

SENATE COMMITTEE OF REFERENCE REPORT

February 23, 2022

Chair of Committee

Date

Committee on Finance.

After consideration on the merits, the Committee recommends the following:

SB22-124 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

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

1 the first taxable period for which this subpart 3 is applicable FOR INCOME
2 TAX YEARS COMMENCING PRIOR TO JANUARY 1, 2023.

3 (3) Any credit allowed pursuant to this article 22 that is
4 attributable to the activities of an electing pass-through entity in the
5 taxable year shall be claimed by the entity and not IS passed through to or
6 AND MUST BE claimed by the electing pass-through entity owner.
7 Notwithstanding any section to the contrary in this article 22, any excess
8 income tax credit, net operating loss, or other modification may be carried
9 forward on the electing pass-through entity's return but may only be
10 utilized in a year in which the electing pass-through entity has made the
11 election allowed in section 39-22-343; except that any limitation specified
12 in the specific section for an income tax credit, the net operating loss, or
13 any other modification shall apply to the electing pass-through entity.

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

16 **39-22-345. Owner exclusion.** (1) Notwithstanding sections
17 39-22-201 and 39-22-322, and as provided in 39-22-104 (4)(aa) and
18 39-22-304 (3)(r), electing pass-through entity owners shall not be liable
19 for the tax and the alternative minimum tax under this article 22 in their
20 separate or individual capacities, and the electing pass-through entity's
21 income attributable to the state and the income not attributable to the state
22 is not taken into account by the electing pass-through entity owners.

23 (2) Notwithstanding the provisions of this subpart 3 and sections
24 39-22-104 (4)(aa) and 39-22-304 (3)(r); The basis in the hands of an
25 electing pass-through entity owner in the interest in the partnership or the
26 stock or indebtedness in the S corporation is determined as if the election
27 under section 39-22-343 had not been made.

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

30 **39-22-346. Credit for tax paid in other states.** An electing
31 pass-through entity is entitled to the credit under section 39-22-108, and
32 subject to the limitations of section 39-22-108, for taxes paid to other
33 states with respect to the electing pass-through entity's income not
34 attributable to this state that is subject to taxation pursuant to section
35 39-22-344 whether the tax was paid by the electing pass-through entity
36 itself or by the electing pass-through entity owners. The resident electing
37 pass-through entity owners are not entitled to any credit under section
38 39-22-108 with respect to income of the electing pass-through entity FOR
39 PURPOSES OF THE RESIDENT PASS-THROUGH ENTITY OWNERS, THE CREDIT
40 ALLOWED UNDER SECTION 39-22-108 IS CALCULATED WITHOUT REGARD
41 TO THE CREDIT ALLOWED UNDER SECTION 39-22-347.

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

1 **39-22-347. Credit for electing pass-through entity owner - tax**
2 **preference performance statement - legislative declaration.**

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

5 (I) ENSURE THE STATE DOES NOT HAVE A NET TAX REVENUE
6 CHANGE WHILE ACCOMPLISHING THE PURPOSE SET FORTH IN SECTION
7 39-22-341; AND

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

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

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

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

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

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

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

36 **39-22-104. Income tax imposed on individuals, estates, and**
37 **trusts - single rate - report - legislative declaration - definitions -**
38 **repeal.** (3) There shall be added to the federal taxable income:

39 (r) Notwithstanding subsection (3)(o) of this section, for income
40 tax years commencing on or after ~~January 1, 2022~~ JANUARY 1, 2018, an
41 amount equal to the deduction taken under section 199A of the internal
42 revenue code, except to the extent the deduction is otherwise disallowed
43 under section 265 of the internal revenue code, for an electing

1 pass-through entity owner of an electing pass-through entity, as such
2 terms are defined in section 39-21-342, that makes the election allowed
3 in subpart 3 of part 3 of this article 22.

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

5 (aa) ~~For income tax years commencing on or after January 1,~~
6 ~~2022, an amount equal to the electing pass-through entity owner's~~
7 ~~distributive share of the electing pass-through entity's income attributable~~
8 ~~to the state that is taxed pursuant to the provisions of subpart 3 of part 3~~
9 ~~of this article 22 and income not attributable to the state that is taxed~~
10 ~~pursuant to the provisions of subpart 3 of part 3 of this article 22.~~

11 **SECTION 6.** In Colorado Revised Statutes, 39-22-304, **repeal**
12 (3)(r) as follows:

13 **39-22-304. Net income of corporation - legislative declaration**
14 **- definitions - repeal.** (3) There shall be subtracted from federal taxable
15 income:

16 (r) ~~For income tax years commencing on or after January 1, 2022,~~
17 ~~an amount equal to the electing pass-through entity owner's distributive~~
18 ~~share of the electing pass-through entity's income attributable to the state~~
19 ~~that is taxed pursuant to the provisions of subpart 3 of part 3 of this article~~
20 ~~22 and income not attributable to the state that is taxed pursuant to the~~
21 ~~provisions of subpart 3 of part 3 of this article 22.~~

22 **SECTION 7.** In Colorado Revised Statutes, 39-22-601, **amend**
23 (2.5)(e) and (5)(e) as follows:

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

33 (5) (e) With respect to each of its nonresident partners, a
34 partnership shall, for each taxable period, either timely file with the
35 department of revenue an agreement, as provided in ~~paragraph (f) of this~~
36 ~~subsection (5)~~ SUBSECTION (5)(f) OF THIS SECTION, or make payment to
37 this state, as provided in ~~paragraph (h) of this subsection (5)~~ SUBSECTION
38 (5)(h) OF THIS SECTION; EXCEPT THAT THIS SUBSECTION (5)(e) SHALL NOT
39 APPLY TO A PARTNERSHIP THAT MAKES THE ELECTION ALLOWED UNDER
40 SUBPART 3 OF PART 3 OF THIS ARTICLE 22.

41 **SECTION 8. Safety clause.** The general assembly hereby finds,
42 determines, and declares that this act is necessary for the immediate
43 preservation of the public peace, health, or safety."

** ** ** ** **