

CHAPTER 310

TAXATION

HOUSE BILL 99-1237

BY REPRESENTATIVES Piffner, Young, May, Hefley, Spradley, McElhany, Alexander, Allen, Clapp, Dean, Decker, Fairbank, Johnson, Kester, Larson, Lawrence, Lee, McKay, Mitchell, Nunez, Paschall, Sinclair, Smith, Spence, Stengel, Sullivant, Swenson, Webster, T. Williams, Witwer, George, Gotlieb, Miller, Morrison, Scott, and Taylor;
also SENATORS Andrews, Tebedo, Arnold, Blickensderfer, Congrove, Dyer, Evans, Feeley, Hillman, Lamborn, Musgrave, Owen, Perlmutter, Phillips, Powers, Teck, Chlouber, Epps, Hernandez, and Wattenberg.

AN ACT

CONCERNING THE EXPANSION OF THE EXISTING MODIFICATION TO COLORADO TAXABLE INCOME FOR CAPITAL GAINS TO INCLUDE CAPITAL GAINS EARNED ON PROPERTY ACQUIRED PRIOR TO MAY 9, 1994.

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

SECTION 1. 39-22-518 (2) (b) (I) and (2) (b) (II) (B), Colorado Revised Statutes, are amended, and the said 39-22-518 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

39-22-518. Tax modification for net capital gains. (2) For the purposes of this section:

(b) (I) "Qualifying gains receiving capital treatment" means the amount of net capital gains, as defined in section 1222 (11) of the internal revenue 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 May 9, 1994, 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~~ SUCH 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 May 9, 1994, 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; OR

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

(C) SUBJECT TO THE PROVISIONS OF SUBSECTION (5) OF THIS SECTION, EARNED BY SUCH QUALIFIED TAXPAYER ON REAL OR TANGIBLE PERSONAL PROPERTY LOCATED WITHIN COLORADO THAT WAS ACQUIRED BEFORE MAY 9, 1994, 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, IF THE TRANSACTION FROM WHICH THE NET CAPITAL GAINS ARISE OCCURRED DURING ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2000, FOR WHICH, BASED UPON THE FINANCIAL REPORT PREPARED IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR THE STATE FISCAL YEAR ENDING IN THAT INCOME TAX YEAR EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION AND THE VOTERS STATEWIDE HAVE EITHER NOT AUTHORIZED THE STATE TO RETAIN AND SPEND ALL OF THE EXCESS STATE REVENUES OR HAVE AUTHORIZED THE STATE TO RETAIN AND SPEND ONLY A PORTION OF THE EXCESS STATE REVENUES FOR THAT FISCAL YEAR; OR

(D) SUBJECT TO THE PROVISIONS OF SUBSECTION (5) OF THIS SECTION, 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 BEFORE MAY 9, 1994, 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, IF THE TRANSACTION FROM WHICH THE NET CAPITAL GAINS ARISE OCCURRED DURING ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2000, FOR WHICH, BASED UPON THE FINANCIAL REPORT PREPARED IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR THE STATE FISCAL YEAR ENDING IN THAT INCOME TAX YEAR EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION AND THE VOTERS STATEWIDE HAVE EITHER NOT AUTHORIZED THE STATE TO RETAIN AND SPEND ALL OF THE EXCESS STATE REVENUES OR HAVE AUTHORIZED THE STATE TO RETAIN AND SPEND ONLY A PORTION OF THE EXCESS STATE REVENUES FOR THAT FISCAL YEAR.

(II) For purposes of this paragraph (b):

(B) "Holding period" means an uninterrupted period of time. ~~commencing on or after June 1, 1994.~~

(5) (a) IF, BASED ON THE FINANCIAL REPORT PREPARED BY THE CONTROLLER IN ACCORDANCE WITH SECTION 24-77-106.5, C.R.S., THE CONTROLLER CERTIFIES THAT THE AMOUNT OF STATE REVENUES FOR ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 1999, EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR THAT FISCAL YEAR BY LESS THAN TWO HUNDRED SIXTY MILLION DOLLARS, AS ADJUSTED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (5), THEN ANY MODIFICATION FOR QUALIFYING GAINS RECEIVING CAPITAL TREATMENT AUTHORIZED BY SUB-SUBPARAGRAPH (C) OR (D) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR IN WHICH SAID STATE FISCAL YEAR ENDED.

