

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0769.01 Ed DeCecco x4216

SENATE BILL 22-124

SENATE SPONSORSHIP

Woodward and Kolker, Hisey, Holbert, Kirkmeyer, Rankin

HOUSE SPONSORSHIP

Ortiz and Van Winkle, Lynch, Van Beber

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORITY OF A PASS-THROUGH BUSINESS ENTITY**
102 **TO ELECT TO PAY STATE INCOME TAXES AT THE ENTITY LEVEL,**
103 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The "SALT Parity Act" (act) was enacted in 2021 and, for income tax years commencing on or after January 1, 2022, the act allows pass-through entities to elect to pay state income tax at the entity level, which allows the entity to claim an unlimited deduction at the federal level for state and local taxes paid. While this election reduces federal

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

taxable income for the pass-through entity, it does not reduce Colorado taxable income under current law.

The bill makes provisions of the act retroactive to January 1, 2018.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. In Colorado Revised Statutes, 39-22-202, add (4)**
3 *as follows:*

4 **39-22-202. Resident partners - definition. (4) FOR PURPOSES OF**
5 SECTION 39-22-108, EACH RESIDENT PARTNER IS CONSIDERED TO HAVE
6 PAID A TAX ON EACH RESIDENT PARTNER IN AN AMOUNT EQUAL TO EACH
7 RESIDENT PARTNER'S PRO RATA SHARE OF ANY NET INCOME TAX PAID BY
8 THE PARTNERSHIP TO A STATE THAT DOES NOT MEASURE THE INCOME OF
9 PARTNERS OF A PARTNERSHIP BY REFERENCE TO THE INCOME OF THE
10 PARTNERSHIP. AS USED IN THIS SUBSECTION (4), "NET INCOME TAX"
11 MEANS ANY TAX IMPOSED ON, OR MEASURED BY, A PARTNERSHIP'S NET
12 INCOME.

13 **SECTION 2. In Colorado Revised Statutes, 39-22-343, amend**
14 *(1) as follows:*

15 **39-22-343. Election. (1)(a) Notwithstanding sections 39-22-201,**
16 39-22-302, and 39-22-322, and except as provided in subsection (2) of
17 this section for income tax years commencing on or after January 1, 2022
18 JANUARY 1, 2018, an S corporation or partnership may annually elect to
19 be subject to tax at the entity level for the taxable period.

20 **(b) EXCEPT AS SET FORTH IN SUBSECTION (1)(c)(I) OF THIS**
21 SECTION, the S corporation or partnership shall make the election on the
22 return filed by such S corporation or partnership under section 39-22-601.
23 The filing of such a return FILED UNDER SECTION 39-22-601 OR
24 SUBSECTION (1)(c)(I) OF THIS SECTION is binding on all electing

1 pass-through entity owners.

2 (c) (I) FOR INCOME TAX YEARS COMMENCING ON OR AFTER
3 JANUARY 1, 2018, BUT PRIOR TO JANUARY 1, 2022, THE S CORPORATION
4 OR PARTNERSHIP MUST MAKE THE ELECTION ON OR AFTER SEPTEMBER 1,
5 2023, BUT BEFORE JULY 1, 2024, IN A COMPOSITE AMENDED TAX RETURN
6 FOR ALL OF THE YEARS FOR WHICH THE ELECTION IS MADE THAT IS FILED
7 ON BEHALF OF THE S CORPORATION OR PARTNERSHIP AND ALL OF THE
8 ELECTING PASS-THROUGH ENTITY OWNERS. THE DEPARTMENT OF REVENUE
9 SHALL ESTABLISH THE RETURN, WHICH SHALL NOT INCLUDE ANY CHANGES
10 TO THE PAST RETURNS OTHER THAN THOSE THAT ARE DIRECTLY RELATED
11 TO THE ELECTION. THE PROVISIONS OF SECTIONS 39-21-107 (2) AND
12 39-21-108(1) SHALL NOT APPLY TO THE PAYMENT OR REFUND OF THE TAX
13 MADE PURSUANT TO THE RETURN.

14 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF AN S
15 CORPORATION OR PARTNERSHIP FILES A RETURN SPECIFIED IN SUBSECTION
16 (1)(c)(I) OF THIS SECTION, NEITHER THE S CORPORATION OR PARTNERSHIP
17 NOR THE ELECTING PASS-THROUGH ENTITY OWNERS SHALL INCUR ANY
18 PENALTIES FOR FILING LATE NOR OWE INTEREST ON SUCH AMOUNTS, AND
19 THE DEPARTMENT SHALL NOT BE REQUIRED TO PAY PENALTIES OR
20 INTEREST ON ANY AMOUNTS OWED TO THE TAXPAYERS.

