

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 20-1268.02 Esther van Mourik x4215

HOUSE BILL 20-1420

HOUSE SPONSORSHIP

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House Committees

Finance
Appropriations

Senate Committees

Finance
Appropriations

SENATE
Amended 3rd Reading
June 15, 2020

A BILL FOR AN ACT

101 **CONCERNING THE ADJUSTMENT OF CERTAIN STATE TAX EXPENDITURES**
102 **IN ORDER TO ALLOCATE ADDITIONAL REVENUES TO THE STATE**
103 **EDUCATION FUND, AND, IN CONNECTION THEREWITH, MAKING**
104 **AN APPROPRIATION.**

SENATE
Amended 2nd Reading
June 13, 2020

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>.)

HOUSE
Amended 3rd Reading
June 11, 2020

Section 1 of the bill specifies that the act shall be known as the "Tax Fairness Act".

Sections 2 and 3 require taxpayers to add to federal taxable

HOUSE
Amended 2nd Reading
June 10, 2020

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.

income:

- ! For income tax years ending on and after the enactment of the March 2020 "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act), but before January 1, 2021, and for income tax years beginning on and after the enactment of the CARES Act, but before January 1, 2021, an amount equal to the difference between a taxpayer's net operating loss deduction as determined under federal law before the amendments made by section 2303 of the CARES Act and the taxpayer's net operating loss deduction as determined under federal law after the amendments made by section 2303 of the CARES Act;
- ! For income tax years ending on and after the enactment of the CARES Act, but before January 1, 2021, and for income tax years beginning on and after the enactment of the CARES Act, but before January 1, 2021, an amount equal to a taxpayer's excess business loss as determined under federal law without regard to the amendments made by section 2304 of the CARES Act, but with regard to the technical amendment made in that section of the CARES Act;
- ! For income tax years ending on and after the enactment of the CARES Act, but before January 1, 2021, and for income tax years beginning on and after the enactment of the CARES Act, but before January 1, 2021, an amount equal to the amount in excess of the limitation on business interest under federal law without regard to the amendments made by section 2306 of the CARES Act; and
- ! For income tax years commencing on or after January 1, 2021, an amount equal to the deduction for qualified business income for an individual taxpayer who files a single return and whose adjusted gross income is greater than \$75,000, and for an individual taxpayer who files a joint return and whose adjusted gross income is greater than \$150,000. This federal deduction may be claimed for income tax years commencing prior to January 1, 2026.

Section 4 limits the amount of net operating loss that a corporation may carry forward to \$400,000. This section also specifies that a corporation may add the amount of all net operating losses that a corporation is prohibited from subtracting, with interest, to the allowable net operating loss that is carried forward by the corporation.

Section 5 eliminates the state income tax modification for qualifying net capital gains for income tax years commencing on or after January 1, 2021.

Sections 6 and 7 repeal the exemption from the state sales and use

taxes for the sales, purchase, storage, use, or consumption of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel, for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses, for filing periods on and after August 1, 2020, except not the state sales and use tax exemption for newsprint and printer's ink for use by publishers of newspapers and commercial printers.

Section 8 creates a sales and use tax refund, not to exceed \$1,000 per filing period, for filing periods on and after August 1, 2020, for all state sales and use tax paid by the taxpayer on the sale, storage, use, or consumption of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel, for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, and all industrial uses; except that the \$1,000 per filing period limit does not apply to the sale, storage, use, or consumption of:

- ! Diesel fuel purchased for off-road use;
- ! Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel purchased for agricultural purposes;
- ! Coal, gas, fuel oil, steam, coke, or nuclear fuel for use in generating electricity; and
- ! Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel for use in street and railroad transportation services.

Sections 9 and 10 prevent the elimination of the sales tax exemption and the creation of the sales tax refund from affecting county and municipal sales and use taxes.

Section 11 repeals the statutes that provide an insurance premium tax rate reduction for insurance companies maintaining a home office or a regional home office in the state. Section 11 also clarifies that, for purposes of the insurance premium tax, an "annuity plan" or an "annuity consideration" does not include a deposit-type contract that does not incorporate mortality or morbidity risks, such as a guaranteed investment or interest certificate, a supplementary contract without life contingencies, an annuity certain, a premium fund or other deposit fund, a dividend accumulation, a coupon accumulation, a lottery payout, or a structured settlement.

