

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

PREAMENDED

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

LLS NO. 22-0769.01 Ed DeCecco x4216

SENATE BILL 22-124

SENATE SPONSORSHIP

Woodward and Kolker, Hisey, Holbert, Kirkmeyer, Rankin

HOUSE SPONSORSHIP

Ortiz and Van Winkle, Lynch, Van Beber

Senate Committees

Finance
Appropriations

House 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.**

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 "SALT Parity Act" (act) was enacted in 2021 and, for income tax years commencing on or after January 1, 2022, the act allows pass-through entities to elect to pay state income tax at the entity level, which allows the entity to claim an unlimited deduction at the federal level for state and local taxes paid. While this election reduces federal taxable income for the pass-through entity, it does not reduce Colorado

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.

taxable income under current law.

The bill makes provisions of the act retroactive to January 1, 2018.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-22-343, **amend**
3 **(1) as follows:**

4 **39-22-343. Election.** (1) **Notwithstanding sections 39-22-201,**
5 **39-22-302, and 39-22-322, and except as provided in subsection (2) of**
6 **this section, for income tax years commencing on or after January 1, 2022**
7 **JANUARY 1, 2018, an S corporation or partnership may annually elect to**
8 **be subject to tax at the entity level for the taxable period. FOR INCOME**
9 **TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2018, BUT PRIOR TO**
10 **JANUARY 1, 2022, THE S CORPORATION OR PARTNERSHIP MUST MAKE THE**
11 **ELECTION ON OR BEFORE MARCH 15, 2023. The S corporation or**
12 **partnership shall make the election on the return filed by such S**
13 **corporation or partnership under section 39-22-601. The filing of such**
14 **return is binding on all electing pass-through entity owners.**

15 **SECTION 2.** In Colorado Revised Statutes, 39-22-344, **amend**
16 **(1) introductory portion, (2), and (3), as follows:**

17 **39-22-344. Imposition of tax.** (1) **With respect to any taxable**
18 **period for which it has made the election under section 39-22-343, an**
19 **electing pass-through entity is subject to a tax in an amount equal to ~~four~~**
20 **~~and fifty-five one-hundredths percent of~~ THE TAX RATE SET FORTH IN**
21 **SECTION 39-22-301 FOR THE APPLICABLE INCOME TAX YEAR MULTIPLIED**
22 **BY the sum of the following, all as determined pursuant to sections**
23 **39-22-202, 39-22-203, 39-22-322, and 39-22-323:**

24 **(2) An electing pass-through entity is treated as a corporation**
25 **under section 39-22-606 with respect to the tax imposed under this**

1 subpart 3; except that section 39-22-606 (5)(c)(I) does not apply during
2 the first taxable period for which this subpart 3 is applicable FOR INCOME
3 TAX YEARS COMMENCING PRIOR TO JANUARY 1, 2023.

4 (3) Any credit allowed pursuant to this article 22 that is
5 attributable to the activities of an electing pass-through entity in the
6 taxable year shall be claimed by the entity and not IS passed through to or
7 AND MUST BE claimed by the electing pass-through entity owner.
8 Notwithstanding any section to the contrary in this article 22, any excess
9 income tax credit, net operating loss, or other modification may be carried
10 forward on the electing pass-through entity's return but may only be
11 utilized in a year in which the electing pass-through entity has made the
12 election allowed in section 39-22-343; except that any limitation specified
13 in the specific section for an income tax credit, the net operating loss, or
14 any other modification shall apply to the electing pass-through entity.

15 **SECTION 3.** In Colorado Revised Statutes, amend 39-22-345 as
16 follows:

17 **39-22-345. Owner exclusion.** (1) Notwithstanding sections
18 39-22-201 and 39-22-322, and as provided in 39-22-104 (4)(aa) and
19 39-22-304 (3)(r), electing pass-through entity owners shall not be liable
20 for the tax and the alternative minimum tax under this article 22 in their
21 separate or individual capacities, and the electing pass-through entity's
22 income attributable to the state and the income not attributable to the state
23 is not taken into account by the electing pass-through entity owners.

