

CHAPTER 71

TAXATION

HOUSE BILL 09-1219

BY REPRESENTATIVE(S) Judd, Benefield, Fischer, Levy, Ryden, Todd;
also SENATOR(S) Sandoval.

AN ACT

CONCERNING THE INTEREST PAID TO TAXPAYERS ON CERTAIN TAX OVERPAYMENTS.

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

SECTION 1. 39-21-110, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-21-110. Interest on overpayments. (1.5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY, A PAYMENT NOT MADE INCIDENT TO A BONA FIDE AND ORDERLY DISCHARGE OF AN ACTUAL LIABILITY OR A LIABILITY REASONABLY ASSUMED TO BE IMPOSED BY LAW IS NOT AN OVERPAYMENT FOR THE PURPOSES OF THIS SECTION ONLY, AND INTEREST IS NOT PAYABLE ON THE PAYMENT. FOR PURPOSES OF THIS SUBSECTION (1.5), THE FOLLOWING BURDENS OF PROOF SHALL APPLY:

(a) IF A TAXPAYER'S TOTAL PAYMENTS ARE LESS THAN OR EQUAL TO TWICE THE AMOUNT OF THE ACTUAL TAX LIABILITY, THEN THE DEPARTMENT SHALL BEAR THE BURDEN OF PROVING, BY A PREPONDERANCE OF THE EVIDENCE, THAT SUCH PAYMENTS WERE NOT MADE INCIDENT TO A BONA FIDE AND ORDERLY DISCHARGE OF AN ACTUAL LIABILITY OR A LIABILITY REASONABLY ASSUMED TO BE IMPOSED BY LAW; AND

(b) IF A TAXPAYER'S TOTAL PAYMENTS ARE MORE THAN TWICE THE AMOUNT OF THE ACTUAL TAX LIABILITY, THEN THE TAXPAYER SHALL BEAR THE BURDEN OF PROVING, BY A PREPONDERANCE OF THE EVIDENCE, THAT SUCH PAYMENTS WERE MADE INCIDENT TO A BONA FIDE AND ORDERLY DISCHARGE OF AN ACTUAL LIABILITY OR A LIABILITY REASONABLY ASSUMED TO BE IMPOSED BY LAW.

SECTION 2. Repeal. 39-22-604 (9), Colorado Revised Statutes, is repealed as

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

follows:

39-22-604. Withholding tax - requirement to withhold - tax lien - exemption from lien - definitions. (9) ~~The department, after an audit of the annual income tax return of the employee, as otherwise provided for in this section, or in cases of returns which take longer than normal to process for reasons specified in section 39-22-622 (4), shall refund the amount deducted or withheld in excess of the tax liability of the employee, together with interest thereon at the rate imposed under section 39-21-110.5 from the fifteenth day of the seventh month following the close of the employee's taxable year for which the income tax return is filed.~~

SECTION 3. 39-22-622 (2) and (4), Colorado Revised Statutes, are amended to read:

39-22-622. Refunds. (2) (a) The department of revenue shall pay refunds within the applicable time period specified in paragraph (b) of this subsection (2). For purposes of this subsection (2), the date of filing shall be the date of receipt of any ~~personal~~ income tax return by the department of revenue; except that the date of filing of any ~~personal~~ income tax return received during the month of April shall be deemed to be May 1.

(b) (I) Refunds for ~~personal~~ income tax returns filed by January 31 of any given year shall be made within fourteen calendar days of the date of filing.

(II) Refunds for ~~personal~~ income tax returns filed after January 31 but prior to or on the last day of February of any given year shall be made within twenty-one calendar days of the date of filing.

(III) Refunds for ~~personal~~ income tax returns filed after the last day of February but prior to or on March 31 of any given year shall be made within twenty-eight calendar days of the date of filing.

(IV) Refunds for ~~personal~~ income tax returns filed after March 31 of any given year shall be made within forty-five calendar days of the date of filing.

(4) The provisions of subsection (2) of this section shall not apply to any return that is being audited or to any return that may take longer than normal to process due to the mathematical or clerical errors contained in said return or to unforeseen delays caused by the failure of processing equipment. Such determination shall be made in good faith by the department. ~~Any refund attributable to a return which takes longer than normal to process for reasons specified in this subsection (4) shall be subject to the requirements of section 39-22-604 (9).~~

SECTION 4. Applicability. This act shall apply to tax returns or claims for overpayment filed on or after the effective date of this act.

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: March 25, 2009