

CHAPTER 35

TAXATION

HOUSE BILL 23-1121

BY REPRESENTATIVE(S) Bird, Duran, Hamrick, Kipp, Lindsay, Marshall, Mauro, McLachlan, Snyder, Titone, Velasco;
also SENATOR(S) Hansen and Liston, Kolker, Moreno.

AN ACT**CONCERNING THE REPEAL OF INFREQUENTLY USED TAX EXPENDITURES.**

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

SECTION 1. In Colorado Revised Statutes, 10-3-209, **repeal** (1)(d)(II), (1)(d)(III), and (1)(g) as follows:

10-3-209. Tax on premiums collected - exemptions - penalties.
(1) (d) (II) ~~Mutual protective associations writing crop hail insurance only and operating on an advance premium basis shall be exempt from the taxes provided by this section on that portion of the premium designated to the loss fund.~~

(III) ~~There shall be no tax under this section in the case of any policy issued prior to 1959 by a domestic insurance company organized under the laws of this state, maintaining its principal place of business in this state, and having thirty percent or more of its assets invested in bonds or warrants of this state or of any county, city, town, or district of this state, and other property within this state in which such company is permitted by law to invest its funds, and the premium of which policy was fixed and is contractually binding upon the company.~~

(g) ~~For the purpose of obtaining the exemption provided in paragraph (d)(III) of this subsection (1), the term "other property within this state" means: Real estate and tangible personal property within this state; first mortgages upon real estate within this state; stocks or bonds of corporations organized under the laws of this state; deposits with banks, trust companies, savings and loan associations, building and loan associations, or financial institutions domiciled within this state; stocks or bonds of foreign or alien corporations which on the date of purchase of such stocks or bonds have fifty percent or more of their assets invested in this state; and accounts of agents who are residents of this state.~~

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.

SECTION 2. In Colorado Revised Statutes, 39-22-304, **amend** (3)(d)(I) and (3)(h); and **add** (3)(d)(IV) as follows:

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

(d) (I) PRIOR TO JANUARY 1, 2024, the portion of any gain received during the taxable year from a qualified sale.

(IV) THIS SUBSECTION (3)(d) IS REPEALED, EFFECTIVE DECEMBER 31, 2028.

(h) (I) PRIOR TO JANUARY 1, 2024, an amount equal to the difference between the depletion allowance permitted under the internal revenue code for oil shale and an amount which would be permitted as the depletion allowance for oil shale if: The percentage depletion rate were twenty-seven and one-half percent; and the crushing, retorting, condensing, and other processes by which oil, gas, or both oil and gas are removed from oil shale, were deemed to be treatment processes considered as mining.

(II) THIS SUBSECTION (3)(h) IS REPEALED, EFFECTIVE DECEMBER 31, 2028.

SECTION 3. In Colorado Revised Statutes, **repeal** 39-22-307 as follows:

39-22-307. Credit allowed for prior payment of impact assistance. ~~(1) For income tax years commencing on or after January 1, 1981, there shall be allowed, as a credit against any taxes imposed by this part 3 on income derived from a new mining, milling, or mining and milling operation or expansion of an existing mining, milling, or mining and milling operation, an amount equal to the value of eligible contributions by the taxpayer made prior to the commencement of operations by the new operation or by the expansion of an existing operation to assist in solving the impact problems of units of local government resulting from the initiation of a new operation or an expansion of an existing operation. The credit allowed by this section shall be allowed only on a new operation or an expansion of an existing operation located within Colorado which begins actual operations subsequent to June 30, 1980. Such credit shall be based on the ratio of the gross income attributable to such new operation or expansion to the total Colorado gross income multiplied by the Colorado income tax liability for the year for which the credit is claimed.~~

~~(2) Eligible contributions, for the purpose of such credit, shall include the donation of property or payments to units of local government for use in the planning or construction or expansion of public facilities, limited to roads, schools, water facilities, sewerage facilities, police and fire protection facilities, and hospitals, which are deemed to be necessitated by the initiation of a new operation or an expansion of an existing operation. In order to qualify as an eligible contribution for credit, the following requirements shall be fulfilled:~~

~~(a) Each contribution shall be based on an agreement between the taxpayer and a unit of local government specifying the need for the contribution and its nature, value, and purpose. The agreement shall be submitted for review to each unit of~~

local government that is impacted by the new operation or the expansion of an existing operation. Each impacted unit of local government may send comments on the agreement to the parties to the agreement and the energy impact assistance advisory committee pursuant to section 34-63-102 (5)(b)(VI).

