

CHAPTER 304

TAXATION

HOUSE BILL 05-1317

BY REPRESENTATIVE(S) Romanoff, Benefield, Borodkin, Buescher, Carroll T., Coleman, Green, Madden, Marshall, McFadyen, Paccione, Plant, Riesberg, Todd, and Vigil;
also SENATOR(S) Johnson and Groff, Anderson, Bacon, Entz, Gordon, Grossman, Hanna, Isgar, Kester, Shaffer, Spence, Tapia, Taylor, Tochtrop, Tupa, Veiga, and Windels.

AN ACT

CONCERNING A TEMPORARY INCOME TAX RATE REDUCTION FOR THE PURPOSE OF REFUNDING STATE REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING FOR CERTAIN STATE FISCAL YEARS IN WHICH THE PROVISIONS OF HOUSE BILL 05-1194 ARE LAW.

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

SECTION 1. 39-22-104 (1.7), Colorado Revised Statutes, is amended to read:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions. (1.7) EXCEPT AS OTHERWISE PROVIDED IN SECTION 39-22-627, subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 2000, a tax of four and sixty-three one hundredths percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

SECTION 2. 39-22-301 (1) (d) (I) (I), Colorado Revised Statutes, is amended to read:

39-22-301. Corporate tax imposed. (1) (d) (I) A tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount of the net income of such C corporation during the year derived from sources within Colorado as set forth in the following schedule of rates:

(I) EXCEPT AS OTHERWISE PROVIDED IN SECTION 39-22-627, for income tax years commencing on or after January 1, 2000, four and sixty-three one hundredths percent of the Colorado net income.

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

39-22-627. Temporary adjustment of rate of income tax - refund of excess state revenues - authority of executive director. (1) (a) SUBJECT TO THE PROVISIONS OF THIS SECTION, IF, FOR ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2010, THE AMOUNT OF STATE REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION THAT ARE REQUIRED TO BE REFUNDED FOR SUCH STATE FISCAL YEAR EXCEEDS THE AMOUNT SPECIFIED IN PARAGRAPH (B) OF THIS SUBSECTION (1), THE EXECUTIVE DIRECTOR SHALL TEMPORARILY REDUCE THE STATE INCOME TAX RATE FOR THE INCOME TAX YEAR COMMENCING DURING THE CALENDAR YEAR IN WHICH THE STATE FISCAL YEAR ENDED FROM FOUR AND SIXTY-THREE ONE-HUNDREDTHS PERCENT OF THE FEDERAL TAXABLE INCOME OF EVERY INDIVIDUAL, ESTATE, TRUST, AND CORPORATION, AS SPECIFIED IN SECTIONS 39-22-104 (1.7) AND 39-22-301 (1) (d) (I) (I), TO FOUR AND ONE-HALF PERCENT OF THE FEDERAL TAXABLE INCOME OF EVERY INDIVIDUAL, ESTATE, TRUST, AND CORPORATION TO REFUND EXCESS STATE REVENUES THAT ARE REQUIRED TO BE REFUNDED PURSUANT TO SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION.

(b) IN ORDER FOR THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (1) TO TAKE EFFECT, THE AMOUNT OF STATE REVENUES REQUIRED TO BE REFUNDED FOR THE SPECIFIED STATE FISCAL YEAR SHALL EXCEED THE ESTIMATED AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE FROM FOUR AND SIXTY-THREE ONE-HUNDREDTHS PERCENT TO FOUR AND ONE-HALF PERCENT OF FEDERAL TAXABLE INCOME, AS DETERMINED PURSUANT TO THIS SECTION.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, NO LATER THAN OCTOBER 1, 2011, AND NO LATER THAN EACH OCTOBER 1 THEREAFTER OF ANY CALENDAR YEAR DURING WHICH IT IS CERTIFIED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-77-106.5, C.R.S., THAT STATE REVENUES EXCEED THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY SECTION 20 (7) (a) OF ARTICLE X OF THE STATE CONSTITUTION FOR THE STATE FISCAL YEAR ENDING IN THAT CALENDAR YEAR AND EXCEED ANY AMOUNT THAT THE VOTERS STATEWIDE HAVE AUTHORIZED THE STATE TO RETAIN AND SPEND FOR THE STATE FISCAL YEAR ENDING IN THAT CALENDAR YEAR, THE EXECUTIVE DIRECTOR SHALL ESTIMATE THE AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE FROM FOUR AND SIXTY-THREE ONE-HUNDREDTHS PERCENT TO FOUR AND ONE-HALF PERCENT OF FEDERAL TAXABLE INCOME FOR THE INCOME TAX YEAR COMMENCING DURING THE CALENDAR YEAR IN WHICH THE STATE FISCAL YEAR ENDED.

(3) IF ONE OR MORE BALLOT QUESTIONS ARE SUBMITTED TO THE VOTERS AT A STATEWIDE ELECTION TO BE HELD IN NOVEMBER OF ANY GIVEN CALENDAR YEAR 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 SHALL NOT REDUCE THE STATE INCOME TAX RATE UNTIL THE RESULTS OF SAID ELECTION ARE KNOWN SO THAT THE STATE INCOME TAX RATE MAY BE REDUCED ONLY IF, AFTER THE RESULTS OF SAID ELECTION, THE AMOUNT OF EXCESS STATE REVENUES REQUIRED TO BE

REFUNDED FOR THE STATE FISCAL YEAR EXCEEDS THE ESTIMATED AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS A RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE FROM FOUR AND SIXTY-THREE ONE-HUNDREDTHS PERCENT TO FOUR AND ONE-HALF PERCENT OF FEDERAL TAXABLE INCOME PURSUANT TO THIS SECTION.

