



SCHOOL SALES EXEMPTIONS

EVALUATION SUMMARY | JANUARY 2021 | 2021-TE5

EXPENDITURE	SALES TO PRIVATE SCHOOLS EXEMPTION	PTA & PTO EXEMPTION	SCHOOL RELATED SALES EXEMPTION
TAX TYPE	Sales Tax	Sales Tax	Sales Tax
YEAR ENACTED	1969	2008	2008
REPEAL/EXPIRATION DATE	None	None	None
REVENUE IMPACT (TAX YEAR 2019)	\$1.7 million	\$3.2 million combined	
NUMBER OF TAXPAYERS	Could Not Determine	Could Not Determine	Could Not Determine

KEY CONCLUSION: These exemptions are likely exempting most eligible school-related sales from sales tax. However, the PTA & PTO and School Related Sales Exemptions' eligibility requirements establish different tax treatment for sales made by similar organizations, and the Sales to Private Schools Exemption appears to be obsolete.

WHAT DO THESE TAX EXPENDITURES DO?

- SALES TO PRIVATE SCHOOLS EXEMPTION—Exempts sales of tangible personal property to private, nonprofit schools from sales tax.
- PTA & PTO EXEMPTION—Exempts sales by parent teacher associations and organizations that benefit a public K-12 school from sales tax.
- SCHOOL RELATED SALES EXEMPTION—Exempts sales by schools, school booster organizations, or any other school organization that benefit a public or private K-12 school from sales tax.

WHAT IS THE PURPOSE OF THESE TAX EXPENDITURES?

Statute and the enacting legislation do not state these tax expenditures' purpose; therefore, we could not definitively determine the General Assembly's original intent. Based on our review of their legislative history and their operation, our evaluation considered these exemptions to have the following potential purposes:

- SALES TO PRIVATE SCHOOLS EXEMPTION—Defining the sales tax base to exclude nonprofit, private schools from paying sales tax, similar to the treatment of charitable organizations.

- PTA & PTO EXEMPTION AND THE SCHOOL RELATED SALES EXEMPTION—We identified two potential purposes for both tax expenditures: (1) reducing eligible organizations' administrative burden related to collecting and remitting sales tax, and (2) increasing eligible organizations' sales revenue and funding available to schools, since individuals may increase their purchases from PTA & PTO fundraisers due to the lower after-tax cost of the items sold.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly may want to consider:

- Amending statute to establish a statutory purpose and performance measures for the three School Sales Exemptions.
- Clarifying or consolidating eligibility requirements for the PTA & PTO Exemption and the School Related Sales Exemption.
- Repealing the Private Schools Exemption because it is likely obsolete.

SCHOOL SALES EXEMPTIONS

EVALUATION RESULTS

WHAT ARE THESE TAX EXPENDITURES?

This evaluation covers three sales tax exemptions related to schools:

- **SALES TO PRIVATE SCHOOLS EXEMPTION** [Section 39-26-704(4), C.R.S.]—This provision exempts sales of tangible personal property made to private, nonprofit schools from state sales tax. Statute [Section 39-26-102(13), C.R.S.] defines “schools” qualifying for the exemption as limited to those providing elementary through college level curriculums; preschools and early childhood education providers do not qualify. The exemption was enacted in 1969 and has remained substantially unchanged since. Retailers typically apply the exemption at the point of sale and should report it on Schedule A, Line 4 of their Retail Sales Tax Return (Form DR 0100).
- **PARENT TEACHER ASSOCIATION AND ORGANIZATION (PTA & PTO) EXEMPTION** [SECTION 39-26-718(1)(C), C.R.S.]—This provision exempts sales by parent teacher associations and organizations that benefit public schools from sales tax. According to Department of Revenue guidance [FYI Sales 86], sales, including fundraiser items, bake-sale goods, silent auction donations, and booster concession stand food items, are eligible for the exemption when benefitting a public kindergarten through 12th grade (K-12) school. Additionally, under Section 29-2-105(1)(d)(I)(L), C.R.S., statutory and home-rule local governments that have their sales taxes collected by the State may choose whether to apply the exemption to their local sales taxes. The PTA & PTO Exemption was enacted in 2008 and has remained substantially unchanged since. PTAs and PTOs that apply the exemption are required to obtain a sales tax license [Section 39-26-103(1)(a) and (9)(a), C.R.S.] and file a Colorado Retail Sales Tax

Return (Form DR 0100) reporting gross sales and deducting exempt sales. Generally, if these organizations do not make any taxable sales at the state or local level, they can file annually. Organizations that collect less than \$300 in taxes on sales, subject to state or local sales tax, may file either quarterly or, if they collect less than \$15, annually. PTAs and PTOs apply the exemption at the point of sale and should report it on Schedule B, Line 6 of the Sales Tax Return (Form DR 0100).

