,000,000	$14.79		0.017%	4.383%	3.806%
Child Tax Credit	HB23-1112	45,600,000	$12.97		0.015%	4.385%	3.808%
Employee Ownership Tax Credit	HB23-1081	1,400,000	$0.40		0.000%	4.400%	3.823%
Military Retirement Benefits Deduction	HB23-1084	4,400,000	$1.25		0.001%	4.399%	3.822%
Child Care Tax Credit	HB23-1091	18,600,000	$5.29		0.006%	4.394%	3.817%
Home Purchase Tax Credit	HB23-1189	874,000	$0.25		0.000%	4.400%	3.823%
Electric Lawn Equipment Tax Credit	SB23-016	12,300,000	$3.50		0.004%	4.396%	3.819%
Enterprise Zone Tax Credits	HB23-1260	1,500,000	$0.43		0.000%	4.400%	3.823%
Wildfire Disaster Construction Sales/Tax Exemption	HB23-1240	5,700,000	$1.62		0.002%	4.398%	3.821%
Innovative Motor Vehicle Tax Credit	HB23-1272	36,500,000	$10.38		0.012%	4.388%	3.811%
Innovative Truck Tax Credit	HB23-1272	500,000	$0.14		0.000%	4.400%	3.823%
Industrial Clean Energy Tax Credit	HB23-1272	16,000,000	$4.55		0.005%	4.395%	3.818%
Geothermal Energy Expenditure Tax Credit	HB23-1272	5,000,000	$1.42		0.002%	4.398%	3.821%
Geothermal Energy Production Tax Credit	HB23-1272					4.400%	3.823%
Heat Pump System Tax Credits	HB23-1272	6,700,000	$1.91		0.002%	4.398%	3.821%
Electric Bicycle Tax Credit	HB23-1272	10,900,000	$3.10		0.004%	4.396%	3.819%
Sustainable Aviation Fuel Production Facility Tax Credit	HB23-1272	2,000,000	$0.57		0.001%	4.399%	3.822%
Heat Pump Sales and Use Tax Exemption	HB23-1272	1,500,000	$0.43		0.000%	4.400%	3.823%
Severance Tax Ad Valorem Credit	HB23-1272	28,300,000	$8.05		0.009%	4.409%	3.832%
Clean Hydrogen Tax Credit	HB23-1281	5,000,000	$1.42		0.002%	4.398%	3.821%
Film Incentive Tax Credit	HB23-1309	2,500,000	$0.71		0.001%	4.399%	3.822%
Earned Income Tax Credit	HB23B-1002					4.400%	3.823%
Total Reduction		**-235,974,000**	**-66.68**	**Total Reduction**	**-0.076%**	**4.324%**	**3.747%**
Total Increase		**39,400,000**	**10.78**	**Total Increase**	**0.013%**	**4.413%**	**3.836%**
Net Change		**-196,574,000**	**-55.90**	**“Net Possible Income Tax Rate Reduction”**	**-0.063%**	**4.337%**	**3.760%**

Source: Legislative Council Staff Fiscal Notes and *December 2023 Economic & Revenue Forecast*

APPENDIX C: QUALITATIVE TABLES, ALL TAX EXPENDITURE BILLS, 2023

The two tables in this appendix include all the same bills and tax expenditures as tables 1 through 3 but provide qualitative rather than quantitative information. Table 4 describes tax expenditure decreases and table 5 describes the increases. Bill topics (column 2) and summaries (column 6) are provided by LCS. The final column (7) primarily provides additional information from LCS fiscal notes and sometimes explains how this report handles questions of interpreting revenue impacts described in fiscal notes. The tables include links to all bills and to state publications that provide information on individual tax expenditures when available. For tax credits created in 2023, a link may not be provided if the state has not yet published informational materials beyond the bill and its fiscal note. In those cases, reference the bill link in the first column for the most up-to-date information.