(4) IN ESTIMATING THE AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL UTILIZE THE MOST RECENT DATA AVAILABLE FROM THE STAFF OF THE LEGISLATIVE COUNCIL REGARDING THE ESTIMATE OF STATE REVENUES GENERATED BY THE STATE INCOME TAX FOR THE APPLICABLE INCOME TAX YEAR.

(5) (a) UPON ESTIMATING THE AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE FOR ANY INCOME TAX YEAR IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, 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 ANY AMOUNT SO ESTIMATED AND THE BASIS FOR SUCH ESTIMATE. SUCH WRITTEN NOTIFICATION SHALL BE GIVEN WITHIN FIVE WORKING DAYS AFTER SUCH ESTIMATE IS COMPLETED, BUT SUCH WRITTEN NOTIFICATION SHALL BE GIVEN NO LATER THAN OCTOBER 1 OF THE CALENDAR YEAR.

(b) IT IS THE FUNCTION OF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL TO REVIEW AND APPROVE OR DISAPPROVE SUCH ESTIMATED AMOUNT WITHIN TWENTY DAYS OF RECEIPT OF SUCH WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR. ANY ESTIMATE OF THE AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE AS ESTIMATED PURSUANT TO THE PROVISIONS OF THIS SECTION 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 ESTIMATED AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE REDUCTION, SUCH AUTOMATIC APPROVAL SHALL NOT OCCUR UNLESS THE EXECUTIVE COMMITTEE DOES NOT APPROVE OR DISAPPROVE SUCH ESTIMATED AMOUNT AFTER THE CONCLUSION OF SUCH HEARING. ANY HEARING CONDUCTED BY THE EXECUTIVE COMMITTEE PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (b) SHALL BE HELD NO LATER THAN TWENTY-FIVE DAYS AFTER RECEIPT OF SUCH WRITTEN NOTIFICATION FROM THE EXECUTIVE DIRECTOR.

(c) (I) IF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL DISAPPROVES THE ESTIMATED AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE AS ESTIMATED BY THE EXECUTIVE DIRECTOR, THE EXECUTIVE COMMITTEE SHALL SPECIFY THE ESTIMATED AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE SO THAT THE EXECUTIVE DIRECTOR CAN DETERMINE WHETHER TO IMPLEMENT THE REDUCED STATE INCOME TAX RATE. ANY ESTIMATED AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE AS SPECIFIED BY THE EXECUTIVE COMMITTEE PURSUANT TO THIS SUBPARAGRAPH (I) SHALL BE ESTIMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(II) THE EXECUTIVE DIRECTOR SHALL NOT ADJUST THE STATE INCOME TAX RATE UNTIL THE ESTIMATED AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE ESTIMATE HAS BEEN APPROVED PURSUANT TO THE PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (5).

(d) ANY INCOME TAX RATE ADJUSTMENT MADE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE MADE BY RULES PROMULGATED BY THE EXECUTIVE DIRECTOR IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(6) 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 THE STATE REVENUES FOR ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2010, 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 AND EXCEEDS THE AMOUNT OF EXCESS STATE REVENUES THAT THE VOTERS STATEWIDE HAVE AUTHORIZED THE STATE TO RETAIN AND SPEND FOR THAT STATE FISCAL YEAR BY LESS THAN THE ESTIMATED AMOUNT BY WHICH STATE REVENUES WOULD BE DECREASED AS THE RESULT OF A REDUCTION IN THE STATE INCOME TAX RATE FROM FOUR AND SIXTY-THREE ONE-HUNDREDTHS PERCENT TO FOUR AND ONE-HALF PERCENT OF FEDERAL TAXABLE INCOME AS CALCULATED BY THE EXECUTIVE DIRECTOR PURSUANT TO SUBSECTION (2) OF THIS SECTION, THEN THE REDUCTION IN THE STATE INCOME TAX RATE ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR COMMENCING DURING THE CALENDAR YEAR IN WHICH THE STATE FISCAL YEAR ENDED.

(7) WHEN THE STATE INCOME TAX RATE IS REQUIRED TO BE TEMPORARILY REDUCED PURSUANT TO THIS SECTION AS A MEANS OF REFUNDING EXCESS STATE REVENUES AS REQUIRED BY SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION, FOR THE PURPOSE OF DETERMINING WHETHER THE AMOUNT OF EXCESS STATE REVENUES FOR THE MOST RECENTLY COMPLETED STATE FISCAL YEAR IS SUFFICIENT TO TRIGGER ANY OTHER METHOD OF REFUNDING EXCESS STATE REVENUES SPECIFIED BY LAW THAT IS ONLY USED WHEN EXCESS STATE REVENUES EXCEED A THRESHOLD AMOUNT, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE AMOUNT OF EXCESS STATE REVENUES FOR THE STATE FISCAL YEAR USED IN MAKING SUCH DETERMINATION SHALL BE THE DIFFERENCE BETWEEN THE AMOUNT OF EXCESS STATE REVENUES COLLECTED DURING THE STATE FISCAL YEAR ABOVE ANY AMOUNT OF EXCESS STATE REVENUES THAT THE VOTERS STATEWIDE HAVE AUTHORIZED THE STATE TO RETAIN AND SPEND AND THE AMOUNT OF SUCH EXCESS STATE REVENUES ESTIMATED TO BE REFUNDED THROUGH THE TEMPORARY REDUCTION IN THE STATE INCOME TAX RATE PURSUANT TO THIS SECTION.

(8) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT A TEMPORARY STATE INCOME TAX RATE REDUCTION 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.

SECTION 4. Effective date. This act shall take effect only if House Bill 05-1194 is enacted at the First Regular Session of the Sixty-fifth General Assembly, is approved by the people at the November 2005 statewide election, and becomes law.

SECTION 5. 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: June 6, 2005