

## CHAPTER 217

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**TAXATION**

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**HOUSE BILL 00-1104**

BY REPRESENTATIVES T. Williams, Bacon, Chavez, Coleman, Fairbank, Gagliardi, Gordon, Gotlieb, Grossman, Hagedorn, Hefley, Keller, Lawrence, Lee, Leyba, Mace, May, McElhany, Mitchell, Morrison, Paschall, Plant, Saliman, Scott, Sinclair, Stengel, Swenson, Tapia, Tate, Tupa, Veiga, Vigil, Webster, S. Williams, Windels, Young, and Zimmerman; also SENATORS Owen, Chlouber, and Sullivant.

**AN ACT**

CONCERNING THE ESTABLISHMENT OF A CREDIT AGAINST STATE INCOME TAX FOR EXPENSES INCURRED BY INDIVIDUALS FOR HEALTH BENEFIT PLANS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

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

**39-22-125. Credit for health benefit plans - definitions - mechanism to refund excess state revenues.** (1) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION AND SUBJECT TO THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2000, 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 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, ANY RESIDENT INDIVIDUAL WHO INCURS AN EXPENSE IN PURCHASING OR MAKING A PAYMENT UPON A HEALTH BENEFIT PLAN FOR THE RESIDENT INDIVIDUAL OR THE RESIDENT INDIVIDUAL'S SPOUSE OR DEPENDENTS SHALL BE ALLOWED A CREDIT AGAINST THE INCOME TAXES DUE ON THE RESIDENT INDIVIDUAL'S INCOME UNDER THIS ARTICLE IF:

(I) (A) THE RESIDENT INDIVIDUAL OR THE RESIDENT INDIVIDUAL'S SPOUSE OR

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

DEPENDENTS WERE NOT COVERED BY AN INDIVIDUAL HEALTH BENEFIT PLAN OR AN EMPLOYEE OR GROUP HEALTH BENEFIT PLAN DURING ANY PORTION OF THE INCOME TAX YEAR IMMEDIATELY PRECEDING THE INCOME TAX YEAR FOR WHICH THE CREDIT IS BEING CLAIMED; OR

(B) THE RESIDENT INDIVIDUAL WAS ALLOWED OR WAS ELIGIBLE TO CLAIM THE CREDIT ALLOWED PURSUANT TO THIS SUBSECTION (1) FOR THE INCOME TAX YEAR IMMEDIATELY PRECEDING THE INCOME TAX YEAR FOR WHICH THE CREDIT IS BEING CLAIMED; AND

(II) (A) FOR A RESIDENT INDIVIDUAL WITH NO DEPENDENTS FILING A SINGLE RETURN, THE RESIDENT INDIVIDUAL'S FEDERAL ADJUSTED GROSS INCOME DOES NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE INCOME TAX YEAR FOR WHICH THE CREDIT IS BEING CLAIMED; OR

(B) FOR TWO RESIDENT INDIVIDUALS WITH NO DEPENDENTS FILING A JOINT RETURN OR TWO MARRIED RESIDENT INDIVIDUALS WITH NO DEPENDENTS FILING SEPARATE RETURNS, THE RESIDENT INDIVIDUALS' FEDERAL ADJUSTED GROSS INCOME DOES NOT EXCEED THIRTY THOUSAND DOLLARS FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE INCOME TAX YEAR FOR WHICH THE CREDIT IS BEING CLAIMED.

(C) FOR A RESIDENT INDIVIDUAL WITH DEPENDENTS FILING A SINGLE RETURN, TWO RESIDENT INDIVIDUALS WITH DEPENDENTS FILING A JOINT RETURN, OR TWO MARRIED RESIDENT INDIVIDUALS WITH DEPENDENTS FILING SEPARATE RETURNS, THE RESIDENT INDIVIDUALS' FEDERAL ADJUSTED GROSS INCOME DOES NOT EXCEED THIRTY-FIVE THOUSAND DOLLARS FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE INCOME TAX YEAR FOR WHICH THE CREDIT IS BEING CLAIMED.

(b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, THE CREDIT SHALL BE AN AMOUNT EQUAL TO THE AMOUNT PAID FOR SUCH HEALTH BENEFIT PLAN DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED; EXCEPT THAT THE AMOUNT OF THE CREDIT CLAIMED PURSUANT TO THIS SECTION SHALL NOT EXCEED FIVE HUNDRED DOLLARS FOR THE TAXABLE YEAR FOR EACH HEALTH BENEFIT PLAN FOR WHICH THE CREDIT IS CLAIMED.