Table 4. Qualitative list of all tax expenditure decreases, 2023

Bill Number	Bill Topic	Tax Expenditure Name	Tax Expenditure Type	Nature of Change	Summary of New Legislation	Additional Notes
HB23-1008	Food Accessibility	Business Meal Expenses Income Tax Deduction 26 U.S. Code § 274(k)	Add Back	Creation	For corporate and individual taxpayers that claim the business meal expenses income tax deduction on their federal income tax return, the bill requires these taxpayers to add back the amount they claimed when computing their state tax liability for the 2024 through 2030 tax years.	
HB23-1272	Tax Policy that Advances Decarbonization	Heat Pump Sales and Use Tax Exemption Colo. Rev. Stat § 39-26-732(3)(5)	Exemption	Replaced	The bill repeals an existing sales and use tax exemption for heat pump systems and heat pump water heaters starting January 1, 2024.	HB23-1272 replaced this exemption with new and larger income tax credits for the same purpose.
		Severance Tax Ad Valorem Credit Colo. Rev. Stat § 39-29-105(2)	Credit	Reduction	Under the bill, the ad valorem (AV) credit will be reduced for tax years 2024 through 2027.	Given the significant volatility in commodity prices and severance tax revenue overall, there is significant uncertainty surrounding this revenue estimate.

Source: Legislative Council Staff

Table 5. Qualitative list of all tax expenditure increases, 2023

Bill Number	Bill Topic	Tax Expenditure Name	Tax Expenditure Type	Nature of Change	Summary of New Legislation	Additional Notes
HB23-1008	Food Accessibility	Healthy Eating Program Tax Credit Colo. Rev. Stat § 39-22-549	Credit	Creation	The bill creates a tax credit for any consortium member and any small food business or small family farm that purchases small food business recovery and resilience grant program equipment. The tax credit is available for tax years 2024 through 2030.	
HB23-1112	Earned Income and Child Tax Credits	Earned Income Tax Credit Colo. Rev. Stat § 39-22-123.5	Credit	Expansion	For tax year 2024, the bill expands the state earned income tax credit (EITC).	If the bill causes a greater share of eligible taxpayers to claim the credit than anticipated under current law, the revenue decrease will be greater than estimated.
		Child Tax Credit Colo. Rev. Stat § 39-22-129	Credit	Expansion	Starting in tax year 2024, the bill expands the state child tax credit (CTC).	The actual revenue decrease will depend on the rate at which the credit is utilized and could be greater or less than estimated.
HB23-1081	Employee Ownership Tax Credit Expansion	Employee Ownership Tax Credit Colo. Rev. Stat § 39-22-542	Credit	Expansion	Beginning in tax year 2024, the bill makes several changes to expand the Employee Ownership Tax Credit. It expires after tax year 2026.	To the extent that the bill incentivizes more businesses to make conversions than under current law, the revenue decrease will be greater than estimated.
HB23-1084	Continuation of Military Retirement Deduction	Military Retirement Benefits Deduction Colo. Rev. Stat § 39-22-104(4)	Deduction	Extension	The bill extends the state income tax deduction for military retirement benefits received by taxpayers under age 55 for tax years 2024 through 2028.	The bill's revenue impact may grow or decline in subsequent years depending on the number of veterans receiving military retirement income as well as the rate of inflation.
HB23-1091	Continuation of Child Care Contribution Tax Credit	Child Care Tax Credit Colo. Rev. Stat § 39-22-121	Credit	Extension	The bill extends the child care contribution tax credit, currently set to expire after 2024, through 2027.	The number of credits claimed is assumed to grow by the March 2023 Legislative Council Staff forecast for Colorado population growth combined with the State Demography Office's 2022 projections for population growth. To the extent that the amount of the credit grows at a different pace than anticipated here, the impact on revenue will be correspondingly greater or less.
HB23-1189	Employer Assistance for Home Purchase Tax Credit	Home Purchase Tax Credit Colo. Rev. Stat § 39-22-104 and 39-22-558	Credit	Creation	For tax year 2024 through tax year 2026, the bill creates a state income tax credit for employers who make a contribution to an employee for purchasing a primary residence.	To the extent that the home purchase allowance replaces part of the salary the employee would otherwise receive, the revenue reduction in the bill will be greater than estimated when accounting for the credit alone... If the credit is utilized more extensively than assumed, the bill will decrease state revenue by a greater amount than estimated.
SB23-016	Greenhouse Gas Emission Reduction Measures	Electric Lawn Equipment Tax Credit Colo. Rev. Stat § 39-22-550	Credit	Creation	For tax years 2024 to 2026, the bill creates a state income tax credit for new, electric-powered lawn equipment	To the extent credits are carried forward, revenue impacts may vary from those estimated in this analysis.

