

CHAPTER 226

FINANCIAL INSTITUTIONS

SENATE BILL 01-125

BY SENATOR(S) Owen, Hernandez, May, and Perlmutter;
also REPRESENTATIVE(S) Berry and Williams T.

AN ACT

CONCERNING REGULATION OF FOREIGN CAPITAL DEPOSITORIES UNDER THE "COLORADO FOREIGN CAPITAL DEPOSITORY ACT".

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

SECTION 1. 11-37.5-106, Colorado Revised Statutes, is amended to read:

11-37.5-106. Protection of appellation. A ~~corporation~~ PERSON that has not been issued a charter under the provisions of section 11-37.5-109 shall not transact business under a name or title that contains the words "foreign", "capital", and "depository" in any combination.

SECTION 2. 11-37.5-115, Colorado Revised Statutes, is amended to read:

11-37.5-115. Annual fee. A depository shall pay to the department an annual fee established by rule that is commensurate with the total projected costs of the department of regulatory agencies in conducting examinations of a depository. ~~and of the department of revenue in carrying out audits pursuant to section 11-37.5-404.~~ The proceeds of the fee shall be deposited in the foreign capital depository account established in section 11-37.5-118.

SECTION 3. 11-37.5-121 (1), Colorado Revised Statutes, is amended, and the said 11-37.5-121 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

11-37.5-121. Sale or transfer of charter prohibited - penalty. (1) A charter issued by the board may not be sold, traded, transferred, or otherwise assigned to ~~another corporation~~ TO ANOTHER PERSON WITHOUT THE PRIOR APPROVAL OF THE BOARD.

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

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT THE SALE OR TRANSFER OF CORPORATE SHARES OF A FOREIGN CAPITAL DEPOSITORY; EXCEPT THAT THE SALE OF CONTROL OF AN EXISTING FOREIGN CAPITAL DEPOSITORY SHALL BE SUBJECT TO THE CHANGE-OF-CONTROL PROVISIONS OF THE "COLORADO BANKING CODE OF 1957".

SECTION 4. 11-37.5-403 (1), Colorado Revised Statutes, is amended to read:

11-37.5-403. State revenue - assessment - collection - distribution. (1) A foreign capital depository shall pay to the department of revenue on June 15 and December 15 of each year a fee that is equal to ~~three-quarters~~ ONE-QUARTER of one percent of the total value of assets on deposit or in a safe deposit box, resulting in a total annual rate of assessment of ~~one and one-half~~ ONE percent. Such fees shall be paid to the state treasurer who shall credit the same to the general fund of the state.

SECTION 5. 11-37.5-404, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-37.5-404. Revenue audits - charges. (4) MONEYS PAID TO THE DEPARTMENT OF REVENUE PURSUANT TO THIS SECTION SHALL BE PAID TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE FOREIGN CAPITAL DEPOSITORY ACCOUNT CREATED BY SECTION 11-37.5-118. THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE SUCH MONEYS TO THE DEPARTMENT OF REVENUE SOLELY FOR THE PURPOSE OF MEETING ITS AUDIT OBLIGATIONS UNDER THIS SECTION.

SECTION 6. 11-37.5-406, Colorado Revised Statutes, is amended to read:

11-37.5-406. Right of appeal. The department of revenue shall provide a means for appeal by a foreign capital depository that receives a notice of deficiency concerning a fee, penalty, or interest charged pursuant to section 11-37.5-405. The department's determinations shall be made in accordance with the "~~State Administrative Procedure Act~~", ~~article 4 of title 24, C.R.S.~~ PROVISIONS OF ARTICLE 21 OF TITLE 39, C.R.S.

SECTION 7. 39-21-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-21-102. Scope. (3) THE PROVISIONS OF THIS ARTICLE APPLY TO THE FEES IMPOSED BY SECTION 11-37.5-403, C.R.S., AND ASSESSED BY SECTION 11-37.5-405, C.R.S., BUT ONLY TO THE EXTENT THAT THE PROVISIONS OF THIS ARTICLE ARE NOT INCONSISTENT WITH THE PROVISIONS OF PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S. WITH THE EXCEPTION OF SECTION 39-21-115, ANY REFERENCE IN THIS ARTICLE TO "TAX" OR "TAXES" SHALL INCLUDE ANY TAX OR FEE IMPOSED UNDER SECTIONS 11-37.5-403 AND 11-37.5-405.

