

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Finance.

SB22-124 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 39-22-343, **amend**  
4 (1) as follows:

5 **39-22-343. Election.** (1) Notwithstanding sections 39-22-201,  
6 39-22-302, and 39-22-322, and except as provided in subsection (2) of  
7 this section, for income tax years commencing on or after ~~January 1, 2022~~  
8 JANUARY 1, 2018, an S corporation or partnership may annually elect to  
9 be subject to tax at the entity level for the taxable period. FOR INCOME  
10 TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2018, BUT PRIOR TO  
11 JANUARY 1, 2022, THE S CORPORATION OR PARTNERSHIP MUST MAKE THE  
12 ELECTION ON OR BEFORE MARCH 15, 2023. The S corporation or  
13 partnership shall make the election on the return filed by such S  
14 corporation or partnership under section 39-22-601. The filing of such  
15 return is binding on all electing pass-through entity owners.

16 **SECTION 2.** In Colorado Revised Statutes, 39-22-344, **amend**  
17 (1) introductory portion, (2), and (3), as follows:

18 **39-22-344. Imposition of tax.** (1) With respect to any taxable  
19 period for which it has made the election under section 39-22-343, an  
20 electing pass-through entity is subject to a tax in an amount equal to ~~four~~  
21 ~~and fifty-five one-hundredths percent of~~ THE TAX RATE SET FORTH IN  
22 SECTION 39-22-301 FOR THE APPLICABLE INCOME TAX YEAR MULTIPLIED  
23 BY the sum of the following, all as determined pursuant to sections  
24 39-22-202, 39-22-203, 39-22-322, and 39-22-323:

25 (2) An electing pass-through entity is treated as a corporation  
26 under section 39-22-606 with respect to the tax imposed under this  
27 subpart 3; except that section 39-22-606 (5)(c)(I) does not apply ~~during~~  
28 ~~the first taxable period for which this subpart 3 is applicable~~ FOR INCOME  
29 TAX YEARS COMMENCING PRIOR TO JANUARY 1, 2023.

30 (3) WITH THE EXCEPTION OF THE CREDIT CREATED IN SECTION  
31 39-22-347, any credit allowed pursuant to this article 22 that is  
32 attributable to the activities of an electing pass-through entity in the  
33 taxable year shall be claimed by the entity and not passed through to or  
34 claimed by the electing pass-through entity owner. Notwithstanding any  
35 section to the contrary in this article 22, any excess income tax credit, net  
36 operating loss, or other modification may be carried forward on the  
37 electing pass-through entity's return but may only be utilized in a year in  
38 which the electing pass-through entity has made the election allowed in  
39 section 39-22-343; except that any limitation specified in the specific

1 section for an income tax credit, the net operating loss, or any other  
2 modification shall apply to the electing pass-through entity.

3 **SECTION 3.** In Colorado Revised Statutes, **amend** 39-22-345 as  
4 follows:

5 **39-22-345. Owner exclusion.** (1) ~~Notwithstanding sections~~  
6 ~~39-22-201 and 39-22-322, and as provided in 39-22-104 (4)(aa) and~~  
7 ~~39-22-304 (3)(r), electing pass-through entity owners shall not be liable~~  
8 ~~for the tax and the alternative minimum tax under this article 22 in their~~  
9 ~~separate or individual capacities, and the electing pass-through entity's~~  
10 ~~income attributable to the state and the income not attributable to the state~~  
11 ~~is not taken into account by the electing pass-through entity owners.~~

12 (2) ~~Notwithstanding the provisions of this subpart 3 and sections~~  
13 ~~39-22-104 (4)(aa) and 39-22-304 (3)(r), The basis in the hands of an~~  
14 ~~electing pass-through entity owner in the interest in the partnership or the~~  
15 ~~stock or indebtedness in the S corporation is determined as if the election~~  
16 ~~under section 39-22-343 had not been made.~~

17 **SECTION 4.** In Colorado Revised Statutes, **amend** 39-22-346 as  
18 follows:

