

CHAPTER 446

TAXATION

HOUSE BILL 23-1189

BY REPRESENTATIVE(S) Bird and Weinberg, Boesenecker, Froelich, Hamrick, Jodeh, Joseph, Lieder, Lindsay, Lindstedt, McLachlan, Michaelson Jenet, Ortiz, Sharbini, Snyder, Story, Valdez, Woodrow, Duran, Titone, McCluskie; also SENATOR(S) Zenzinger and Mullica, Bridges, Ginal, Hansen, Moreno, Priola, Rodriguez, Smallwood, Sullivan, Winter F., Fenberg.

AN ACT**CONCERNING AN INCOME TAX CREDIT FOR EMPLOYER ASSISTANCE TO EMPLOYEES IN MAKING A HOME PURCHASE.**

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

SECTION 1. In Colorado Revised Statutes, **add** 39-22-558 as follows:

39-22-558. Tax credit for employer's contribution to employee for eligible expenses in connection with a qualifying home purchase - legislative declaration - definitions. (1) (a) **IN ACCORDANCE WITH SECTION 39-21-304 (1),** THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE PURPOSE OF THIS TAX EXPENDITURE IS TO INDUCE CERTAIN DESIGNATED BEHAVIOR BY TAXPAYERS TO ENCOURAGE HOME OWNERSHIP BY PROVIDING TAX RELIEF TO EMPLOYERS WHO CONTRIBUTE MONEY TO AN EMPLOYEE FOR A DOWN PAYMENT AND RELATED CLOSING COSTS ON A HOME PURCHASE.

(b) THE GENERAL ASSEMBLY AND THE STATE AUDITOR SHALL MEASURE THE EFFECTIVENESS OF THE CREDIT IN ACHIEVING THE PURPOSES SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION BASED ON THE INFORMATION REQUIRED TO BE MAINTAINED BY AND REPORTED TO THE STATE AUDITOR UPON REQUEST BY THE DEPARTMENT PURSUANT TO SUBSECTION (4) OF THIS SECTION.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(b) "ELIGIBLE EXPENSES" MEANS A DOWN PAYMENT AND ANY CLOSING COSTS

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.

INCLUDED ON A REAL ESTATE SETTLEMENT STATEMENT, INCLUDING BUT NOT LIMITED TO APPRAISAL FEES, MORTGAGE ORIGATION FEES, AND INSPECTION FEES.

(c) "EMPLOYEE CONTRIBUTION" MEANS THE AMOUNT AN EMPLOYEE AUTHORIZES AN EMPLOYER TO WITHHOLD FROM THE EMPLOYEE'S EARNINGS FOR DEPOSIT INTO THE SAVINGS ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION (3)(b)(I) OF THIS SECTION FOR USE BY AN EMPLOYEE FOR ELIGIBLE EXPENSES IN CONNECTION WITH A QUALIFYING HOME PURCHASE.

(d) "EMPLOYER" MEANS A PRIVATE, NONPUBLIC PERSON THAT EMPLOYS ONE OR MORE EMPLOYEES WITHIN THE STATE.

(e) "EMPLOYER CONTRIBUTION" MEANS THE AMOUNT AN EMPLOYER CONTRIBUTES TO A SAVINGS ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION (3)(b)(I) OF THIS SECTION FOR USE BY AN EMPLOYEE FOR ELIGIBLE EXPENSES IN CONNECTION WITH A QUALIFYING HOME PURCHASE.

(f) "QUALIFYING HOME PURCHASE" MEANS A PROPERTY PURCHASED BY AN EMPLOYEE AS A PRIMARY RESIDENCE.

(3)(a) FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2027, IF AN EMPLOYER MAKES A CONTRIBUTION OF MONEY TO AN EMPLOYEE DURING THE INCOME TAX YEAR FOR USE BY THE EMPLOYEE FOR ELIGIBLE EXPENSES IN CONNECTION WITH A QUALIFYING HOME PURCHASE, THEN THE EMPLOYER IS ALLOWED A CREDIT AGAINST THE INCOME TAXES IMPOSED BY THIS ARTICLE 22 IN AN AMOUNT EQUAL TO FIVE PERCENT OF THE AMOUNT OF THE EMPLOYER CONTRIBUTION; EXCEPT THAT AN EMPLOYER CANNOT CLAIM A CREDIT OF MORE THAN FIVE THOUSAND DOLLARS FOR ANY ONE EMPLOYEE AND THE MAXIMUM TOTAL CREDIT THAT AN EMPLOYER MAY CLAIM IN A TAXABLE YEAR IS FIVE HUNDRED THOUSAND DOLLARS.

(b) (I) IN ORDER TO CLAIM THE TAX CREDIT ALLOWED BY THIS SECTION, THE EMPLOYER SHALL ESTABLISH ONE OR MORE SAVINGS ACCOUNTS FOR THE PURPOSE OF DEPOSITING THE MONEY FOR THE EMPLOYER'S CONTRIBUTION TO AN EMPLOYEE.