SECTION 8. 39-21-103 (1), Colorado Revised Statutes, is amended to read:

39-21-103. Hearings. (1) As soon as practicable after any tax return or the return showing the value of oil and gas is filed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., OR THE RETURN SHOWING

THE TAX OR FEE IMPOSED PURSUANT TO SECTIONS 11-37.5-403 AND 11-37.5-405, C.R.S., IS FILED, the executive director of the department of revenue shall examine it and shall determine the correct amount of tax. If the tax found due is greater than the amount theretofore assessed or paid, a notice of deficiency shall be mailed to the taxpayer by first-class mail as set forth in section 39-21-105.5.

SECTION 9. 39-21-106 (1), Colorado Revised Statutes, is amended to read:

39-21-106. Compromise. (1) The executive director of the department of revenue or his OR HER delegate may compromise any civil or criminal case arising under any tax or the charge on oil and gas production imposed by articles 22 to 29 of this title or article 60 of title 34 or article 3 of title 42, OR PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S., prior to reference to the department of law for prosecution or defense; and the attorney general or his OR HER delegate shall, upon the written direction of the executive director, compromise any such case after reference to the department of law for prosecution or defense.

SECTION 10. 39-21-107 (1), Colorado Revised Statutes, is amended to read:

39-21-107. Limitations. (1) Except as provided in this section and unless such time is extended by waiver, the amount of any tax or of any charge on oil and gas production imposed pursuant to articles 23 and 24 to 29 of this title or article 3 of title 42, OR PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S., and the penalty and interest applicable thereto shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed, and no assessment shall be made or credit taken and no notice of lien shall be filed, nor distraint warrant issued, nor suit for collection instituted, nor any other action to collect the same commenced after the expiration of such period; except that a written proposed adjustment of the tax liability by the department issued prior to the expiration of such period shall extend the limitation of this subsection (1) for one year after a final determination or assessment is made. No lien shall continue after the three-year period provided for in this subsection (1), except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, and except for taxes on which written notice of any proposed adjustment of the tax liability has been sent to the taxpayer during such three-year period, in which case the lien shall continue for one year only after the expiration of such period or after the issuance of a final determination or assessment based on the proposed adjustment issued prior to the expiration of the three-year period. This subsection (1) shall not apply to income tax or to any tax imposed under article 23.5 of this title.

SECTION 11. 39-21-108 (1) (a) and (3) (a) (I), Colorado Revised Statutes, are amended to read:

39-21-108. Refunds. (1) (a) In the case of income tax imposed by article 22 of this title, the taxpayer must file any claim for refund or credit for any year not later than one year after the expiration of the time provided for filing a claim for refund of federal income tax, including any extensions of the period by agreement between the taxpayer and the federal taxing authorities; but nothing in this subsection (1) shall be construed to shorten the period for filing claims provided by section 39-22-601 (6) (f). In the case of the charge on oil and gas production imposed by article 60 of title

34, C.R.S., and the passenger-mile tax imposed by article 3 of title 42, C.R.S., or the severance tax imposed by article 29 of this title, OR ANY TAX OR FEE IMPOSED BY PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S., the taxpayer must file any claim for refund or credit for any period not later than three years after the date of payment. Claims for refund of other taxes covered by this article shall be made within the time limits expressly provided for the specific taxes involved. No suit for refund may be commenced before the expiration of six months after the date of filing the claim for refund required under this section unless the executive director of the department of revenue renders a decision thereon within that time, nor after the expiration of two years after the date of mailing, by first-class mail as set forth in section 39-21-105.5, by the executive director to the taxpayer of a notice of disallowance of the part of the claim to which the suit relates. The said two-year period shall be extended for the period as may be agreed upon in writing between the taxpayer and the executive director. This subsection (1) shall not apply to sales and use taxes.

(3) (a) (I) Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax covered by articles 22 and 26 to 29 of this title, article 60 of title 34, C.R.S., and article 3 of title 42, OR PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S., and that there is an unpaid balance of tax and interest accrued, according to the records of the executive director, owing by such taxpayer for any other period or that there is an amount required to be repaid to the unemployment compensation fund pursuant to section 8-81-101 (4), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or which has been reduced to judgment by the division of employment and training in the department of labor and employment, or that there is any unpaid child support debt as set forth in section 14-14-104, C.R.S., or child support arrearages ~~which~~ THAT are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S., as certified by the department of human services, or that there are any unpaid obligations owing to the state as set forth in section 26-2-133, C.R.S., for overpayment of public assistance or medical assistance benefits, the amount of which has been determined to be owing as a result of final agency determination or judicial decision or which has been reduced to judgment, as certified by the department of human services, or that there is any unpaid loan or other obligation due to a state-supported institution of higher education as set forth in section 23-5-115, C.R.S., the amount of which has been reduced to judgment, owing to such institution by such taxpayer, as certified by the appropriate institution, or that there is any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1) (p), C.R.S., the amount of which has been reduced to judgment, owing to such division by such taxpayer, as certified by the division, or that there is any unpaid debt owing to the state or any agency thereof by such taxpayer, and which is found to be owing as a result of a final agency determination or the amount of which has been reduced to judgment and as certified by the controller, or that the taxpayer is a qualified individual identified pursuant to section 39-22-120 (10) or 39-22-2003 (9), so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance or unpaid debt shall be credited first to the unpaid balance of tax and interest accrued and then to the unpaid debt, and any excess of the overpayment shall be refunded. If the taxpayer elects to designate his or her refund as a credit against a subsequent year's tax liability, the amount allowed to be so credited shall be reduced first by the unpaid balance of tax and interest accrued and then by the unpaid debt. If the taxpayer filed a joint return, the executive director shall notify the taxpayer's spouse that the portion