21 (III) NOTWITHSTANDING THE DATES PROVIDED IN SUBSECTION
22 (1)(c)(I) OF THIS SECTION, THE DEPARTMENT SHALL HAVE ONE YEAR FROM
23 THE DATE THE COMPOSITE AMENDED TAX RETURN IS FILED TO REVIEW THE
24 RETURN AND MAKE A WRITTEN PROPOSED ADJUSTMENT IN ACCORDANCE
25 WITH SECTION 39-21-103. THE DEPARTMENT MUST MAKE ANY
26 ASSESSMENT WITHIN ONE YEAR AFTER A FINAL DETERMINATION IS MADE
27 UNDER SECTION 39-21-103 (8). ANY FINAL DETERMINATION MADE AS

1 SPECIFIED IN THIS SUBSECTION (1)(C)(III) MAY BE ENFORCED AT ANY TIME
2 WITHIN SIX YEARS FROM THE DATE OF THE FINAL DETERMINATION.

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

5 **39-22-344. Imposition of tax.** (1) With respect to any taxable
6 period for which it has made the election under section 39-22-343, an
7 electing pass-through entity is subject to a tax in an amount equal to four
8 and fifty-five one-hundredths percent of THE TAX RATE SET FORTH IN
9 SECTION 39-22-301 FOR THE APPLICABLE INCOME TAX YEAR MULTIPLIED
10 BY the sum of the following, all as determined pursuant to sections
11 39-22-202, 39-22-203, 39-22-322, and 39-22-323:

12 (2) An electing pass-through entity is treated as a corporation
13 under section 39-22-606 with respect to the tax imposed under this
14 subpart 3; except that section 39-22-606 (5)(c)(I) THE REQUIREMENT TO
15 MAKE ESTIMATED PAYMENTS UNDER SECTION 39-22-606 does not apply
16 during the first taxable period for which this subpart 3 is applicable FOR
17 INCOME TAX YEARS COMMENCING PRIOR TO JANUARY 1, 2023.

18 (3) Any credit allowed pursuant to this article 22 that is
19 attributable to the activities of an electing pass-through entity in the
20 taxable year shall be claimed by the entity and not IS passed through to or
21 AND MUST BE claimed by the electing pass-through entity owner.
22 Notwithstanding any section to the contrary in this article 22, any excess
23 income tax credit, net operating loss, or other modification may be carried
24 forward on the electing pass-through entity's return but may only be
25 utilized in a year in which the electing pass-through entity has made the
26 election allowed in section 39-22-343; except that any limitation specified
27 in the specific section for an income tax credit, the net operating loss, or

1 any other modification shall apply to the electing pass-through entity.

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

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

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

16 **SECTION 5. In Colorado Revised Statutes, amend 39-22-346 as**
17 follows:

18 **39-22-346. Credit for tax paid in other states.** An electing
19 pass-through entity is entitled to the credit under section 39-22-108, and
20 subject to the limitations of section 39-22-108, for taxes paid to other
21 states with respect to the electing pass-through entity's income not
22 attributable to this state that is subject to taxation pursuant to section
23 39-22-344 whether the tax was paid by the electing pass-through entity
24 itself or by the electing pass-through entity owners. The resident electing
25 pass-through entity owners are not entitled to any credit under section
26 39-22-108 with respect to income of the electing pass-through entity FOR
27 PURPOSES OF THE RESIDENT PASS-THROUGH ENTITY OWNERS, THE CREDIT

1 ALLOWED UNDER SECTION 39-22-108 IS CALCULATED WITHOUT REGARD
2 TO THE CREDIT ALLOWED UNDER SECTION 39-22-347.

3 **SECTION 6.** In Colorado Revised Statutes, add 39-22-347 as
4 follows:

5 **39-22-347. Credit for electing pass-through entity owner - tax**
6 **preference performance statement - legislative declaration.**

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

9 (I) ENSURE THE STATE DOES NOT HAVE A NET TAX REVENUE
10 CHANGE WHILE ACCOMPLISHING THE PURPOSE SET FORTH IN SECTION
11 39-22-341; AND

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

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

16 (II) THE GENERAL ASSEMBLY AND THE STATE AUDITOR SHALL
17 MEASURE THE EFFECTIVENESS OF THE CREDIT CREATED IN THIS SECTION
18 IN ACHIEVING THE PURPOSE SPECIFIED IN SUBSECTION (1)(b)(I) OF THIS
19 SECTION BASED ON WHETHER THE AMOUNT OF THE CREDIT IS EQUAL TO
20 THE AMOUNT OF THE TAX REVENUE COLLECTED UNDER SECTION
21 39-22-344.

