

CHAPTER 141

TAXATION

HOUSE BILL 01-1287

BY REPRESENTATIVE(S) Spradley, Cadman, Clapp, Cloer, Crane, Dean, Decker, Fairbank, Fritz, Garcia, Hefley, Hoppe, Jahn, Johnson, Kester, King, Larson, Lawrence, Lee, Mace, Miller, Nuñez, Paschall, Rhodes, Schultheis, Scott, Sinclair, Smith, Snook, Spence, Stafford, Stengel, Swenson, Tapia, Webster, White, Williams S., Williams T., Witwer, and Young;
also SENATOR(S) Perlmutter, Arnold, Cairns, Chlouber, Dennis, Dyer (Arapahoe), Epps, Fitz-Gerald, Hagedorn, Hanna, Hernandez, Hillman, Matsunaka, May, Musgrave, Nichol, Owen, Reeves, Taylor, and Teck.

AN ACT

CONCERNING BUSINESS PERSONAL PROPERTY TAX, AND, IN CONNECTION THEREWITH, INCREASING THE AMOUNT OF THE CREDIT AGAINST STATE TAXES FOR A PORTION OF BUSINESS PERSONAL PROPERTY TAX PAID AND MODIFYING THE ADMINISTRATION OF THE CREDIT.

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

SECTION 1. 39-22-124 (3), the introductory portion to 39-22-124 (4), 39-22-124 (4) (b), the introductory portions to 39-22-124 (5) and (5) (a), and 39-22-124 (5) (b) and (8) (c) (I), Colorado Revised Statutes, are amended, and the said 39-22-124 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

39-22-124. Tax credit against state taxes - legislative declaration - hearings and appeals. (3) (a) During ~~any~~ THE state fiscal year commencing on ~~or after~~ July 1, 2000, there shall be refunded to each qualified taxpayer a credit against state taxes in an amount specified in subsection (4) of this section, if:

(I) The revenue estimate prepared by the staff of the legislative council in June of the immediately preceding state fiscal year indicates that the amount of state revenues will exceed the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for such immediately preceding state fiscal year by one hundred seventy million dollars or more as adjusted pursuant to paragraph (c) of subsection (8) of this section; or

(II) The revenue estimate prepared by the staff of the legislative council in June of the immediately preceding state fiscal year indicates that the amount of state revenues

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

will not exceed the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for such immediately preceding state fiscal year by one hundred seventy million dollars or more but, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller subsequently certifies that the amount of state revenues for such immediately preceding state fiscal year actually exceeded the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution by one hundred seventy million dollars or more as adjusted pursuant to paragraph (c) of subsection (8) of this section.

(a.5) DURING ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2001, THERE SHALL BE REFUNDED TO EACH QUALIFIED TAXPAYER A CREDIT AGAINST STATE TAXES IN AN AMOUNT SPECIFIED IN SUBSECTION (4.5) OF THIS SECTION 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 IMMEDIATELY PRECEDING STATE FISCAL YEAR EXCEEDED THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION BY ONE HUNDRED SEVENTY MILLION DOLLARS OR MORE AS ADJUSTED PURSUANT TO PARAGRAPH (c) OF SUBSECTION (8) OF THIS SECTION.

(b) If neither the revenue estimate prepared by the staff of the legislative council in June of ~~any~~ THE state fiscal year commencing on ~~or after~~ July 1, 1999, nor the certification of the amount of state revenues prepared by the controller for such state fiscal year OR ANY SUBSEQUENT STATE FISCAL YEAR indicates that the amount of state revenues for such state fiscal year exceeds the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution by one hundred seventy million dollars or more as adjusted pursuant to paragraph (c) of subsection (8) of this section, then no refund shall be allowed pursuant to this section during the immediately succeeding state fiscal year.

(4) The amount of the credit against state taxes ~~allowed~~ TO BE REFUNDED under this section DURING THE STATE FISCAL YEAR COMMENCING ON JULY 1, 2000, for each qualified taxpayer shall be an amount equal to:

(b) Except as otherwise provided in subparagraph (III) of paragraph (a) of subsection (5) of this section, ~~and subparagraph (II) of paragraph (b) of subsection (5) of this section,~~ the lesser of eighty-six and sixty-three one-hundredths of one percent of the aggregate amount of personal property tax paid by the qualified taxpayer to all taxing jurisdictions in the immediately preceding state fiscal year or four hundred thirty-three dollars and fifteen cents.

