



COLORADO CHAMBER OF COMMERCE

To: Legislative Oversight Committee on Tax Policy
From: Colorado Chamber Tax Council
Date: 9/21/22
Re: Proposed Legislation on Computer Software Taxation

On behalf of the Colorado Chamber of Commerce Tax Council, we are providing formal comments/concerns by Tax Council members regarding the Legislative Oversight Committee's proposed legislation potentially changing Colorado's existing law on the taxation of computer software.

The Colorado Chamber of Commerce membership includes thousands of businesses of all sizes representing all industries across the State. The Tax Council includes representatives of those businesses that are actively engaged in tax policy and who advocate for a healthy and competitive tax environment for the State of Colorado.

History of Colorado's Software Tax Policy:

The Legislative Oversight Committee Concerning Tax Policy is considering draft legislation that would dramatically change current law which was established in 2011 through a bi-partisan bill known as House Bill 1293 and signed by Governor Hickenlooper. Prior to the passage of that legislation, the taxation of software has gone through many iterations beginning in 1977 and the Colorado Chamber's Tax Council has been involved in those changes.

The Chamber strongly advocated for and helped pass HB 11-1293 which codified into statute an updated version of Department of Revenue Special Regulation 7 which had provided much needed clarity for taxpayers for how software is defined as taxable and non-taxable. HB 1293 provided the followed clarity:

Software is only defined as tangible personal property subject to sales/use tax if:

- Software is pre-packaged for repeat sale or license;
- Use of software is governed by a tear-open non-negotiable license agreement; and
- Delivered to a customer in a tangible medium.

By this definition, software not meeting all three criteria is not taxable. Following the passage of HB 1293, software is not tangible personal property if it is provided to the

customer through an application service provider (ASP), delivered by electronic software delivery, or transferred by load and leave software delivery.

Economic Impact for Colorado:

The Colorado Chamber conducted a survey of tax exclusions or exemptions being considered for elimination or modification. Colorado employers statewide responded that the elimination of the software exclusion created the largest negative impact to their business.

This current tax policy has lured many companies and IT Centers to come to Colorado because of its clarity and efficiency in defining how software is taxed as well as reduced many lawsuits with the DOR because the definition of what is taxable tangible personal property is now very clear. Colorado employers have long believed that HB 1293 has provided the proper balance that tax practitioners and taxpayers across the state were trying to achieve for years.

The Colorado Chamber strongly encourages this Committee to maintain the current law that has provided common sense and clarification on tax policy that took years to achieve and discourages this Committee from moving Bill #7 forward to be considered during the 2023 Legislative Session. Please be advised that the Tax Council also includes members who serve on the Legislative Task Force on Tax Policy and those members have also expressed strong concerns with this draft legislation.

Please contact Loren Furman at lfurman@cochamber.com or Larry Hudson at larry@groupfulcrum.com if you should have any questions.