24 (2) Notwithstanding the provisions of this subpart 3 and sections
25 39-22-104 (4)(aa) and 39-22-304 (3)(r), The basis in the hands of an
26 electing pass-through entity owner in the interest in the partnership or the
27 stock or indebtedness in the S corporation is determined as if the election

1 under section 39-22-343 had not been made.

2 **SECTION 4.** In Colorado Revised Statutes, **amend** 39-22-346 as
3 follows:

4 **39-22-346. Credit for tax paid in other states. An electing**
5 **pass-through entity is entitled to the credit under section 39-22-108, and**
6 **subject to the limitations of section 39-22-108, for taxes paid to other**
7 **states with respect to the electing pass-through entity's income not**
8 **attributable to this state that is subject to taxation pursuant to section**
9 **39-22-344 whether the tax was paid by the electing pass-through entity**
10 **itself or by the electing pass-through entity owners. The resident electing**
11 **pass-through entity owners are not entitled to any credit under section**
12 **39-22-108 with respect to income of the electing pass-through entity FOR**
13 **PURPOSES OF THE RESIDENT PASS-THROUGH ENTITY OWNERS, THE CREDIT**
14 **ALLOWED UNDER SECTION 39-22-108 IS CALCULATED WITHOUT REGARD**
15 **TO THE CREDIT ALLOWED UNDER SECTION 39-22-347.**

16 **SECTION 5.** In Colorado Revised Statutes, **add** 39-22-347 as
17 follows:

18 **39-22-347. Credit for electing pass-through entity owner - tax**
19 **preference performance statement - legislative declaration.**

20 **(1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE**
21 **PURPOSE OF THIS TAX CREDIT IS TO:**

22 **(I) ENSURE THE STATE DOES NOT HAVE A NET TAX REVENUE**
23 **CHANGE WHILE ACCOMPLISHING THE PURPOSE SET FORTH IN SECTION**
24 **39-22-341; AND**

25 **(II) REPLACE A RELATED STATE INCOME TAX DEDUCTION.**

26 **(b) (I) NOTWITHSTANDING SECTION 39-21-304 (2), THE PURPOSE**
27 **OF THE TAX EXPENDITURE CREATED IN THIS SECTION IS TO AVOID DOUBLE**

1 TAXATION OF INCOME ON ELECTING PASS-THROUGH ENTITY OWNERS.

2 (II) THE GENERAL ASSEMBLY AND THE STATE AUDITOR SHALL
3 MEASURE THE EFFECTIVENESS OF THE CREDIT CREATED IN THIS SECTION
4 IN ACHIEVING THE PURPOSE SPECIFIED IN SUBSECTION (1)(b)(I) OF THIS
5 SECTION BASED ON WHETHER THE AMOUNT OF THE CREDIT IS EQUAL TO
6 THE AMOUNT OF THE TAX REVENUE COLLECTED UNDER SECTION
7 39-22-344.

8 (2) SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (3) OF
9 THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER
10 JANUARY 1, 2018, AN ELECTING PASS-THROUGH ENTITY OWNER IS
11 ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE 22 THAT
12 IS AN AMOUNT EQUAL TO THE ELECTING PASS-THROUGH ENTITY OWNER'S
13 DISTRIBUTIVE SHARE OF THE INCOME TAX IMPOSED ON THE ELECTING
14 PASS-THROUGH ENTITY UNDER SECTION 39-22-344.

15 (3) NO CREDIT IS ALLOWED TO AN ELECTING PASS-THROUGH
16 ENTITY OWNER UNDER SUBSECTION (2) OF THIS SECTION UNLESS THE
17 ELECTING PASS-THROUGH ENTITY PAID THE TAX IMPOSED UNDER THIS
18 ARTICLE 22 AND PROVIDED SUFFICIENT INFORMATION ON THE ELECTING
19 PASS-THROUGH ENTITY TAX RETURN, AS PRESCRIBED BY THE DEPARTMENT
20 OF REVENUE, TO IDENTIFY THAT ELECTING PASS-THROUGH ENTITY OWNER.