(4.5) THE AMOUNT OF THE CREDIT AGAINST STATE TAXES TO BE REFUNDED UNDER THIS SECTION DURING ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2001, FOR EACH QUALIFIED TAXPAYER SHALL BE AN AMOUNT EQUAL TO:

(a) SIXTEEN PERCENT OF THE AGGREGATE AMOUNT OF PERSONAL PROPERTY TAX PAID BY THE QUALIFIED TAXPAYER TO ALL TAXING JURISDICTIONS IN THE STATE FISCAL YEAR IMMEDIATELY PRECEDING THE STATE FISCAL YEAR IN WHICH THE CREDIT IS REFUNDED; PLUS

(b) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (III) OF PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION, THE LESSER OF EIGHTY-FOUR PERCENT OF THE AGGREGATE AMOUNT OF PERSONAL PROPERTY TAX PAID BY THE QUALIFIED TAXPAYER TO ALL TAXING JURISDICTIONS IN THE IMMEDIATELY PRECEDING STATE FISCAL YEAR OR FIVE HUNDRED EIGHTY-EIGHT DOLLARS.

(5) To ensure that each qualified taxpayer receives the full amount of the credit allowed by ~~subsection (4)~~ SUBSECTION (4) OR (4.5) of this section, WHICHEVER IS APPLICABLE, as expeditiously as possible, the following procedures shall be followed:

(a) For ~~any~~ THE state fiscal year commencing on ~~or after~~ July 1, 1999, for which IF the revenue estimate prepared by the staff of the legislative council in June of such state fiscal year indicates that the amount of state revenues will exceed the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for such state fiscal year by one hundred seventy million dollars or more as adjusted pursuant to paragraph (c) of subsection (8) of this section:

(b) For any state fiscal year commencing on or after July 1, ~~1999~~ 2000, for which ~~the revenue estimate prepared by the staff of the legislative council in June of such state fiscal year indicates that the amount of state revenues will not exceed the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for such state fiscal year by one hundred seventy million dollars or more as adjusted pursuant to paragraph (c) of subsection (8) of this section but for which, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller subsequently certifies that the amount of state revenues for such~~ THE immediately preceding state fiscal year actually exceeded the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution by one hundred seventy million dollars or more as adjusted pursuant to paragraph (c) of subsection (8) of this section:

(I) (A) No later than October 1 of the state fiscal year immediately succeeding such state fiscal year, EACH COUNTY ASSESSOR SHALL PROVIDE TO THE DEPARTMENT OF REVENUE THE NAME, ADDRESS, SCHEDULE NUMBER OR NUMBERS, AMOUNT OF PERSONAL PROPERTY TAX PAID, AND TAXPAYER IDENTIFICATION NUMBER, IF AVAILABLE, FOR EACH QUALIFIED TAXPAYER WHO WAS REQUIRED TO LIST ALL OF THE TAXPAYER'S TAXABLE PERSONAL PROPERTY WITHIN THE COUNTY ON A SCHEDULE OR STATEMENTS OR EXHIBITS ATTACHED TO A SCHEDULE IN ACCORDANCE WITH SECTION 39-5-107 (1) OR FOR WHOM THE PROPERTY TAX ADMINISTRATOR HAS DETERMINED THE ACTUAL VALUE OF TAXABLE PROPERTY WITHIN THE COUNTY PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF THIS TITLE.