The earned income tax credit is equal to a percentage of the federal earned income tax credit. **Section 12** increases the percentage from 10% to 20% beginning in 2023. Section 12 also specifies that for income tax years commencing on or after January 1, 2020, taxpayers filing with an individual taxpayer identification number are eligible for the earned income tax credit.

Section 13 specifies that the state treasurer shall transfer the following amounts from the general fund to the state education fund created in section 17 (4) of article IX of the state constitution for the following fiscal years:

! \$150,000,000 for the fiscal year 2021-22;
! \$200,000,000 for the fiscal year 2022-23;
! \$200,000,000 for the fiscal year 2023-24; and
! \$200,000,000 for the fiscal year 2024-25.

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

2 **SECTION 1. Short title.** The short title of this act is the "Tax
3 Fairness Act".

4 **SECTION 2.** In Colorado Revised Statutes, 39-22-104, **add**
5 (3)(l), (3)(m), (3)(n), and (3)(o) as follows:

6 **39-22-104. Income tax imposed on individuals, estates, and**
7 **trusts - single rate - legislative declaration - definitions - repeal.**

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

9 (l) FOR INCOME TAX YEARS ENDING ON AND AFTER THE
10 ENACTMENT OF THE MARCH 2020 "CORONAVIRUS AID, RELIEF, AND
11 ECONOMIC SECURITY ACT", PUB. L. 116-136, REFERRED TO IN THIS
12 SECTION AS THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AND FOR
13 INCOME TAX YEARS BEGINNING ON AND AFTER THE ENACTMENT OF THE
14 "CARES ACT", BUT BEFORE JANUARY 1, 2021, AN AMOUNT EQUAL TO THE
15 DIFFERENCE BETWEEN A TAXPAYER'S NET OPERATING LOSS DEDUCTION AS
16 DETERMINED UNDER SECTION 172 (a) OF THE INTERNAL REVENUE CODE
17 BEFORE THE AMENDMENTS MADE BY SECTION 2303 OF THE "CARES ACT"
18 AND THE TAXPAYER'S NET OPERATING LOSS DEDUCTION AS DETERMINED
19 UNDER SECTION 172 (a) OF THE INTERNAL REVENUE CODE AFTER THE
20 AMENDMENTS MADE BY SECTION 2303 OF THE "CARES ACT".

21 (m) FOR INCOME TAX YEARS ENDING ON AND AFTER THE
22 ENACTMENT OF THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AND
23 FOR INCOME TAX YEARS BEGINNING ON AND AFTER THE ENACTMENT OF

1 THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AN AMOUNT EQUAL TO
2 A TAXPAYER'S EXCESS BUSINESS LOSS AS DETERMINED UNDER SECTION
3 461 (l) OF THE INTERNAL REVENUE CODE WITHOUT REGARD TO THE
4 AMENDMENTS MADE BY SECTION 2304 OF THE "CARES ACT", BUT WITH
5 REGARD TO THE TECHNICAL AMENDMENT MADE BY SECTION 2304
6 (b)(2)(B) OF THE "CARES ACT".

7 (n) FOR INCOME TAX YEARS ENDING ON AND AFTER THE
8 ENACTMENT OF THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AND
9 FOR INCOME TAX YEARS BEGINNING ON AND AFTER THE ENACTMENT OF
10 THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AN AMOUNT EQUAL TO
11 THE AMOUNT IN EXCESS OF THE LIMITATION ON BUSINESS INTEREST UNDER
12 SECTION 163 (j) OF THE INTERNAL REVENUE CODE WITHOUT REGARD TO
13 THE AMENDMENTS MADE BY SECTION 2306 OF THE "CARES ACT".