21 (4) ANY AMOUNT OF THE CREDIT ALLOWED BY THIS SECTION THAT
22 EXCEEDS THE ELECTING PASS-THROUGH ENTITY OWNER'S INCOME TAXES
23 DUE IS REFUNDED TO THE ELECTING PASS-THROUGH ENTITY OWNER.

24 **SECTION 6.** In Colorado Revised Statutes, 39-22-104, amend
25 (3)(r); and repeal (4)(aa) as follows:

26 **39-22-104. Income tax imposed on individuals, estates, and**
27 **trusts - single rate - report - legislative declaration - definitions -**

1 repeal. (3) There shall be added to the federal taxable income:

2 (r) Notwithstanding subsection (3)(o) of this section, for income
3 tax years commencing on or after January 1, 2022 JANUARY 1, 2018, an
4 amount equal to the deduction taken under section 199A of the internal
5 revenue code, except to the extent the deduction is otherwise disallowed
6 under section 265 of the internal revenue code, for an electing
7 pass-through entity owner of an electing pass-through entity, as such
8 terms are defined in section 39-21-342, that makes the election allowed
9 in subpart 3 of part 3 of this article 22.

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

11 (aa) For income tax years commencing on or after January 1,
12 2022, an amount equal to the electing pass-through entity owner's
13 distributive share of the electing pass-through entity's income attributable
14 to the state that is taxed pursuant to the provisions of subpart 3 of part 3
15 of this article 22 and income not attributable to the state that is taxed
16 pursuant to the provisions of subpart 3 of part 3 of this article 22.

17 SECTION 7. In Colorado Revised Statutes, 39-22-304, repeal
18 (3)(r) 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 (r) For income tax years commencing on or after January 1, 2022,
23 an amount equal to the electing pass-through entity owner's distributive
24 share of the electing pass-through entity's income attributable to the state
25 that is taxed pursuant to the provisions of subpart 3 of part 3 of this article
26 22 and income not attributable to the state that is taxed pursuant to the
27 provisions of subpart 3 of part 3 of this article 22.

1 **SECTION 8.** In Colorado Revised Statutes, 39-22-601, amend
2 (2.5)(e) and (5)(e) as follows:

3 **39-22-601. Returns.** (2.5) (e) With respect to each of its
4 nonresident shareholders, an S corporation shall, for each taxable period,
5 either timely file with the department of revenue an agreement, as
6 provided in paragraph (f) of this subsection (2.5) SUBSECTION (2.5)(f) OF
7 THIS SECTION, or make a payment to this state as provided in paragraph
8 (h) of this subsection (2.5) SUBSECTION (2.5)(h) OF THIS SECTION; EXCEPT
9 THAT THIS SUBSECTION (2.5)(e) SHALL NOT APPLY TO AN S CORPORATION
10 THAT MAKES THE ELECTION ALLOWED UNDER SUBPART 3 OF PART 3 OF
11 THIS ARTICLE 22.

12 (5) (e) With respect to each of its nonresident partners, a
13 partnership shall, for each taxable period, either timely file with the
14 department of revenue an agreement, as provided in paragraph (f) of this
15 subsection (5) SUBSECTION (5)(f) OF THIS SECTION, or make payment to
16 this state, as provided in paragraph (h) of this subsection (5) SUBSECTION
17 (5)(h) OF THIS SECTION; EXCEPT THAT THIS SUBSECTION (5)(e) SHALL NOT
18 APPLY TO A PARTNERSHIP THAT MAKES THE ELECTION ALLOWED UNDER
19 SUBPART 3 OF PART 3 OF THIS ARTICLE 22.

20 **SECTION 9. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, or safety.