

**First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 21-0892.01 Esther van Mourik x4215

**HOUSE BILL 21-1327**

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**HOUSE SPONSORSHIP**

**Ortiz and Van Winkle,**

**SENATE SPONSORSHIP**

**Kolker and Woodward,**

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**House Committees**  
Finance

**Senate Committees**

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**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.**

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**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 2017 federal "Tax Cuts and Jobs Act" placed a cap of \$10,000 on the amount of state and local taxes paid that an individual can deduct on their federal taxes. This limitation did not apply to C corporations. Consequently, businesses organized as pass-through entities like S corporations and partnerships pay increased taxes on business profits compared to C corporations because pass-through entities pay taxes on

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.

business profits at the individual (partner or shareholder) level.

For income tax years commencing on or after January 1, 2022, the bill allows pass-through entities to elect to pay their state income tax at the entity level so that the pass-through entity can claim an unlimited deduction at the federal level of state and local taxes paid.

While this reduces federal taxable income for the pass-through entity, it does not reduce Colorado taxable income because, under current law, the individual and the partnership are required to add back any state and local taxes deducted at the federal level.

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

2           **SECTION 1.** In Colorado Revised Statutes, **add** subpart 3 to part  
3 of article 22 of title 39 as follows:

4   SUBPART 3

5   SALT PARITY ACT

6           **39-22-340. Short title - citation.** THIS SUBPART 3 IS COMPRISED  
7 OF SECTIONS 39-22-340 TO 39-22-346 AND MAY BE CITED AS SUBPART 3.  
8 THIS SUBPART 3 SHALL BE KNOWN AND MAY BE CITED AS THE "SALT  
9 PARITY ACT".

10           **39-22-341. Legislative declaration.** THE GENERAL ASSEMBLY  
11 HEREBY FINDS AND DECLARES THAT THE DEDUCTIBILITY OF STATE INCOME  
12 TAXES SHOULD BE THE SAME FOR C CORPORATIONS, S CORPORATIONS,  
13 AND PARTNERSHIPS.

14           **39-22-342. Definitions.** AS USED IN THIS SUBPART 3, UNLESS THE  
15 CONTEXT OTHERWISE REQUIRES:

16           (1) "ELECTING PASS-THROUGH ENTITY" MEANS, WITH RESPECT TO  
17 A TAXABLE PERIOD, AN S CORPORATION OR PARTNERSHIP THAT HAS MADE  
18 THE ELECTION UNDER SECTION 39-22-343 WITH RESPECT TO THE TAXABLE  
19 PERIOD.

20           (2) "ELECTING PASS-THROUGH ENTITY OWNER" MEANS, WITH

1 RESPECT TO AN S CORPORATION, A SHAREHOLDER OF THE S CORPORATION  
2 AND, WITH RESPECT TO A PARTNERSHIP, A PARTNER IN THE PARTNERSHIP;  
3 EXCEPT THAT A PARTNER DOES NOT INCLUDE A C CORPORATION THAT IS  
4 UNITARY WITH THE PARTNERSHIP.

5 (3) "INCOME ATTRIBUTABLE TO THE STATE" MEANS, WITH RESPECT  
6 TO AN S CORPORATION, THE PORTION OF THE ITEMS OF INCOME, GAIN,  
7 LOSS, OR DEDUCTION OF THE S CORPORATION APPORTIONED OR  
8 ALLOCATED TO THIS STATE IN ACCORDANCE WITH THE PROVISIONS OF  
9 SECTION 39-22-321 (1) AND (2), AND, WITH RESPECT TO A PARTNERSHIP,  
10 THE PORTION OF THE INCOME, GAIN, LOSS, DEDUCTION, OR CREDIT OF THE  
11 PARTNERSHIP DERIVED FROM SOURCES WITHIN COLORADO DETERMINED  
12 IN ACCORDANCE WITH THE PROVISIONS OF SECTION 39-22-203.