14 (o) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
15 1, 2021, BUT BEFORE JANUARY 1, 2023, AN AMOUNT EQUAL TO THE
16 DEDUCTION ALLOWED UNDER SECTION 199A OF THE INTERNAL REVENUE
17 CODE FOR A TAXPAYER WHO FILES A SINGLE RETURN AND WHOSE
18 ADJUSTED GROSS INCOME IS GREATER THAN FIVE HUNDRED THOUSAND
19 DOLLARS, AND FOR TAXPAYERS WHO FILE A JOINT RETURN AND WHOSE
20 ADJUSTED GROSS INCOME IS GREATER THAN ONE MILLION DOLLARS;
21 EXCEPT THAT THIS SUBSECTION (3)(o) DOES NOT APPLY TO A TAXPAYER
22 WHO FILES A SCHEDULE F, PROFIT OR LOSS FROM FARMING, OR SUCCESSOR
23 FORM, AS AN ATTACHMENT TO A FEDERAL INCOME TAX RETURN.

24 **SECTION 3.** In Colorado Revised Statutes, 39-22-304, **add** (2)(i)
25 as follows:

26 **39-22-304. Net income of corporation - legislative declaration**
27 **- definitions - repeal.** (2) There shall be added to federal taxable income:

1 (i) FOR INCOME TAX YEARS ENDING ON AND AFTER THE
2 ENACTMENT OF THE MARCH 2020 "CORONAVIRUS AID, RELIEF, AND
3 ECONOMIC SECURITY ACT", PUB. L. 116-136, REFERRED TO IN THIS
4 SECTION AS THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AND FOR
5 INCOME TAX YEARS BEGINNING ON AND AFTER THE ENACTMENT OF THE
6 "CARES ACT", BUT BEFORE JANUARY 1, 2021, AN AMOUNT EQUAL TO THE
7 AMOUNT IN EXCESS OF THE LIMITATION ON BUSINESS INTEREST UNDER
8 SECTION 163 (j) OF THE INTERNAL REVENUE CODE WITHOUT REGARD TO
9 THE AMENDMENTS MADE BY SECTION 2306 OF THE "CARES ACT".

10 **SECTION 4.** In Colorado Revised Statutes, 39-22-504, **amend**
11 (1) as follows:

12 **39-22-504. Net operating losses.** (1) (a) A net operating loss
13 deduction shall be allowed in the same manner that it is allowed under the
14 internal revenue code except as otherwise provided in this section. The
15 amount of the net operating loss that may be carried forward and carried
16 back for Colorado income tax purposes shall be that portion of the federal
17 net operating loss allocated to Colorado under this ~~article~~ ARTICLE 22 in
18 the taxable year that the net operating loss is sustained.

19 (b) FOR LOSSES INCURRED AFTER DECEMBER 31, 2017, THE EIGHTY
20 PERCENT LIMITATION SET FORTH IN SECTION 172 (a)(2) OF THE INTERNAL
21 REVENUE CODE SHALL APPLY WITHOUT REGARD TO THE AMENDMENTS
22 MADE IN SECTION 2303 OF THE MARCH 2020 "CORONAVIRUS AID, RELIEF,
23 AND ECONOMIC SECURITY ACT", PUB. L. 116-136.

24 =====
25 **SECTION 5.** In Colorado Revised Statutes, 39-22-123.5, **amend**
26 (1)(h) and (2); **repeal** (3); and **add** (2.5) as follows:

27 **39-22-123.5. Earned income tax credit - not a refund of excess**

1 **state revenues - trigger - legislative declaration - definition.** (1) The
2 general assembly hereby finds and declares that:

3 (h) Now, therefore, it is the intent of the general assembly to
4 establish a permanent and refundable state earned income tax credit for
5 eligible Colorado taxpayers. ~~which is equal to ten percent of the federal~~
6 ~~earned income tax credit.~~ The intended purpose of this credit is to help
7 individuals and families achieve greater financial security and to help
8 Colorado's economy.

9 (2) (a) For an income tax year ~~specified in subsection (3) of this~~
10 ~~section~~ COMMENCING PRIOR TO JANUARY 1, 2022, a resident individual
11 who claims an earned income tax credit on the individual's federal tax
12 return is allowed an earned income tax credit against the taxes due under
13 this ~~article~~ ARTICLE 22 that is equal to ten percent of the federal credit that
14 the resident individual claimed on his or her federal tax return for the
15 same tax year.

