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An Act

SENATE BILL 14-019

BY SENATOR(S) Steadman, Aguilar, Guzman, Heath, Hodge, Jahn, Johnston, Jones, Kefalas, Kerr, Newell, Nicholson, Schwartz, Tochtrop, Todd, Ulibarri, Zenzinger, Carroll;
also REPRESENTATIVE(S) Moreno and Ginal, Becker, Court, Fields, Fischer, Foote, Hamner, Kraft-Tharp, Labuda, Lebsock, McLachlan, Melton, Mitsch Bush, Pabon, Peniston, Pettersen, Primavera, Rosenthal, Ryden, Salazar, Schafer, Singer, Young, Ferrandino.

CONCERNING THE STATE INCOME TAX FILING STATUS OF TWO TAXPAYERS
WHO MAY LEGALLY FILE A JOINT FEDERAL INCOME TAX RETURN.

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

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments**, 14-15-117 as follows:

14-15-117. Application of article to joint tax returns - legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT SOME PARTNERS IN A CIVIL UNION MAY LEGALLY HAVE THEIR FEDERAL TAXABLE INCOME DETERMINED ON EITHER SEPARATE FEDERAL TAX RETURNS OR ON A JOINT FEDERAL TAX RETURN. SINCE COLORADO INCOME TAX FILINGS ARE TIED TO THE FEDERAL INCOME TAX FORM BY REQUIRING TAXPAYERS TO PAY A PERCENTAGE OF THEIR FEDERAL TAXABLE INCOME AS THEIR STATE 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.

TAXES:

(a) PARTNERS IN A CIVIL UNION WHO HAVE THEIR FEDERAL TAXABLE INCOME DETERMINED ON SEPARATE FEDERAL TAX RETURNS MUST HAVE SUCH INCOME SEPARATELY DETERMINED FOR PURPOSES OF THE COLORADO INCOME TAX; AND

(b) PARTNERS IN A CIVIL UNION WHO HAVE THEIR FEDERAL TAXABLE INCOME DETERMINED ON A JOINT FEDERAL TAX RETURN MUST HAVE THEIR STATE TAXABLE INCOME DETERMINED BASED ON THEIR JOINT FEDERAL TAXABLE INCOME.

SECTION 2. In Colorado Revised Statutes, 39-21-108, **amend** (3) (a) (I) (A) as follows:

39-21-108. Refunds. (3) (a) (I) (A) Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax covered by articles 22 and 26 to 29 of this title, article 60 of title 34, C.R.S., and article 3 of title 42, C.R.S., and that: There is an unpaid balance of tax and interest accrued, according to the records of the executive director, owing by such taxpayer for any other period; there is an amount required to be repaid to the unemployment compensation fund pursuant to section 8-81-101 (4), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment by the division of unemployment insurance in the department of labor and employment; there is any unpaid child support debt as set forth in section 14-14-104, C.R.S., or child support arrearages that are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S., as certified by the department of human services; there are any unpaid obligations owing to the state as set forth in section 26-2-133, C.R.S., for overpayment of public assistance or medical assistance benefits, the amount of which has been determined to be owing as a result of final agency determination or judicial decision or that has been reduced to judgment, as certified by the department of human services; there is any unpaid loan or other obligation due to a state-supported institution of higher education as set forth in section 23-5-115, C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment, as certified by the appropriate institution; there is any unpaid loan due to the student loan division of the department of

higher education as set forth in section 23-3.1-104 (1) (p), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment, as certified by the division; there is any unpaid loan due to the collegeinvest division of the department of higher education as set forth in section 23-3.1-206, C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment; there is any outstanding judicial fine, fee, cost, or surcharge as set forth in section 16-11-101.8, C.R.S., or judicial restitution as set forth in section 16-18.5-106.8, C.R.S., the amount of which has been determined to be owing as a result of a final judicial department determination or certified by the judicial department as a judgment owed the state or a victim; there is any unpaid debt owing to the state or any agency thereof by such taxpayer, and that is found to be owing as a result of a final agency determination or the amount of which has been reduced to judgment and as certified by the controller; or the taxpayer is a qualified individual identified pursuant to section 39-22-120 (10) or 39-22-2003 (9), so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance or unpaid debt must be credited first to the unpaid balance of tax and interest accrued and then to the unpaid debt, and any excess of the overpayment must be refunded. If the taxpayer elects to designate his or her refund as a credit against a subsequent year's tax liability, the amount allowed to be so credited must be reduced first by the unpaid balance of tax and interest accrued and then by the unpaid debt. If the taxpayer filed a joint return, the executive director shall notify the ~~taxpayer's spouse~~ OTHER TAXPAYER NAMED ON THE JOINT RETURN that the portion of the overpayment that is generated by the ~~spouse's~~ OTHER TAXPAYER'S income will be refunded upon receipt of a request detailing said amount. As used in this section, unless the context otherwise requires, "agency" includes a state-supported institution of higher education or a political subdivision of the state under contract with central collection services.