- SCHOOL RELATED SALES EXEMPTION [SECTION 39-26-725(2), C.R.S.]—This exemption broadens the types of school-related organizations whose sales are exempt from sales tax. Specifically, under the School Related Sales Exemption, sales by schools themselves, school booster organizations, or any other school organizations that benefit a public or private school are exempt from sales tax. The exemption is limited to sales by or benefiting public or private, nonprofit, K-12 schools. Sales by preschools, post-secondary, or for-profit schools or school organizations are not eligible for the exemption under Department of Revenue Regulations [1 CCR-201-4 39-26-718(9)(b)]. Additionally, under Section 29-2-105(1)(d)(I)(K), C.R.S., statutory and home-rule local governments that have their sales taxes collected by the State may choose whether to apply the exemption to their local sales taxes. The School Related Sales Exemption was created in 2008 and has remained unchanged since. To apply the exemption, schools and school-related organizations are required to obtain a sales tax license [Sections 39-26-103(1)(a) and (9)(a), C.R.S.] and report exempt sales on Schedule B, Line 6 of the Sales Tax Return (Form DR 0100).

In addition to these tax expenditures, sales to public schools are also exempt from sales tax under a broader provision, exempting all government entities from sales tax [Section 39-26-704(1), C.R.S.], which is not included in this evaluation. Because the State is precluded from taxing these entities under federal law and the State Constitution, we do not consider this provision to be a tax expenditure for the purposes of our evaluations.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURES?

Statute does not directly state the intended beneficiaries of the Sales to Private Schools Exemption, the PTA & PTO Exemption, or the School Related Sales Exemption. Based on the operation of the Sales to Private Schools Exemption and a survey of schools in the state, we considered its intended beneficiaries to be private, nonprofit schools in Colorado whose after-tax costs for purchases of tangible personal property are reduced as a result of the exemption.

Based on the tax expenditures' operation and legislative testimony, we considered the intended beneficiaries of the PTA & PTO Exemption and the School Related Sales Exemption to include PTAs, PTOs, schools, school organizations, and individuals making purchases from these organizations. Specifically, the exemptions may decrease the organizations' administrative burden related to collecting and remitting sales tax and increase the funds they collect, since the organizations can offer their sale items free of sales tax, which may encourage customers to make additional purchases. Individuals making purchases from the organizations also directly benefit by not paying sales tax. Additionally, legislative testimony indicated that private and public school students and teachers in K-12 schools were intended to indirectly benefit, to the extent that the exemptions increase sales, because PTA, PTO, and school organization sales are often related to fundraising efforts used to increase schools' total funds, along with educational and extracurricular opportunities for students.

WHAT IS THE PURPOSE OF THESE TAX EXPENDITURES?

Statute and the enacting legislation for these tax expenditures do not state their purposes; therefore, we could not definitively determine the General Assembly's original intent. However, our evaluation of the tax expenditures considered the following potential purposes:

- **SALES TO PRIVATE SCHOOLS EXEMPTION**—Based on its operation and other states’ statutory exemptions, we considered a potential purpose: to define the sales tax base to exclude nonprofit private schools. Specifically, nonprofit schools are commonly exempted from sales tax because they are considered to provide a public benefit. This is consistent with the State’s treatment of charitable organizations, which have been exempt from sales tax since the sales tax was established in 1935. Similarly, other states with a sales tax typically exempt sales to nonprofit organizations and institutions designed to educate the public.
- **PTA & PTO EXEMPTION AND THE SCHOOL RELATED SALES EXEMPTION**—Based on our review of statutory language, legislative testimony, discussions with stakeholders, and survey responses, we considered these exemptions to have the following potential purposes: (1) reducing eligible organizations’ administrative burden related to collecting and remitting sales tax, and (2) increasing eligible organizations’ sales revenue and funding available to schools, since individuals may increase their purchases from PTA & PTO fundraisers due to the lower after-tax cost of the items sold. The PTA & PTO Exemption and the School Related Sales Exemption were implemented during the economic downturn in 2008, when public school districts experienced significant budget shortfalls and private school enrollment and tuition declined.