13 (4) "INCOME NOT ATTRIBUTABLE TO THE STATE" MEANS ALL ITEMS  
14 OF INCOME, GAIN, LOSS, OR DEDUCTION OF AN ELECTING PASS-THROUGH  
15 ENTITY OTHER THAN INCOME ATTRIBUTABLE TO THE STATE.

16 (5) "RESIDENT ELECTING PASS-THROUGH ENTITY OWNER" MEANS  
17 AN ELECTING PASS-THROUGH ENTITY OWNER THAT IS A RESIDENT OF  
18 COLORADO AS DEFINED IN SECTION 39-22-103 (6), (7), (8), (9), AND (10).

19 (6) "TAXABLE PERIOD" MEANS ANY TAXABLE YEAR OR PORTION OF  
20 A TAXABLE YEAR DURING WHICH A CORPORATION IS AN S CORPORATION  
21 OR A NONCORPORATE ENTITY IS A PARTNERSHIP.

22 **39-22-343. Election.** NOTWITHSTANDING SECTIONS 39-22-201,  
23 39-22-302, AND 39-22-322, FOR INCOME TAX YEARS COMMENCING ON OR  
24 AFTER JANUARY 1, 2022, AN S CORPORATION OR PARTNERSHIP MAY  
25 ANNUALLY ELECT TO BE SUBJECT TO TAX AT THE ENTITY LEVEL FOR THE  
26 TAXABLE PERIOD. THE S CORPORATION OR PARTNERSHIP SHALL MAKE THE  
27 ELECTION ON THE RETURN FILED BY SUCH S CORPORATION OR

1 PARTNERSHIP UNDER SECTION 39-22-601. THE FILING OF SUCH RETURN IS  
2 BINDING ON ALL ELECTING PASS-THROUGH ENTITY OWNERS.

3 **39-22-344. Imposition of tax.** (1) WITH RESPECT TO ANY  
4 TAXABLE PERIOD FOR WHICH IT HAS MADE THE ELECTION UNDER SECTION  
5 39-22-343, AN ELECTING PASS-THROUGH ENTITY IS SUBJECT TO A TAX IN  
6 AN AMOUNT EQUAL TO FOUR AND FIFTY-FIVE ONE-HUNDREDTHS PERCENT  
7 OF THE SUM OF THE FOLLOWING, ALL AS DETERMINED PURSUANT TO  
8 SECTIONS 39-22-202, 39-22-203, 39-22-322, AND 39-22-323:

9 (a) EACH ELECTING PASS-THROUGH ENTITY OWNER'S PRO RATA OR  
10 DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH ENTITY'S INCOME  
11 ATTRIBUTABLE TO THE STATE; AND

12 (b) EACH RESIDENT ELECTING PASS-THROUGH ENTITY OWNER'S  
13 PRO RATA OR DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH  
14 ENTITY'S INCOME NOT ATTRIBUTABLE TO THE STATE.

15 (2) AN ELECTING PASS-THROUGH ENTITY IS TREATED AS A  
16 CORPORATION UNDER SECTION 39-22-606 WITH RESPECT TO THE TAX  
17 IMPOSED UNDER THIS SUBPART 3; EXCEPT THAT SECTION 39-22-606  
18 (5)(c)(I) DOES NOT APPLY DURING THE FIRST TAXABLE PERIOD FOR WHICH  
19 THIS SUBPART 3 IS APPLICABLE.

20 (3) ANY CREDIT ALLOWED PURSUANT TO THIS ARTICLE 22 THAT IS  
21 ATTRIBUTABLE TO THE ACTIVITIES OF AN ELECTING PASS-THROUGH ENTITY  
22 IN THE TAXABLE YEAR SHALL BE CLAIMED BY THE ENTITY AND NOT  
23 PASSED THROUGH TO OR CLAIMED BY THE ELECTING PASS-THROUGH  
24 ENTITY OWNER. NOTWITHSTANDING ANY SECTION TO THE CONTRARY IN  
25 THIS ARTICLE 22, ANY EXCESS INCOME TAX CREDIT, NET OPERATING LOSS,  
26 OR OTHER MODIFICATION MAY BE CARRIED FORWARD ON THE ELECTING  
27 PASS-THROUGH ENTITY'S RETURN BUT MAY ONLY BE UTILIZED IN A YEAR

