

## CHAPTER 5

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**TAXATION**


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**HOUSE BILL 21-1002**

BY REPRESENTATIVE(S) Weissman and Sirota, Bennett, Bird, Cutter, Duran, Exum, Froelich, Gray, Herod, Hooton, Jackson, Kipp, McCluskie, Michaelson Jenet, Mullica, Ortiz, Sandridge, Snyder, Valdez A., Woodrow;  
also SENATOR(S) Moreno and Hansen, Bridges, Buckner, Coleman, Danielson, Fenberg, Fields, Gonzales, Jaquez Lewis, Kolker, Lee, Pettersen, Priola, Rodriguez, Story, Winter, Garcia.

**AN ACT**

**CONCERNING REDUCTIONS TO CERTAIN TAXPAYERS' STATE INCOME TAX LIABILITY RELATED TO STATE TAX LAW CHANGES MADE IN 2020, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

**SECTION 1.** In Colorado Revised Statutes, 39-22-104, **add** (4)(z) as follows:

**39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - legislative declaration - definitions - repeal.** (4) There shall be subtracted from federal taxable income:

(z) (I) EXCEPT AS PROVIDED IN SUBSECTION (4)(z)(II) OF THIS SECTION, FOR INCOME TAX YEARS BEGINNING ON OR AFTER JANUARY 1, 2021, BUT BEFORE JANUARY 1, 2022, THE SUM OF THE AMOUNT BY WHICH TAXABLE INCOME FOR THE SPECIFIED TAX YEARS EXCEEDS THE TAXABLE INCOME FOR THE MODIFIED SPECIFIED TAX YEARS COMPUTED SEPARATELY FOR EACH INCOME TAX YEAR, PLUS THE SUM OF ANY AMOUNTS ADDED BACK BY THE TAXPAYER AS SPECIFIED IN SUBSECTIONS (3)(l), (3)(m), AND (3)(n) OF THIS SECTION.

(II) (A) THE SUBTRACTION CALCULATED UNDER SUBSECTION (4)(z)(I) OF THIS SECTION APPLIES AFTER THE APPLICATION OF THE OTHER SUBTRACTIONS PROVIDED FOR IN THIS SUBSECTION (4) AND IS LIMITED TO THE LESSER OF THE TAXPAYER'S COLORADO TAXABLE INCOME OR THREE HUNDRED THOUSAND DOLLARS.

(B) ANY AMOUNT OF THE SUBTRACTION CALCULATED UNDER SUBSECTION (4)(z)(I) OF THIS SECTION THAT A TAXPAYER MAY NOT CLAIM BY OPERATION OF

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

SUBSECTION (4)(z)(II)(A) OF THIS SECTION MAY BE CARRIED FORWARD TO SUBSEQUENT TAX YEARS AS A SUBTRACTION FROM THE TAXPAYER'S FEDERAL TAXABLE INCOME UNTIL EXHAUSTED; EXCEPT THAT EACH TAX YEAR'S SUBTRACTION MAY NOT EXCEED THE LESSER OF THE TAXPAYER'S COLORADO TAXABLE INCOME OR ONE HUNDRED FIFTY THOUSAND DOLLARS FOR THE INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2026, AND EACH YEAR'S SUBTRACTION MAY NOT EXCEED THE TAXPAYER'S COLORADO TAXABLE INCOME IN ANY INCOME TAX YEARS THEREAFTER. ANY SUBTRACTION MUST BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE.

(III) A TAXPAYER THAT APPLIES THE SUBTRACTION ALLOWED IN THIS SUBSECTION (4)(z) WITH RESPECT TO QUALIFIED IMPROVEMENT PROPERTY SHALL CALCULATE THE GAIN OR LOSS ON A SALE OF SUCH QUALIFIED IMPROVEMENT PROPERTY FOR PURPOSES OF THE SUBTRACTION IN SUBSECTION (4)(b) OF THIS SECTION USING THE BASIS REPORTED ON THEIR FEDERAL INCOME TAX RETURN AT THE TIME OF THE SALE.

(IV) AS USED IN THIS SUBSECTION (4)(z), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "CARES ACT" MEANS THE MARCH 2020 "CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT", PUB.L. 116-136.

(B) "COLORADO TAXABLE INCOME" MEANS FEDERAL TAXABLE INCOME AS MODIFIED BY THIS ARTICLE 22 WITHOUT REGARD TO THIS SUBSECTION (4)(z).

(C) "RETROACTIVE PROVISIONS OF THE CARES ACT" MEANS THE CHANGES MADE TO THE INTERNAL REVENUE CODE IN SECTIONS 2303, 2304, 2306, AND 2307 OF THE CARES ACT.

