

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

REREVISED

This Version Includes All Amendments
Adopted in the Second House

LLS NO. 21-0892.01 Esther van Mourik x4215

HOUSE BILL 21-1327

HOUSE SPONSORSHIP

Ortiz and Van Winkle, Bernett, Bird, Bockenfeld, Garnett, Gray, Pico, Ricks, Roberts, Snyder, Titone

SENATE SPONSORSHIP

Kolker and Woodward, Bridges, Cooke, Garcia, Hisey, Holbert, Kirkmeyer, Liston, Lundeen, Pettersen, Priola, Rankin, Rodriguez, Simpson, Smallwood

House Committees

Finance
Appropriations

Senate Committees

State, Veterans, & Military Affairs
Appropriations

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 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

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.

SENATE
3rd Reading Unamended
June 8, 2021

SENATE
2nd Reading Unamended
June 7, 2021

HOUSE
3rd Reading Unamended
June 7, 2021

HOUSE
Amended 2nd Reading
June 4, 2021

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.** (1) NOTWITHSTANDING SECTIONS
23 39-22-201, 39-22-302, AND 39-22-322, AND EXCEPT AS PROVIDED IN
24 SUBSECTION (2) OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING
25 ON OR AFTER JANUARY 1, 2022, AN S CORPORATION OR PARTNERSHIP MAY
26 ANNUALLY ELECT TO BE SUBJECT TO TAX AT THE ENTITY LEVEL FOR THE
27 TAXABLE PERIOD. THE S CORPORATION OR PARTNERSHIP SHALL MAKE THE

1 ELECTION ON THE RETURN FILED BY SUCH S CORPORATION OR
2 PARTNERSHIP UNDER SECTION 39-22-601. THE FILING OF SUCH RETURN IS
3 BINDING ON ALL ELECTING PASS-THROUGH ENTITY OWNERS.

4 (2) THE ELECTION ALLOWED UNDER SUBSECTION (1) OF THIS
5 SECTION IS ONLY ALLOWED IN AN INCOME TAX YEAR WHERE THERE IS A
6 LIMITATION ON THE DEDUCTIONS ALLOWED TO INDIVIDUALS UNDER
7 SECTION 164 OF THE INTERNAL REVENUE CODE.

8 **39-22-344. Imposition of tax.** (1) WITH RESPECT TO ANY
9 TAXABLE PERIOD FOR WHICH IT HAS MADE THE ELECTION UNDER SECTION
10 39-22-343, AN ELECTING PASS-THROUGH ENTITY IS SUBJECT TO A TAX IN
11 AN AMOUNT EQUAL TO FOUR AND FIFTY-FIVE ONE-HUNDREDTHS PERCENT
12 OF THE SUM OF THE FOLLOWING, ALL AS DETERMINED PURSUANT TO
13 SECTIONS 39-22-202, 39-22-203, 39-22-322, AND 39-22-323:

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

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

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

25 (3) ANY CREDIT ALLOWED PURSUANT TO THIS ARTICLE 22 THAT IS
26 ATTRIBUTABLE TO THE ACTIVITIES OF AN ELECTING PASS-THROUGH ENTITY
27 IN THE TAXABLE YEAR SHALL BE CLAIMED BY THE ENTITY AND NOT

1 PASSED THROUGH TO OR CLAIMED BY THE ELECTING PASS-THROUGH
2 ENTITY OWNER. NOTWITHSTANDING ANY SECTION TO THE CONTRARY IN
3 THIS ARTICLE 22, ANY EXCESS INCOME TAX CREDIT, NET OPERATING LOSS,
4 OR OTHER MODIFICATION MAY BE CARRIED FORWARD ON THE ELECTING
5 PASS-THROUGH ENTITY'S RETURN BUT MAY ONLY BE UTILIZED IN A YEAR
6 IN WHICH THE ELECTING PASS-THROUGH ENTITY HAS MADE THE ELECTION
7 ALLOWED IN SECTION 39-22-343; EXCEPT THAT ANY LIMITATION SPECIFIED
8 IN THE SPECIFIC SECTION FOR AN INCOME TAX CREDIT, THE NET OPERATING
9 LOSS, OR ANY OTHER MODIFICATION SHALL APPLY TO THE ELECTING
10 PASS-THROUGH ENTITY.