19 **39-22-346. Credit for tax paid in other states.** ~~An electing~~  
20 ~~pass-through entity is entitled to the credit under section 39-22-108, and~~  
21 ~~subject to the limitations of section 39-22-108, for taxes paid to other~~  
22 ~~states with respect to the electing pass-through entity's income not~~  
23 ~~attributable to this state that is subject to taxation pursuant to section~~  
24 ~~39-22-344 whether the tax was paid by the electing pass-through entity~~  
25 ~~itself or by the electing pass-through entity owners. The resident electing~~  
26 ~~pass-through entity owners are not entitled to any credit under section~~  
27 ~~39-22-108 with respect to income of the electing pass-through entity FOR~~  
28 ~~PURPOSES OF THE RESIDENT PASS-THROUGH ENTITY OWNERS, THE CREDIT~~  
29 ~~ALLOWED UNDER SECTION 39-22-108 IS CALCULATED WITHOUT REGARD~~  
30 ~~TO THE CREDIT ALLOWED UNDER SECTION 39-22-347.~~

31 **SECTION 4.** In Colorado Revised Statutes, **add** 39-22-347 as  
32 follows:

33 **39-22-347. Credit for electing pass-through entity owner - tax**  
34 **preference performance statement - legislative declaration.**

35 (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE  
36 PURPOSE OF THIS TAX CREDIT IS TO:

37 (I) ENSURE THE STATE DOES NOT HAVE A NET TAX REVENUE  
38 CHANGE WHILE ACCOMPLISHING THE PURPOSE SET FORTH IN SECTION  
39 39-22-341; AND

40 (II) REPLACE A RELATED STATE INCOME TAX DEDUCTION.

41 (b) (I) NOTWITHSTANDING SECTION 39-21-304 (2), THE PURPOSE  
42 OF THE TAX EXPENDITURE CREATED IN THIS SECTION IS TO AVOID DOUBLE  
43 TAXATION OF INCOME ON ELECTING PASS-THROUGH ENTITY OWNERS.

1 (II) THE GENERAL ASSEMBLY AND THE STATE AUDITOR SHALL  
2 MEASURE THE EFFECTIVENESS OF THE CREDIT CREATED IN THIS SECTION  
3 IN ACHIEVING THE PURPOSE SPECIFIED IN SUBSECTION (1)(b)(I) OF THIS  
4 SECTION BASED ON WHETHER THE AMOUNT OF THE CREDIT IS EQUAL TO  
5 THE AMOUNT OF THE TAX REVENUE COLLECTED UNDER SECTION  
6 39-22-344.

7 (2) SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (3) OF  
8 THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER  
9 JANUARY 1, 2018, AN ELECTING PASS-THROUGH ENTITY OWNER IS  
10 ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE 22 THAT  
11 IS AN AMOUNT EQUAL TO THE ELECTING PASS-THROUGH ENTITY OWNER'S  
12 DISTRIBUTIVE SHARE OF THE INCOME TAX IMPOSED ON THE ELECTING  
13 PASS-THROUGH ENTITY UNDER SECTION 39-22-344.

14 (3) NO CREDIT IS ALLOWED TO AN ELECTING PASS-THROUGH  
15 ENTITY OWNER UNDER SUBSECTION (2) OF THIS SECTION UNLESS THE  
16 ELECTING PASS-THROUGH ENTITY PAID THE TAX IMPOSED UNDER THIS  
17 ARTICLE 22 AND PROVIDED SUFFICIENT INFORMATION ON THE ELECTING  
18 PASS-THROUGH ENTITY TAX RETURN, AS PRESCRIBED BY THE DEPARTMENT  
19 OF REVENUE, TO IDENTIFY THAT ELECTING PASS-THROUGH ENTITY OWNER.

20 (4) ANY AMOUNT OF THE CREDIT ALLOWED BY THIS SECTION THAT  
21 EXCEEDS THE ELECTING PASS-THROUGH ENTITY OWNER'S INCOME TAXES  
22 DUE IS REFUNDED TO THE ELECTING PASS-THROUGH ENTITY OWNER.