~~(A) Each county treasurer shall provide to the department of revenue the name, address, schedule number or numbers, and amount of personal property tax paid for each qualified taxpayer who was required to list all of the taxpayer's taxable personal property within the county on a schedule or statements or exhibits attached to a schedule in accordance with section 39-5-107 (1) or for whom the property tax administrator has determined the actual value of taxable property within the county pursuant to the provisions of article 4 of this title; and~~

~~(B) Each county assessor shall provide to the department of revenue the name, schedule number or numbers, and taxpayer identification number, if available, for~~

~~each qualified taxpayer who was required to list all of the taxpayer's taxable personal property within the county on a schedule or statements or exhibits attached to a schedule in accordance with section 39-5-107 (1) or for whom the property tax administrator has determined the actual value of taxable property within the county pursuant to the provisions of article 4 of this title.~~

(B) NOTWITHSTANDING THE PROVISIONS OF SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), UPON MUTUAL AGREEMENT OF THE COUNTY ASSESSOR AND THE COUNTY TREASURER OF ANY COUNTY, THE COUNTY TREASURER SHALL PROVIDE TO THE DEPARTMENT OF REVENUE THE INFORMATION THAT WOULD ORDINARILY BE PROVIDED BY THE ASSESSOR PURSUANT TO SAID SUB-SUBPARAGRAPH (A).

(II) TO MAXIMIZE THE ACCURACY AND COMPLETENESS OF THE INFORMATION TO BE PROVIDED TO THE DEPARTMENT OF REVENUE PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b):

(A) EXCEPT FOR CASES IN WHICH A COUNTY TREASURER IS PROVIDING INFORMATION DIRECTLY TO THE DEPARTMENT OF REVENUE PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), NO LATER THAN SEPTEMBER 1 OF THE STATE FISCAL YEAR IMMEDIATELY SUCCEEDING SUCH STATE FISCAL YEAR, EACH COUNTY TREASURER SHALL PROVIDE TO THE COUNTY ASSESSOR OF THE SAME COUNTY, IN A FORM PRESCRIBED BY THE PROPERTY TAX ADMINISTRATOR THAT IS READILY ACCESSIBLE TO THE ASSESSOR, THE NAME, ADDRESS, SCHEDULE NUMBER OR NUMBERS, AND AMOUNT OF PERSONAL PROPERTY TAX PAID FOR EACH QUALIFIED TAXPAYER WHO WAS REQUIRED TO LIST ALL OF THE TAXPAYER'S TAXABLE PERSONAL PROPERTY WITHIN THE COUNTY ON A SCHEDULE OR STATEMENTS OR EXHIBITS ATTACHED TO A SCHEDULE IN ACCORDANCE WITH SECTION 39-5-107 (1) OR FOR WHOM THE PROPERTY TAX ADMINISTRATOR HAS DETERMINED THE ACTUAL VALUE OF TAXABLE PROPERTY WITHIN THE COUNTY PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF THIS TITLE.

~~(B) The property tax administrator shall provide to the county assessor of each county the taxpayer identification number for each qualified taxpayer for whom the property tax administrator has determined the actual value of taxable property within the county and any additional information that the county assessor REASONABLY requires. to maximize the accuracy and completeness of the information to be provided to the department pursuant to sub-subparagraph (B) of subparagraph (I) of this paragraph (b).~~

(III) No later than November 15 of the state fiscal year immediately succeeding such state fiscal year, the department of revenue shall refund to each qualified taxpayer the full amount of the credit allowed to the qualified taxpayer pursuant to paragraphs (a) and (b) of ~~subsection (4)~~ SUBSECTION (4.5) of this section; EXCEPT THAT, IF THE DEPARTMENT IS UNABLE TO MAKE A REFUND BY NOVEMBER 15 DUE TO AN UNAVOIDABLE DELAY IN PROCESSING THE CREDIT, INCLUDING BUT NOT LIMITED TO AN UNAVOIDABLE DELAY RESULTING FROM ANY COMPUTER OR CHECK PRINTING PROBLEM, THE DEPARTMENT MAY MAKE THE REFUND NO LATER THAN NOVEMBER 30 OF SAID STATE FISCAL YEAR. If the department does not have sufficient information to determine the amount of the portion of the credit allowed to the qualified taxpayer pursuant to paragraph (b) of ~~subsection (4)~~ SUBSECTION (4.5) of this section, the department shall refund only the amount of the portion of the credit allowed pursuant

