

CHAPTER 163

TAXATION

HOUSE BILL 00-1171

BY REPRESENTATIVES Taylor, Alexander, Chavez, Coleman, Dean, Fairbank, Hefley, Hoppe, Kester, King, Lawrence, Lee, May, McElhany, McKay, Miller, Nuñez, Paschall, Scott, Sinclair, Spence, Spradley, Stengel, T. Williams, and Young; also SENATORS Blickensderfer, Arnold, Epps, Evans, Lamborn, Powers, and Sullivant.

AN ACT

CONCERNING AN EXCLUSION OF CERTAIN INCOME FROM FEDERAL TAXABLE INCOME FOR COLORADO INCOME TAX PURPOSES, AND, IN CONNECTION THEREWITH, EXCLUDING CERTAIN INTEREST INCOME, DIVIDEND INCOME, NET CAPITAL GAINS, AND NET CAPITAL GAINS FROM THE INCOME TAX IMPOSED ON INDIVIDUALS, ESTATES, AND TRUSTS.

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

SECTION 1. 39-22-104 (4) (I) (I), (4) (I) (III), (4) (I) (IV) (A), (4) (I) (IV) (B), and (4) (I) (V), Colorado Revised Statutes, are amended, and the said 39-22-104 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions. (4) There shall be subtracted from federal taxable income:

(I) (I) Subject to the provisions of subparagraphs (III) to (V) of this paragraph (I), for ~~any~~ THE income tax year commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2001, if, based upon the financial report prepared in accordance with section 24-77-106.5, C.R.S., the controller certifies 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, an amount equal to the aggregate of any interest income, dividend income, and net capital gains to the extent included in federal taxable income and not otherwise subtracted from federal taxable income pursuant to this subsection (4) and section 39-22-518, but not to exceed one thousand two hundred dollars in any taxable year. In the case of two individuals filing a joint return or a qualified individual filing as a surviving spouse, the amount

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

subtracted from federal taxable income shall not exceed two thousand four hundred dollars in any taxable year. For purposes of this paragraph (I), "net capital gains" means net capital gain as defined in section 1222 (11) of the internal revenue code.

(III) 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~~ THE 1999-2000 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 twenty million dollars, as adjusted pursuant to subparagraph (IV) of this paragraph (I), then the state income tax modification authorized by subparagraph (I) of this paragraph (I) shall not be allowed. ~~for the income tax year in which said state fiscal year ended.~~

(IV) (A) ~~No later than October 1 of any given calendar year commencing on or after January 1, 2000~~ OCTOBER 1, 2000, the executive director of the department of revenue shall ~~annually~~ adjust the dollar amount specified in subparagraph (III) of this paragraph (I) to reflect the rate of growth of Colorado personal income for the 1999 calendar year. ~~immediately preceding the calendar year in which such adjustment is made.~~ For purposes of this sub-subparagraph (A), "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 1999 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~~ THE 1998 calendar year. ~~prior to the calendar year immediately preceding the calendar year in which the adjustment is made.~~

(B) Upon calculating the adjustment of said dollar amount in accordance with sub-subparagraph (A) of this subparagraph (IV), 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~~ OCTOBER 1, 2000.

(V) If one or more ballot questions that seek authorization for the state to retain and spend all or any portion of the amount of excess state revenues for the ~~immediately preceding~~ 1999-2000 STATE fiscal year are submitted to the voters at a ~~statewide~~ THE 2000 GENERAL election, ~~to be held in November of any calendar year commencing on or after January 1, 2000,~~ the executive director of the department of revenue shall not determine whether the state income tax modification authorized by subparagraph (I) of this paragraph (I) shall be allowed ~~FOR THE INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2000, BUT PRIOR TO JANUARY 1, 2001,~~ and shall not promulgate rules containing said state income tax modification until the impact of the results of said election on the amount of the excess state revenues to be refunded is ascertained.

