

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading

LLS NO. 21-0892.01 Esther van Mourik x4215

HOUSE BILL 21-1327

HOUSE SPONSORSHIP

Ortiz and Van Winkle,

SENATE SPONSORSHIP

Kolker and Woodward,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORITY OF A PASS-THROUGH BUSINESS ENTITY**
102 **TO ELECT TO PAY STATE INCOME TAXES AT THE ENTITY LEVEL,**
103 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The 2017 federal "Tax Cuts and Jobs Act" placed a cap of \$10,000 on the amount of state and local taxes paid that an individual can deduct on their federal taxes. This limitation did not apply to C corporations. Consequently, businesses organized as pass-through entities like S corporations and partnerships pay increased taxes on business profits

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 RESPECT TO AN S CORPORATION, A SHAREHOLDER OF THE S CORPORATION
2 AND, WITH RESPECT TO A PARTNERSHIP, A PARTNER IN THE PARTNERSHIP;
3 EXCEPT THAT A PARTNER DOES NOT INCLUDE A C CORPORATION THAT IS
4 UNITARY WITH THE PARTNERSHIP.

5 (3) "INCOME ATTRIBUTABLE TO THE STATE" MEANS, WITH RESPECT
6 TO AN S CORPORATION, THE PORTION OF THE ITEMS OF INCOME, GAIN,
7 LOSS, OR DEDUCTION OF THE S CORPORATION APPORTIONED OR
8 ALLOCATED TO THIS STATE IN ACCORDANCE WITH THE PROVISIONS OF
9 SECTION 39-22-321 (1) AND (2), AND, WITH RESPECT TO A PARTNERSHIP,
10 THE PORTION OF THE INCOME, GAIN, LOSS, DEDUCTION, OR CREDIT OF THE
11 PARTNERSHIP DERIVED FROM SOURCES WITHIN COLORADO DETERMINED
12 IN ACCORDANCE WITH THE PROVISIONS OF SECTION 39-22-203.

13 (4) "INCOME NOT ATTRIBUTABLE TO THE STATE" MEANS ALL ITEMS
14 OF INCOME, GAIN, LOSS, OR DEDUCTION OF AN ELECTING PASS-THROUGH
15 ENTITY OTHER THAN INCOME ATTRIBUTABLE TO THE STATE.

16 (5) "RESIDENT ELECTING PASS-THROUGH ENTITY OWNER" MEANS
17 AN ELECTING PASS-THROUGH ENTITY OWNER THAT IS A RESIDENT OF
18 COLORADO AS DEFINED IN SECTION 39-22-103 (6), (7), (8), (9), AND (10).

19 (6) "TAXABLE PERIOD" MEANS ANY TAXABLE YEAR OR PORTION OF
20 A TAXABLE YEAR DURING WHICH A CORPORATION IS AN S CORPORATION
21 OR A NONCORPORATE ENTITY IS A PARTNERSHIP.

22 **39-22-343. Election.** NOTWITHSTANDING SECTIONS 39-22-201,
23 39-22-302, AND 39-22-322, FOR INCOME TAX YEARS COMMENCING ON OR
24 AFTER JANUARY 1, 2022, AN S CORPORATION OR PARTNERSHIP MAY
25 ANNUALLY ELECT TO BE SUBJECT TO TAX AT THE ENTITY LEVEL FOR THE
26 TAXABLE PERIOD. THE S CORPORATION OR PARTNERSHIP SHALL MAKE THE
27 ELECTION ON THE RETURN FILED BY SUCH S CORPORATION OR

1 PARTNERSHIP UNDER SECTION 39-22-601. THE FILING OF SUCH RETURN IS
2 BINDING ON ALL ELECTING PASS-THROUGH ENTITY OWNERS.

3 **39-22-344. Imposition of tax.** (1) WITH RESPECT TO ANY
4 TAXABLE PERIOD FOR WHICH IT HAS MADE THE ELECTION UNDER SECTION
5 39-22-343, AN ELECTING PASS-THROUGH ENTITY IS SUBJECT TO A TAX IN
6 AN AMOUNT EQUAL TO FOUR AND FIFTY-FIVE ONE-HUNDREDTHS PERCENT
7 OF THE SUM OF THE FOLLOWING, ALL AS DETERMINED PURSUANT TO
8 SECTIONS 39-22-202, 39-22-203, 39-22-322, AND 39-22-323:

9 (a) EACH ELECTING PASS-THROUGH ENTITY OWNER'S PRO RATA OR
10 DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH ENTITY'S INCOME
11 ATTRIBUTABLE TO THE STATE; AND

12 (b) EACH RESIDENT ELECTING PASS-THROUGH ENTITY OWNER'S
13 PRO RATA OR DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH
14 ENTITY'S INCOME NOT ATTRIBUTABLE TO THE STATE.

