



NONRESIDENT DISASTER RELIEF WORKER SUBTRACTION

EVALUATION SUMMARY | SEPTEMBER 2022 | 2022-TE35

TAX TYPE	Income	REVENUE IMPACT	At least \$2,425
YEAR ENACTED	2014	(TAX YEAR 2018)	
REPEAL/EXPIRATION DATE	None	NUMBER OF TAXPAYERS	At least 5
		(TAX YEAR 2018)	

KEY CONCLUSION: The subtraction relieves some nonresident disaster relief workers of the burden of filing a Colorado income tax return and, depending on their home state, may reduce their net tax liability. However, the subtraction does not relieve regulatory burdens imposed on the employers of disaster relief workers, and does not appear to expedite disaster response in Colorado. Additionally, the subtraction appears to be infrequently used, and awareness of the subtraction appears to be low.

WHAT DOES THE TAX EXPENDITURE DO?

The Nonresident Disaster Relief Worker Subtraction [Section 39-22-104(4)(t), C.R.S.] exempts income earned by Colorado nonresidents for disaster-related work performed during a disaster period in Colorado from state income tax. The subtraction can be claimed either (1) by the exemption of a nonresident employee's eligible disaster relief wages from Colorado withholding at the time they are paid by the employer, or (2) by a nonresident disaster relief worker later filing a Colorado income tax return to receive a refund for any eligible disaster relief wages that were withheld.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

House Bill 14-1003, which established the subtraction, provides that its purpose is *“[to ensure that the state may focus on providing a quick response to the needs of the state and its citizens during a declared state disaster emergency and to reduce the regulatory burden in appreciation for those out-of-state workers and their employers who provide needed assistance to Colorado during declared state disaster emergencies.]”*

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly may want to consider amending statute to:

- Reduce reporting requirements on employers of nonresident disaster relief workers.
- Clarify eligibility requirements.



NONRESIDENT DISASTER RELIEF WORKER SUBTRACTION

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

The Nonresident Disaster Relief Worker Subtraction [Section 39-22-104(4)(t), C.R.S.] exempts income earned by Colorado nonresidents for disaster-related work performed during a disaster period in Colorado from state income tax.

Disaster-related work means “repairing, renovating, installing, building, or rendering services that relate to infrastructure that has been damaged, impaired, or destroyed by a declared state disaster emergency, or, providing emergency medical, firefighting, law enforcement, hazardous material, search and rescue, or other emergency service related to a declared state disaster emergency” [Section 39-22-104(4)(t)(II)(C), C.R.S.].

A “disaster period” means a period beginning on the day the Governor declares a disaster emergency by executive order, and ending 60 days after the expiration of the Governor’s executive order [Section 39-22-104(4)(t)(II)(C), C.R.S.]. The Governor can declare a disaster emergency for up to 30 days before having to reissue the order [Section 24-33.5-704, C.R.S.]. In practice, all disaster emergencies have been declared for at least 30 days, and some disaster declarations have been reissued multiple times, resulting in disaster periods ranging from 60 days to over a year (for the COVID-19 pandemic).

The subtraction may be claimed in two ways:

First, an employer may exclude eligible wages of a Colorado nonresident from Colorado income tax withholding. Provided that the

proper wages are excluded, no further action is necessary by the employee in order to claim the subtraction. In the event that the employee is not a Colorado resident and has no Colorado income besides that earned performing disaster-related work during a declared disaster period, the employee is also exempted from filing a Colorado income tax return [Section 39-22-601(1)(a)(II), C.R.S]. However, an employee may still be required to pay taxes on those wages in their home state, depending on that state's laws.

Second, in the event that an employer withheld a portion of a Colorado nonresident's wages for income tax purposes and remitted them to the State of Colorado, a nonresident disaster relief worker may claim the subtraction by filing a Colorado income tax return and receiving a commensurate refund from the State. On returns for Tax Year 2021, nonresident taxpayers can claim this subtraction on line 15 of the Subtractions from Income Schedule (Form DR 0104AD). They must also list the executive order that declared the disaster emergency for which they performed disaster-related work.

The subtraction was established in 2014 by House Bill 14-1003. No changes have been made to the subtraction since it was established.

