

CHAPTER 319

TAXATION

HOUSE BILL 99-1383

BY REPRESENTATIVES McPherson, Hefley, Tate, Alexander, Allen, Bacon, Berry, Chavez, Clarke, Coleman, Dean, Gagliardi, George, Gottlieb, Hagedorn, Kaufman, Keller, King, Larson, Lawrence, Leyba, Mace, Miller, Plant, Ragsdale, Saliman, Scott, Spradley, Stengel, Swenson, Tapia, Taylor, Tochtrop, Tool, Tupa, Veiga, Vigil, Webster, S. Williams, T. Williams, Windels, Witwer, and Zimmerman;
also SENATORS Lacy, Arnold, Blickensderfer, Hernandez, Linkhart, Martinez, Reeves, Rupert, and Weddig.

AN ACT

CONCERNING THE CREATION OF A COLORADO EARNED INCOME TAX CREDIT, AND, IN CONNECTION THEREWITH, UTILIZING THE EARNED INCOME TAX CREDIT AS A MEANS OF REFUNDING STATE REVENUES IN EXCESS OF THE CONSTITUTIONAL LIMITATION ON STATE FISCAL YEAR SPENDING FOR ANY GIVEN FISCAL YEAR, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Part 1 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-22-123. Earned income tax credit - refund of state excess revenues for fiscal years commencing on or after July 1, 1998. (1) SUBJECT TO THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 1999, IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR THE STATE FISCAL YEAR ENDING IN THAT INCOME TAX YEAR EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION AND THE VOTERS STATEWIDE EITHER HAVE NOT AUTHORIZED THE STATE TO RETAIN AND SPEND ALL OF THE EXCESS STATE REVENUES OR HAVE AUTHORIZED THE STATE TO RETAIN AND SPEND ONLY A PORTION OF THE EXCESS STATE REVENUES FOR THAT FISCAL YEAR, A RESIDENT INDIVIDUAL OR PART-YEAR RESIDENT INDIVIDUAL WHO CLAIMS AN EARNED INCOME TAX CREDIT ON THE INDIVIDUAL'S FEDERAL TAX RETURN SHALL BE ALLOWED AN EARNED INCOME TAX CREDIT AGAINST THE TAXES DUE ON THE INDIVIDUAL'S INCOME UNDER THIS ARTICLE. THE AMOUNT OF THE CREDIT SHALL BE AN AMOUNT EQUAL TO EIGHT AND ONE-HALF PERCENT OF THE AMOUNT OF THE FEDERAL CREDIT CLAIMED ON THE RESIDENT INDIVIDUAL'S FEDERAL

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

TAX RETURN OR, IN THE CASE OF A PART-YEAR RESIDENT INDIVIDUAL, SUCH AMOUNT AS SHALL REFLECT EIGHT AND ONE-HALF PERCENT OF THE FEDERAL EARNED INCOME CREDIT EARNED WHILE A RESIDENT OF COLORADO.

(2) IF THE CREDIT ALLOWED UNDER SUBSECTION (1) OF THIS SECTION EXCEEDS THE INCOME TAXES DUE ON THE RESIDENT INDIVIDUAL'S INCOME, THE AMOUNT OF THE CREDIT NOT USED TO OFFSET INCOME TAXES SHALL NOT BE CARRIED FORWARD AS TAX CREDITS AGAINST THE RESIDENT INDIVIDUAL'S SUBSEQUENT YEARS' INCOME TAX LIABILITY AND SHALL BE REFUNDED TO THE INDIVIDUAL.

(3) ANY EARNED INCOME TAX CREDIT ALLOWED FOR ANY GIVEN TAXABLE YEAR PURSUANT TO THIS SECTION SHALL BE PUBLISHED IN RULES PROMULGATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE INCLUDED IN INCOME TAX FORMS FOR THAT TAXABLE YEAR.

(4) (a) IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR THE STATE FISCAL YEAR COMMENCING ON JULY 1, 1998, EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR THAT FISCAL YEAR BY LESS THAN FIFTY MILLION DOLLARS, THEN THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR COMMENCING ON JANUARY 1, 1999.

(b) IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 1999, EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR THAT FISCAL YEAR BY LESS THAN FIFTY MILLION DOLLARS, AS ADJUSTED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (4), THEN THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR IN WHICH SAID STATE FISCAL YEAR ENDED.