15 (2) AN ELECTING PASS-THROUGH ENTITY IS TREATED AS A
16 CORPORATION UNDER SECTION 39-22-606 WITH RESPECT TO THE TAX
17 IMPOSED UNDER THIS SUBPART 3; EXCEPT THAT SECTION 39-22-606
18 (5)(c)(I) DOES NOT APPLY DURING THE FIRST TAXABLE PERIOD FOR WHICH
19 THIS SUBPART 3 IS APPLICABLE.

20 (3) ANY CREDIT ALLOWED PURSUANT TO THIS ARTICLE 22 THAT IS
21 ATTRIBUTABLE TO THE ACTIVITIES OF AN ELECTING PASS-THROUGH ENTITY
22 IN THE TAXABLE YEAR SHALL BE CLAIMED BY THE ENTITY AND NOT
23 PASSED THROUGH TO OR CLAIMED BY THE ELECTING PASS-THROUGH
24 ENTITY OWNER. NOTWITHSTANDING ANY SECTION TO THE CONTRARY IN
25 THIS ARTICLE 22, ANY EXCESS INCOME TAX CREDIT, NET OPERATING LOSS,
26 OR OTHER MODIFICATION MAY BE CARRIED FORWARD ON THE ELECTING
27 PASS-THROUGH ENTITY'S RETURN BUT MAY ONLY BE UTILIZED IN A YEAR

1 IN WHICH THE ELECTING PASS-THROUGH ENTITY HAS MADE THE ELECTION
2 ALLOWED IN SECTION 39-22-343; EXCEPT THAT ANY LIMITATION SPECIFIED
3 IN THE SPECIFIC SECTION FOR AN INCOME TAX CREDIT, THE NET OPERATING
4 LOSS, OR ANY OTHER MODIFICATION SHALL APPLY TO THE ELECTING
5 PASS-THROUGH ENTITY.

6 (4) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
7 MAY PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24 TO
8 REQUIRE OR PERMIT AN ELECTING PASS-THROUGH ENTITY TO MAKE
9 RETURNS, SET FORTH INFORMATION, OR FURNISH COPIES OF INFORMATION
10 AS REQUIRED IN SECTION 39-22-601 (2.5)(a) THROUGH (2.5)(c) AND (5)(a)
11 THROUGH (5)(c) AS IS NECESSARY TO EXECUTE THE PROVISIONS OF THIS
12 SUBPART 3. NOTWITHSTANDING THE SPECIFICITY OF THE FOREGOING, THE
13 EXECUTIVE DIRECTOR MAY PROMULGATE SUCH OTHER RULES AS ARE, IN
14 THE EXECUTIVE DIRECTOR'S VIEW, NECESSARY OR EXPEDIENT IN
15 ENFORCING THE PROVISIONS OF THIS SUBPART 3.

16 (5) THE PROVISIONS OF SECTIONS 39-22-601 (2.5)(d) THROUGH
17 (2.5)(i) AND (5)(d) THROUGH (5)(i) ARE NOT APPLICABLE TO AN ELECTING
18 PASS-THROUGH ENTITY.

19 (6) THE PROVISIONS OF ARTICLE 21 OF THIS TITLE 39 REGARDING
20 THE COLLECTION, ADMINISTRATION, AND ENFORCEMENT OF TAX IS
21 APPLICABLE TO THE TAX DUE UNDER THIS SECTION, AND,
22 NOTWITHSTANDING THE PROVISIONS OF SECTIONS 39-22-201, 39-22-302,
23 AND 39-22-322, AN ELECTING PASS-THROUGH ENTITY IS A TAXPAYER.

24 **39-22-345. Owner exclusion.** (1) NOTWITHSTANDING SECTIONS
25 39-22-201 AND 39-22-322, AND AS PROVIDED IN 39-22-104 (4)(z) AND
26 39-22-304 (3)(p), ELECTING PASS-THROUGH ENTITY OWNERS SHALL NOT
27 BE LIABLE FOR THE TAX AND THE ALTERNATIVE MINIMUM TAX UNDER THIS

1 ARTICLE 22 IN THEIR SEPARATE OR INDIVIDUAL CAPACITIES, AND THE
2 ELECTING PASS-THROUGH ENTITY'S INCOME ATTRIBUTABLE TO THE STATE
3 AND THE INCOME NOT ATTRIBUTABLE TO THE STATE IS NOT TAKEN INTO
4 ACCOUNT BY THE ELECTING PASS-THROUGH ENTITY OWNERS.

5 (2) NOTWITHSTANDING THE PROVISIONS OF THIS SUBPART 3 AND
6 SECTIONS 39-22-104 (4)(z) AND 39-22-304 (3)(p), THE BASIS IN THE
7 HANDS OF AN ELECTING PASS-THROUGH ENTITY OWNER IN THE INTEREST
8 IN THE PARTNERSHIP OR THE STOCK OR INDEBTEDNESS IN THE S
9 CORPORATION IS DETERMINED AS IF THE ELECTION UNDER SECTION
10 39-22-343 HAD NOT BEEN MADE.