(c) FOR PURPOSES OF THIS SECTION, "HEALTH BENEFIT PLAN" MEANS ANY HEALTH BENEFIT PLAN, AS DEFINED IN SECTION 10-16-102 (21), C.R.S., THAT IS ACQUIRED INDIVIDUALLY BY A TAXPAYER.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY:

(a) THE CREDIT AUTHORIZED BY THIS SECTION SHALL NOT BE ALLOWED FOR ANY AMOUNT PAID BY A TAXPAYER FOR A HEALTH BENEFIT PLAN DURING ANY GIVEN TAXABLE YEAR THAT IS DEDUCTED FROM FEDERAL ADJUSTED GROSS INCOME FOR THE SAME TAXABLE YEAR PURSUANT TO THE INTERNAL REVENUE CODE; AND

(b) THE CREDIT AUTHORIZED BY THIS SECTION SHALL NOT BE ALLOWED FOR ANY AMOUNT PAID BY A TAXPAYER OR AN EMPLOYER OF THE TAXPAYER DURING ANY GIVEN TAXABLE YEAR FOR AN EMPLOYEE OR GROUP HEALTH BENEFIT PLAN FOR THE TAXPAYER OR THE TAXPAYER'S SPOUSE OR DEPENDENTS THAT IS PROVIDED THROUGH

THE TAXPAYER'S EMPLOYER.

(c) NO MORE THAN ONE CREDIT AUTHORIZED BY THIS SECTION SHALL BE ALLOWED FOR ANY ONE HOUSEHOLD.

(3) THE CREDIT ALLOWED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION SHALL NOT EXCEED THE AMOUNT OF INCOME TAXES DUE ON THE TAXPAYER'S INCOME FOR THE INCOME TAX YEAR FOR WHICH THE CREDIT IS CLAIMED AND THE AMOUNT OF THE CREDIT NOT USED TO OFFSET INCOME TAXES SHALL NOT BE CARRIED FORWARD AS A CREDIT AGAINST THE TAXPAYER'S SUBSEQUENT YEARS' INCOME TAX LIABILITY AND SHALL NOT BE REFUNDED TO THE TAXPAYER.

(4) ANY CREDIT ALLOWED FOR ANY GIVEN TAXABLE YEAR PURSUANT TO THIS SECTION SHALL BE PUBLISHED IN RULES PROMULGATED BY THE EXECUTIVE DIRECTOR IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE INCLUDED IN INCOME TAX FORMS FOR THAT TAXABLE YEAR.

(5) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT AN INCOME TAX CREDIT FOR HEALTH BENEFIT PLAN EXPENSES 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.

(6) (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 THE STATE FISCAL YEAR COMMENCING ON 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 STATE FISCAL YEAR BY LESS THAN FOUR HUNDRED MILLION DOLLARS, THEN THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR COMMENCING ON JANUARY 1, 2000.

(b) 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, 2000, EXCEEDS THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR THAT STATE FISCAL YEAR BY LESS THAN FOUR HUNDRED MILLION DOLLARS, AS ADJUSTED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (6), THEN THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR IN WHICH SAID FISCAL YEAR ENDED.

(c) (I) NO LATER THAN OCTOBER 1 OF ANY GIVEN CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2001, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL ANNUALLY ADJUST THE DOLLAR AMOUNT SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (6) 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 (c), THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE 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 OF THE LEGISLATIVE COUNCIL 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 OF THE DEPARTMENT OF REVENUE. 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) (A) IF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL DISAPPROVES ANY ADJUSTMENT OF SAID DOLLAR AMOUNT CALCULATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE PURSUANT TO THIS PARAGRAPH (c), 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 (A) SHALL BE CALCULATED IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH (c).

(B) FOR THE PURPOSE OF DETERMINING WHETHER THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION IS TO BE ALLOWED FOR ANY GIVEN INCOME TAX YEAR, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL NOT UTILIZE ANY ADJUSTED DOLLAR AMOUNT THAT HAS NOT BEEN APPROVED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) OR OTHERWISE SPECIFIED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV).

(V) 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 STATE REVENUES FOR THE STATE FISCAL YEAR ENDING DURING SAID CALENDAR YEAR, THE

EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL NOT DETERMINE WHETHER THE CREDIT AUTHORIZED BY SUBSECTION (1) OF THIS SECTION SHALL BE ALLOWED AND SHALL NOT PROMULGATE RULES CONTAINING SAID CREDIT UNTIL THE IMPACT OF THE RESULTS OF SAID ELECTION OF THE AMOUNT OF EXCESS STATE REVENUES TO BE REFUNDED IS ASCERTAINED.

**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 one hundred forty-four thousand three hundred dollars (\$144,300), 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 one hundred forty-four thousand three hundred dollars (\$144,300).

(b) The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by one hundred forty-four thousand three hundred dollars (\$144,300).

**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 25, 2000