(II) THE EMPLOYER SHALL ESTABLISH POLICIES CONCERNING THE CONTRIBUTION, INCLUDING HOW THE EMPLOYER CONTRIBUTION IS TO BE MADE AND PROCEDURES FOR AN EMPLOYEE TO FOLLOW TO WITHDRAW MONEY FOR QUALIFYING EXPENSES AND FOR AN EMPLOYER TO FOLLOW TO WITHHOLD AN EMPLOYEE'S EARNINGS AS AN EMPLOYEE CONTRIBUTION.

(III) AN EMPLOYEE MAY AUTHORIZE AN EMPLOYER TO WITHHOLD A SPECIFIED PORTION OF THE EMPLOYEE'S EARNINGS AS AN EMPLOYEE CONTRIBUTION, WHICH MONEY SHALL BE DEPOSITED IN A SAVINGS ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION (3)(b)(I) OF THIS SECTION.

(c) IF AN EMPLOYEE ENDS THE EMPLOYEE'S EMPLOYMENT WITH THE EMPLOYER OR IF THE EMPLOYEE CHOOSES TO USE MONEY IN A SAVINGS ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION (3)(b)(I) OF THIS SECTION THAT IS AN EMPLOYEE CONTRIBUTION FOR SOMETHING OTHER THAN AN ELIGIBLE EXPENSE, THE EMPLOYEE IS NOT ENTITLED TO ANY UNEXPENDED AMOUNT OF THE EMPLOYER CONTRIBUTION,

AND THE EMPLOYER SHALL REMIT TO THE EMPLOYEE ANY AMOUNT IN THE SAVINGS ACCOUNT WHICH IS ALL OR THE REMAINING AMOUNT OF THE EMPLOYEE CONTRIBUTION, PLUS ANY INTEREST EARNED ON THE AMOUNT. THE EMPLOYER SHALL PAY THE ENTIRE AMOUNT OF THE CREDIT RECEIVED FOR THE EMPLOYER CONTRIBUTION. THE EMPLOYER SHALL REPORT THE RECAPTURE REQUIRED BY THIS SUBSECTION (3)(c) BY INCREASING THEIR INCOME TAX LIABILITY BY THE AMOUNT OF THE TOTAL CREDIT CLAIMED FOR THE YEAR IN WHICH THE RECAPTURE OCCURS.

(4) (a) To claim the credit for an income tax year, an employer must keep records related to the credit as required by the department. The executive director of the department may promulgate rules to implement this section. Notwithstanding any other requirements of the department, records maintained by an employer must show:

(I) The number of employees to whom the employer made employer contributions in the tax year;

(II) The amount the employer contributed to each employee in the tax year as employer contributions;

(III) The number of employees who expended money from a savings account established pursuant to subsection (3)(b)(I) of this section on eligible expenses for a home purchase in the tax year; and

(IV) The total amount of any employer contributions made by the employer for use by the employee for eligible expenses in connection with a qualifying home purchase that an employee has forfeited pursuant to subsection (3)(c) of this section in the tax year.

(b) Upon request by the state auditor, the department shall provide to the state auditor the information contained in records required by subsection (4)(a) of this section.

(5) If the amount of the credit allowed under this section exceeds the amount of income taxes otherwise due on the employer's income in the income tax year for which the credit is claimed, the amount of the credit not used as an offset against income taxes in the current income tax year may be carried forward and used as a credit against income tax liability in subsequent years for a period not to exceed five years and must be applied first to the earliest income tax year possible. Any credit remaining after the period may not be refunded or credited to the employer.

(6) Nothing in this section is intended to preclude an employee who receives a contribution from their employer in accordance with subsection (3) of this section from having a first-time home buyer savings account pursuant to part 47 of this article 22.

SECTION 2. In Colorado Revised Statutes, 39-22-104, add (3)(t) and (4)(bb) as follows:

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

(t) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2025, AN AMOUNT EQUAL TO THE AMOUNT OF EMPLOYER CONTRIBUTION THAT AN EMPLOYEE FORFEITS PURSUANT TO SECTION 39-22-558 (3)(c) AND THAT THE TAXPAYER HAD PREVIOUSLY SUBTRACTED FROM THE TAXPAYER'S FEDERAL TAXABLE INCOME PURSUANT TO SUBSECTION (4)(bb) OF THIS SECTION.

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

(bb) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2027, AN AMOUNT EQUAL TO ANY EMPLOYER CONTRIBUTION RECEIVED FROM AN EMPLOYER PURSUANT TO SECTION 39-22-558. THIS SUBSECTION (4)(bb) IS REPEALED, EFFECTIVE DECEMBER 31, 2034.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 7, 2023