ARE THE TAX EXPENDITURES MEETING THEIR PURPOSES AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We could not definitively determine whether these tax expenditures are meeting their purposes because no purposes are provided for them in statute or their enacting legislation. However, we found that they are meeting the potential purposes we considered in order to conduct this evaluation.

Statute does not provide quantifiable performance measures for these exemptions. Therefore, we created and applied the following performance measures to determine the extent to which the exemptions are meeting their potential purposes:

PERFORMANCE MEASURE #1: To what extent are sales to private schools and sales by schools, school organizations, and PTAs/PTOs exempted from Colorado sales and use tax?

RESULT: Schools reported that vendors commonly apply the Sales to Private Schools Exemption when making sales to private schools. Although we lacked data to quantify the extent to which the exemption is applied, we conducted a survey of schools and school districts in the state and received survey responses from seven private schools. While one survey participant commented that some vendors make getting the exemption too difficult, 6 of the 7 schools (86 percent) indicated that vendors typically apply the Sales to Private Schools Exemption when making sales to private schools.

We also found that PTAs, schools, and school organizations that benefit public and private schools commonly apply the PTA & PTO Exemption and the School Related Sales Exemption to eligible sales. We received survey responses from eight private schools and 39 public school districts in the state representing 270 schools. Of these respondents, six private schools and 24 school districts said they had a PTA or PTO and all of them indicated that, to their knowledge, the exemptions were applied to most sales. Further, interviews with two PTAs in the state indicated that they apply the exemptions to eligible sales.

PERFORMANCE MEASURE #2: To what extent do the PTA & PTO Exemption and the School Related Sales Exemption reduce schools' and school organizations' administrative burden when making sales?

RESULT: Based on survey participants' responses, we found that the exemptions are reducing the administrative burden for schools, school organizations, and PTAs/PTOs. The 22 public school districts and six

private schools that answered the relevant questions generally indicated that the exemptions reduce the number of personnel and resources needed by schools and school organizations to properly collect and remit sales tax. According to respondents, by not having to calculate and collect sales tax at the time of sale, and reporting sales tax information to the Department of Revenue less frequently, they can decrease the workload and number of employees needed for schools and school-related organizations' fundraising. However, the exemptions do not completely eliminate the administrative burden, since schools and eligible school-related organizations are still required to obtain a retail sales tax license and track and report total sales annually on their sales tax return.

PERFORMANCE MEASURE 3: *To what extent do the PTA & PTO Exemption and the School Related Sales Exemption increase financial support to schools?*

RESULT: We found that the PTA & PTO Exemption and School Related Sales Exemption likely provide some financial support to schools, though their impact is small relative to schools' total budgets.

Of the 36 respondents to our survey of private schools and public school districts who answered the relevant questions, 17 (47 percent) reported that the exemptions were important to the schools and school districts because they provide financial support over and above what would already be coming from the school or eligible organizations' sales. Respondents explained that the funds raised by school-related organizations are used to buy additional supplies for classrooms, fund student activities, provide equipment for school clubs, provide professional development to teachers, and increase funding for in-classroom grants.

Although some schools and school districts reported that the exemptions provide important financial support, this support is likely small relative to their overall funding. Based on survey respondents' reported revenue from eligible sales and districts' pupil count data from

the Colorado Department of Education, we estimate that public school survey respondents received roughly \$129 per pupil from sales by schools, school organizations, and PTAs and PTOs in School Year 2019-2020. Therefore, assuming that the school organizations increased their fundraising by the 2.9 percent in sales taxes that are not collected due to the exemptions, schools would have seen about a \$3.64 increase in per pupil funding. Similarly, the five *private schools* that responded to the applicable questions in our survey reported average eligible sales of about \$47.50 per pupil, meaning that the exemption would provide an increase of about \$1.34 per pupil. Though these potential increases to public and private school funding could provide important support in some areas, they are relatively small in comparison to schools' total budgets. For example, Colorado public school budgets averaged \$10,280 per pupil in Calendar Year 2017, according to the National Center for Education Statistics (NCES).