11 **39-22-346. Credit for tax paid in other states.** AN ELECTING
12 PASS-THROUGH ENTITY IS ENTITLED TO THE CREDIT UNDER SECTION
13 39-22-108, AND SUBJECT TO THE LIMITATIONS OF SECTION 39-22-108, FOR
14 TAXES PAID TO OTHER STATES WITH RESPECT TO THE ELECTING
15 PASS-THROUGH ENTITY'S INCOME NOT ATTRIBUTABLE TO THIS STATE THAT
16 IS SUBJECT TO TAXATION PURSUANT TO SECTION 39-22-344 WHETHER THE
17 TAX WAS PAID BY THE ELECTING PASS-THROUGH ENTITY ITSELF OR BY THE
18 ELECTING PASS-THROUGH ENTITY OWNERS. THE RESIDENT ELECTING
19 PASS-THROUGH ENTITY OWNERS ARE NOT ENTITLED TO ANY CREDIT UNDER
20 SECTION 39-22-108 WITH RESPECT TO INCOME OF THE ELECTING
21 PASS-THROUGH ENTITY.

22 **SECTION 2.** In Colorado Revised Statutes, 39-22-104, **add**
23 (3)(p) and (4)(z) as follows:

24 **39-22-104. Income tax imposed on individuals, estates, and**
25 **trusts - single rate - legislative declaration - definitions - repeal.**

26 (3) There shall be added to the federal taxable income:

27 (p) NOTWITHSTANDING SUBSECTION (3)(o) OF THIS SECTION, FOR

1 INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, AN
2 AMOUNT EQUAL TO THE DEDUCTION TAKEN UNDER SECTION 199A OF THE
3 INTERNAL REVENUE CODE, EXCEPT TO THE EXTENT THE DEDUCTION IS
4 OTHERWISE DISALLOWED UNDER SECTION 265 OF THE INTERNAL REVENUE
5 CODE, FOR AN ELECTING PASS-THROUGH ENTITY OWNER OF AN ELECTING
6 PASS-THROUGH ENTITY, AS SUCH TERMS ARE DEFINED IN SECTION
7 39-21-342, THAT MAKES THE ELECTION ALLOWED IN SUBPART 3 OF PART
8 3 OF THIS ARTICLE 22.

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

10 (z) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
11 1, 2022, AN AMOUNT EQUAL TO THE ELECTING PASS-THROUGH ENTITY
12 OWNER'S DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH ENTITY'S
13 INCOME ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE
14 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22 AND INCOME NOT
15 ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE
16 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22.

17 **SECTION 3.** In Colorado Revised Statutes, 39-22-304, **add**
18 (3)(p) as follows:

19 **39-22-304. Net income of corporation - legislative declaration**
20 **- definitions - repeal.** (3) There shall be subtracted from federal taxable
21 income:

22 (p) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
23 1, 2022, AN AMOUNT EQUAL TO THE ELECTING PASS-THROUGH ENTITY
24 OWNER'S DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH ENTITY'S
25 INCOME ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE
26 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22 AND INCOME NOT
27 ATTRIBUTABLE TO THE STATE THAT IS TAXED PURSUANT TO THE

1 PROVISIONS OF SUBPART 3 OF PART 3 OF THIS ARTICLE 22.

2 **SECTION 4.** In Colorado Revised Statutes, 39-22-601, **add**
3 (1)(a)(IV) as follows:

4 **39-22-601. Returns.** (1) (a) (IV) FOR PURPOSES OF THIS
5 SUBSECTION (1)(a), A NONRESIDENT INDIVIDUAL WHOSE ONLY SOURCE OF
6 INCOME FROM THIS STATE IS INCOME FROM AN ELECTING PASS-THROUGH
7 ENTITY UNDER SUBPART 3 OF PART 3 OF THIS ARTICLE 22 NEED NOT FILE
8 A RETURN.

9 **SECTION 5. Appropriation.** (1) For the 2021-22 state fiscal
10 year, \$432,578 is appropriated to the department of revenue. This
11 appropriation is from the general fund. To implement this act, the
12 department may use this appropriation as follows:

13 (a) \$1,600 for use by the executive director's office for personal
14 services related to administration and support;

15 (b) \$239,607 for use by the taxation business group for personal
16 services related to taxation services, which amount is based on an
17 assumption that the group will require an additional 2.8 FTE;

18 (c) \$22,650 for use by the taxation business group for operating
19 expenses related to taxation services;

20 (d) \$66,375 for tax administration IT system (GenTax) support;
21 **and**

22 (e) \$102,346 for the purchase of document management services.

23 (2) For the 2021-22 state fiscal year, \$102,346 is appropriated to
24 the department of personnel. This appropriation is from reappropriated
25 funds received from the department of revenue under subsection (1)(e) of
26 this section. To implement this act, the department of personnel may use
27 this appropriation to provide document management services for the

1 department of revenue.

2 **SECTION 6. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, or safety.