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

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

24 (6) THE PROVISIONS OF ARTICLE 21 OF THIS TITLE 39 REGARDING
25 THE COLLECTION, ADMINISTRATION, AND ENFORCEMENT OF TAX IS
26 APPLICABLE TO THE TAX DUE UNDER THIS SECTION, AND,
27 NOTWITHSTANDING THE PROVISIONS OF SECTIONS 39-22-201, 39-22-302,

1 AND 39-22-322, AN ELECTING PASS-THROUGH ENTITY IS A TAXPAYER.

2 **39-22-345. Owner exclusion.** (1) NOTWITHSTANDING SECTIONS
3 39-22-201 AND 39-22-322, AND AS PROVIDED IN 39-22-104 (4)(z) AND
4 39-22-304 (3)(p), ELECTING PASS-THROUGH ENTITY OWNERS SHALL NOT
5 BE LIABLE FOR THE TAX AND THE ALTERNATIVE MINIMUM TAX UNDER THIS
6 ARTICLE 22 IN THEIR SEPARATE OR INDIVIDUAL CAPACITIES, AND THE
7 ELECTING PASS-THROUGH ENTITY'S INCOME ATTRIBUTABLE TO THE STATE
8 AND THE INCOME NOT ATTRIBUTABLE TO THE STATE IS NOT TAKEN INTO
9 ACCOUNT BY THE ELECTING PASS-THROUGH ENTITY OWNERS.

10 (2) NOTWITHSTANDING THE PROVISIONS OF THIS SUBPART 3 AND
11 SECTIONS 39-22-104 (4)(z) AND 39-22-304 (3)(p), THE BASIS IN THE
12 HANDS OF AN ELECTING PASS-THROUGH ENTITY OWNER IN THE INTEREST
13 IN THE PARTNERSHIP OR THE STOCK OR INDEBTEDNESS IN THE S
14 CORPORATION IS DETERMINED AS IF THE ELECTION UNDER SECTION
15 39-22-343 HAD NOT BEEN MADE.

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

27 **SECTION 2.** In Colorado Revised Statutes, 39-22-104, **add**

1 (3)(p) and (4)(z) as follows:

2 **39-22-104. Income tax imposed on individuals, estates, and**
3 **trusts - single rate - legislative declaration - definitions - repeal.**

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

5 (p) NOTWITHSTANDING SUBSECTION (3)(o) OF THIS SECTION, FOR
6 INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, AN
7 AMOUNT EQUAL TO THE DEDUCTION TAKEN UNDER SECTION 199A OF THE
8 INTERNAL REVENUE CODE, EXCEPT TO THE EXTENT THE DEDUCTION IS
9 OTHERWISE DISALLOWED UNDER SECTION 265 OF THE INTERNAL REVENUE
10 CODE, FOR AN ELECTING PASS-THROUGH ENTITY OWNER OF AN ELECTING
11 PASS-THROUGH ENTITY, AS SUCH TERMS ARE DEFINED IN SECTION
12 39-21-342, THAT MAKES THE ELECTION ALLOWED IN SUBPART 3 OF PART
13 3 OF THIS ARTICLE 22.

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

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

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

24 **39-22-304. Net income of corporation - legislative declaration**
25 **- definitions - repeal.** (3) There shall be subtracted from federal taxable
26 income:

27 (p) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY

1 1, 2022, AN AMOUNT EQUAL TO THE ELECTING PASS-THROUGH ENTITY
2 OWNER'S DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH ENTITY'S
3 INCOME ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE
4 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22 AND INCOME NOT
5 ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE
6 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22.

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

9 **39-22-601. Returns.** (1) (a) (IV) FOR PURPOSES OF THIS
10 SUBSECTION (1)(a), A NONRESIDENT INDIVIDUAL WHOSE ONLY SOURCE OF
11 INCOME FROM THIS STATE IS INCOME FROM AN ELECTING PASS-THROUGH
12 ENTITY UNDER SUBPART 3 OF PART 3 OF THIS ARTICLE 22 NEED NOT FILE
13 A RETURN.

14 **SECTION 5. Appropriation.** (1) For the 2021-22 state fiscal
15 year, \$432,578 is appropriated to the department of revenue. This
16 appropriation is from the general fund. To implement this act, the
17 department may use this appropriation as follows:

18 (a) \$1,600 for use by the executive director's office for personal
19 services related to administration and support;

20 (b) \$239,607 for use by the taxation business group for personal
21 services related to taxation services, which amount is based on an
22 assumption that the group will require an additional 2.8 FTE;

23 (c) \$22,650 for use by the taxation business group for operating
24 expenses related to taxation services;

25 (d) \$66,375 for tax administration IT system (GenTax) support;
26 **and**

27 (e) \$102,346 for the purchase of document management services.

1 (2) For the 2021-22 state fiscal year, \$102,346 is appropriated to
2 the department of personnel. This appropriation is from reappropriated
3 funds received from the department of revenue under subsection (1)(e) of
4 this section. To implement this act, the department of personnel may use
5 this appropriation to provide document management services for the
6 department of revenue.

7 **SECTION 6. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, or safety.