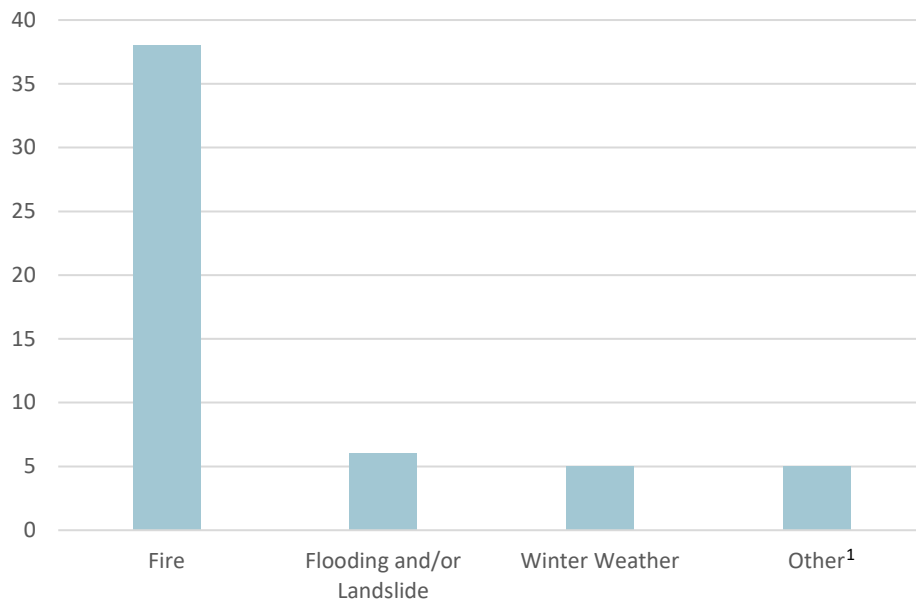
WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statue does not explicitly state the intended beneficiaries of the subtraction. Based on a review of statutory language, we considered the intended beneficiaries to be nonresident disaster relief workers who perform disaster-related work in Colorado during a declared disaster period and their employers. Such workers might be employees of a larger company that operates in multiple states, such as a utility provider or healthcare staffing agency, or could be nonresidents hired by a local firm directly.

Between January 1, 2015 and December 31, 2020, there were 54 declared disaster emergencies in Colorado. Most disaster emergencies (approximately 70 percent) were related to wildfires; several others

were related to flooding, landslides, or winter weather. Additionally, other types of disaster emergencies occurred only once during the period, such as a cybersecurity incident, and the COVID-19 pandemic. Exhibit 1 provides an overview of the types of disaster emergencies declared in Colorado between January 1, 2015 and December 31, 2020.

**EXHIBIT 1: TYPES OF DISASTER EMERGENCIES DECLARED
IN COLORADO BETWEEN
JANUARY 1, 2015, AND DECEMBER 31, 2020**



SOURCE: Colorado Office of the Governor and the Colorado State Archives.

¹Other types of disasters include the Gold King Mine Incident, a state agency cyber security incident, severe drought, water supply emergency, and the COVID-19 pandemic.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

The General Assembly established the following purpose for the subtraction in its enacting legislation (House Bill 14-1003):

“to ensure that the state may focus on providing a quick response to the needs of the state and its citizens during a declared state disaster emergency and to reduce the regulatory burden in appreciation for those out-of-state workers and their employers who provide needed assistance to Colorado during declared state disaster emergencies.”

IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We determined that the Nonresident Disaster Relief subtraction appears to be infrequently used and has not expedited the State's response to declared disaster emergencies, nor has it reduced regulatory or administrative burdens for the employers of nonresident disaster relief workers. However, we found some evidence that the deduction has reduced regulatory and administrative burdens for nonresident disaster relief employees.

Statute does not provide performance measures for the subtraction. Therefore, we created and applied the following performance measures to determine the extent to which the subtraction is meeting its purpose.

PERFORMANCE MEASURE #1: *To what extent has the subtraction expedited the State's response to declared disaster emergencies?*

We did not find any evidence that this subtraction has expedited the State's response to declared disaster emergencies. We reached out to several state agencies involved in disaster relief (the Colorado Office of Emergency Management, the Colorado Division of Fire Prevention and Control, the Coronavirus Response Section of the Colorado Department of Public Health and Environment, and the Colorado Department of Transportation) and learned that, in most instances, state agencies do not hire nonresident disaster relief workers. Typically, when state agencies require nonresident disaster relief personnel to respond to a disaster emergency, they utilize private contractors, instead of hiring a nonresident directly. No state agency we talked with was aware of an instance in which this subtraction expedited their, or their contractor's, response to a disaster emergency. One agency noted that they had struggled with staffing some permanent positions and would have used nonresidents, but were unable to do so because Article XII, Section 13, Part 6 of the Colorado Constitution requires that permanent employees reside in Colorado (except for positions within 30 miles of the state border).