(b) (I) NO LATER THAN OCTOBER 1 OF ANY GIVEN CALENDAR YEAR COMMENCING

ON OR AFTER JANUARY 1, 2000, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL ANNUALLY ADJUST THE DOLLAR AMOUNT SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (5) TO REFLECT THE RATE OF GROWTH OF COLORADO PERSONAL INCOME FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH SUCH ADJUSTMENT IS MADE. FOR PURPOSES OF THIS SUBPARAGRAPH (I), "THE RATE OF GROWTH OF COLORADO PERSONAL INCOME" MEANS THE PERCENTAGE CHANGE BETWEEN THE MOST RECENT PUBLISHED ANNUAL ESTIMATE OF TOTAL PERSONAL INCOME FOR COLORADO, AS DEFINED AND OFFICIALLY REPORTED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED STATES DEPARTMENT OF COMMERCE FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE ADJUSTMENT IS MADE AND THE MOST RECENT PUBLISHED ANNUAL ESTIMATE OF TOTAL PERSONAL INCOME FOR COLORADO, AS DEFINED AND OFFICIALLY REPORTED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED STATES DEPARTMENT OF COMMERCE FOR THE CALENDAR YEAR PRIOR TO THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE ADJUSTMENT IS MADE.

(II) UPON CALCULATING THE ADJUSTMENT OF SAID DOLLAR AMOUNT IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE EXECUTIVE DIRECTOR SHALL NOTIFY IN WRITING THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL CREATED PURSUANT TO SECTION 2-3-301 (1), C.R.S., OF THE ADJUSTED DOLLAR AMOUNT AND THE BASIS FOR THE ADJUSTMENT. SUCH WRITTEN NOTIFICATION SHALL BE GIVEN WITHIN FIVE WORKING DAYS AFTER SUCH CALCULATION IS COMPLETED, BUT SUCH WRITTEN NOTIFICATION SHALL BE GIVEN NO LATER THAN OCTOBER 1 OF THE CALENDAR YEAR.

(III) IT IS THE FUNCTION OF THE EXECUTIVE COMMITTEE TO REVIEW AND APPROVE OR DISAPPROVE SUCH ADJUSTMENT OF SAID DOLLAR AMOUNT WITHIN TWENTY DAYS AFTER RECEIPT OF SUCH WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR. ANY ADJUSTMENT THAT IS NOT APPROVED OR DISAPPROVED BY THE EXECUTIVE COMMITTEE WITHIN SAID TWENTY DAYS SHALL BE AUTOMATICALLY APPROVED; EXCEPT THAT, IF WITHIN SAID TWENTY DAYS THE EXECUTIVE COMMITTEE SCHEDULES A HEARING ON SUCH ADJUSTMENT, SUCH AUTOMATIC APPROVAL SHALL NOT OCCUR UNLESS THE EXECUTIVE COMMITTEE DOES NOT APPROVE OR DISAPPROVE SUCH ADJUSTMENT AFTER THE CONCLUSION OF SUCH HEARING. ANY HEARING CONDUCTED BY THE EXECUTIVE COMMITTEE PURSUANT TO THIS SUBPARAGRAPH (III) SHALL BE CONCLUDED NO LATER THAN TWENTY-FIVE DAYS AFTER RECEIPT OF SUCH WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR.

(IV) IF THE EXECUTIVE COMMITTEE DISAPPROVES ANY ADJUSTMENT OF SAID DOLLAR AMOUNT CALCULATED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS PARAGRAPH (b), THE EXECUTIVE COMMITTEE SHALL SPECIFY SUCH ADJUSTED DOLLAR AMOUNT TO BE UTILIZED BY THE EXECUTIVE DIRECTOR. ANY ADJUSTED DOLLAR AMOUNT SPECIFIED BY THE EXECUTIVE COMMITTEE PURSUANT TO THIS SUBPARAGRAPH (IV) SHALL BE CALCULATED IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b).