Furthermore, the exemptions are likely not providing equal benefit to all students throughout the state. Specifically, discussions with stakeholders and our review of scholarly articles on school financing indicated that the benefit of these exemptions is most likely larger for districts and schools located in wealthier areas because schools in these areas receive more funding through fundraising activities. For example, according to school district survey responses, school districts located in counties with a median household income greater than \$70,000 received an average of about \$45 per pupil in PTA/PTO sales, while areas with a median household income of less than \$50,000 received about \$4 per pupil in PTA/PTO sales.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THESE TAX EXPENDITURES?

We estimate that in Calendar Year 2019, the Sales to Private Schools Exemption resulted in about \$1.7 million in forgone state revenue and that the PTA & PTO Exemption and the School Related Sales Exemption had a combined revenue impact of about \$3.2 million.

The Department of Revenue could not provide data for the Sales to Private Schools Exemption and lacked complete information for the PTA & PTO Exemption and School Related Sales Exemption. Therefore, we conducted the following analyses to estimate the revenue impact:

- **SALES TO PRIVATE SCHOOLS EXEMPTION**—We estimated that private schools' purchases of exempt items resulted in about \$1.7 million in foregone revenue by projecting the total exempt sales reported by six private schools that responded to our survey to all private schools in the state. Specifically, these respondents reported an average of \$1,411 in annual per pupil exempt purchases in Calendar Year 2019, which we calculated by dividing each respondent's total reported exempt purchases by the number of students in each school. We then multiplied the average respondents' per pupil purchases by the 42,600 private K-12 students in the state, as estimated by the NCES, to estimate that private schools made about \$60 million in exempt purchases in Calendar Year 2019. We multiplied this amount by the state sales tax rate (2.9 percent) to arrive at our estimate.

Although we estimated the Sales to Private Schools Exemption's revenue impact in isolation from other available tax expenditures, when these other expenditures are considered, the exemption likely has had a minimal impact on state revenues. Specifically, as nonprofit organizations, the private schools eligible for this exemption would generally also qualify for a sales tax exemption under Section 39-26-718(1)(a), C.R.S., which exempts charitable organizations from paying sales taxes on their purchases.

- **PTA & PTO EXEMPTION AND THE SCHOOL RELATED SALES EXEMPTION**—We estimated a total revenue impact of \$3.2 million for these exemptions using information provided by the 28 school districts and six private schools that responded to our survey. Specifically, we calculated the revenue qualifying for the exemptions on a per pupil basis by taking the qualifying revenue reported by survey respondents and dividing this amount by the number of

students in each school or district. From this calculation we estimated that for public schools, there was an average of about \$129 in qualifying revenue per pupil and for private schools there was about \$47.50 per pupil. We then multiplied these averages by the approximately 832,000 public school students in Colorado, according to data from the Colorado Department of Education, and 42,600 private school students, according to data from the NCES, to project that there were about \$109 million in qualifying sales statewide in Calendar Year 2019. We then multiplied this amount by the state sales tax rate of 2.9 percent to arrive at our estimate of \$3.2 million, which includes \$3.1 million for sales by public schools and related organizations and \$59,000 for sales by private schools and related organizations.

Because our survey results might not be representative of all public and private schools in the state, our revenue impact estimates should be viewed as a general indicator of the scale of these exemptions. Specifically, the schools and districts that responded to our survey serve only about 14 percent of all K-12 private and public students in the state and could use the exemptions to a greater or lesser extent than the average school or school district, which would reduce the accuracy of our projection. Further, although survey responses generally came from school districts and schools' financial staff with knowledge of school budgets and sales, some of the respondents indicated that they do not systematically track the information about sales that we requested, since the revenue would be collected and tracked by the fundraising organizations. As a result, the figures they provided were estimates and likely lack precision. Finally, we did not have data to include higher education institutions in our estimate for the Sales to Private Schools Exemption, which would further increase the estimated impact.