1 IN WHICH THE ELECTING PASS-THROUGH ENTITY HAS MADE THE ELECTION  
2 ALLOWED IN SECTION 39-22-343; EXCEPT THAT ANY LIMITATION SPECIFIED  
3 IN THE SPECIFIC SECTION FOR AN INCOME TAX CREDIT, THE NET OPERATING  
4 LOSS, OR ANY OTHER MODIFICATION SHALL APPLY TO THE ELECTING  
5 PASS-THROUGH ENTITY.

6 (4) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE  
7 MAY PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24 TO  
8 REQUIRE OR PERMIT AN ELECTING PASS-THROUGH ENTITY TO MAKE  
9 RETURNS, SET FORTH INFORMATION, OR FURNISH COPIES OF INFORMATION  
10 AS REQUIRED IN SECTION 39-22-601 (2.5)(a) THROUGH (2.5)(c) AND (5)(a)  
11 THROUGH (5)(c) AS IS NECESSARY TO EXECUTE THE PROVISIONS OF THIS  
12 SUBPART 3. NOTWITHSTANDING THE SPECIFICITY OF THE FOREGOING, THE  
13 EXECUTIVE DIRECTOR MAY PROMULGATE SUCH OTHER RULES AS ARE, IN  
14 THE EXECUTIVE DIRECTOR'S VIEW, NECESSARY OR EXPEDIENT IN  
15 ENFORCING THE PROVISIONS OF THIS SUBPART 3.

16 (5) THE PROVISIONS OF SECTIONS 39-22-601 (2.5)(d) THROUGH  
17 (2.5)(i) AND (5)(d) THROUGH (5)(i) ARE NOT APPLICABLE TO AN ELECTING  
18 PASS-THROUGH ENTITY.

19 (6) THE PROVISIONS OF ARTICLE 21 OF THIS TITLE 39 REGARDING  
20 THE COLLECTION, ADMINISTRATION, AND ENFORCEMENT OF TAX IS  
21 APPLICABLE TO THE TAX DUE UNDER THIS SECTION, AND,  
22 NOTWITHSTANDING THE PROVISIONS OF SECTIONS 39-22-201, 39-22-302,  
23 AND 39-22-322, AN ELECTING PASS-THROUGH ENTITY IS A TAXPAYER.

24 **39-22-345. Owner exclusion.** (1) NOTWITHSTANDING SECTIONS  
25 39-22-201 AND 39-22-322, AND AS PROVIDED IN 39-22-104 (4)(z) AND  
26 39-22-304 (3)(p), ELECTING PASS-THROUGH ENTITY OWNERS SHALL NOT  
27 BE LIABLE FOR THE TAX AND THE ALTERNATIVE MINIMUM TAX UNDER THIS

1 ARTICLE 22 IN THEIR SEPARATE OR INDIVIDUAL CAPACITIES, AND THE  
2 ELECTING PASS-THROUGH ENTITY'S INCOME ATTRIBUTABLE TO THE STATE  
3 AND THE INCOME NOT ATTRIBUTABLE TO THE STATE IS NOT TAKEN INTO  
4 ACCOUNT BY THE ELECTING PASS-THROUGH ENTITY OWNERS.

5 (2) NOTWITHSTANDING THE PROVISIONS OF THIS SUBPART 3 AND  
6 SECTIONS 39-22-104 (4)(z) AND 39-22-304 (3)(p), THE BASIS IN THE  
7 HANDS OF AN ELECTING PASS-THROUGH ENTITY OWNER IN THE INTEREST  
8 IN THE PARTNERSHIP OR THE STOCK OR INDEBTEDNESS IN THE S  
9 CORPORATION IS DETERMINED AS IF THE ELECTION UNDER SECTION  
10 39-22-343 HAD NOT BEEN MADE.