of the overpayment ~~which~~ THAT is generated by the spouse's income shall be refunded upon receipt of a request detailing said amount.

SECTION 12. 39-21-112 (1), Colorado Revised Statutes, is amended to read:

39-21-112. Duties and powers of executive director. (1) It is the duty of the executive director of the department of revenue to administer the provisions of this article, and he OR SHE has the power to adopt, amend, or rescind such rules and regulations not inconsistent with the provisions of this article and articles 22 to 29 of this title and article 3 of title 42 OR PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S., and, subject to other provisions of law relating to the promulgation of regulations, to appoint, pursuant to section 13 of article XII of the state constitution, such persons, to make such expenditures, to require such reports, to make such investigations, and to take such other action as he OR SHE deems necessary or suitable to that end. The executive director shall determine his OR HER own organization and methods of procedure in accordance with the provisions of this article. For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the executive director has the power to examine or cause to be examined by any employee, agent, or representative designated by him OR HER for that purpose any books, papers, records, or memoranda bearing upon the matters required to be included in the return. In the exercise of rule-making authority as to article 29 of this title, as granted by the general assembly pursuant to this subsection (1), the executive director, in interpreting section 39-29-107.5 (1) (c), shall not have authority to reduce the amount of any approved contributions not previously credited by applying the amount of any additional percentage previously allowed pursuant to said section. In the exercise of rule-making authority as to article 29 of this title, as granted by the general assembly pursuant to this subsection (1), the executive director may not readopt any rule, or portion thereof, disapproved on or after July 1, 1982, by the general assembly pursuant to section 24-4-103 (8) (d), C.R.S., without the approval of the general assembly.

SECTION 13. 39-21-113 (1) (a), Colorado Revised Statutes, is amended to read:

39-21-113. Reports and returns. (1) (a) It is the duty of every person, firm, or corporation liable to the state of Colorado for any tax or any charge on oil and gas production imposed pursuant to articles 23 to 29 of this title or article 3 of title 42 OR PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S., to keep and preserve for a period of three years such books, accounts, and records as may be necessary to determine the amount of liability.

SECTION 14. 39-21-115, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-21-115. Reciprocity with other states for collection of taxes provided.
(4) FOR THE PURPOSES OF THIS SECTION, TAXES DO NOT INCLUDE ANY TAX OR FEE IMPOSED UNDER PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S.

SECTION 15. 39-21-119 (1) (a), Colorado Revised Statutes, is amended to read:

39-21-119. Filing with executive director - when deemed to have been made.
(1) (a) Any report, claim, tax return, statement, or other document required or

authorized under articles 22, 26, 28, and 29 of this title and article 3 of title 42 OR PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S., to be filed with or any payment made to the executive director of the department of revenue ~~which~~ THAT is transmitted through the United States mails shall be deemed filed with and received by the executive director on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed.

SECTION 16. 39-21-120 (1), Colorado Revised Statutes, is amended to read:

39-21-120. Signature and filing alternatives for tax returns. (1) For the purposes of any returns or other documents made, filed, signed, subscribed, verified, transmitted, received, or stored pursuant to any provision of articles 22 to 31 of this title and articles 46 and 47 of title 12, article 60 of title 34, and article 3 of title 42 OR PART 4 OF ARTICLE 37.5 OF TITLE 11, C.R.S., the executive director may prescribe voluntary alternative methods for the making, filing, signing, subscribing, verifying, transmitting, receiving, or storing of returns or other documents pursuant to the statutory provisions of this article and other articles referenced in this article. The executive director shall adopt rules and regulations as may be appropriate to define and implement acceptable alternatives for each article within the scope of this section.

SECTION 17. 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 1, 2001