

2018 FAA BILL REVENUE DIVERSION AMENDMENT

Section 159 of Public Law No. 115-254. Effective date – 10-5-18

Adds a new subparagraph (v) to 49 USC 40116(d)(2)(A).

Section 159. STATE TAXATION.

(a) IN GENERAL.—Section 40116(d)(2)(A) of title 49, United States Code, is amended by adding at the end the following:

“(v) except as otherwise provided under section 47133, levy or collect a tax, fee, or charge, first taking effect after the date of enactment of this clause, upon any business located at a commercial service airport or operating as a permittee of such an airport that is not generally imposed on sales or services by that State, political subdivision, or authority unless wholly utilized for airport or aeronautical purposes.”.

(b) RULE OF CONSTRUCTION.—Nothing in this section or an amendment made by this section shall affect a change to a rate or other provision of a tax, fee, or charge under section 40116 of title 49, United States Code, that was enacted prior to the date of enactment of this Act. Such provision of a tax, fee, or charge shall continue to be subject to the requirements to which such provision was subject under that section as in effect on the day before the date of enactment of this Act.

**STATEMENT OF THE AMERICAN CAR RENTAL ASSOCIATION
BEFORE THE
COLORADO SENATE COMMITTEE ON FINANCE
OPPOSITION TO CURRENT VERSION OF SB24-184**

APRIL 2, 2024

Chair Mullica, Vice Chair Kolker, and Members of the Colorado Senate Finance Committee -- The American Car Rental Association (ACRA) respectfully offers this testimony in **opposition** to SB24-184 with respect to the bill's funding mechanism. This bill would increase the state short-term car rental excise tax by \$3.00 per day. ACRA respectfully asks that the committee either amend the bill to drop that funding source or reject this measure.

ACRA is the national representative for over 98% of our nation's car rental industry. If a visitor or Colorado resident (and voter) rents a car in Colorado, chances are they are renting it from an ACRA member.

ACRA won't repeat its testimony last week before the Senate Transportation Committee in opposition to the funding mechanism embedded in SB184. Members of the Finance Committee should be aware, however, of the additional following points:

1. The current \$3/day car rental tax contained in SB184 violates the diversion of airport revenue prohibitions of a 2018 federal law enacted to prevent just such a measure as SB184 (attached);

2. The 2018 federal law prohibits the diversion of funds from federally-assisted airports for non-aeronautical projects; 43% of SB184's tax revenue will come from car rentals at federally-assisted airports.
3. Prior testimony likened SB184's funding mechanism to the "nicotine tax" adopted by Colorado in 2020; this tax on rental cars is fundamentally different because the "nicotine" tax had nothing to do with airport operations; this tax on rental cars is a direct and blatant violation of the 2018 federal law.
4. A favorable judicial review of ACRA's interpretation of the 2018 statute would result in all Colorado airports being cut off from federal Airport Improvement Program (AIP) funds because their state violated the anti-revenue diversion assurance an airport must make before receiving AIP funds; **Colorado airports received over \$41.5 million in AIP funds in 2023;**
5. This federal court decision also would deprive the rail projects -- and other yet to be identified transportation projects -- to be supported by the tax revenues proposed by SB184 of funding; such a federal court decision will add years of project delays – as well as missed opportunities for unprecedented federal matching funds;
6. Two Colorado citizens have filed petitions (one attached) under Proposition 117 challenging the car rental tax embedded in SB184 as a "tax policy change" that requires approval of Colorado voters through a ballot initiative prior to adoption; affirmation of those petitions will at best delay the funding mechanism under SB184 if not kill it outright.

For the reasons above, ACRA respectfully **opposes** the current funding mechanism embodied in SB24-184 and asks the Committee to either drop the car rental tax provisions of the bill or reject this measure.

If ACRA's statement has given rise to questions, please contact Gregory M. Scott, ACRA's Government Relations Advisor, at 202-297-5123 or gscott@merevir.com. Thank you for the opportunity to submit this testimony.

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-77-101 **add** (5.5) as follows:

24-77-101. Definitions. As used in this article 77, unless the context otherwise requires:
(5.5) “FEE” MEANS A VOLUNTARILY INCURRED GOVERNMENTAL CHARGE IN EXCHANGE FOR SPECIFIC BENEFIT CONFERRED ON THE PAYER, WHICH FEE SHOULD REASONABLY APPROXIMATE THE PAYER'S FAIR SHARE OF THE COSTS INCURRED BY THE GOVERNMENT IN PROVIDING SAID SPECIFIC BENEFIT.

SECTION 2. In Colorado Revised Statutes, **add** 24-77-108 as follows:

24-77-108. Prohibited fees. NO PERSON SHALL BE ASSESSED A FEE UNLESS THE ASSESSED AMOUNT IS IN COMPLIANCE WITH C.R.S. 24-77-101.

SECTION 3. Effective date. This act takes effect on upon passage by the voters and signature of the Governor.