In addition, statute [Section 29-2-105(1), C.R.S.] requires statutory and home-rule cities, counties, and districts for which the State collects sales taxes to apply the Sales to Private Schools Exemption and allows them to choose whether to apply the PTA & PTO Exemption and the School Related Sales Exemption. Therefore, we estimate a combined local

government revenue impact of about \$460,000 for state-collected local jurisdictions that were required to apply the Sales to Private Schools Exemption in Calendar Year 2019. We also estimated an additional local government revenue impact of \$160,000 for the four cities and eight counties that chose to apply the PTA & PTO and School Related Sales Exemptions. We estimated these amounts using data from the State Demographer's Office and local tax rate information from the Department of Revenue. Specifically, we calculated a household income-weighted average local tax rate of 2.3 percent for state-collected local jurisdictions, including counties, municipalities, and districts (all of which are required to apply the Sales to Private Schools exemption) and a household income-weighted average combined local tax rate of 1.7 percent in jurisdictions that have opted to apply the PTA & PTO and School Related Sales Exemption. We then multiplied those rates by the total projected sales reported as exempt statewide for sales to private schools (\$60 million) and sales by schools and eligible organizations (\$109 million). We then multiplied these figures by the percentage of the State's population residing in state-collected jurisdictions that apply the Sales to Private Schools Exemption (33 percent) and the PTA & PTO and School Related Sales Exemption (8.8 percent) to arrive at our estimate.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURES HAVE ON BENEFICIARIES?

If the Sales to Private Schools Exemption was eliminated, most sales to private schools' would still be tax-exempt and the impact would likely be minimal. Although we estimate that private schools save on average about \$4,287 under the exemption each year, because most not-for-profit private schools in the state are also tax-exempt charitable organizations, they would likely still qualify for a sales tax exemption under Section 39-26-718(1)(a), C.R.S., which exempts charitable organizations from paying sales tax.

If the PTA & PTO Exemption and the School Related Sales Exemption were eliminated, individuals purchasing items from schools or school-related organizations would see at least a 2.9 percent increase in the after-tax cost of their purchases, plus any additional local sales taxes that applied, which can range from 1 to 3.5 percent in state-collected cities and .25 to 3.6 percent in state-collected counties that have opted to apply the exemptions. As discussed above, we estimate that the exemptions likely provide public schools with a relatively small potential benefit of about \$4 per pupil, which would not be available if the exemptions were eliminated. However, the schools and school districts that participated in our survey reported that eliminating the exemptions would have a significant impact and would decrease fundraising revenues, which would result in less revenue for schools and decrease educational opportunities for students. Moreover, some participants explained that the impact would be exacerbated by current financial circumstances and the Fiscal Year 2021 budget cuts for public schools due to COVID-19. Finally, survey respondents indicated that eliminating the PTA & PTO Exemption and the School Related Sales Exemption would significantly increase the administrative burden associated with collecting and remitting sales tax.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

Of the 44 states (excluding Colorado) and District of Columbia, that levy a sales tax, we found that the majority of states have exemptions for sales to private schools, though exemptions for sales by schools and PTAs/PTOs are less common. However, many states that do not have a specific exemption for sales by schools or PTAs and PTOs have exemptions for not-for-profit or charitable organizations for which schools and PTAs/PTOs may qualify. EXHIBIT 1 provides the number of states explicitly exempting school-related sales by the type of exemption offered.

EXHIBIT 1. NUMBER OF STATES EXEMPTING SALES TO PRIVATE SCHOOLS FROM SALES TAX

Type of Exemption	Number of states with an exemption (out of 45) ¹
Sales to Private Schools	33
Sales by Private Schools	23
Sales by Private School PTAs/PTOs	11
Sales by Public Schools	24
Sales by Public School PTAs/PTOs	12

SOURCE: Office of the State Auditor analysis of Bloomberg Law resources and other states' statutory provisions, accessed in August 2020.

¹Includes the District of Columbia.

ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

We identified the following tax expenditures and programs designed to supplement school funding and enhance available educational opportunities:

FEDERAL EDUCATOR EXPENSES DEDUCTION—Allows eligible educators to claim a deduction of up to \$250 for the purchase of school supplies and professional development courses when calculating their federal taxable income.

SALES TO CHARITABLE ORGANIZATIONS SALES TAX EXEMPTION (SECTION 39-26-718, C.R.S.)—Nonprofit private schools that qualify for the Sales to Private Schools exemption are also eligible for this sales tax exemption, which exempts charitable organizations from paying sales tax on their purchases. Most nonprofit organizations with a charitable, religious, or educational purpose are eligible for the exemption; and, generally, if an organization has qualified for federal tax-exempt status under Internal Revenue Code Section 501(c)(3), it will also qualify for the Sales to Charitable Organizations Sales Tax Exemption.

COLORADO DEPARTMENT OF EDUCATION'S COMPETITIVE GRANTS AND AWARDS—The Colorado Department of Education administers a wide variety of federal and state grant opportunities intended to enhance school improvement and student success.