We were able to contact two companies that have been contracted with by the State to provide debris removal service after wildfires. Neither company reported having used Colorado's subtraction. However, one contractor did indicate that they believed the subtraction would provide a meaningful benefit to their employees and their organization's ability to leverage an out-of-state workforce to respond to disasters in Colorado in the future.

We also found the subtraction did not expedite disaster relief by non-state entities. We reached out to four Colorado utility providers to learn whether the subtraction has been utilized by their nonresident employees while repairing their infrastructure following a disaster emergency in Colorado; four Colorado hospital systems to learn whether the subtraction was utilized as they responded to the coronavirus pandemic; and two federal agencies involved in responding to wildland fires in Colorado to learn whether the subtraction was used to expedite their wildfire response. Many of the organizations we reached out to were unfamiliar with the subtraction and several reported that their employees were likely unfamiliar with the subtraction as well. Only one utility company reported that they had exempted their nonresident disaster relief employees from Colorado withholding in the past. Another utility company reported familiarity with the subtraction, but said they had never employed nonresidents to do disaster-related work in Colorado. There may be other organizations in the State that have used the subtraction that we did not identify, but it does not appear to be widely used. Therefore, we find it unlikely that this subtraction has significantly expedited disaster relief in Colorado, either by the State or other entities.

PERFORMANCE MEASURE #2: To what extent has the subtraction reduced regulatory or administrative burdens for disaster relief workers and their employers?

We found some evidence that the subtraction has reduced regulatory or administrative burdens on nonresident disaster relief workers, but no evidence that it has reduced regulatory and administrative burdens on

their employers. Additionally, due to its limited use, it appears that few employees and employers have benefited from it.

The subtraction can potentially reduce regulatory or administrative burdens for nonresident-disaster relief workers in two ways. First, the subtraction grants qualifying workers an exemption from filing a Colorado income tax return if their sole Colorado income was from qualified disaster relief work. This could provide a meaningful benefit to a nonresident worker who only worked in Colorado for a limited time and could reduce their overall tax liability depending on the tax laws of their home state. However, the extent to which this benefit is used by nonresident disaster relief workers may be limited, because, based on our conversations with employers about the subtraction, it is unlikely that many employers have exempted their nonresident employees' eligible wages from Colorado income tax withholding. Consequently, it appears that many nonresident disaster relief workers would still have to file a Colorado return to receive a refund for the wages their employer withheld, but only five employees did so in Tax Year 2018, the most recent year with available data.

Second, the subtraction could also benefit qualifying employees whose employers would not otherwise properly withhold wages when the employee works in Colorado. We encountered several employers who reported that they did not have the means to track when their employees performed work outside of their home state for a brief period of time. Therefore, prior to the subtraction, some employers of non-resident disaster relief workers may not have been in compliance with Section 39-22-604(3)(a), C.R.S., which requires employers to withhold taxes for all eligible wages paid to Colorado employees. For any nonresident disaster relief workers whose employers were not in compliance with Colorado law, the subtraction relieves the employee of the burden of filing and paying Colorado income tax themselves.

Additionally, we found that the subtraction does not fully eliminate regulatory and administrative burdens for employers of nonresidents performing disaster-related work in Colorado, because employers are

still required by Department of Revenue Rule 39-22-604(8)(b) to file W-2s (tax forms showing the individual earnings of each employee) with the Colorado Department of Revenue (Department) for all employees who perform work in Colorado. Consequently, employers must still track which part of a nonresident's earnings are attributable to their work in Colorado in order to fulfill their reporting requirements to the Department. One respondent noted that the payroll office would not necessarily be informed that an employee was performing work in Colorado, instead of their home state, in time for an adjustment of that employee's withholdings. Therefore, it appears that some employers may not be in compliance with reporting requirements and would not have withheld wages for Colorado income tax purposes regardless of the exemption.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE?

As previously noted, the subtraction can be claimed either by a nonresident disaster relief worker filing a Colorado income tax return for wages that were withheld, or by an employer who exempts the eligible wages of a Colorado nonresident employee from Colorado withholding at the time they are paid. We were unable to quantify the total revenue impact of the subtraction to the State, because no data exists showing the extent to which the subtraction has been claimed by employers exempting nonresident employees' wages from Colorado withholding. However, we did obtain data on the extent to which individual disaster relief workers whose employers withheld Colorado income taxes on their behalf have retroactively claimed the subtraction by filing a Colorado income tax return. According to Department data, in Tax Year 2018, \$2,425 was claimed by five employees for the Nonresident Disaster Relief Worker Subtraction. Given that Colorado's income tax rate was 4.63 percent in 2018, this amounts to approximately \$52,400 in wages that were not subject to income tax. In 2015 and 2016, the only other years for which data is available, no amount was claimed by any persons.