11 **39-22-346. Credit for tax paid in other states.** AN ELECTING  
12 PASS-THROUGH ENTITY IS ENTITLED TO THE CREDIT UNDER SECTION  
13 39-22-108, AND SUBJECT TO THE LIMITATIONS OF SECTION 39-22-108, FOR  
14 TAXES PAID TO OTHER STATES WITH RESPECT TO THE ELECTING  
15 PASS-THROUGH ENTITY'S INCOME NOT ATTRIBUTABLE TO THIS STATE THAT  
16 IS SUBJECT TO TAXATION PURSUANT TO SECTION 39-22-344 WHETHER THE  
17 TAX WAS PAID BY THE ELECTING PASS-THROUGH ENTITY ITSELF OR BY THE  
18 ELECTING PASS-THROUGH ENTITY OWNERS. THE RESIDENT ELECTING  
19 PASS-THROUGH ENTITY OWNERS ARE NOT ENTITLED TO ANY CREDIT UNDER  
20 SECTION 39-22-108 WITH RESPECT TO INCOME OF THE ELECTING  
21 PASS-THROUGH ENTITY.

22 **SECTION 2.** In Colorado Revised Statutes, 39-22-104, **add**  
23 (3)(p) and (4)(z) as follows:

24 **39-22-104. Income tax imposed on individuals, estates, and**  
25 **trusts - single rate - legislative declaration - definitions - repeal.**

26 (3) There shall be added to the federal taxable income:

27 (p) NOTWITHSTANDING SUBSECTION (3)(o) OF THIS SECTION, FOR

1 INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, AN  
2 AMOUNT EQUAL TO THE DEDUCTION TAKEN UNDER SECTION 199A OF THE  
3 INTERNAL REVENUE CODE, EXCEPT TO THE EXTENT THE DEDUCTION IS  
4 OTHERWISE DISALLOWED UNDER SECTION 265 OF THE INTERNAL REVENUE  
5 CODE, FOR AN ELECTING PASS-THROUGH ENTITY OWNER OF AN ELECTING  
6 PASS-THROUGH ENTITY, AS SUCH TERMS ARE DEFINED IN SECTION  
7 39-21-342, THAT MAKES THE ELECTION ALLOWED IN SUBPART 3 OF PART  
8 3 OF THIS ARTICLE 22.

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

10 (z) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY  
11 1, 2022, AN AMOUNT EQUAL TO THE ELECTING PASS-THROUGH ENTITY  
12 OWNER'S DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH ENTITY'S  
13 INCOME ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE  
14 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22 AND INCOME NOT  
15 ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE  
16 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22.

17 **SECTION 3.** In Colorado Revised Statutes, 39-22-304, **add**  
18 (3)(p) as follows:

19 **39-22-304. Net income of corporation - legislative declaration**  
20 **- definitions - repeal.** (3) There shall be subtracted from federal taxable  
21 income:

22 (p) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY  
23 1, 2022, AN AMOUNT EQUAL TO THE ELECTING PASS-THROUGH ENTITY  
24 OWNER'S DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH ENTITY'S  
25 INCOME ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE  
26 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22 AND INCOME NOT  
27 ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE

1 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22.

2           **SECTION 4.** In Colorado Revised Statutes, 39-22-601, **add**  
3 (1)(a)(IV) as follows:

4           **39-22-601. Returns.** (1) (a) (IV) FOR PURPOSES OF THIS  
5 SUBSECTION (1)(a), A NONRESIDENT INDIVIDUAL WHOSE ONLY SOURCE OF  
6 INCOME FROM THIS STATE IS INCOME FROM AN ELECTING PASS-THROUGH  
7 ENTITY UNDER SUBPART 3 OF PART 3 OF THIS ARTICLE 22 NEED NOT FILE  
8 A RETURN.

9           **SECTION 5. Safety clause.** The general assembly hereby finds,  
10 determines, and declares that this act is necessary for the immediate  
11 preservation of the public peace, health, or safety.