23 **SECTION 5.** In Colorado Revised Statutes, 39-22-104, **amend**  
24 (3)(r); and **repeal** (4)(aa) as follows:

25 **39-22-104. Income tax imposed on individuals, estates, and**  
26 **trusts - single rate - report - legislative declaration - definitions -**  
27 **repeal.** (3) There shall be added to the federal taxable income:

28 (r) Notwithstanding subsection (3)(o) of this section, for income  
29 tax years commencing on or after ~~January 1, 2022~~ JANUARY 1, 2018, an  
30 amount equal to the deduction taken under section 199A of the internal  
31 revenue code, except to the extent the deduction is otherwise disallowed  
32 under section 265 of the internal revenue code, for an electing  
33 pass-through entity owner of an electing pass-through entity, as such  
34 terms are defined in section 39-21-342, that makes the election allowed  
35 in subpart 3 of part 3 of this article 22.

36 (4) There shall be subtracted from federal taxable income:

37 (aa) ~~For income tax years commencing on or after January 1,~~  
38 ~~2022, an amount equal to the electing pass-through entity owner's~~  
39 ~~distributive share of the electing pass-through entity's income attributable~~  
40 ~~to the state that is taxed pursuant to the provisions of subpart 3 of part 3~~  
41 ~~of this article 22 and income not attributable to the state that is taxed~~  
42 ~~pursuant to the provisions of subpart 3 of part 3 of this article 22.~~

43 **SECTION 6.** In Colorado Revised Statutes, 39-22-304, **repeal**

1 (3)(r) as follows:  
2 **39-22-304. Net income of corporation - legislative declaration**  
3 **- definitions - repeal.** (3) There shall be subtracted from federal taxable  
4 income:  
5 (r) ~~For income tax years commencing on or after January 1, 2022,~~  
6 ~~an amount equal to the electing pass-through entity owner's distributive~~  
7 ~~share of the electing pass-through entity's income attributable to the state~~  
8 ~~that is taxed pursuant to the provisions of subpart 3 of part 3 of this article~~  
9 ~~22 and income not attributable to the state that is taxed pursuant to the~~  
10 ~~provisions of subpart 3 of part 3 of this article 22.~~  
11 **SECTION 7.** In Colorado Revised Statutes, 39-22-601, **amend**  
12 (2.5)(e) and (5)(e) as follows:  
13 **39-22-601. Returns.** (2.5) (e) With respect to each of its  
14 nonresident shareholders, an S corporation shall, for each taxable period,  
15 either timely file with the department of revenue an agreement, as  
16 provided in ~~paragraph (f) of this subsection (2.5)~~ SUBSECTION (2.5)(f) OF  
17 THIS SECTION, or make a payment to this state as provided in ~~paragraph~~  
18 ~~(h) of this subsection (2.5)~~ SUBSECTION (2.5)(h) OF THIS SECTION; EXCEPT  
19 THAT THIS SUBSECTION (2.5)(e) SHALL NOT APPLY TO AN S CORPORATION  
20 THAT MAKES THE ELECTION ALLOWED UNDER SUBPART 3 OF PART 3 OF  
21 THIS ARTICLE 22.  
22 (5) (e) With respect to each of its nonresident partners, a  
23 partnership shall, for each taxable period, either timely file with the  
24 department of revenue an agreement, as provided in ~~paragraph (f) of this~~  
25 ~~subsection (5)~~ SUBSECTION (5)(f) OF THIS SECTION, or make payment to  
26 this state, as provided in ~~paragraph (h) of this subsection (5)~~ SUBSECTION  
27 (5)(h) OF THIS SECTION; EXCEPT THAT THIS SUBSECTION (5)(e) SHALL NOT  
28 APPLY TO A PARTNERSHIP THAT MAKES THE ELECTION ALLOWED UNDER  
29 SUBPART 3 OF PART 3 OF THIS ARTICLE 22.  
30 **SECTION 8. Safety clause.** The general assembly hereby finds,  
31 determines, and declares that this act is necessary for the immediate  
32 preservation of the public peace, health, or safety."

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