to paragraph (a) of ~~subsection (4)~~ SUBSECTION (4.5) of this section and shall include with such refund a form that requires sufficient information to allow the department to determine the amount of the portion of the credit allowed to the taxpayer pursuant to paragraph (b) of ~~subsection (4)~~ SUBSECTION (4.5) of this section and that the qualified taxpayer can complete and return to the department to claim the portion of the credit allowed pursuant to paragraph (b) of ~~subsection (4)~~ SUBSECTION (4.5) of this section. If the qualified taxpayer returns a completed form to the department by April 30 of such immediately succeeding state fiscal year, the department shall refund to the qualified taxpayer the amount of the portion of the credit allowed by paragraph (b) of ~~subsection (4)~~ SUBSECTION (4.5) of this section no later than May 31 of such immediately succeeding state fiscal year. If the qualified taxpayer fails to return a completed form to the department by April 30, the department shall not refund the portion of the credit allowed by paragraph (b) of ~~subsection (4)~~ SUBSECTION (4.5) of this section.

(8) (c) (I) ~~No later than May 15 of any given calendar year commencing on or after January 1, 2000~~ MAY 15, 2000, the executive director of the department of revenue shall ~~annually~~ adjust the dollar amount specified in paragraphs (a) and (b) of subsection (3) of this section and paragraphs (a) and (b) of subsection (5) of this section to reflect the rate of growth of Colorado personal income for ~~the~~ THE 1999 calendar year. ~~immediately preceding the calendar year in which such adjustment is made.~~ 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 PARAGRAPH (a.5) OF SUBSECTION (3) OF THIS SECTION AND PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION TO REFLECT THE RATE OF GROWTH OF COLORADO PERSONAL INCOME FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE CALENDAR YEAR IN WHICH THE 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.

(10) (a) A QUALIFIED TAXPAYER WHO DID NOT RECEIVE A CREDIT PURSUANT TO THIS SECTION, BUT BELIEVES THAT A CREDIT SHOULD HAVE BEEN ALLOWED, OR A QUALIFIED TAXPAYER WHO RECEIVED A CREDIT PURSUANT TO THIS SECTION, BUT BELIEVES THAT THE AMOUNT OF THE CREDIT RECEIVED WAS LESS THAN THE AMOUNT TO WHICH THE QUALIFIED TAXPAYER WAS ENTITLED, MAY REQUEST A HEARING BY APPLICATION TO THE EXECUTIVE DIRECTOR NO LATER THAN JUNE 30 OF ANY STATE FISCAL YEAR IN WHICH CREDITS WERE REFUNDED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION. THE REQUEST FOR HEARING SHALL SET FORTH THE QUALIFIED TAXPAYER'S REASONS FOR CLAIMING THAT THE QUALIFIED TAXPAYER DID NOT RECEIVE THE FULL AMOUNT OF THE CREDIT TO WHICH THE QUALIFIED TAXPAYER WAS ENTITLED AND THE AMOUNT OF THE CLAIMED UNDERPAYMENT AND SHALL ALSO INCLUDE SUCH ADDITIONAL INFORMATION AS THE EXECUTIVE DIRECTOR MAY REQUIRE.

(b) THE EXECUTIVE DIRECTOR SHALL NOTIFY THE QUALIFIED TAXPAYER IN WRITING OF THE TIME AND PLACE FOR A HEARING NOT LESS THAN THIRTY DAYS BEFORE THE HEARING. IN ALL CASES WHERE THE CLAIM EXCEEDS TWO HUNDRED DOLLARS, THE HEARING SHALL BE HELD IN DENVER, COLORADO. IF THE CLAIM IS TWO HUNDRED DOLLARS OR LESS, THE HEARING MAY BE HELD, AT THE ELECTION OF THE QUALIFIED TAXPAYER, IN THE DISTRICT OFFICE OF THE DEPARTMENT OF REVENUE NEAREST TO THE PLACE WHERE THE QUALIFIED TAXPAYER RESIDES OR HAS HIS OR HER PRINCIPAL PLACE OF BUSINESS WITHIN COLORADO. IF THE QUALIFIED TAXPAYER DOES NOT RESIDE OR HAVE A PLACE OF BUSINESS IN COLORADO, THE HEARING SHALL BE HELD IN DENVER, COLORADO. THE HEARING SHALL BE HELD BEFORE THE EXECUTIVE DIRECTOR OR, IN CASES WHERE THE DISPUTED DEFICIENCY IS TWO HUNDRED DOLLARS OR LESS, BEFORE A PERSON WITHIN THE DEPARTMENT WHOM THE EXECUTIVE DIRECTOR SHALL DESIGNATE. THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE MAY ADMINISTER OATHS AND TAKE TESTIMONY. AT THE HEARING, THE QUALIFIED TAXPAYER SHALL PROVIDE PROOF, IN SUCH FORM AS THE EXECUTIVE DIRECTOR MAY REQUIRE, OF THE AMOUNT OF PERSONAL PROPERTY TAXES PAID IN EACH COUNTY ON THE QUALIFIED TAXPAYER'S PERSONAL PROPERTY DURING THE STATE FISCAL YEAR IMMEDIATELY PRECEDING THE STATE FISCAL YEAR FOR WHICH AN ADDITIONAL REFUND IS CLAIMED. THE QUALIFIED TAXPAYER MAY ALSO ASSERT ANY FACTS, MAKE ANY ARGUMENTS, AND FILE ANY BRIEFS OR AFFIDAVITS THAT THE QUALIFIED TAXPAYER BELIEVES RELEVANT. THE QUALIFIED TAXPAYER SHALL NOT BE ENTITLED TO ANY REHEARING BEFORE THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE.