(V) FOR THE PURPOSE OF DETERMINING WHETHER ANY MODIFICATION FOR QUALIFYING GAINS RECEIVING CAPITAL TREATMENT AUTHORIZED BY SUB-SUBPARAGRAPH (C) OR (D) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION IS TO BE ALLOWED IN ANY GIVEN TAX YEAR, THE EXECUTIVE DIRECTOR SHALL NOT UTILIZE ANY ADJUSTED DOLLAR AMOUNT THAT HAS

NOT BEEN APPROVED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (b) OR OTHERWISE SPECIFIED PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (b).

(VI) IF ONE OR MORE BALLOT QUESTIONS ARE SUBMITTED TO THE VOTERS AT A STATEWIDE ELECTION TO BE HELD IN NOVEMBER OF ANY CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2000, THAT SEEK AUTHORIZATION FOR THE STATE TO RETAIN AND SPEND ALL OR ANY PORTION OF THE AMOUNT OF EXCESS REVENUES FOR THE STATE FISCAL YEAR ENDING DURING SAID CALENDAR YEAR, THE EXECUTIVE DIRECTOR SHALL NOT DETERMINE WHETHER ANY MODIFICATION FOR QUALIFYING GAINS RECEIVING CAPITAL TREATMENT AUTHORIZED BY SUB-SUBPARAGRAPH (C) OR (D) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION SHALL BE ALLOWED UNTIL THE IMPACT OF THE RESULTS OF SAID ELECTION ON THE AMOUNT OF THE EXCESS STATE REVENUES TO BE REFUNDED IS ASCERTAINED.

(6) ANY MODIFICATION FOR QUALIFYING GAINS RECEIVING CAPITAL TREATMENT ALLOWED PURSUANT TO SUB-SUBPARAGRAPH (C) OR (D) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION SHALL BE PUBLISHED IN RULES PROMULGATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE INCLUDED IN INCOME TAX FORMS FOR THAT TAXABLE YEAR.

(7) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE TEMPORARY MODIFICATIONS FOR QUALIFYING GAINS RECEIVING CAPITAL TREATMENT ALLOWED BY SUB-SUBPARAGRAPHS (C) AND (D) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION ARE REASONABLE METHODS OF REFUNDING A PORTION OF THE EXCESS STATE REVENUES REQUIRED TO BE REFUNDED IN ACCORDANCE WITH SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION.

SECTION 2. 24-77-106.5, Colorado Revised Statutes, is amended to read:

24-77-106.5. Annual financial report. (1) (a) For each fiscal year, the controller shall prepare a financial report for the state for purposes of ascertaining compliance with the provisions of this article. Any financial report prepared pursuant to this section shall include, but shall not be limited to, state fiscal year spending, reserves, revenues, and debt. Such financial report shall be audited by the state auditor.

(b) BASED UPON THE FINANCIAL REPORT PREPARED IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (1) FOR ANY GIVEN FISCAL YEAR, THE CONTROLLER SHALL CERTIFY TO THE GOVERNOR, THE GENERAL ASSEMBLY, AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE NO LATER THAN SEPTEMBER 1 FOLLOWING THE END OF A FISCAL YEAR THE AMOUNT OF STATE REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF THE ARTICLE X OF THE STATE CONSTITUTION, IF ANY, FOR SUCH FISCAL YEAR.

(2) ANY FINANCIAL REPORT PREPARED AND CERTIFICATION OF STATE EXCESS REVENUES MADE PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE AUDITED BY THE STATE AUDITOR. NO LATER THAN SEPTEMBER 15 FOLLOWING THE CERTIFICATION MADE BY THE STATE CONTROLLER FOR ANY GIVEN FISCAL YEAR, THE STATE AUDITOR SHALL REPORT AND TRANSMIT TO THE GOVERNOR, THE GENERAL

ASSEMBLY, AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THE RESULTS OF ANY AUDIT CONDUCTED IN ACCORDANCE WITH THIS SUBSECTION (2).

~~(2)~~ (3) Notwithstanding any generally accepted accounting principles to the contrary, financial reports prepared pursuant to subsection (1) of this section shall not include any unrealized gains or losses on investments held by the state.

SECTION 3. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 3, 1999