(c) (I) NO LATER THAN OCTOBER 1 OF ANY GIVEN CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2000, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL ANNUALLY ADJUST THE DOLLAR AMOUNT SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (4) TO REFLECT THE RATE OF GROWTH OF COLORADO PERSONAL INCOME FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH SUCH ADJUSTMENT IS MADE. FOR PURPOSES OF THIS SUBPARAGRAPH (I), "THE RATE OF GROWTH OF COLORADO PERSONAL INCOME" MEANS THE PERCENTAGE CHANGE BETWEEN THE MOST RECENT PUBLISHED ANNUAL ESTIMATE OF TOTAL PERSONAL INCOME FOR COLORADO, AS DEFINED AND OFFICIALLY REPORTED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED STATES DEPARTMENT OF COMMERCE FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE ADJUSTMENT IS MADE AND THE MOST RECENT PUBLISHED ANNUAL ESTIMATE OF TOTAL PERSONAL INCOME FOR COLORADO, AS DEFINED AND OFFICIALLY REPORTED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED STATES DEPARTMENT OF COMMERCE FOR THE CALENDAR YEAR PRIOR TO THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE ADJUSTMENT IS MADE.

(II) UPON CALCULATING THE ADJUSTMENT OF SAID DOLLAR AMOUNT IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), THE EXECUTIVE DIRECTOR SHALL NOTIFY IN WRITING THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL CREATED PURSUANT TO SECTION 2-3-301 (1), C.R.S., OF THE ADJUSTED DOLLAR AMOUNT AND THE BASIS FOR THE ADJUSTMENT. SUCH WRITTEN NOTIFICATION SHALL BE GIVEN WITHIN FIVE WORKING DAYS AFTER SUCH CALCULATION IS COMPLETED, BUT SUCH WRITTEN NOTIFICATION SHALL BE GIVEN NO LATER THAN OCTOBER 1 OF THE CALENDAR YEAR.

(III) IT IS THE FUNCTION OF THE EXECUTIVE COMMITTEE TO REVIEW AND APPROVE OR DISAPPROVE SUCH ADJUSTMENT OF SAID DOLLAR AMOUNT WITHIN TWENTY DAYS AFTER RECEIPT OF SUCH WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR. ANY ADJUSTMENT THAT IS NOT APPROVED OR DISAPPROVED BY THE EXECUTIVE COMMITTEE WITHIN SAID TWENTY DAYS SHALL BE AUTOMATICALLY APPROVED; EXCEPT THAT, IF WITHIN SAID TWENTY DAYS THE EXECUTIVE COMMITTEE SCHEDULES A HEARING ON SUCH ADJUSTMENT, SUCH AUTOMATIC APPROVAL SHALL NOT OCCUR UNLESS THE EXECUTIVE COMMITTEE DOES NOT APPROVE OR DISAPPROVE SUCH ADJUSTMENT AFTER THE CONCLUSION OF SUCH HEARING. ANY HEARING CONDUCTED BY THE EXECUTIVE COMMITTEE PURSUANT TO THIS SUBPARAGRAPH (III) SHALL BE CONCLUDED NO LATER THAN TWENTY-FIVE DAYS AFTER RECEIPT OF SUCH WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR.

(IV) (A) IF THE EXECUTIVE COMMITTEE DISAPPROVES ANY ADJUSTMENT OF SAID DOLLAR AMOUNT CALCULATED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PARAGRAPH (c), THE EXECUTIVE COMMITTEE SHALL SPECIFY SUCH ADJUSTED DOLLAR AMOUNT TO BE UTILIZED BY THE EXECUTIVE DIRECTOR. ANY ADJUSTED DOLLAR AMOUNT SPECIFIED BY THE EXECUTIVE COMMITTEE PURSUANT TO THIS SUB-SUBPARAGRAPH (A) SHALL BE CALCULATED IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH (c).

(B) FOR THE PURPOSE OF DETERMINING WHETHER THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION IS TO BE ALLOWED FOR ANY GIVEN INCOME TAX YEAR, THE EXECUTIVE DIRECTOR SHALL NOT UTILIZE ANY ADJUSTED DOLLAR AMOUNT THAT HAS NOT BEEN APPROVED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) OR OTHERWISE SPECIFIED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV).