(D) "TAXABLE INCOME FOR THE MODIFIED SPECIFIED TAX YEARS" MEANS THE TAXPAYER'S COLORADO TAXABLE INCOME FOR TAX YEARS ENDING BEFORE MARCH 27, 2020, AS CALCULATED UNDER THE INTERNAL REVENUE CODE AND COLORADO LAW APPLICABLE TO THE TAXPAYER'S RETURN AS OF THE DATE THE RETURN WAS DUE, AS MODIFIED BY THE APPLICATION OF THE RETROACTIVE PROVISIONS OF THE CARES ACT APPLIED TO THE CALCULATION OF THE TAXPAYER'S FEDERAL TAXABLE INCOME, BUT ONLY TO THE EXTENT THE TAXPAYER APPROPRIATELY APPLIED THOSE PROVISIONS TO THE TAXPAYER'S FEDERAL INCOME TAX RETURNS FOR EACH TAX YEAR.

(E) "TAXABLE INCOME FOR THE SPECIFIED TAX YEARS" MEANS THE TAXPAYER'S COLORADO TAXABLE INCOME FOR TAX YEARS ENDING BEFORE MARCH 27, 2020, AS CALCULATED UNDER COLORADO LAW APPLICABLE TO THE TAXPAYER'S RETURN AS OF THE DATE THE RETURN WAS DUE.

**SECTION 2.** In Colorado Revised Statutes, 39-22-123.5, **amend** (2.5)(a); and **repeal** (2.5)(c) as follows:

**39-22-123.5. Earned income tax credit - not a refund of excess state revenues - trigger - legislative declaration.** (2.5) (a) For income tax years commencing on or after ~~January 1, 2021~~ JANUARY 1, 2020, but before January 1, 2022, a resident individual is allowed an earned income tax credit against the taxes due under this

article 22 that is equal to ten percent of the federal credit that the resident individual would have been allowed, but for the fact that the resident individual, the resident individual's spouse, or one or more of the resident individual's dependents do not have a social security number that is valid for employment.

~~(c) For purposes of this subsection (2.5), a "resident individual" includes a taxpayer filing with an individual taxpayer identification number.~~

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

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

(p) (I) (A) EXCEPT AS PROVIDED IN SUBSECTIONS (3)(p)(I)(B) AND (3)(p)(II) OF THIS SECTION, FOR INCOME TAX YEARS BEGINNING ON OR AFTER JANUARY 1, 2021, BUT BEFORE JANUARY 1, 2022, THE SUM OF THE AMOUNT BY WHICH TAXABLE INCOME FOR THE SPECIFIED TAX YEARS EXCEEDS THE TAXABLE INCOME FOR THE MODIFIED SPECIFIED TAX YEARS COMPUTED SEPARATELY FOR EACH INCOME TAX YEAR, PLUS THE AMOUNT ADDED BACK BY THE TAXPAYER AS SPECIFIED IN SUBSECTION (2)(i) OF THIS SECTION.

(B) FOR ANY INCOME TAX YEAR INCLUDED IN THE CALCULATION UNDER SUBSECTION (3)(p)(I)(A) OF THIS SECTION IN WHICH THE TAXPAYER WAS REQUIRED TO APPORTION OR ALLOCATE INCOME TO COLORADO UNDER THE PROVISIONS OF THIS ARTICLE 22 APPLICABLE TO THAT INCOME TAX YEAR, THE AMOUNT INCLUDED IN THE CALCULATION UNDER SUBSECTION (3)(p)(I)(A) IS THE FOLLOWING AMOUNT MULTIPLIED BY THE TAXPAYER'S APPORTIONMENT FACTOR FOR THE TAX YEAR: THE AMOUNT BY WHICH TAXABLE INCOME FOR THE SPECIFIED TAX YEAR EXCEEDS THE TAXABLE INCOME FOR THE MODIFIED SPECIFIED TAX YEAR, PLUS THE AMOUNT ADDED BACK BY THE TAXPAYER AS SPECIFIED IN SUBSECTION (2)(i).

(II) (A) THE SUBTRACTION CALCULATED UNDER SUBSECTION (3)(p)(I) OF THIS SECTION APPLIES AFTER THE APPLICATION OF THE OTHER SUBTRACTIONS PROVIDED FOR IN THIS SUBSECTION (3) AND IS LIMITED TO THE LESSER OF THE TAXPAYER'S COLORADO TAXABLE INCOME OR THREE HUNDRED THOUSAND DOLLARS.