Table 5. continued...

Bill Number	Bill Topic	Tax Expenditure Name	Tax Expenditure Type	Nature of Change	Summary of New Legislation	Additional Notes
HB23-1260	Advanced Industry Semiconductor MFG Incentives	Enterprise Zone Tax Credits Colo. Rev. Stat § 39-36 and 39-30-104, 105.1, 105.5	Credit	Expansion	For tax years 2023 through 2035, the bill creates the CHIPS Zone program. If a CHIPS Zone is established, taxpayers are eligible for the enterprise zone investment tax credit (ITC), new employee tax credit, and research development credit. For FY 2023-24 through FY 2028-29, the bill allows taxpayers who are eligible to claim the three existing state income tax credits to apply for a refundability certificate.	To the extent the commission does not approve the full $75 million, the decline in General Fund revenue will be less.
HB23-1240	Sales & Use Tax Exemption Wildfire Disaster Construction	Wildfire Disaster Construction Sales/Tax Exemption Colo. Rev. Stat § 39-26-734	Exemption	Creation	The bill creates a sales and use tax exemption for building materials purchased for rebuilding and repairing residential structures damaged by wildfire from 2020 to 2022.	The bill allows for additional claims until 2028 for tax years 2020-22, but the fiscal note does not provide an estimate for claims after FY2024-25. Any claims in the out years are expected to be a minimal revenue impact.
HB23-1272	Tax Policy that Advances Decarbonization	Innovative Motor Vehicle Tax Credit Colo. Rev. Stat § 39-22-516.7	Credit	Extension	The bill expands the state income tax credits for purchases and leases of electric and plug-in hybrid electric passenger vehicles from 2025 to 2028.	The credit is expected to be claimed for 11,290 vehicles in FY 2023-24 and increasing amounts in future years. Beginning in tax year 2026, if state revenue subject to TABOR is not expected to increase by at least 4 percent in the fiscal year in which the relevant tax year begins, then the amounts of the tax credits will be reduced by 50 percent, with any credit less than $500 reduced to $0.
		Innovative Truck Tax Credit Colo. Rev. Stat § 39-22-516.8	Credit	Extension	The bill extends the state income tax credits for purchases and leases of electric and plug-in hybrid electric trucks from 2025 to 2032.	The credit is expected to be claimed for 169 vehicles in FY 2023-24 and increasing amounts in future years. Beginning in tax year 2026, if state revenue subject to TABOR is not expected to increase by at least 4 percent in the fiscal year in which the relevant tax year begins, then the amounts of the tax credits will be reduced by 50 percent, with any credit less than $500 reduced to $0.
		Industrial Clean Energy Tax Credit Colo. Rev. Stat § 39-22-551	Credit	Creation	The bill creates a new refundable state income tax credit for tax years 2024 through 2032. The credit is equal to 30 percent of qualifying expenditures by an owner of an industrial facility to undertake an industrial emissions study or between 30 percent and 50 percent of qualifying expenditures to implement greenhouse gas emissions reduction improvements.	The fiscal note assumes that the aggregate credit amounts specified in the bill will be fully utilized and spread evenly across available tax years.
		Geothermal Energy Expenditure Tax Credit Colo. Rev. Stat § 39-22-552	Credit	Creation	The bill creates a new refundable state income tax credit, for tax years 2024 through 2032, for 30 to 50 percent of qualifying expenditures made to evaluate and develop a geothermal energy resource for the purpose of electricity production.	The fiscal note assumes that the aggregate credit amount specified in the bill will be fully utilized for the first seven years of the credit's availability

Table 5. continued...