16 (b) FOR AN INCOME TAX YEAR COMMENCING ON OR AFTER
17 JANUARY 1, 2022, A RESIDENT INDIVIDUAL WHO CLAIMS AN EARNED
18 INCOME TAX CREDIT ON THE INDIVIDUAL'S FEDERAL TAX RETURN IS
19 ALLOWED AN EARNED INCOME TAX CREDIT AGAINST THE TAXES DUE
20 UNDER THIS ARTICLE 22 THAT IS EQUAL TO FIFTEEN PERCENT OF THE
21 FEDERAL CREDIT THAT THE RESIDENT INDIVIDUAL CLAIMED ON HIS OR HER
22 FEDERAL TAX RETURN FOR THE SAME TAX YEAR.

23 (2.5) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER
24 JANUARY 1, 2021, BUT BEFORE JANUARY 1, 2022, A RESIDENT INDIVIDUAL
25 IS ALLOWED AN EARNED INCOME TAX CREDIT AGAINST THE TAXES DUE
26 UNDER THIS ARTICLE 22 THAT IS EQUAL TO TEN PERCENT OF THE FEDERAL
27 CREDIT THAT THE RESIDENT INDIVIDUAL WOULD HAVE BEEN ALLOWED,

1 BUT FOR THE FACT THAT THE RESIDENT INDIVIDUAL, THE RESIDENT
2 INDIVIDUAL'S SPOUSE, OR ONE OR MORE OF THE RESIDENT INDIVIDUAL'S
3 DEPENDENTS DO NOT HAVE A SOCIAL SECURITY NUMBER THAT IS VALID
4 FOR EMPLOYMENT.

5 (b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
6 1, 2022, A RESIDENT INDIVIDUAL IS ALLOWED AN EARNED INCOME TAX
7 CREDIT AGAINST THE TAXES DUE UNDER THIS ARTICLE 22 THAT IS EQUAL
8 TO FIFTEEN PERCENT OF THE FEDERAL CREDIT THAT THE TAXPAYER WOULD
9 HAVE BEEN ALLOWED, BUT FOR THE FACT THAT THE RESIDENT INDIVIDUAL,
10 THE RESIDENT INDIVIDUAL'S SPOUSE, OR ONE OR MORE OF THE RESIDENT
11 INDIVIDUAL'S DEPENDENTS DO NOT HAVE A SOCIAL SECURITY NUMBER
12 THAT IS VALID FOR EMPLOYMENT.

13 (c) FOR PURPOSES OF THIS SUBSECTION (2.5), A "RESIDENT
14 INDIVIDUAL" INCLUDES A TAXPAYER FILING WITH AN INDIVIDUAL
15 TAXPAYER IDENTIFICATION NUMBER.

16 ~~(3) If a credit is allowed under section 39-22-123 for an income~~
17 ~~tax year commencing on or after January 1, 2013, the credit allowed~~
18 ~~under this section may be claimed for any income tax year beginning with~~
19 ~~the income tax year after the income tax year that the credit is allowed~~
20 ~~under section 39-22-123.~~

21 **SECTION 6.** In Colorado Revised Statutes, 24-75-220, **add** (6)
22 as follows:

23 **24-75-220. State education fund - transfers - surplus -**
24 **legislative declaration.** (6) (a) ON **MARCH 1, 2021**, THE STATE
25 TREASURER SHALL TRANSFER ONE HUNDRED THIRTEEN MILLION DOLLARS
26 FROM THE GENERAL FUND TO THE STATE EDUCATION FUND CREATED IN
27 SECTION 17 (4) OF ARTICLE IX OF THE STATE CONSTITUTION.

1 (b) ON MARCH 1, 2022, THE STATE TREASURER SHALL TRANSFER
2 TWENTY-THREE MILLION DOLLARS FROM THE GENERAL FUND TO THE
3 STATE EDUCATION FUND CREATED IN SECTION 17 (4) OF ARTICLE IX OF
4 THE STATE CONSTITUTION.

5 **SECTION 7. Appropriation.** (1) For the 2020-21 state fiscal
6 year, \$49,002 is appropriated to the department of revenue. This
7 appropriation is from the general fund. To implement this act, the
8 department may use this appropriation as follows:

9 (a) \$20,580 for use by the taxation and compliance division for
10 personal services;

11 (b) \$5,922 for use by the taxpayer service division for personal
12 services; and

13 (c) \$22,500 for tax administration IT system (GenTax) support.

14 == ==

15 **SECTION 8. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, or safety.