

CHAPTER 83

TAXATION

HOUSE BILL 96-1277

BY REPRESENTATIVES Tupa, Anderson, Clarke, Entz, Friednash, Keller, Reeves, and Saliman;
also SENATORS Rizzuto, Hernandez, Pascoe, Tanner, and Weddig.

AN ACT

CONCERNING STATE INCOME TAX PROCEDURES GOVERNING PARTNERSHIPS, AND, IN CONNECTION THEREWITH, IMPLEMENTING PROCEDURES REGARDING THE PAYMENT OF STATE INCOME TAX BY NONRESIDENT PARTNERS OF PARTNERSHIPS WITH INCOME FROM COLORADO SOURCES.

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

SECTION 1. 39-22-103, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-22-103. Definitions - construction of terms. As used in this article, unless the context otherwise requires:

(5.6) "PARTNERSHIP" MEANS ANY GROUP OR ORGANIZATION THAT IS A PARTNERSHIP, AS DEFINED BY SECTION 761 (a) OF THE INTERNAL REVENUE CODE, AND IS REQUIRED TO FILE A RETURN UNDER SECTION 6031 (a) OF THE INTERNAL REVENUE CODE.

SECTION 2. 39-22-601 (5), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-22-601. Returns. (5) (a) Every partnership THAT ENGAGES IN ACTIVITIES IN THIS STATE THAT WOULD SUBJECT A C CORPORATION TO THE REQUIREMENT TO MAKE A RETURN UNDER THIS SECTION shall make a return ~~which~~ THAT shall contain a written declaration that it is made under the penalties of perjury in the second degree. Such return shall set forth, in such detail as the executive director shall prescribe, ~~by regulations the items of federal taxable~~ ORDINARY income and the modifications and credits required or allowed under this article and any other information necessary to carry out the purposes of this article. The return shall be signed by any one of the

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

partners.

(b) IN ADDITION TO OTHER INFORMATION THAT THE EXECUTIVE DIRECTOR MAY PRESCRIBE, THE RETURN SHALL SET FORTH:

(I) THE NAME, ADDRESS, AND SOCIAL SECURITY OR FEDERAL IDENTIFICATION NUMBER OF EACH PARTNER OF THE PARTNERSHIP;

(II) THE INCOME ATTRIBUTABLE TO THE STATE AND THE INCOME NOT ATTRIBUTABLE TO THE STATE WITH RESPECT TO EACH PARTNER OF THE PARTNERSHIP AS DETERMINED UNDER SECTION 39-22-203; AND

(III) THE MODIFICATIONS REQUIRED BY SECTION 39-22-202.

(c) THE PARTNERSHIP SHALL, ON OR BEFORE THE DAY ON WHICH THE RETURN IS FILED, FURNISH TO EACH PERSON WHO WAS A PARTNER OF THE PARTNERSHIP DURING THE YEAR A COPY OF SUCH INFORMATION SHOWN ON THE RETURN AS THE EXECUTIVE DIRECTOR MAY PRESCRIBE.

(d) THE DEPARTMENT OF REVENUE SHALL PERMIT PARTNERSHIPS TO FILE COMPOSITE RETURNS AND TO MAKE COMPOSITE PAYMENTS OF TAX ON BEHALF OF ANY OR ALL OF ITS NONRESIDENT PARTNERS.

(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), OR MAKE PAYMENT TO THIS STATE, AS PROVIDED IN PARAGRAPH (h) OF THIS SUBSECTION (5).

(f) THE AGREEMENT REFERRED TO IN PARAGRAPH (e) OF THIS SUBSECTION (5) IS AN AGREEMENT OF A NONRESIDENT PARTNER OF THE PARTNERSHIP:

(I) TO FILE A RETURN IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (5) AND TO MAKE TIMELY PAYMENT OF ALL TAXES IMPOSED ON THE MEMBER BY THIS STATE WITH RESPECT TO THE INCOME OF THE PARTNERSHIP; AND

(II) TO BE SUBJECT TO PERSONAL JURISDICTION IN THIS STATE FOR PURPOSES OF THE COLLECTION OF INCOME TAXES, TOGETHER WITH RELATED INTEREST AND PENALTIES, IMPOSED ON THE PARTNER BY THIS STATE WITH RESPECT TO THE INCOME OF THE PARTNERSHIP.

(g) A PARTNERSHIP THAT TIMELY FILES AN AGREEMENT AS PROVIDED IN PARAGRAPH (e) OF THIS SUBSECTION (5) WITH RESPECT TO A NONRESIDENT PARTNER OF THE PARTNERSHIP FOR A TAXABLE PERIOD SHALL BE CONSIDERED TO HAVE TIMELY FILED SUCH AN AGREEMENT FOR EACH SUBSEQUENT TAXABLE PERIOD. A PARTNERSHIP THAT DOES NOT TIMELY FILE SUCH AN AGREEMENT FOR A TAXABLE PERIOD SHALL NOT BE PRECLUDED FROM TIMELY FILING SUCH AN AGREEMENT FOR SUBSEQUENT TAXABLE PERIODS. THE AGREEMENT WILL BE CONSIDERED TO BE TIMELY FILED FOR A TAXABLE PERIOD AND FOR ALL SUBSEQUENT TAXABLE PERIODS IF IT IS FILED AT OR BEFORE THE TIME THE ANNUAL RETURN FOR SUCH TAXABLE PERIOD IS REQUIRED TO BE FILED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION

(5).

(h) THE PAYMENT REFERRED TO IN PARAGRAPH (e) OF THIS SUBSECTION (5) SHALL BE IN AN AMOUNT EQUAL TO THE HIGHEST MARGINAL TAX RATE IN EFFECT UNDER SECTION 39-22-104 (1) MULTIPLIED BY THE NONRESIDENT PARTNER'S SHARE OF THE INCOME ATTRIBUTABLE TO THE STATE AS REFLECTED ON THE PARTNERSHIP'S RETURN FOR THE TAXABLE PERIOD. A PARTNERSHIP SHALL BE ENTITLED TO RECOVER A PAYMENT PURSUANT TO THIS PARAGRAPH (h) FROM THE NONRESIDENT PARTNER ON WHOSE BEHALF THE PAYMENT WAS MADE. ANY SUCH PAYMENT FOR A TAXABLE PERIOD MUST BE MADE AT OR BEFORE THE TIME THE ANNUAL RETURN FOR SUCH TAXABLE PERIOD IS REQUIRED TO BE FILED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5).

(i) ANY AMOUNT PAID BY THE PARTNERSHIP TO THIS STATE PURSUANT TO PARAGRAPH (d) OR (h) OF THIS SUBSECTION (5) SHALL BE CONSIDERED TO BE A PAYMENT BY THE NONRESIDENT PARTNER ON ACCOUNT OF THE INCOME TAX IMPOSED ON THE NONRESIDENT PARTNER FOR THE TAXABLE PERIOD PURSUANT TO SECTION 39-22-104 OR 39-22-301.

SECTION 3. 39-22-604.5 (6) (e), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

39-22-604.5. Withholding tax - transfers of Colorado real property - nonresident transferors. (6) For purposes of this section, unless the context otherwise requires:

(e) "Person" means any individual, estate, OR trust ~~or partner~~ who may be subject to taxation pursuant to part 1 of this article.

SECTION 4. Effective date - applicability. This act shall take effect upon passage, and shall apply to income tax years commencing on or after January 1, 1996.

SECTION 5. 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: April 16, 1996