

## CHAPTER 133

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**TAXATION**

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**HOUSE BILL 01-1364**

BY REPRESENTATIVE(S) Fairbank and Young;  
also SENATOR(S) Takis.

**AN ACT**

CONCERNING THE MODIFICATION OF STATUTORY PROVISIONS AFFECTING THE ADMINISTRATION OF  
STATE INCOME TAX RETURNS.

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

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) While implementing state income tax statutes enacted or amended in recent years, the Colorado department of revenue has discovered technical errors in said statutes that need to be corrected to allow for the administration of said statutes in accordance with the original intent of the general assembly when enacting or amending said statutes; and

(b) The changes to the state income tax statutes proposed by this act are intended only to clarify and make technical corrections to existing state income tax laws and are not intended to modify or otherwise alter the substance of said laws.

**SECTION 2.** 39-22-104 (3) (d) (II) and (4) (k), Colorado Revised Statutes, are amended to read:

**39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions.** (3) There shall be added to the federal taxable income:

(d) (II) For income tax years beginning on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who deduct state income taxes pursuant to section 164 (a) (3) of the internal revenue code, an amount equal to the deduction claimed; except that such amount shall be limited to the amount required to reduce the federal itemized amount computed under

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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.*

section 161 of the internal revenue code to an amount equal to double the amount of the basic standard deduction allowable under section 63 (c) (2) of the internal revenue code in the case of an individual federal return for an individual who is not the head of a household PLUS ANY ADDITIONAL STANDARD DEDUCTION ALLOWABLE UNDER SECTION 63 (c) (3) OF THE INTERNAL REVENUE CODE, IF APPLICABLE.

(4) There shall be subtracted from federal taxable income:

(k) For income tax years commencing on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who claim itemized deductions in an amount that is greater than the amount of the basic standard deduction allowable under section 63 (c) (2) of the internal revenue code PLUS ANY ADDITIONAL STANDARD DEDUCTION ALLOWABLE UNDER SECTION 63 (c) (3) OF THE INTERNAL REVENUE CODE, IF APPLICABLE, in the case of a joint federal return, but less than double the amount of the basic standard deduction allowable under section 63 (c) (2) of the internal revenue code PLUS ANY ADDITIONAL STANDARD DEDUCTION ALLOWABLE UNDER SECTION 63 (c) (3) OF THE INTERNAL REVENUE CODE, IF APPLICABLE, in the case of an individual federal return for an individual who is not the head of a household, an amount equal to the difference between an amount equal to double the amount of such basic standard deduction allowable in the case of an individual federal return for an individual who is not the head of a household PLUS ANY ADDITIONAL STANDARD DEDUCTION ALLOWABLE TO EITHER INDIVIDUAL and the amount of the itemized deductions claimed by the resident individuals.

**SECTION 3.** 39-22-122 (2) (c), Colorado Revised Statutes, is amended to read:

**39-22-122. Long-term care insurance credit.** (2) Notwithstanding any other provision of this section to the contrary, a credit shall only be allowed to:

(c) Two individuals filing a joint return with a federal taxable income of less than one hundred thousand dollars for the tax year for which the credit is claimed if claiming the credit for two policies OR FOR A JOINT POLICY THAT COVERS EACH INDIVIDUAL SEPARATELY.

**SECTION 4.** 39-22-126 (4) (a), (4) (d), (6), (7), and (10) (a), Colorado Revised Statutes, are amended to read:

**39-22-126. Credit for health care professionals practicing in rural health care professional shortage areas - legislative declaration - definitions.**

(4) Notwithstanding any other provision of this section, the credit created by this section shall only be allowed when the taxpayer:

(a) Is a health care professional PRACTICING AT LEAST TWENTY HOURS PER WEEK;

(d) Is a borrower on a student loan ISSUED UNDER A RECOGNIZED STUDENT LOAN PROGRAM, made to ~~him or her~~ AND USED BY THE TAXPAYER to finance higher education opportunities resulting in a ~~medical, physician assistant, or nursing~~ degree THAT IS REQUIRED TO ENABLE THE TAXPAYER TO BE LICENSED OR CERTIFIED AS A HEALTH CARE PROFESSIONAL. THE AMOUNT OF ANY LOAN SUBJECT TO THE CREDIT ALLOWED BY THIS SECTION SHALL BE THE SUM OF THE BALANCE DUE ON ANY SAID

LOAN AS OF THE BEGINNING OF THE FIRST INCOME TAX YEAR FOR WHICH THE CREDIT IS CLAIMED.

(6) To qualify for the credit provided by this section, the taxpayer shall submit a certification form with each income tax return. Such form shall be obtained from the department of public health and environment. The department shall certify that the taxpayer has satisfied the requirements for allowance of the credit as specified in subsections (3), (4), and (5) of this section. IN ADDITION, AS PART OF THE CERTIFICATION REQUIRED BY THIS SUBSECTION (6), THE FORM SHALL CONTAIN THE IDENTITY OF THE LOAN REFERENCED IN PARAGRAPH (d) OF SUBSECTION (4) OF THIS SECTION AND THE BALANCE DUE ON SAID LOAN AS OF THE BEGINNING OF THE FIRST INCOME TAX YEAR FOR WHICH THE CREDIT IS CLAIMED.