(c) IN LIEU OF A REQUEST FOR HEARING, A QUALIFIED TAXPAYER MAY, AT HIS OR HER ELECTION AND WITHIN THE DEADLINES SPECIFIED FOR REQUESTING A HEARING, FILE A WRITTEN BRIEF AND SUCH OTHER WRITTEN MATERIALS OR DOCUMENTS AS THE QUALIFIED TAXPAYER DEEMS RELEVANT AND REQUEST THAT THE EXECUTIVE DIRECTOR CONSIDER THE QUALIFIED TAXPAYER'S CLAIM FOR A CREDIT WITHOUT A HEARING. THE QUALIFIED TAXPAYER SHALL ALSO PROVIDE PROOF, IN SUCH FORM AS THE EXECUTIVE DIRECTOR MAY REQUIRE, OF THE AMOUNT OF PERSONAL PROPERTY TAXES PAID IN EACH COUNTY ON THE QUALIFIED TAXPAYER'S PERSONAL PROPERTY DURING THE STATE FISCAL YEAR IMMEDIATELY PRECEDING THE STATE FISCAL YEAR FOR WHICH AN ADDITIONAL REFUND IS CLAIMED. THE EXECUTIVE DIRECTOR SHALL CONSIDER THE CLAIM AS IF THE WRITTEN MATERIAL SUBMITTED HAD BEEN PRESENTED AT A HEARING.

(d) BASED ON THE EVIDENCE PRESENTED AT THE HEARING OR FILED IN SUPPORT OF THE QUALIFIED TAXPAYER'S CLAIM, THE EXECUTIVE DIRECTOR SHALL MAKE A FINAL DETERMINATION WITHIN A REASONABLE TIME. THE EXECUTIVE DIRECTOR SHALL REFUND TO THE QUALIFIED TAXPAYER ANY CREDIT TO WHICH THE QUALIFIED TAXPAYER IS ENTITLED PLUS INTEREST AT THE RATE IMPOSED BY SECTION 39-21-110.5 FROM THE DATE THE CREDIT SHOULD HAVE BEEN REFUNDED TO THE DATE A WARRANT FOR A REFUND IS ISSUED.

(e) A QUALIFIED TAXPAYER MAY APPEAL ANY DENIAL OF A CLAIM FOR A CREDIT PURSUED UNDER THIS SUBSECTION (10) IN ACCORDANCE WITH SECTION 39-21-105; EXCEPT THAT A QUALIFIED TAXPAYER SHALL NOT BE REQUIRED TO COMPLY WITH SECTION 39-21-105 (4).

SECTION 2. 39-21-105 (1), Colorado Revised Statutes, is amended to read:

39-21-105. Appeals. (1) The taxpayer may appeal the final determination of the executive director of the department of revenue issued pursuant to ~~section 39-21-103 or 39-21-104~~ SECTION 39-21-103, 39-21-104, OR 39-22-124 (10) within thirty days ~~of~~ AFTER the mailing of such determination.

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: April 20, 2001