~~(b) Each contribution must be determined to be eligible for credit, after joint submission by the taxpayer and the unit of local government, by the executive director of the department of local affairs upon the recommendation of the energy impact assistance advisory committee.~~

~~(c) Certification of eligibility for credit of a contribution of a specified value must be made by the executive director of the department of local affairs to the executive director of the department of revenue, the unit of local government, and the taxpayer. Certification of eligibility for credit shall not be made to the specified value of any contribution submitted, but to a prorated value of the contribution, if the total of all claims received by the department of local affairs exceeds one hundred thousand dollars.~~

~~(3) A taxpayer may claim credit against income tax liability during the first five years of operations by a new operation or an expansion of an existing operation in the amount of the total value of all contributions certified as eligible for credit by submitting with the annual declarations and returns required by section 39-29-112 the certifications of eligibility for such credit. Any unabsorbed credit may not be claimed as a refund or applied as a credit to estimated tax.~~

SECTION 4. In Colorado Revised Statutes, 39-29-107, **amend** (1), (2), (3), and (3.1) as follows:

39-29-107. Tax on severance of oil shale - repeal. (1) (a) (I) PRIOR TO JANUARY 1, 2024, in addition to any other tax, there shall be levied, collected, and paid for each taxable year a tax upon the severance of oil shale as to all such severance occurring on and after January 1, 1978. Such tax shall be levied against every person engaged in the severance of oil shale. Subject to the provisions of subsections (2) and (3) of this section, such tax shall be levied on the gross proceeds from each commercial oil shale facility at a rate of four percent of such gross proceeds.

(II) THIS SUBSECTION (1)(a) IS REPEALED, EFFECTIVE DECEMBER 31, 2027.

(b) ON AND AFTER JANUARY 1, 2024, IN ADDITION TO ANY OTHER TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR EACH TAXABLE YEAR A TAX UPON THE SEVERANCE OF OIL SHALE. SUCH TAX SHALL BE LEVIED AGAINST EVERY PERSON ENGAGED IN THE SEVERANCE OF OIL SHALE. SUCH TAX SHALL BE LEVIED ON THE GROSS PROCEEDS FROM EACH COMMERCIAL OIL SHALE FACILITY AT A RATE OF FOUR PERCENT OF SUCH GROSS PROCEEDS.

(2) (a) PRIOR TO JANUARY 1, 2024, the tax shall only have application to a commercial oil shale facility one hundred eighty days after the facility commences commercial production, as follows:

Year	Fraction of tax imposed by subsection (1)
First year	1/4
Second year	1/2
Third year	3/4
Fourth and each succeeding year	Entire rate imposed by subsection (1).

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31, 2027.

(3) (a) PRIOR TO JANUARY 1, 2024, the production of the first fifteen thousand tons per day of oil shale or ten thousand barrels per day of shale oil, whichever is greater, shall be exempt from the tax.

(b) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE DECEMBER 31, 2027.

(3.1) (a) PRIOR TO JANUARY 1, 2024, the calculation of the daily production subject to the tax and to the exemption in subsection (3) of this section shall be determined by dividing the total production of a calendar month by the total number of days in such month.

(b) THIS SUBSECTION (3.1) IS REPEALED, EFFECTIVE DECEMBER 31, 2027.

SECTION 5. In Colorado Revised Statutes, **repeal** 39-29-107.5 as follows:

39-29-107.5. Credit allowed for prior payment of impact assistance.