22 (2) SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (3) OF
23 THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER
24 JANUARY 1, 2018, AN ELECTING PASS-THROUGH ENTITY OWNER IS
25 ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE 22 THAT
26 IS AN AMOUNT EQUAL TO THE SHARE OF THE TAX IMPOSED PURSUANT TO
27 SECTION 39-22-344 (1) ON THE ELECTING PASS-THROUGH ENTITY WITH

1 RESPECT TO THE ELECTING PASS-THROUGH ENTITY OWNER'S INCOME.

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

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

11 **SECTION 7.** In Colorado Revised Statutes, 39-22-104, amend
12 (3)(r); and repeal (4)(aa) as follows:

13 **39-22-104. Income tax imposed on individuals, estates, and**
14 **trusts - single rate - report - legislative declaration - definitions -**
15 **repeal.** (3) There shall be added to the federal taxable income:

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

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

25 (aa) For income tax years commencing on or after January 1,
26 2022, an amount equal to the electing pass-through entity owner's
27 distributive share of the electing pass-through entity's income attributable

1 to the state that is taxed pursuant to the provisions of subpart 3 of part 3
2 of this article 22 and income not attributable to the state that is taxed
3 pursuant to the provisions of subpart 3 of part 3 of this article 22.

4 **SECTION 8.** In Colorado Revised Statutes, 39-22-304, **repeal**
5 (3)(r) as follows:

6 **39-22-304. Net income of corporation - legislative declaration**
7 **- definitions - repeal.** (3) There shall be subtracted from federal taxable
8 income:

9 (r) For income tax years commencing on or after January 1, 2022,
10 an amount equal to the electing pass-through entity owner's distributive
11 share of the electing pass-through entity's income attributable to the state
12 that is taxed pursuant to the provisions of subpart 3 of part 3 of this article
13 22 and income not attributable to the state that is taxed pursuant to the
14 provisions of subpart 3 of part 3 of this article 22.

15 **SECTION 9.** In Colorado Revised Statutes, 39-22-601, **amend**
16 (2.5)(e) and (5)(e) as follows:

17 **39-22-601. Returns.** (2.5) (e) With respect to each of its
18 nonresident shareholders, an S corporation shall, for each taxable period,
19 either timely file with the department of revenue an agreement, as
20 provided in paragraph (f) of this subsection (2.5) SUBSECTION (2.5)(f) OF
21 THIS SECTION, or make a payment to this state as provided in paragraph
22 (h) of this subsection (2.5) SUBSECTION (2.5)(h) OF THIS SECTION; EXCEPT
23 THAT THIS SUBSECTION (2.5)(e) SHALL NOT APPLY TO AN S CORPORATION
24 THAT MAKES THE ELECTION ALLOWED UNDER SUBPART 3 OF PART 3 OF
25 THIS ARTICLE 22.

26 (5) (e) With respect to each of its nonresident partners, a
27 partnership shall, for each taxable period, either timely file with the

1 department of revenue an agreement, as provided in paragraph (f) of this
2 subsection (5) SUBSECTION (5)(f) OF THIS SECTION, or make payment to
3 this state, as provided in paragraph (h) of this subsection (5) SUBSECTION
4 (5)(h) OF THIS SECTION; EXCEPT THAT THIS SUBSECTION (5)(e) SHALL NOT
5 APPLY TO A PARTNERSHIP THAT MAKES THE ELECTION ALLOWED UNDER
6 SUBPART 3 OF PART 3 OF THIS ARTICLE 22.

7 **SECTION 10. Appropriation.** (1) For the 2022-23 state fiscal
8 year, \$550,447 is appropriated to the department of revenue. This
9 appropriation is from the general fund. To implement this act, the
10 department may use this appropriation as follows:

11 (a) \$364,306 for use by taxation services for personal services,
12 which amount is based on an assumption that the department will require
13 an additional 4.4 FTE;

14 (b) \$37,345 for use by taxation services for operating expense;

15 (c) \$135,000 for tax administration IT system (GenTax) support;

16 (d) \$12,800 for use by the executive director's office for personal
17 services; and

18 (e) \$996 for the purchase of document management services.

19 (2) For the 2022-23 state fiscal year, \$996 is appropriated to the
20 department of personnel. This appropriation is from reappropriated funds
21 received from the department of revenue under subsection (1)(e) of this
22 section. To implement this act, the department of personnel may use this
23 appropriation to provide document management services for the
24 department of revenue.

25 **SECTION 11. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, or safety.