RESPONSE, INNOVATION, AND STUDENT EQUITY (RISE) EDUCATION FUND—Administered by the Governor's Office, the fund was established in 2020 to assist schools, school districts, and institutions of higher education in addressing the educational challenges caused by the COVID-19 pandemic. The RISE Education Fund utilizes federal funds from the Governor's Emergency Education Relief Fund, included as part of the CARES Act. The fund will provide grants totaling \$32.7 million, which will be available for use through September 2022.

In addition to these programs, there are an array of private, community, and corporate foundations that provide financial benefits to public and private schools in the state.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURES?

The Department of Revenue could not provide data showing the revenue impact for the Sales to Private Schools Exemption. Specifically, vendors report sales to private schools on Schedule A, Line 4 of the Department of Revenue's Colorado Sales and Use Tax Return (Form DR 0100), along with sales to other exempt entities like governments and charitable organizations, and this information cannot be disaggregated for analysis. If the General Assembly wants complete information, it could consider instructing the Department of Revenue to add a reporting line for sales to private schools to the Sales Tax Return form. GenTax, the Department's tax processing and information system, would also have to be reconfigured to collect and extract this data; however, according to the Department of Revenue, this type of change would require additional resources to develop the form and complete the necessary programming in GenTax (see the Tax Expenditures Overview Section of the Office of the State Auditor's *Tax*

Expenditures Compilation Report for additional details on the limitations of Department of Revenue data and the potential costs of addressing the limitations).

Although the Department was able to provide information related to the PTA & PTO Exemption and the School Related Sales Exemption, it did not have complete data showing the use of the exemptions. Specifically, Department staff and our review of taxpayer data indicated that, in some instances, schools and organizations may have reported the exemptions on the wrong line of their Sales Tax Return form. Specifically, schools and organizations may have mistakenly reported the exemptions on Schedule A, Line 2, labeled as “Sales to governmental agencies, religious or charitable organizations” or Schedule B, Line 10 labeled as “Other Exemptions” on the 2018-19 Sales Tax Return instead of on Schedule B, Line 6, labeled as “school related sales.” Department staff also indicated that school-related organizations may have erroneously thought that their sales are exempt from all state and local sales taxes and have not reported any sales that are exempt from state sales tax, but are subject to local sales tax. For this reason, the revenue impact information the Department could provide, which was based on the amount reported by taxpayers on Schedule B, Line 6 of the form, may not include the full revenue impact of the exemptions. Therefore, using survey data, we estimated the revenue impact to be \$3.2 million, which was significantly higher than the \$983,000 reported by the Department for 2019 sales in its *2020 Tax Profile and Expenditure Report*. According to Department staff, the issue was addressed by revising the 2020 Sales Tax Return Form (Form DR 0100) and creating a supplemental guidance form that provides specific line instructions for remitting sales taxes, which should improve the quality of the available data for future evaluations.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

THE GENERAL ASSEMBLY MAY WANT TO CONSIDER AMENDING STATUTE TO ESTABLISH A STATUTORY PURPOSE AND PERFORMANCE MEASURES FOR THE SCHOOL SALES EXEMPTIONS. As discussed, statute and the enacting legislation for these exemptions do not state the exemptions' purposes or provide performance measures for evaluating their effectiveness. Therefore, for the purposes of our evaluation, we considered the following potential purposes:

- SALES TO PRIVATE SCHOOLS EXEMPTION—We considered its potential purpose to be defining the tax base to exclude nonprofit private schools from sales tax. We identified this purpose based on the operation of the exemption, which provides tax treatment similar to the exemption the State provides to charitable organizations. Specifically, such organizations, which include nonprofit private schools, have been considered to provide a benefit to the public and have been exempt from sales tax since the sales tax was first established in 1935. However, as discussed below, this provision is likely duplicative and obsolete and the General Assembly would only need to establish a statutory purpose and performance measures if the General Assembly did not repeal the exemption.
- PTA & PTO EXEMPTION AND SCHOOL RELATED SALES EXEMPTION—We identified two purposes for these exemptions: (1) reduce eligible organizations' administrative burden related to collecting and remitting sales tax, and (2) provide financial support to schools, since organizations conducting fundraising activities for the benefit of schools often make qualifying sales. We identified these purposes based on our review of the operation of the exemptions, stakeholder input, and their legislative history. Specifically, the sponsors for House Bills 08-1013 and 08-1358, which established the exemptions, indicated that they intended for the provisions to reduce the administrative burden on organizations and support schools financially.

