

CHAPTER 57

TAXATION

HOUSE BILL 05-1125

BY REPRESENTATIVE(S) Vigil, Cloer, McCluskey, Benefield, Berens, Boyd, Crane, Merrifield, Paccione, Stafford, and Coleman;
also SENATOR(S) Mitchell, Sandoval, Taylor, and Teck.

AN ACT

CONCERNING THE AMOUNT OF EXCESS STATE REVENUES NECESSARY TO TRIGGER THE EXCLUSION FROM STATE TAXABLE INCOME OF CHARITABLE CONTRIBUTIONS MADE BY A NONITEMIZING TAXPAYER.

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

SECTION 1. 39-22-104 (4) (m), Colorado Revised Statutes, is amended to read:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions. (4) There shall be subtracted from federal taxable income:

(m) (I) Subject to the provisions of subparagraph (III) of this paragraph (m), for any income tax year commencing on or after January 1, 2001, ~~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 calendar 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,~~ for any individual who claims the basic standard deduction allowed under section 63 (c) (2) of the internal revenue code on the individual's federal return and, therefore, cannot claim an itemized deduction for charitable contributions pursuant to section 170 of the internal revenue code, an amount equal to the amount of any deduction based upon the aggregate amount of charitable contributions in excess of five hundred dollars that the individual could have claimed pursuant to section 170 of the internal revenue code if the individual had not claimed the basic standard deduction.

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

(II) Any state income tax modification allowed pursuant to the provisions of subparagraph (I) of this paragraph (m) 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.

(III) (A) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m) AND SUB-SUBPARAGRAPHS (A.5), (B), (B.5), AND (B.7) OF THIS SUBPARAGRAPH (III), 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, 2000~~, ENDING IN THAT CALENDAR YEAR 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 three hundred fifty million dollars, then the state income tax modification authorized by subparagraph (I) of this paragraph (m) shall not be allowed for the income tax year commencing on January 1, 2001~~. 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, THEN THE STATE INCOME TAX MODIFICATION AUTHORIZED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (m) SHALL BE ALLOWED FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2001.

(A.5) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), 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, 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 THREE HUNDRED FIFTY MILLION DOLLARS, THEN THE STATE INCOME TAX MODIFICATION AUTHORIZED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (m) SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR COMMENCING ON JANUARY 1, 2001.

(B) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), 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, 2001, BUT BEFORE JULY 1, 2005, 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 three hundred fifty million dollars, as adjusted pursuant to sub-subparagraphs (C), (D), (E), (F), and (G) of this subparagraph (III), then the state income tax modification authorized by subparagraph (I) of this paragraph (m) shall not be allowed for the income tax year in which said state fiscal year ended.

(B.5) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), 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, 2005, 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 ONE HUNDRED MILLION DOLLARS, THEN THE STATE INCOME TAX MODIFICATION AUTHORIZED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (m) SHALL

NOT BE ALLOWED FOR THE INCOME TAX YEAR IN WHICH SAID STATE FISCAL YEAR ENDED.

(B.7) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), 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, 2006, 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 ONE HUNDRED MILLION DOLLARS, AS ADJUSTED PURSUANT TO SUB-SUBPARAGRAPHS (C), (D), (E), (F), AND (G) OF THIS SUBPARAGRAPH (III), THEN THE STATE INCOME TAX MODIFICATION AUTHORIZED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (m) SHALL NOT BE ALLOWED FOR THE INCOME TAX YEAR IN WHICH SAID STATE FISCAL YEAR ENDED.

(C) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), no later than October 1 of any given calendar year commencing on or after January 1, 2001, BUT BEFORE JANUARY 1, 2006, the executive director ~~of the department of revenue~~ shall annually adjust the dollar amount specified in sub-subparagraph (B) of this subparagraph (III) 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. NO LATER THAN OCTOBER 1 OF ANY GIVEN CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2007, THE EXECUTIVE DIRECTOR SHALL ANNUALLY ADJUST THE DOLLAR AMOUNT SPECIFIED IN SUB-SUBPARAGRAPH (B.7) OF THIS SUBPARAGRAPH (III) 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 sub-subparagraph (C), "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.

(D) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), upon calculating the adjustment of said dollar amount in accordance with sub-subparagraph (C) of this subparagraph (III), 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 of the calendar year.

(E) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), it is the function of the executive committee of the legislative council to review and approve or disapprove the adjustment of the dollar amount required by sub-subparagraph (D) of this subparagraph (III) within twenty days after receipt of such written notification from the executive director. 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 sub-subparagraph (E) shall be concluded no later than twenty-five days after receipt of such written notification from the executive director.

(F) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), if the executive committee of the legislative council disapproves any adjustment of said dollar amount calculated by the executive director pursuant to sub-subparagraphs (C) and (D) of this subparagraph (III), 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 (F) shall be calculated in accordance with the provisions of sub-subparagraphs (C), (D), and (E) of this subparagraph (III).

(G) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), for the purpose of determining whether the income tax modification authorized by subparagraph (I) of this paragraph (m) is to be allowed for any given income tax year, the executive director shall not utilize any adjusted dollar amount that has not been approved pursuant to sub-subparagraph (E) of this subparagraph (III) or otherwise specified pursuant to sub-subparagraph (F) of this subparagraph (III).

(IV) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), if one or more ballot questions that seek authorization for the state to retain and spend all excess state revenues for the immediately preceding fiscal year are submitted to the voters at a statewide election to be held in November of any calendar year commencing on or after January 1, 2001, the executive director shall not determine whether the state income tax modification authorized by subparagraph (I) of this paragraph (m) shall be allowed and shall not promulgate rules containing said state income tax modification until the impact of the results of said election on the excess state revenues to be refunded is ascertained.

(V) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (VI) OF THIS PARAGRAPH (m), the general assembly hereby finds and declares that the state income tax modification authorized by subparagraph (I) of this paragraph (m) 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.

(VI) IF VOTERS APPROVE, BY A SIMPLE MAJORITY, AT THE NOVEMBER 2005 STATEWIDE ELECTION, A REVENUE CHANGE PURSUANT TO SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION, OR OTHERWISE MODIFY THE PROVISIONS OF SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION IN A MANNER THAT PROVIDES ADDITIONAL REVENUE FOR EXPENDITURE BY THE STATE, THEN THE STATE INCOME TAX MODIFICATION AUTHORIZED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (m) SHALL BE ALLOWED FOR EACH INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2006, REGARDLESS OF ANY AMOUNT OF EXCESS STATE REVENUES REQUIRED TO BE REFUNDED IN ACCORDANCE WITH SECTION 20 (7) (d) OF ARTICLE X OF THE STATE CONSTITUTION. IF SUCH REVENUE CHANGE OR MODIFICATION APPROVED BY THE VOTERS IS FOR A LIMITED TIME, AT THE END OF THAT PERIOD THE STATE

INCOME TAX MODIFICATION AUTHORIZED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (m) SHALL BE ALLOWED PURSUANT TO SUB-SUBPARAGRAPH (B.5) OR (B.7) OF SUBPARAGRAPH (III) OF THIS PARAGRAPH (m).

SECTION 2. 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.

Became Law: April 8, 2005