Bill Number	Bill Topic	Tax Expenditure Name	Tax Expenditure Type	Nature of Change	Summary of New Legislation	Additional Notes
HB23-1272(Cont)		Geothermal Energy Production Tax Credit Colo. Rev. Stat § 39-22-553	Credit	Creation	The bill creates a refundable state income tax credit for income tax years 2024 through 2032 for the production of geothermal electricity for sale or for own use.	The fiscal note assumes that geothermal power plant construction and electricity generation development requires an average of six years, and that up to 5 entities may be able to claim the maximum credit of $1.0 million starting in tax year 2030.
		Heat Pump Systems Tax Credit Colo. Rev. Stat § 39-22-545 and 39-22-554	Credit	Expansion	The bill creates a new refundable state income tax credit for the installation of heat pump technology or the development of a thermal energy network. The tax credit is available for tax years 2024 through 2032. A different state income tax credit for the purchase of heat pump systems or heat pump water heaters was scheduled to expire after tax year 2024 under current law. The bill ends that credit after tax year 2023, so that only the new credit created in the bill is available for tax year 2024.	The fiscal note assumes that heat pump adoption will grow at rates similar to that of recent years with prices increasing by Denver-Aurora Lakewood inflation. Beginning in tax year 2026, if state revenue subject to TABOR is not expected to increase by at least 4 percent in the fiscal year in which the relevant tax year begins, then the amounts of the tax credits will be reduced by 50 percent, with any credit less than $250 reduced to $0.
		Electric Bicycle Tax Credit Colo. Rev. Stat § 39-22-555	Credit	Creation	The bill creates a refundable income tax credit for tax years 2024 through 2032 for the sale of new, qualifying electric bicycles, for retail sales starting April 1, 2024.	The fiscal note assumes accelerating growth in electric bicycle sales. Beginning in tax year 2026, if state revenue subject to TABOR is not expected to increase by at least 4 percent in the fiscal year in which the relevant tax year begins, then the amounts of the tax credits will be reduced by 50 percent.
		Sustainable Aviation Fuel Production Facility Tax Credit Colo. Rev. Stat § 39-22-556	Credit	Creation	The bill creates a refundable income tax credit for tax years 2024 through 2032 for the costs incurred to construct a sustainable aviation fuel production facility.	The fiscal note assumes that one credit will be claimed each year, which will reach the maximum amount available for the credit.
HB23-1281	Advance the Use of Clean Hydrogen	Clean Hydrogen Tax Credit Colo. Rev. Stat § 39-22-557	Credit	Creation	The bill creates a refundable income tax credit for qualified uses of clean hydrogen for tax years 2024 through 2032.	Clean hydrogen is considered an early developmental-stage technology by the U.S. Energy Information Association. As such, current levels of production and consumption are not well documented, and future trends are difficult to forecast. Actual changes in revenue may fall well below the maximum amounts identified in this fiscal note.
HB23-1309	Film Incentive Tax Credit	Film Incentive Tax Credit Colo. Rev. Stat § 39-22-559	Credit	Creation	The bill makes the current performance-based incentive for film production in Colorado unavailable in 2024. It instead creates a state income tax credit for a film production company that employs a workforce for in-state production activity for income tax year 2024 only.	If revenue subject to TABOR does not exceed the Referendum C cap in FY 2023-24, or exceeds the cap by less than $50 million, the availability of the credit is determined by the General Assembly.
HB23B-1002	Increased Earned Income Tax Credit 2023	Earned Income Tax Credit Colo. Rev. Stat § 39-22-123.5(2.8)	Credit	Expansion	The bill expands the state earned income tax credit for tax year 2023.	The bill classifies this expansion to the EITC as a TABOR refund mechanism for the FY 2022-23 TABOR surplus, refunded in FY 2023-24. This report, however, treats it no different than any other tax expenditure that reduces state revenue. See *Appendix A*.4 for more information.

Source: Legislative Council Staff

APPENDIX D: ADDITIONAL RESOURCES

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