(B) ANY AMOUNT OF THE SUBTRACTION CALCULATED UNDER SUBSECTION (3)(p)(I) OF THIS SECTION THAT A TAXPAYER MAY NOT CLAIM BY OPERATION OF SUBSECTION (3)(p)(II)(A) OF THIS SECTION MAY BE CARRIED FORWARD TO SUBSEQUENT TAX YEARS AS A SUBTRACTION FROM THE TAXPAYER'S FEDERAL TAXABLE INCOME UNTIL EXHAUSTED; EXCEPT THAT EACH TAX YEAR'S SUBTRACTION MAY NOT EXCEED THE LESSER OF THE TAXPAYER'S COLORADO TAXABLE INCOME OR ONE HUNDRED FIFTY THOUSAND DOLLARS FOR THE INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2026, AND EACH YEAR'S SUBTRACTION MAY NOT EXCEED THE TAXPAYER'S COLORADO TAXABLE INCOME IN ANY INCOME TAX YEARS THEREAFTER. ANY SUBTRACTION MUST BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE.

(C) IN THE CASE OF A TAXPAYER THAT APPORTIONS AND ALLOCATES NET INCOME AS REQUIRED BY SECTION 39-22-303.6 (3)(b) IN THE TAXPAYER'S INCOME TAX YEAR BEGINNING ON OR AFTER JANUARY 1, 2021, BUT BEFORE JANUARY 1, 2022, THE

SUBTRACTION APPLIES TO THE TAXPAYER'S NET INCOME APPORTIONED AND ALLOCATED TO COLORADO. ANY CARRY FORWARD AMOUNT SUBTRACTED IN A SUBSEQUENT TAX YEAR UNDER SUBSECTION (3)(p)(II)(B) OF THIS SECTION IS APPLIED TO NET INCOME APPORTIONED AND ALLOCATED TO COLORADO FOR THAT SUBSEQUENT TAX YEAR.

(III) A TAXPAYER THAT APPLIES THE SUBTRACTION ALLOWED IN THIS SUBSECTION (3)(p) WITH RESPECT TO QUALIFIED IMPROVEMENT PROPERTY SHALL CALCULATE THE GAIN OR LOSS ON A SALE OF SUCH QUALIFIED IMPROVEMENT PROPERTY FOR PURPOSES OF THE SUBTRACTION IN SUBSECTION (3)(c) OF THIS SECTION USING THE BASIS REPORTED ON THEIR FEDERAL INCOME TAX RETURN AT THE TIME OF THE SALE.

(IV) AS USED IN THIS SUBSECTION (3)(p), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "CARES ACT" MEANS THE MARCH 2020 "CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT", PUB.L. 116-136.

(B) "COLORADO TAXABLE INCOME" MEANS FEDERAL TAXABLE INCOME AS MODIFIED BY THIS ARTICLE 22 WITHOUT REGARD TO THIS SUBSECTION (3)(p).

(C) "RETROACTIVE PROVISIONS OF THE CARES ACT" MEANS THE CHANGES MADE TO THE INTERNAL REVENUE CODE IN SECTIONS 2306 AND 2307 OF THE CARES ACT.

(D) "TAXABLE INCOME FOR THE MODIFIED SPECIFIED TAX YEARS" MEANS THE TAXPAYER'S COLORADO TAXABLE INCOME FOR TAX YEARS ENDING BEFORE MARCH 27, 2020, AS CALCULATED UNDER THE INTERNAL REVENUE CODE AND COLORADO LAW APPLICABLE TO THE TAXPAYER'S RETURN AS OF THE DATE THE RETURN WAS DUE, AS MODIFIED BY THE APPLICATION OF THE RETROACTIVE PROVISIONS OF THE CARES ACT APPLIED TO THE CALCULATION OF THE TAXPAYER'S FEDERAL TAXABLE INCOME, BUT ONLY TO THE EXTENT THE TAXPAYER APPROPRIATELY APPLIED THOSE PROVISIONS TO THE TAXPAYER'S FEDERAL INCOME TAX RETURNS FOR EACH TAX YEAR.

(E) "TAXABLE INCOME FOR THE SPECIFIED TAX YEARS" MEANS THE TAXPAYER'S COLORADO TAXABLE INCOME FOR TAX YEARS ENDING BEFORE MARCH 27, 2020, AS CALCULATED UNDER COLORADO LAW APPLICABLE TO THE TAXPAYER'S RETURN AS OF THE DATE THE RETURN WAS DUE.

**SECTION 4. Appropriation.** (1) For the 2020-21 state fiscal year, \$130,254 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$125,934 for use by the taxpayer service division for personal services, which amount is based on an assumption that the division will require an additional 2.6 FTE; and

(b) \$4,320 for use by the taxpayer service division for operating expenses.

(2) For the 2021-22 state fiscal year, \$96,905 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the

department may use this appropriation as follows:

(a) \$4,608 for use by the executive director's office administration and support division for personal services;

(b) \$41,850 for tax administration IT system (GenTax) support;

(c) \$14,805 for use by the taxation and compliance division for personal services; and

(d) \$35,642 for use by the taxpayer service division for personal services, which amount is based on an assumption that the division will require an additional 0.7 FTE.

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

Approved: January 21, 2021