

CHAPTER 164

TAXATION

SENATE BILL 22-124

BY SENATOR(S) Woodward and Kolker, Hisey, Holbert, Kirkmeyer, Rankin, Ginal, Hinrichsen, Pettersen, Zenzinger;
also REPRESENTATIVE(S) Ortiz and Van Winkle, Lynch, Van Beber, Bennett, Bird, Bockenfeld, Carver, Exum, Herod, Jodeh,
Lindsay, McCluskie, McLachlan, Mullica, Neville, Pico, Ricks, Roberts, Sandridge, Snyder, Soper, Titone, Valdez A., Valdez D.,
Young, Garnett.

AN ACT**CONCERNING THE AUTHORITY OF A PASS-THROUGH BUSINESS ENTITY TO ELECT TO PAY STATE INCOME TAXES AT THE ENTITY LEVEL.**

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

SECTION 1. In Colorado Revised Statutes, 39-22-202, **add** (4) as follows:

39-22-202. Resident partners - definition. (4) FOR PURPOSES OF SECTION 39-22-108, EACH RESIDENT PARTNER IS CONSIDERED TO HAVE PAID A TAX ON EACH RESIDENT PARTNER IN AN AMOUNT EQUAL TO EACH RESIDENT PARTNER'S PRO RATA SHARE OF ANY NET INCOME TAX PAID BY THE PARTNERSHIP TO A STATE THAT DOES NOT MEASURE THE INCOME OF PARTNERS OF A PARTNERSHIP BY REFERENCE TO THE INCOME OF THE PARTNERSHIP. AS USED IN THIS SUBSECTION (4), "NET INCOME TAX" MEANS ANY TAX IMPOSED ON, OR MEASURED BY, A PARTNERSHIP'S NET INCOME.

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

39-22-343. Election. (1) (a) 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~~ JANUARY 1, 2018, an S corporation or partnership may annually elect to be subject to tax at the entity level for the taxable period.

(b) EXCEPT AS SET FORTH IN SUBSECTION (1)(c)(I) OF THIS SECTION, 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~~ A return FILED UNDER SECTION 39-22-601 OR SUBSECTION (1)(c)(I) OF THIS SECTION IS

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binding on all electing pass-through entity owners.

(c)(I) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2018, BUT PRIOR TO JANUARY 1, 2022, THE S CORPORATION OR PARTNERSHIP MUST MAKE THE ELECTION ON OR AFTER SEPTEMBER 1, 2023, BUT BEFORE JULY 1, 2024, IN A COMPOSITE AMENDED TAX RETURN FOR ALL OF THE YEARS FOR WHICH THE ELECTION IS MADE THAT IS FILED ON BEHALF OF THE S CORPORATION OR PARTNERSHIP AND ALL OF THE ELECTING PASS-THROUGH ENTITY OWNERS. THE DEPARTMENT OF REVENUE SHALL ESTABLISH THE RETURN, WHICH SHALL NOT INCLUDE ANY CHANGES TO THE PAST RETURNS OTHER THAN THOSE THAT ARE DIRECTLY RELATED TO THE ELECTION. THE PROVISIONS OF SECTIONS 39-21-107 (2) AND 39-21-108 (1) SHALL NOT APPLY TO THE PAYMENT OR REFUND OF THE TAX MADE PURSUANT TO THE RETURN.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF AN S CORPORATION OR PARTNERSHIP FILES A RETURN SPECIFIED IN SUBSECTION (1)(c)(I) OF THIS SECTION, NEITHER THE S CORPORATION OR PARTNERSHIP NOR THE ELECTING PASS-THROUGH ENTITY OWNERS SHALL INCUR ANY PENALTIES FOR FILING LATE NOR OWE INTEREST ON SUCH AMOUNTS, AND THE DEPARTMENT SHALL NOT BE REQUIRED TO PAY PENALTIES OR INTEREST ON ANY AMOUNTS OWED TO THE TAXPAYERS.

(III) NOTWITHSTANDING THE DATES PROVIDED IN SUBSECTION (1)(c)(I) OF THIS SECTION, THE DEPARTMENT SHALL HAVE ONE YEAR FROM THE DATE THE COMPOSITE AMENDED TAX RETURN IS FILED TO REVIEW THE RETURN AND MAKE A WRITTEN PROPOSED ADJUSTMENT IN ACCORDANCE WITH SECTION 39-21-103. THE DEPARTMENT MUST MAKE ANY ASSESSMENT WITHIN ONE YEAR AFTER A FINAL DETERMINATION IS MADE UNDER SECTION 39-21-103 (8). ANY FINAL DETERMINATION MADE AS SPECIFIED IN THIS SUBSECTION (1)(c)(III) MAY BE ENFORCED AT ANY TIME WITHIN SIX YEARS FROM THE DATE OF THE FINAL DETERMINATION.

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

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 TAX RATE SET FORTH IN SECTION 39-22-301 FOR THE APPLICABLE INCOME TAX YEAR MULTIPLIED BY the sum of the following, all as determined pursuant to sections 39-22-202, 39-22-203, 39-22-322, and 39-22-323:

(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) THE REQUIREMENT TO MAKE ESTIMATED PAYMENTS UNDER SECTION 39-22-606 does not apply during the first taxable period for which this subpart 3 is applicable~~ FOR INCOME TAX YEARS COMMENCING PRIOR TO JANUARY 1, 2023.

(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~~ IS PASSED THROUGH TO OR AND MUST BE 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.~~

SECTION 4. In Colorado Revised Statutes, **amend** 39-22-345 as follows:

~~**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.~~

SECTION 5. In Colorado Revised Statutes, **amend** 39-22-346 as follows:

~~**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. FOR PURPOSES OF THE RESIDENT PASS-THROUGH ENTITY OWNERS, THE CREDIT ALLOWED UNDER SECTION 39-22-108 IS CALCULATED WITHOUT REGARD TO THE CREDIT ALLOWED UNDER SECTION 39-22-347.~~

SECTION 6. In Colorado Revised Statutes, **add** 39-22-347 as follows:

39-22-347. Credit for electing pass-through entity owner - tax preference performance statement - legislative declaration. (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE PURPOSE OF THIS TAX CREDIT IS TO:

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

(II) REPLACE A RELATED STATE INCOME TAX DEDUCTION.

(b) (I) NOTWITHSTANDING SECTION 39-21-304 (2), THE PURPOSE OF THE TAX EXPENDITURE CREATED IN THIS SECTION IS TO AVOID DOUBLE TAXATION OF INCOME ON ELECTING PASS-THROUGH ENTITY OWNERS.

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

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

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

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

SECTION 7. In Colorado Revised Statutes, 39-22-104, **amend** (3)(r); and **repeal** (4)(aa) as follows:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - report - 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~~ JANUARY 1, 2018, 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 8. In Colorado Revised Statutes, 39-22-304, **repeal** (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 9. In Colorado Revised Statutes, 39-22-601, **amend** (2.5)(e) and (5)(e) as follows:

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

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

SECTION 10. 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: May 16, 2022