~~(1) (a) There shall be allowed, as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels from or for a new operation from or for which first severance occurs subsequent to June 30, 1979, an amount equal to the value of approved contributions by the taxpayer made prior to first severance of such minerals or mineral fuels to assist in solving the impact problems of units of local government resulting from the initiation of such new operation.~~

~~(b) There shall be allowed, as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels from or for an operation which has an increase in production from or for which increased severance occurs subsequent to June 30, 1980, an amount equal to the value of approved contributions by the taxpayer made to assist in solving the impact problems of units of local government or local units of government locally impacted by the increase in production of an operation.~~

~~(c) There shall be allowed, pursuant to an agreement between or on behalf of the taxpayer and the unit of local government specified in subparagraph (1) of paragraph (a) of subsection (2) of this section as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels, in addition to any amounts determined under paragraphs (a) and (b) of this subsection (1) and subsection (2) of this section, an amount equal to three-fourths of one percent per month times the~~

amount of approved contributions by a taxpayer for each month that any approved contribution precedes the month in which said approved contribution is credited against a taxpayer's yearly severance tax liability. Any amounts of approved contributions credited against a taxpayer's yearly severance tax liability shall be applied to reduce the amount, if any, of approved contributions not previously credited, and the additional percentage provided in this paragraph (c) shall apply solely to said reduced amount of approved contributions:

(2)(a) ~~Approved contributions, for the purpose of such credits, shall include the contribution of property or payment of money to units of local government or local units of government locally impacted, for use in planning, including financial, architectural, and engineering services, construction, or expansion of public facilities, including but not limited to county or municipal roads, schools, recreation facilities, water facilities, sewage facilities, police and fire protection facilities, and hospitals, which are deemed to be necessitated by the initiation of a new operation or increase in production of an existing operation. In addition, subject to the agreement reached pursuant to paragraph (c) of subsection (1) of this section, approved contributions may also include any loss sustained by reason of the sale of any bonds by the taxpayer who purchased such bonds, the proceeds of which bonds are used in the planning, construction, or expansion of any such public facilities by a unit of local government or local unit of government locally impacted, and any loss by reason of the default on loans made by a taxpayer or satisfaction of a guaranty obligation of the taxpayer arising out of the issuance of such bonds, whether or not such bonds are purchased by the taxpayer. Such losses shall be approved contributions as of the date of the making of a loan, the date of issuance of the bonds, or the date of entering into the guaranty obligation; except that, for purposes of the additional credit allowed pursuant to paragraph (c) of subsection (1) of this section, the date of the approved contribution shall be the date of default on any such loan, the date of loss on any such bond, or the date of satisfaction of any such guaranty obligation. In no event shall the total amount of approved contributions by a taxpayer exceed fifty percent of the severance tax liability which the taxpayer anticipates will be incurred during the first ten years of severance from a new operation or fifty percent of the increased severance tax liability which the taxpayer anticipates will be incurred during the first ten years of severance from an expanded existing operation plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section. In order for an approved contribution to qualify for credit, the following requirements shall be fulfilled:~~

~~(I) Each contribution shall be based on an agreement between or on behalf of the taxpayer and a unit of local government or local unit of government locally impacted, specifying the need for such contribution and its nature, value or amount, and purpose;~~

~~(II) Each contribution must be acted upon for credit and, if approved, a certificate of eligibility issued, within ninety days after joint submission by the taxpayer and the unit of local government, or local unit of government locally impacted, by the executive director of the department of local affairs upon the recommendation of the energy impact assistance advisory committee created by section 34-63-102 (5)(b), C.R.S., and failure to act upon the eligibility within said ninety days shall be deemed as approval and certification of the contribution; and~~

~~(III) Certification of eligibility for credit of a contribution of a specified value or amount must be transmitted by the executive director of the department of local affairs to the executive director of the department of revenue, the unit of local government or local unit of government locally impacted, and the taxpayer.~~