We also developed three performance measures to assess the extent to which the exemptions are meeting their potential purposes. However, the General Assembly may want to clarify its intent for the exemptions by providing a purpose statement and corresponding performance measure(s) in statute. This would eliminate potential uncertainty regarding the exemptions' purposes and allow our office to more definitively assess the extent to which the exemptions are accomplishing their intended goal(s).

THE GENERAL ASSEMBLY MAY WANT TO CONSIDER CLARIFYING OR CONSOLIDATING THE PTA & PTO EXEMPTION AND THE SCHOOL RELATED SALES EXEMPTION. Based on our review of statute, Department of Revenue regulations, and discussions with Department staff, we found that although the PTA & PTO Exemption overlaps with the broader School Related Sales Exemption, the exemptions provide somewhat different treatment to public school PTAs/PTOs as compared to private school PTAs/PTOs and PTAs/PTOs that have not qualified as a "charitable organization." Specifically, all private school PTAs/PTOs and public school PTAs/PTOs that have not qualified as a charitable organization can only qualify for the School Related Sales Exemption. This exemption requires that all of their sale proceeds, except the actual costs incurred for the good or service sold, be donated to a school or school organization. In contrast, public school PTAs/PTOs that qualify for the PTA & PTO Exemption can exempt sales used to pay the "reasonable expenses" of the organization [1 CCR 201-4 39-26-718(8) and (9)]. Thus, although the exemptions are similar, they appear to provide stricter requirements for how a PTA or PTO can use the funds it raises if it benefits a private school or has not qualified as a charitable organization. They also extend this stricter treatment to other types of organizations that are not PTAs and PTOs, such as booster clubs, which only qualify for the School Related Sales Exemption.

Based on our review of the legislative history of both exemptions, which were passed during the 2008 legislative session in separate bills (House Bills 08-1013 and 08-1358), legislators were aware that the two provisions were similar, but it is unclear whether the General Assembly

intended to create different benefits based on the criteria outlined above. Further, the differences in these provisions add complexity to the administration of the exemptions and could create confusion for taxpayers. Therefore, the General Assembly may wish to review these exemptions and clarify or consolidate them to the extent that they are not meeting their intent.

The GENERAL ASSEMBLY MAY WANT TO CONSIDER REPEALING THE PRIVATE SCHOOLS EXEMPTION BECAUSE IT IS LIKELY OBSOLETE. We considered the purpose of the Sales to Private Schools Exemption to be defining the tax base to exclude nonprofit private schools from sales tax. However, we found in our evaluation that sales to these schools are likely also sales-tax-exempt under the Sales to Charitable Organizations Sales Tax Exemption [Section 39-26-718(1)(a), C.R.S.], which exempts sales to charitable organizations qualifying for federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Based on discussions with Department of Revenue staff, we determined that in 1967, before the Colorado General Assembly enacted the Sales to Private Schools Exemption, private schools' federal tax-exempt status was temporarily suspended due to a series of rulings issued by the Internal Revenue Service (IRS). Specifically, the IRS determined that some private schools receiving state aid were not entitled to tax-exempt status under Internal Revenue Code 501(c)(3) due to the potential for racially discriminatory admission practices and required that private schools have a racial nondiscrimination policy to qualify. Later expanding this ruling in 1970 to all private schools, regardless of whether or not they received state aid, the IRS also implemented a series of revenue procedures and rulings with the intent of enforcing nondiscrimination requirements.

Because under Colorado law, schools are presumed to qualify for the Sales to Charitable Organizations Sales Tax Exemption if they have qualified for federal tax-exempt status under Internal Revenue Code Section 501(c)(3), these IRS actions may have disqualified some schools from the state level exemption. Therefore, the Sales to Private Schools Exemption would have provided private schools with a sales tax exemption regardless of whether they qualified under Section 501(c)(3).

However, because the IRS has since resumed the tax-exempt status of nonprofit private schools, the Sales to Private Schools Exemption is likely obsolete and has the potential to complicate the tax code, thereby creating confusion for taxpayers reporting and remitting sales tax exemptions. Therefore, the General Assembly could consider repealing this exemption.