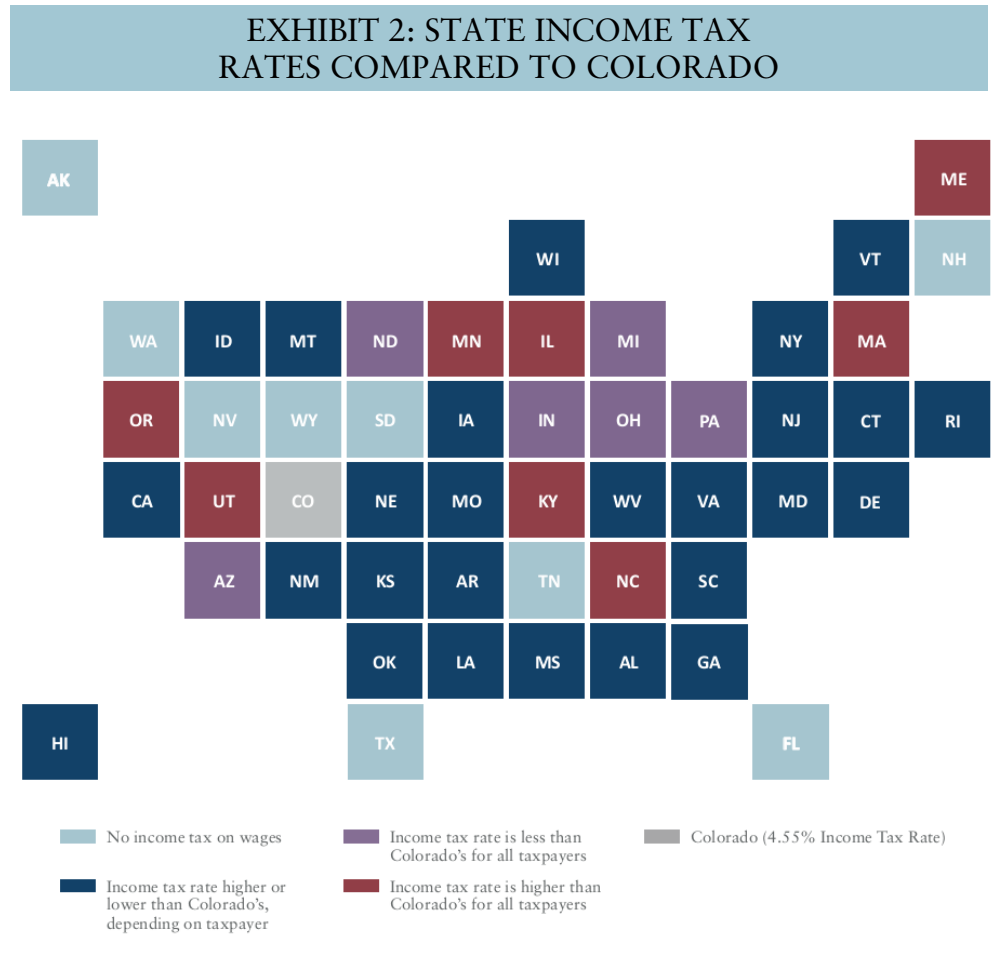
Further, we encountered several employers who told us that they did not have a means by which to track whether an employee worked for a short period of time outside of their home state, indicating that in the absence of the subtraction, it is likely that some employers would still not collect Colorado withholding on wages for work in Colorado, and consequently, there would likely be no gain in the State's revenue.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

Based on the Department data we reviewed and our stakeholder outreach, the subtraction appears to be infrequently used. Consequently, elimination of the subtraction would have little impact on most nonresident disaster relief workers or their employers.

