

## CHAPTER 165

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**TAXATION**

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**HOUSE BILL 02-1219**

BY REPRESENTATIVE(S) Larson, Coleman, Garcia, Groff, Mace, and Weddig;  
also SENATOR(S) Hernandez.

**AN ACT****CONCERNING FRIVOLOUS STATE INCOME TAX RETURNS.**

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

**SECTION 1.** 39-22-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**39-22-103. Definitions - construction of terms.** As used in this article, unless the context otherwise requires:

(10.8) "WITHHOLDING CERTIFICATE" MEANS A DOCUMENT , WHICH MAY BE IN PAPER OR ELECTRONIC FORM, UTILIZED BY AN EMPLOYEE TO INSTRUCT HIS OR HER EMPLOYER TO WITHHOLD TAXES AT A SPECIFIC RATE.

**SECTION 2.** Part 6 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**39-22-603.5. Frivolous returns.** (1) AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES, "FRIVOLOUS RETURN" MEANS A RETURN FILED BY ANY PERSON THAT PURPORTS TO BE A RETURN OF THE TAX IMPOSED BY THIS ARTICLE BUT THAT:

(a) DOES NOT CONTAIN INFORMATION ON WHICH THE SUBSTANTIAL CORRECTNESS OF THE RETURN MAY BE JUDGED; OR

(b) CONTAINS INFORMATION THAT ON ITS FACE INDICATES THAT THE RETURN IS SUBSTANTIALLY INCORRECT; AND

(c) THE CONDUCT DESCRIBED IN EITHER PARAGRAPH (a) OR (b) OF THIS SUBSECTION

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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.*

(1) IS DUE TO EITHER:

(I) A POSITION THAT IS FRIVOLOUS; OR

(II) A DESIRE, WHICH APPEARS ON THE PURPORTED RETURN, TO DELAY OR IMPEDE THE ADMINISTRATION OF STATE INCOME TAX LAWS.

(2) (a) IF ANY PERSON FILES A FRIVOLOUS RETURN, THE EXECUTIVE DIRECTOR MAY CALCULATE THE PERSON'S COLORADO TAXABLE INCOME AND MAKE AN ASSESSMENT BASED ON SUCH INFORMATION AS IS AVAILABLE AT THE TIME THE RETURN IS FILED.

(b) IF THE TAX CALCULATED BY THE EXECUTIVE DIRECTOR IS GREATER THAN THE AMOUNT THERETOFORE ASSESSED OR PAID, A NOTICE OF DEFICIENCY SHALL BE MAILED TO THE TAXPAYER BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5.

**SECTION 3.** 39-22-604 (16) (b), Colorado Revised Statutes, is amended to read:

**39-22-604. Withholding tax - requirement to withhold - tax lien - exemption from lien.** (16) (b) (I) To enforce the provisions of this section, the executive director may file with the employer a withholding certificate on behalf of the employee. Prior to the filing of such certificate, the executive director shall first notify the employee that the certificate previously filed by the employee is being examined and that the employee may submit satisfactory evidence pursuant to the internal revenue code within ten days of receipt of said notice as to the correct number of withholding exemptions and allowances. Should the executive director, after reviewing any evidence so submitted, find the certificate filed by the employee to be defective, the employer shall accept the certificate filed by the director in lieu of any certificate previously filed by the employee, and such certificate filed by the executive director shall thereafter form the basis for withholding wages as required by this section. The executive director may also require from the employer a copy of any withholding certificate signed by the employee.

(II) ANY EMPLOYER WHO FAILS TO PROVIDE A COPY OF ANY WITHHOLDING CERTIFICATE SIGNED BY THE EMPLOYEE REQUIRED BY THE EXECUTIVE DIRECTOR SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS. SUCH CIVIL PENALTY MAY BE ASSESSED AND COLLECTED BY THE EXECUTIVE DIRECTOR.

**SECTION 4.** 39-22-621 (2) (e), Colorado Revised Statutes, is amended to read:

**39-22-621. Interest and penalties.** (2) (e) If any person files a fraudulent, FRIVOLOUS, or willfully false return, there shall be collected as a penalty the sum of one hundred fifty dollars or one hundred fifty percent of the amount of the tax, if any, whichever is greater.

**SECTION 5. 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, 2002