

CHAPTER 192

TAXATION

HOUSE BILL 94-1053

BY REPRESENTATIVES Dyer, Agler, Anderson, Berry, Chlouber, Coffman, Epps, Grampsas, Hagedorn, Jerke, Kaufman, Lawrence, Martin, Pfiffner, Schauer, Sullivan, Tanner, and Taylor;
also SENATORS Cassidy, Ament, Bird, Bishop, Blickensderfer, Feeley, Hopper, Johnson, Meiklejohn, Norton, Pastore, R. Powers, Rizzuto, Roberts, Schaffer, Schroeder, Tebedo, Traylor, Wattenberg, Wells, and Wham.

AN ACT**CONCERNING THE CREATION OF AN INCOME TAX MODIFICATION FOR CERTAIN CAPITAL GAINS INCLUDED IN A QUALIFIED TAXPAYER'S TAXABLE INCOME.**

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

SECTION 1. Part 5 of article 22 of title 39, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

39-22-518. Tax modification for net capital gains. (1) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JULY 1, 1995, A MODIFICATION, IN THE FORM OF A REDUCTION OF INCOME TAXABLE BY THE STATE OF COLORADO, SHALL BE ALLOWED TO ANY QUALIFIED TAXPAYER FOR THE AMOUNT OF INCOME ATTRIBUTABLE TO QUALIFYING GAINS RECEIVING CAPITAL TREATMENT EARNED BY THE QUALIFIED TAXPAYER DURING THE TAXABLE YEAR AND INCLUDED IN FEDERAL TAXABLE INCOME.

(2) FOR THE PURPOSES OF THIS SECTION:

(a) (I) "QUALIFIED TAXPAYER" MEANS ANY TAXPAYER WITH NO OVERDUE STATE TAX LIABILITIES AND NOT IN DEFAULT ON ANY CONTRACTUAL OBLIGATIONS OWED TO THE STATE OR TO ANY LOCAL GOVERNMENT WITHIN COLORADO AT THE TIME THE MODIFICATION CREATED UNDER THIS SECTION IS CLAIMED.

(II) FOR THE PURPOSES OF THIS PARAGRAPH (a), "OVERDUE STATE TAX LIABILITIES" INCLUDES UNCOLLECTIBLE TAX LIABILITIES RESULTING FROM BANKRUPTCY.

(b) (I) "QUALIFYING GAINS RECEIVING CAPITAL TREATMENT" MEANS THE AMOUNT OF NET CAPITAL GAINS, AS DEFINED IN SECTION 1222 (11) OF THE INTERNAL REVENUE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

CODE, INCLUDED IN ANY QUALIFIED TAXPAYER'S FEDERAL INCOME TAX RETURN AND:

(A) EARNED BY SUCH QUALIFIED TAXPAYER ON REAL OR TANGIBLE PERSONAL PROPERTY LOCATED WITHIN COLORADO THAT WAS ACQUIRED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND THAT HAS BEEN OWNED BY THE QUALIFIED TAXPAYER FOR A HOLDING PERIOD OF AT LEAST FIVE YEARS PRIOR TO THE DATE OF THE TRANSACTION FROM WHICH THE NET CAPITAL GAINS ARISE; OR

(B) EARNED ON THE SALE OF STOCK OR ON THE SALE OF AN OWNERSHIP INTEREST IN A COLORADO COMPANY, LIMITED LIABILITY COMPANY, OR PARTNERSHIP WHERE SUCH STOCK OR OWNERSHIP INTEREST WAS ACQUIRED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND HAS BEEN OWNED BY THE QUALIFIED TAXPAYER FOR A HOLDING PERIOD OF AT LEAST FIVE YEARS PRIOR TO THE DATE OF THE TRANSACTION FROM WHICH THE NET CAPITAL GAINS ARISE.

(II) FOR PURPOSES OF THIS PARAGRAPH (b):

(A) "COLORADO COMPANY, LIMITED LIABILITY COMPANY, OR PARTNERSHIP" MEANS AN ENTITY WITH FIFTY PERCENT OR MORE OF ITS PROPERTY AND PAYROLL, AS DETERMINED IN ACCORDANCE WITH ARTICLE IV OF THE MULTISTATE TAX COMPACT, SECTION 24-60-1301, C.R.S., ASSIGNED TO LOCATIONS WITHIN COLORADO.

(B) "HOLDING PERIOD" MEANS AN UNINTERRUPTED PERIOD OF TIME COMMENCING ON OR AFTER JUNE 1, 1994.

(3) ANY REDUCTION IN COLORADO TAXABLE INCOME CAUSED BY THE MODIFICATION ALLOWED BY THIS SECTION SHALL NOT CREATE ANY RIGHT TO A CASH REFUND FOR THE YEAR FOR WHICH THE MODIFICATION IS CLAIMED NOR SHALL THE REDUCTION CREATE ANY RIGHT TO A FINANCIAL OR OTHER TAX BENEFIT WHICH MAY BE CARRIED FORWARD BY THE QUALIFIED TAXPAYER.

(4) ANY TAXPAYER CLAIMING A MODIFICATION PURSUANT TO THIS SECTION SHALL SUBMIT WITH THE TAXPAYER'S INCOME TAX RETURN IN WHICH SUCH MODIFICATION IS CLAIMED AN AFFIDAVIT, SIGNED UNDER PENALTY OF PERJURY, STATING THAT THE TAXPAYER MEETS THE DEFINITION OF A QUALIFIED TAXPAYER AS STATED IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION.

SECTION 2. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

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

Approved: May 9, 1994