To the extent to which the subtraction is used by nonresident disaster relief workers, the elimination of the subtraction could affect their net tax liabilities, depending on their home state's tax rates and laws related to out-of-state income. We found that among the other 40 states that levy an individual income tax on wages, all 40 states tax income earned by their residents in other states, and all 40 states offer a credit for income tax paid to another state (usually not to exceed the tax liability for that income if it had been earned in the resident's home state). Therefore, if a nonresident disaster relief worker is a resident of a state with an income tax rate equal to or greater than Colorado's, they would generally derive no net benefit from Colorado's subtraction, since any savings in Colorado would be offset by a greater tax liability in their home state. A nonresident disaster relief worker would only incur a net cost from the elimination of Colorado's subtraction if their income tax rate in their home state is less than Colorado's income tax rate, or if their home state did not levy an income tax on wages. Eight states levy an income tax rate greater than Colorado's (4.55 percent) for all taxpayers, and 26 levy an income tax that may be greater or less than Colorado's, depending on the taxable income of each taxpayer. In the remaining 15 states, the income tax rates are less than Colorado's for all taxpayers (including 9 states that do not levy a tax on individual income from wages). Exhibit 2 provides an overview of the states that

have a lower or higher income tax rate than Colorado’s and would, in turn, lead to a resident of that state incurring a net tax benefit or no net tax benefit, respectively.



SOURCE: Office of the State Auditor analysis of information provided by Bloomberg BNA.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

We identified at least 17 states that offer an exemption from their state’s income tax to nonresidents who came to the state to respond to a disaster and nine states that do not levy an income tax on wages. We also identified one other state that exempted wages from all nonresidents for the first 60 days a nonresident worked in the state. Therefore, in at least 27 other states, nonresidents are not taxed for their immediate response to a disaster emergency.

ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

We did not identify any similar programs or expenditures in Colorado.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURE?

We were unable to definitively determine the extent to which the subtraction has been used, because the extent to which employers exclude eligible nonresident disaster relief wages from Colorado withholding is not reported to the Department. This data constraint could be remedied by requiring employers who exempt their employees' wages from Colorado withholding to report such exclusions to the Department. However, this could require significant resources from the Department to implement and enforce, and could place an additional burden on employers (see the Tax Expenditures Overview section of the *Office of the State Auditor's Tax Expenditures Compilation Report* for additional details on the limitations of Department of Revenue data and the potential costs of addressing the limitations).

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

THE GENERAL ASSEMBLY MAY WANT TO CONSIDER AMENDING STATUTE TO REDUCE REPORTING REQUIREMENTS ON EMPLOYERS OF NONRESIDENT DISASTER RELIEF WORKERS. As discussed, we found that the subtraction does not fully eliminate regulatory and administrative burdens on the employers of nonresident disaster relief workers because employers are still subject to the State's wage reporting requirements. Specifically, employers in Colorado are required to report the amount of wages they have paid each employee to the Department via an annual transmittal of employees' W-2s [Rule 39-22-604(8)(b)]. The rule does not prescribe an exemption for the W-2s of employees who qualify for the subtraction, which may impose a burden on an employer who normally does not operate in Colorado (and who is not familiar with reporting to Colorado), or from an employer that would not ordinarily think they were required to file a W-2 for an employee for which no Colorado

income tax was withheld. Further, although employers in Colorado are required to apply for and maintain an active wage withholding account with the Department [Rule 39-22-604)(4)(a)], it is not clear whether this is required if an employer in Colorado uses the subtraction to exclude all wages they pay from Colorado withholding. Therefore, the General Assembly could consider amending statute to clarify that non-Colorado employers are not required to adhere to any reporting regulations with the Department if their sole activities in Colorado are the employment of nonresident disaster relief workers, and exempt all employers in Colorado from reporting the wages paid to nonresident employees whose sole work in Colorado was eligible disaster relief.

THE GENERAL ASSEMBLY MAY WANT TO AMEND STATUTE TO CLARIFY ELIGIBILITY REQUIREMENTS FOR THE SUBTRACTION. Currently, statute indicates that employers are not required to withhold any amount of disaster relief wages “if the employee’s withholding certificate indicates that the compensation is eligible [for the nonresident disaster relief worker subtraction]” (Section 39-22-604(19), C.R.S.) An employee’s withholding certificate is the certificate the employee files with their employer at the outset of their employment, and is used to determine the amount that should be withheld from their wages. IRS Form W-4 is the primary withholding certificate used in Colorado, although employees may optionally file the Colorado Withholding Employee Certificate (Form DR 0004) as well. It is not clear what an employer would gain by referencing this certificate when determining an employee’s eligibility for the subtraction; according to the Department, no part of the withholding certificate indicates whether an employee is eligible for the subtraction, and the address an employee has provided may not be their residence and thus, should not be used to determine an employee’s residency. Therefore, the General Assembly may want to amend statute to remove language indicating that the determination of an employee’s eligibility for the subtraction be based on the employee withholding certificate, and instead allow employers to rely on the eligibility criteria already established in Section 39-22-104(4)(t)(I), C.R.S.