

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Pierce Lively, Office of Legislative Legal Services

DATE: January 9, 2020

SUBJECT: Repeal of the nonprofit transit agency fuel 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 nonprofit transit agency fuel tax exemption (exemption) found that the exemption has not been claimed since it was enacted in 1994 and that only a small percentage of vehicles can qualify for the exemption.

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.

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<sup>1</sup> 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### **The nonprofit transit agency fuel tax exemption should be repealed.**

The exemption is codified in section 39-27-102.5 (7), C.R.S, and reads as follows:

**39-27-102.5. Exemptions on tax imposed – ex-tax purchases.** (7) Motor vehicles that are owned or operated by a nonprofit transit agency that receives public funds and that are used exclusively in performing the agency's nonprofit functions and activities shall be exempt for the special fuel tax imposed by section 29-27-102 (1)(a) upon liquefied petroleum gas and natural gas. A person who purchases special fuel for the purposes set forth in section (7) may, in accordance with section 29-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

Under the exemption, nonprofit transit agencies are exempt from the fuel excise tax on liquefied petroleum gas and natural gas for vehicles that are used for transit purposes and only use liquefied petroleum gas and natural gas. However, the OSA's evaluation found that there are no transit vehicles in the United States that use liquefied petroleum gas and only 15% of transit vehicles in the United States use natural gas or natural gas blends. The OSA's evaluation further found that, perhaps because of the small number of vehicles that qualify for the exemption, the exemption has not been claimed since it was enacted in 1994.

Additionally, the exemption does not have stated performance measures to determine whether it is meeting its purpose and does not have an expiration date.

## Statutory Charge<sup>2</sup>

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 nonprofit transit agency fuel tax exemption appears to fall squarely

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<sup>2</sup> 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.

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

## **Proposed Bill**

The attached bill repeals the nonprofit transit agency fuel tax exemption.