(7) Any taxpayer who has claimed the credit provided by this section and who EITHER moves out of a rural health care professional shortage area OR CEASES TO PRACTICE IN SUCH AREA during the period that such taxpayer was committed to reside and practice in such area shall repay the entire amount of the total credit claimed pursuant to this section for all years for which the credit was claimed. THE TAXPAYER SHALL REPORT THE RECAPTURE REQUIRED BY THIS SECTION BY INCREASING THE TAXPAYER'S INCOME TAX LIABILITY BY THE AMOUNT OF THE TOTAL CREDIT CLAIMED FOR THE YEAR IN WHICH THE RECAPTURE OCCURS.

(10) (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 ~~this subsection (10)~~ SUBSECTION (9) OF THIS SECTION 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 paragraph (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.

**SECTION 5.** 39-22-518 (5) (a), (5) (b) (I), (5) (b) (II), and (5) (b) (VI), Colorado Revised Statutes, are amended to read:

**39-22-518. Tax modification for net capital gains.** (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, 1998, ~~but before 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 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 ~~the~~ ANY 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 ~~that commenced on January 1, 1999~~, IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH SAID 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 ~~that commenced on January 1, 1999~~, 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 ~~that commenced on January 1, 1998~~, 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 ~~2000~~ OF THE CALENDAR YEAR.

(VI) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of ~~the~~ 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.

**SECTION 6.** 39-22-522 (1), (2), (3), (4), and (5) (b) (III), Colorado Revised Statutes, are amended to read:

**39-22-522. Credit against tax - conservation easements.** (1) For purposes of this section, "taxpayer" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article, A PARTNERSHIP, S CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY, ESTATE, OR TRUST THAT DONATES A CONSERVATION EASEMENT AS AN ENTITY, AND A PARTNER, MEMBER, AND SUBCHAPTER S SHAREHOLDER OF SUCH PASS-THROUGH ENTITY.

(2) For income tax years commencing on or after January 1, 2000, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in

section 38-30.5-104 (2), C.R.S. THE AMOUNT OF THE CREDIT SHALL NOT INCLUDE THE VALUE OF ANY PORTION OF AN EASEMENT ON REAL PROPERTY LOCATED IN ANOTHER STATE.

(3) In order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall file WITH THE DEPARTMENT OF REVENUE AT THE SAME TIME AS THE TAXPAYER FILES A RETURN FOR THE TAXABLE YEAR IN WHICH THE CREDIT IS CLAIMED A SUMMARY OF a qualified appraisal, as defined in ~~26 C.F.R. 1.170A-13 (c) (3) (1998), with the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed.~~ 26 C.F.R. 1.170A-13 (c) (4) (1998); HOWEVER, IF REQUESTED BY THE DEPARTMENT, THE TAXPAYER SHALL SUBMIT THE APPRAISAL ITSELF.

(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. IN NO EVENT SHALL A CREDIT CLAIMED BY A TAXPAYER FILING A JOINT FEDERAL RETURN OR THE SUM OF THE CREDITS CLAIMED BY TAXPAYERS FILING MARRIED SEPARATE FEDERAL RETURNS EXCEED THE DOLLAR LIMITATION SET FORTH IN THIS PARAGRAPH (a).

(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, MEMBERS, or shareholders in proportion to the partners', MEMBERS', or shareholders' distributive shares of income from such entity. THE TOTAL AGGREGATE AMOUNT OF THE CREDIT ALLOCATED TO SAID PARTNERS, MEMBERS, OR SHAREHOLDERS SHALL NOT EXCEED THE DOLLAR LIMITATION SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (4).

(5) (b) (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. IN THE CASE OF A PARTNERSHIP, S CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY THAT DONATES A CONSERVATION EASEMENT AS AN ENTITY, IF ANY REFUND IS CLAIMED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE AGGREGATE AMOUNT OF THE REFUND AND THE CREDIT CLAIMED BY THE PARTNERS, MEMBERS, OR SHAREHOLDERS OF THE ENTITY SHALL NOT EXCEED THE DOLLAR LIMITATION SET FORTH IN THIS SUBPARAGRAPH (III) 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.

**SECTION 7.** 39-22-524 (5), Colorado Revised Statutes, is amended to read:

**39-22-524. Tax credit for individuals contributing matching funds for individual development accounts - repeal.** (5) If the amount of the tax credit allowed under this section exceeds the amount of the income tax otherwise due on the

income of the charitable donor, the amount of the credit not used as an offset against income taxes ~~may~~ SHALL NOT be carried forward as a tax credit against subsequent years' income tax liability for a period not exceeding three years and shall be applied first to the earliest years possible. ~~Any amount of the tax credit that is not used during said period~~ AND shall ~~not be refundable~~ REFUNDED to the charitable donor.

**SECTION 8. 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: April 19, 2001