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MEMORANDUM¹

TO: Statutory Revision Committee

FROM: Pierce Lively, Office of Legislative Legal Services

DATE: January 9, 2020

SUBJECT: Repeal of the crop hail insurance premium tax exemption

Summary

Section 39-21-305, C.R.S., requires the Office of the State Auditor (OSA) to evaluate all of the state's tax expenditures every five years. The OSA began to publish its evaluations of these tax expenditures in September 2018. The Tax Expenditure Evaluation Interim Study Committee (committee) convened during the 2019 legislative interim to review the policy considerations in the OSA's tax expenditure evaluations.

The OSA's evaluation of the crop hail insurance premium tax exemption (exemption) found that no insurers in Colorado have been eligible to claim this exemption since 1979. Therefore, the OSA's evaluation stated that the General Assembly may want to either repeal the exemption or expand its eligibility requirements.

After reviewing the OSA's evaluation of the exemption, the committee requested a draft of a bill repealing the exemption. The Office of Legislative Legal Services (OLLS) prepared the bill draft and informed the committee that the drafted bill fit within the Statutory Revision Committee's (SRC) charge. The committee then unanimously requested that OLLS present the proposed bill to the SRC.

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

Analysis

The crop hail insurance premium tax exemption should be repealed.

The exemption is codified in section 10-3-209 (1)(d)(II), C.R.S, and reads as follows:

10-3-209. Tax on premiums collected – exemptions – penalties - repeal. (1)(d)(II) Mutual protective associations writing crop hail insurance only and operating on an advanced premium basis shall be exempt from the taxes provided by this section on that portion of the premium designated to the loss fund.

Under the exemption, mutual protective associations are exempt from paying the insurance premium tax on the portion of the insurance premiums they collect that are designated to their loss fund.

To qualify for the exemption, an insurer must, among other requirements, be a "mutual protective association" and only offer crop hail insurance to policyholders. However, the OSA's evaluation found that none of the insurers licensed in Colorado are "mutual protective associations" and there have not been any active "mutual protective associations" in Colorado since 1979. Moreover, the OSA's evaluation also found that all of the insurance companies that offer crop hail insurance in Colorado offer other types of insurance as well. Thus, no insurers are currently eligible to claim the exemption.

Statutory Charge²

The SRC is tasked with both examining Colorado statutes to discover "anachronisms in the law" and with recommending legislation "to effect such changes in the law as [the SRC] deems necessary in order to modify or eliminate antiquated ... rules of law." Thus, removing the crop hail insurance premium tax exemption appears to fall

² The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

squarely within the SRC's charge because doing so eliminates an anachronism and an antiquated rule of law.

Proposed Bill

The attached bill repeals the crop hail insurance premium tax exemption.