(V) IF ONE OR MORE BALLOT QUESTIONS ARE SUBMITTED TO THE VOTERS AT A STATEWIDE ELECTION TO BE HELD IN NOVEMBER OF ANY CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 1999, THAT SEEK AUTHORIZATION FOR THE STATE TO RETAIN AND SPEND ALL OR ANY PORTION OF THE AMOUNT OF EXCESS STATE REVENUES FOR THE STATE FISCAL YEAR ENDING DURING SAID CALENDAR YEAR, THE EXECUTIVE DIRECTOR SHALL NOT DETERMINE WHETHER THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION SHALL BE ALLOWED AND SHALL NOT PROMULGATE RULES CONTAINING SAID CREDIT UNTIL THE IMPACT OF THE RESULTS OF SAID ELECTION ON THE AMOUNT OF THE EXCESS STATE REVENUES TO BE REFUNDED IS ASCERTAINED.

(5) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT AN EARNED INCOME TAX CREDIT IS A REASONABLE METHOD OF REFUNDING A PORTION OF THE STATE EXCESS REVENUES REQUIRED TO BE REFUNDED IN ACCORDANCE WITH SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION.

SECTION 2. 24-77-106.5, Colorado Revised Statutes, is amended to read:

24-77-106.5. Annual financial report - certification of state excess revenues.

(1) (a) For each fiscal year, the controller shall prepare a financial report for the state for purposes of ascertaining compliance with the provisions of this article. Any financial report prepared pursuant to this section shall include, but shall not be limited to, state fiscal year spending, reserves, revenues, and debt. Such financial report shall be audited by the state auditor.

(b) BASED UPON THE FINANCIAL REPORT PREPARED IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (1) FOR ANY GIVEN FISCAL YEAR, THE CONTROLLER SHALL CERTIFY TO THE GOVERNOR, THE GENERAL ASSEMBLY, AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE NO LATER THAN SEPTEMBER 1 FOLLOWING THE END OF A FISCAL YEAR THE AMOUNT OF STATE REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION, IF ANY, FOR SUCH FISCAL YEAR.

(2) ANY FINANCIAL REPORT PREPARED AND CERTIFICATION OF STATE EXCESS REVENUES MADE PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE AUDITED BY THE STATE AUDITOR. NO LATER THAN SEPTEMBER 15 FOLLOWING THE CERTIFICATION MADE BY THE STATE CONTROLLER FOR ANY GIVEN FISCAL YEAR, THE STATE AUDITOR SHALL REPORT AND TRANSMIT TO THE GOVERNOR, THE GENERAL ASSEMBLY, AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THE RESULTS OF ANY AUDIT CONDUCTED IN ACCORDANCE WITH THIS SUBSECTION (2).

~~(2)~~ (3) Notwithstanding any generally accepted accounting principles to the contrary, financial reports prepared pursuant to subsection (1) of this section shall not include any unrealized gains or losses on investments held by the state.

SECTION 3. Article 77 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-77-103.7. Refunds of excess state revenues. IF, THROUGH ONE OR MORE MECHANISMS UTILIZED PURSUANT TO LAW TO REFUND STATE REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING FOR ANY GIVEN FISCAL YEAR, THE AMOUNT OF STATE REVENUES ACTUALLY REFUNDED DURING ANY GIVEN FISCAL YEAR EXCEEDS THE AMOUNT OF STATE REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING FOR THE IMMEDIATELY PRECEDING FISCAL YEAR REQUIRED TO BE REFUNDED, AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT OF STATE REVENUES ACTUALLY REFUNDED AND THE AMOUNT OF STATE REVENUES FROM THE IMMEDIATELY PRECEDING FISCAL YEAR REQUIRED TO BE REFUNDED SHALL BE A REFUND OF STATE REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING FOR THE FISCAL YEAR IN WHICH SAID STATE REVENUES WERE REFUNDED.

SECTION 4. Appropriation - adjustment in 1999 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, information technology division, for the fiscal year beginning July 1, 1999, the sum of sixty-four thousand nine hundred twenty-two dollars (\$64,922), or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriations act for the fiscal year beginning July 1, 1999, shall be adjusted as follows:

(a) The general fund appropriation to the capital construction fund outlined in section 3 (1) (f) is reduced by sixty-four thousand nine hundred twenty-two dollars (\$64,922).

(b) The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by sixty-four thousand nine hundred twenty-two dollars (\$64,922).

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, and safety.

Approved: June 3, 1999