

CHAPTER 209

TAXATION

HOUSE BILL 00-1348

BY REPRESENTATIVES Spradley, Young, Coleman, George, Johnson, Kester, May, Smith, Witwer, Alexander, Bacon, Fairbank, Gotlieb, Grossman, Hefley, King, McElhany, Morrison, Nuñez, Plant, Spence, and Tochtrop; also SENATORS Owen, Chlouber, Congrove, Feeley, Hernandez, Hillman, Linkhart, Matsunaka, Musgrave, Pascoe, Phillips, Reeves, Rupert, and Sullivan.

AN ACT

CONCERNING THE STATE INCOME TAX CREDIT FOR TAXPAYERS WHO DONATE REAL PROPERTY INTERESTS FOR CONSERVATION PURPOSES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 39-22-522 (4), (5), and (6), Colorado Revised Statutes, are amended and the said 39-22-522 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

39-22-522. Credit against tax - conservation easements. (4) (a) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to the fair market value of the donated portion of such conservation easement in gross when created. The amount of the credit allowed pursuant to this subsection (4) shall not exceed one hundred thousand dollars per donation.

(b) IN THE CASE OF A PARTNERSHIP, S CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY THAT DONATES A CONSERVATION EASEMENT AS AN ENTITY, THE AMOUNT OF THE CREDIT ALLOWED PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL BE ALLOCATED TO THE ENTITY'S PARTNERS OR SHAREHOLDERS IN PROPORTION TO THE PARTNERS' OR SHAREHOLDERS' DISTRIBUTIVE SHARES OF INCOME FROM SUCH ENTITY.

(5) (a) If the tax credit provided in this section exceeds the amount of income tax due on the income of the taxpayer for the taxable year, the amount of the credit not

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

used as an offset against income taxes in said income tax year AND NOT REFUNDED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (5) may be carried forward and applied against the income tax due in each of the twenty succeeding income tax years but shall be first applied against the income tax due for the earliest of the income tax years possible. Any amount of the credit that is not used after said period shall not be refundable.

(b) (I) SUBJECT TO THE REQUIREMENTS SPECIFIED IN SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (b), FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2000, IF THE AMOUNT OF THE TAX CREDIT ALLOWED IN OR CARRIED FORWARD TO ANY TAX YEAR PURSUANT TO THIS SECTION EXCEEDS THE AMOUNT OF INCOME TAX DUE ON THE INCOME OF THE TAXPAYER FOR THE YEAR, THE TAXPAYER MAY ELECT TO HAVE THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET AGAINST INCOME TAXES IN SAID INCOME TAX YEAR REFUNDED TO THE TAXPAYER.

(II) A TAXPAYER MAY ELECT TO CLAIM A REFUND PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) ONLY 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 THE STATE FISCAL YEAR ENDING IN THE INCOME TAX YEAR FOR WHICH THE REFUND IS CLAIMED 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.

(III) IF ANY REFUND IS CLAIMED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THEN THE AGGREGATE AMOUNT OF THE REFUND AND AMOUNT OF THE CREDIT USED AS AN OFFSET AGAINST INCOME TAXES FOR THAT INCOME TAX YEAR SHALL NOT EXCEED TWENTY THOUSAND DOLLARS FOR THAT INCOME TAX YEAR. NOTHING IN THIS SUBPARAGRAPH (III) SHALL LIMIT A TAXPAYER'S ABILITY TO CLAIM A CREDIT AGAINST TAXES DUE IN EXCESS OF TWENTY THOUSAND DOLLARS IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION.

(6) A taxpayer may claim only one tax credit under this section per income tax year. A taxpayer who has carried forward OR ELECTED TO RECEIVE A REFUND OF part of the tax credit in accordance with subsection (5) of this section shall not claim an additional tax credit under this section for any income tax year in which the taxpayer applies the amount carried forward against income tax due OR RECEIVES A REFUND. NEITHER A TAXPAYER WHO HAS TRANSFERRED A CREDIT TO A TRANSFEREE PURSUANT TO SUBSECTION (7) OF THIS SECTION NOR THE TRANSFEREE TO WHOM THE CREDIT WAS TRANSFERRED SHALL CLAIM AN ADDITIONAL TAX CREDIT UNDER THIS SECTION FOR ANY INCOME TAX YEAR IN WHICH THE TRANSFEREE USES SUCH TRANSFERRED CREDIT.

(7) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2000, A TAXPAYER MAY TRANSFER ALL OR A PORTION OF A TAX CREDIT GRANTED PURSUANT TO SUBSECTION (2) OF THIS SECTION TO ANOTHER TAXPAYER FOR SUCH OTHER TAXPAYER, AS TRANSFEREE, TO APPLY AS A CREDIT AGAINST THE TAXES IMPOSED BY THIS ARTICLE SUBJECT TO THE FOLLOWING LIMITATIONS:

(a) THE TAXPAYER MAY ONLY TRANSFER SUCH PORTION OF THE TAX CREDIT AS THE

TAXPAYER HAS NOT APPLIED AGAINST THE INCOME TAXES IMPOSED BY THIS ARTICLE;

(b) THE TAXPAYER MAY TRANSFER THE TAX CREDIT TO MORE THAN ONE TRANSFEREE; EXCEPT THAT IN NO EVENT SHALL A CREDIT BE TRANSFERRED IN AN AMOUNT OF LESS THAN TWENTY THOUSAND DOLLARS;

(c) A TRANSFEREE MAY NOT ELECT TO HAVE ANY TRANSFERRED CREDIT REFUNDED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION; AND

(d) FOR ANY TAX YEAR IN WHICH A TAX CREDIT IS TRANSFERRED PURSUANT TO THIS SUBSECTION (7), BOTH THE TAXPAYER AND THE TRANSFEREE SHALL FILE WRITTEN STATEMENTS WITH THEIR INCOME TAX RETURNS SPECIFYING THE AMOUNT OF THE TAX CREDIT THAT HAS BEEN TRANSFERRED. A TRANSFEREE MAY NOT CLAIM A CREDIT TRANSFERRED PURSUANT TO THIS SUBSECTION (7) UNLESS THE TAXPAYER'S WRITTEN STATEMENT VERIFIES THE AMOUNT OF THE TAX CREDIT CLAIMED BY THE TRANSFEREE.

(8) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE MAY PROMULGATE RULES FOR THE IMPLEMENTATION OF THIS SECTION. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

SECTION 2. Appropriation - adjustment in 2000 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, for the fiscal year beginning July 1, 2000, the sum of sixty-nine thousand three hundred dollars (\$69,300), or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriations act for the fiscal year beginning July 1, 2000, shall be adjusted as follows:

(a) The general fund appropriation to the capital construction fund outlined in section 3 (1) (f) is reduced by sixty-nine thousand three hundred dollars (\$69,300).

(b) The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by sixty-nine thousand three hundred dollars (\$69,300).

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: May 24, 2000