(1.5) (I) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPHS (III) TO (V) OF THIS PARAGRAPH (1.5), FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY

1, 2001, 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 EXCESS 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 EITHER HAVE 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, AN AMOUNT EQUAL TO THE AGGREGATE OF ANY INTEREST INCOME, DIVIDEND INCOME, AND NET CAPITAL GAINS TO THE EXTENT INCLUDED IN FEDERAL TAXABLE INCOME, AND NOT OTHERWISE SUBTRACTED FROM FEDERAL TAXABLE INCOME PURSUANT TO THIS SUBSECTION (4) AND SECTION 39-22-518, BUT NOT TO EXCEED ONE THOUSAND FIVE HUNDRED DOLLARS IN ANY TAXABLE YEAR. IN THE CASE OF TWO INDIVIDUALS FILING A JOINT RETURN OR A QUALIFIED INDIVIDUAL FILING AS A SURVIVING SPOUSE, THE AMOUNT SUBTRACTED FROM FEDERAL TAXABLE INCOME SHALL NOT EXCEED THREE THOUSAND DOLLARS IN ANY TAXABLE YEAR. FOR PURPOSES OF THIS PARAGRAPH (1.5), "NET CAPITAL GAINS" MEANS NET CAPITAL GAIN AS DEFINED IN SECTION 1222 (11) OF THE INTERNAL REVENUE CODE.

(II) ANY STATE INCOME TAX MODIFICATION ALLOWED PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (1.5) 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.

(III) 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 EXCESS STATE REVENUES FOR ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2000, 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 THREE HUNDRED FIFTY MILLION DOLLARS, AS ADJUSTED PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (1.5), THEN THE STATE INCOME TAX MODIFICATION AUTHORIZED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (1.5) SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR IN WHICH SUCH STATE FISCAL YEAR ENDED.

(IV) (A) NO LATER THAN OCTOBER 1 OF ANY GIVEN CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2001, THE EXECUTIVE DIRECTOR SHALL ANNUALLY ADJUST THE DOLLAR AMOUNT SPECIFIED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (1.5) 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 SUB-SUBPARAGRAPH (A), "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.

(B) UPON CALCULATING THE ADJUSTMENT OF SAID DOLLAR AMOUNT IN ACCORDANCE WITH SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV), 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.

(C) 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 SUB-SUBPARAGRAPH (C) SHALL BE CONCLUDED NO LATER THAN TWENTY-FIVE DAYS AFTER RECEIPT OF SUCH WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR.

(D) IF THE EXECUTIVE COMMITTEE DISAPPROVES ANY ADJUSTMENT OF SAID DOLLAR AMOUNT CALCULATED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS SUBPARAGRAPH (IV), 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 SUB-SUBPARAGRAPH (D) SHALL BE CALCULATED IN ACCORDANCE WITH THE PROVISIONS OF SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV).

(E) FOR THE PURPOSE OF DETERMINING WHETHER THE STATE INCOME TAX MODIFICATION AUTHORIZED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (1.5) 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 SUB-SUBPARAGRAPH (C) OF THIS SUBPARAGRAPH (IV) OR OTHERWISE SPECIFIED PURSUANT TO SUB-SUBPARAGRAPH (D) OF THIS SUBPARAGRAPH (IV).

(V) IF ONE OR MORE BALLOT QUESTIONS THAT SEEK AUTHORIZATION FOR THE STATE TO RETAIN AND SPEND ALL OR ANY PORTION OF THE AMOUNT OF EXCESS STATE REVENUES FOR THE IMMEDIATELY PRECEDING STATE FISCAL YEAR 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, THE EXECUTIVE DIRECTOR SHALL NOT DETERMINE WHETHER THE STATE INCOME TAX MODIFICATION AUTHORIZED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (1.5) SHALL BE ALLOWED FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2001, AND SHALL NOT PROMULGATE RULES CONTAINING SAID STATE INCOME TAX MODIFICATION UNTIL THE IMPACT OF THE RESULTS OF SAID ELECTION ON THE AMOUNT OF THE EXCESS STATE REVENUES TO BE REFUNDED IS ASCERTAINED.

(VI) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT EXCLUDING CERTAIN INTEREST INCOME, DIVIDEND INCOME, AND NET CAPITAL GAINS FROM FEDERAL TAXABLE INCOME FOR STATE INCOME TAX PURPOSES AS AUTHORIZED BY THIS PARAGRAPH (1.5) IS A REASONABLE METHOD OF REFUNDING A PORTION OF THE EXCESS STATE REVENUES REQUIRED TO BE REFUNDED IN ACCORDANCE WITH SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION.

SECTION 2. 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 22, 2000