~~(b) In the event that the taxpayer purchases any bonds relating to public facilities as provided in this subsection (2) or makes any loans or guaranty arising out of the issuance of such bonds, the contribution, for purposes of subparagraphs (I) and (II) of paragraph (a) of this subsection (2), shall be the purchase price of any bonds purchased, the face value of any bonds guaranteed, or the amount loaned; except that the taxpayer shall be entitled to claim as a credit pursuant to subsection (3) of this section only the amount of loss on any such bonds, the amount paid in satisfaction of any such guaranty, or the amount of default on any such bonds.~~

~~(c) In order for a loss from the purchase and sale of bonds to qualify as an approved contribution:~~

~~(I) The purchase must arise out of the original distribution of such bonds; and~~

~~(II) The sale of such bonds must be made through a registered broker; and~~

~~(III) The sale must take place within five business days of the purchase.~~

~~(3) A taxpayer shall be entitled to credit against its severance tax liability in an amount equal to the total of all contributions made and certified as eligible for credit plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section. The taxpayer may claim such credit by submitting with the annual declarations and returns required by section 39-29-112 the certifications of eligibility for such credit or evidence regarding deemed certification, and in the case of losses sustained by reason of the sale of any bonds purchased by the taxpayer, by reason of satisfaction of a guaranty obligation of the taxpayer arising out of the issuance of bonds, or by reason of loans made by the taxpayer, evidence of such losses. The amount of credit available in any one taxable year, including carry-overs, shall not exceed the taxpayer's severance tax liability in such year. Any excess shall be carried over and shall be available as a credit in the next succeeding year or years subject to the same annual limitation.~~

~~(4) For the purposes of this section, minerals or mineral fuels shall include, but not be limited to, oil shale, crude oil, natural gas, and oil and gas.~~

~~(5) The executive director of the department of local affairs, or his or her designee; the executive director of the department of natural resources, or his or her designee; the executive director of the department of revenue, or his or her designee; and the energy impact assistance advisory committee created in section 34-63-102 (5)(b)(I), C.R.S., shall work together with the executive director, or his or her designee, of the Colorado municipal league, or its successor organization; the executive director, or his or her designee, of Colorado counties, incorporated, or its successor organization; representatives of the energy and mineral industry; and any other stakeholders to determine how best to improve the impact assistance credit established in this section so that any major infrastructure needs of communities impacted by the energy and mineral industry are addressed. The group specified in~~

~~this subsection (5) shall recommend any proposed legislation to the agriculture, livestock, and natural resources committee of the house of representatives and the agriculture, natural resources, and energy committee of the senate, or any successor committees, no later than January 31, 2009.~~

SECTION 6. In Colorado Revised Statutes, 39-21-112, **amend** (1) as follows:

39-21-112. Duties and powers of executive director. (1) It is the duty of the executive director to administer the provisions of this ~~article~~ ARTICLE 21, and ~~he or she~~ THE EXECUTIVE DIRECTOR has the power to adopt, amend, or rescind such rules not inconsistent with the provisions of this ~~article~~ ARTICLE 21, articles 22 to 29 of this ~~title~~ TITLE 39, and article 3 of title 42 ~~C.R.S.~~; and, subject to other provisions of law relating to the promulgation of rules, 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~~ THE EXECUTIVE DIRECTOR deems necessary or suitable to that end. The executive director shall determine ~~his or her own~~ THE organization and methods of procedure in accordance with the provisions of this ~~article~~ ARTICLE 21. 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~~ THE EXECUTIVE DIRECTOR 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~~ TITLE 39, 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 7. In Colorado Revised Statutes, 39-29-108, **repeal** (3) as follows:

39-29-108. Allocation of severance tax revenues - definitions - repeal.
(3) ~~Effective July 1, 1981, the total gross receipts from any taxpayer who has previously claimed the full amount of the credit for an approved contribution under section 39-29-107.5 shall be allocated solely to the state severance tax trust fund until such time as there is allocated to such fund, in addition to any current allocation to such fund, an amount equal to what would have been allocated to such fund during the time the taxpayer claimed such credit.~~

SECTION 8. 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 I (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: March 23, 2023