

CHAPTER 300

TAXATION

HOUSE BILL 21-1327

BY REPRESENTATIVE(S) Ortiz and Van Winkle, Bennett, Bird, Bockenfeld, Gray, Pico, Ricks, Roberts, Snyder, Titone, Garnett; also SENATOR(S) Kolker and Woodward, Bridges, Cooke, Hisey, Holbert, Kirkmeyer, Liston, Lundeen, Pettersen, Priola, Rankin, Rodriguez, Simpson, Smallwood, Garcia.

AN ACT

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

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

SECTION 1. In Colorado Revised Statutes, **add** subpart 3 to part 3 of article 22 of title 39 as follows:

SUBPART 3
SALT PARITY ACT

39-22-340. Short title - citation. THIS SUBPART 3 IS COMPRISED OF SECTIONS 39-22-340 TO 39-22-346 AND MAY BE CITED AS SUBPART 3. THIS SUBPART 3 SHALL BE KNOWN AND MAY BE CITED AS THE "SALT PARITY ACT".

39-22-341. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE DEDUCTIBILITY OF STATE INCOME TAXES SHOULD BE THE SAME FOR C CORPORATIONS, S CORPORATIONS, AND PARTNERSHIPS.

39-22-342. Definitions. AS USED IN THIS SUBPART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ELECTING PASS-THROUGH ENTITY" MEANS, WITH RESPECT TO A TAXABLE PERIOD, AN S CORPORATION OR PARTNERSHIP THAT HAS MADE THE ELECTION UNDER SECTION 39-22-343 WITH RESPECT TO THE TAXABLE PERIOD.

(2) "ELECTING PASS-THROUGH ENTITY OWNER" MEANS, WITH RESPECT TO AN S

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.

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

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

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

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

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

39-22-343. Election. (1) NOTWITHSTANDING SECTIONS 39-22-201, 39-22-302, AND 39-22-322, AND EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, AN S CORPORATION OR PARTNERSHIP MAY ANNUALLY ELECT TO BE SUBJECT TO TAX AT THE ENTITY LEVEL FOR THE TAXABLE PERIOD. THE S CORPORATION OR PARTNERSHIP SHALL MAKE THE ELECTION ON THE RETURN FILED BY SUCH S CORPORATION OR PARTNERSHIP UNDER SECTION 39-22-601. THE FILING OF SUCH RETURN IS BINDING ON ALL ELECTING PASS-THROUGH ENTITY OWNERS.

(2) THE ELECTION ALLOWED UNDER SUBSECTION (1) OF THIS SECTION IS ONLY ALLOWED IN AN INCOME TAX YEAR WHERE THERE IS A LIMITATION ON THE DEDUCTIONS ALLOWED TO INDIVIDUALS UNDER SECTION 164 OF THE INTERNAL REVENUE CODE.

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

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

(b) EACH RESIDENT ELECTING PASS-THROUGH ENTITY OWNER'S PRO RATA OR DISTRIBUTIVE SHARE OF THE ELECTING PASS-THROUGH ENTITY'S INCOME NOT

ATTRIBUTABLE TO THE STATE.

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

(3) ANY CREDIT ALLOWED PURSUANT TO THIS ARTICLE 22 THAT IS ATTRIBUTABLE TO THE ACTIVITIES OF AN ELECTING PASS-THROUGH ENTITY IN THE TAXABLE YEAR SHALL BE CLAIMED BY THE ENTITY AND NOT PASSED THROUGH TO OR CLAIMED BY THE ELECTING PASS-THROUGH ENTITY OWNER. NOTWITHSTANDING ANY SECTION TO THE CONTRARY IN THIS ARTICLE 22, ANY EXCESS INCOME TAX CREDIT, NET OPERATING LOSS, OR OTHER MODIFICATION MAY BE CARRIED FORWARD ON THE ELECTING PASS-THROUGH ENTITY'S RETURN BUT MAY ONLY BE UTILIZED IN A YEAR IN WHICH THE ELECTING PASS-THROUGH ENTITY HAS MADE THE ELECTION ALLOWED IN SECTION 39-22-343; EXCEPT THAT ANY LIMITATION SPECIFIED IN THE SPECIFIC SECTION FOR AN INCOME TAX CREDIT, THE NET OPERATING LOSS, OR ANY OTHER MODIFICATION SHALL APPLY TO THE ELECTING PASS-THROUGH ENTITY.

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

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

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

39-22-345. Owner exclusion. (1) NOTWITHSTANDING SECTIONS 39-22-201 AND 39-22-322, AND AS PROVIDED IN 39-22-104 (4)(aa) AND 39-22-304 (3)(r), ELECTING PASS-THROUGH ENTITY OWNERS SHALL NOT BE LIABLE FOR THE TAX AND THE ALTERNATIVE MINIMUM TAX UNDER THIS ARTICLE 22 IN THEIR SEPARATE OR INDIVIDUAL CAPACITIES, AND THE ELECTING PASS-THROUGH ENTITY'S INCOME ATTRIBUTABLE TO THE STATE AND THE INCOME NOT ATTRIBUTABLE TO THE STATE IS NOT TAKEN INTO ACCOUNT BY THE ELECTING PASS-THROUGH ENTITY OWNERS.

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

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

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

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - legislative declaration - definitions - repeal. (3) There shall be added to the federal taxable income:

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

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

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

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

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

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

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

39-22-601. Returns. (1) (a) (IV) FOR PURPOSES OF THIS SUBSECTION (1)(a), A

NONRESIDENT INDIVIDUAL WHOSE ONLY SOURCE OF INCOME FROM THIS STATE IS INCOME FROM AN ELECTING PASS-THROUGH ENTITY UNDER SUBPART 3 OF PART 3 OF THIS ARTICLE 22 NEED NOT FILE A RETURN.

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

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

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

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

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

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

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

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

Approved: June 23, 2021