SECTION 3. In Colorado Revised Statutes, 39-22-107, **amend** (1) and (2) as follows:

39-22-107. Income tax filing status. (1) If the federal taxable income of ~~a husband or wife, or both~~, TWO TAXPAYERS MAY LEGALLY BE DETERMINED ON A JOINT FEDERAL RETURN BUT ACTUALLY is determined on separate federal returns, such income for purposes of the Colorado income

tax shall be separately determined.

(2) If the federal taxable income of a ~~husband and wife~~ TWO TAXPAYERS is determined on a joint federal return, their tax shall be determined on their joint federal taxable income.

SECTION 4. In Colorado Revised Statutes, 39-22-104, **amend** (4) (f) (III), (4) (n) (I) (B), and (4) (n.5) (I) (B) as follows:

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

(f) (III) For income tax years commencing on or after January 1, 1989, amounts subtracted under this paragraph (f) shall not exceed twenty thousand dollars per tax year; except that, for income tax years commencing on or after January 1, 2000, amounts subtracted under subparagraph (I) of this paragraph (f) shall not exceed twenty-four thousand dollars per tax year for any individual who is sixty-five years of age or older at the close of the taxable year. For the purpose of determining the exclusion allowed by this paragraph (f), in the case of a joint return, social security benefits included in federal taxable income shall be apportioned in a ratio of the gross social security benefits of each ~~spouse~~ TAXPAYER to the total gross social security benefits of both ~~spouses~~ TAXPAYERS. For the purposes of this paragraph (f), "pensions and annuities" means retirement benefits that are periodic payments attributable to personal services performed by an individual prior to his or her retirement from employment and that arise from an employer-employee relationship, from service in the uniformed services of the United States, or from contributions to a retirement plan which are deductible for federal income tax purposes. "Pensions and annuities" includes lump-sum distributions from pension and profit sharing plans to the extent that such distributions qualify for the tax-averaging computation under section 402 (e) (1) of the internal revenue code, distributions from individual retirement arrangements and self-employed retirement accounts to the extent that such distributions are not deemed to be premature distributions for federal income tax purposes, amounts received from fully matured privately purchased annuities, social security benefits, and amounts paid from any such sources by reason of permanent disability or death of the person entitled to receive the benefits.

(n) (I) (B) In the case of two ~~individuals~~ TAXPAYERS filing a joint return, the amount subtracted from federal taxable income shall not exceed two thousand five hundred dollars in any taxable year. In the case of a ~~married individual who files a separate return~~, TWO TAXPAYERS WHO MAY LEGALLY FILE A JOINT RETURN BUT ACTUALLY FILE SEPARATE RETURNS, only one ~~individual in the marriage~~ OF THE TAXPAYERS may claim the deduction specified in this paragraph (n).

(n.5) (I) (B) In the case of two ~~individuals~~ TAXPAYERS filing a joint return, the amount subtracted from federal taxable income shall not exceed two thousand five hundred dollars in any taxable year. In the case of a ~~married individual who files a separate return~~, TWO TAXPAYERS WHO MAY LEGALLY FILE A JOINT RETURN BUT ACTUALLY FILE SEPARATE RETURNS, only one ~~individual in the marriage~~ OF THE TAXPAYERS may claim the deduction specified in this paragraph (n.5).

SECTION 5. In Colorado Revised Statutes, 39-22-109, **amend** (3) (a) and (3) (b) as follows:

39-22-109. Income of a nonresident individual for purposes of Colorado income tax. (3) (a) If the federal taxable income of a ~~husband or wife, or both~~, TWO TAXPAYERS, both of whom are nonresidents, is determined on separate federal returns, their Colorado taxable incomes shall be separately determined.

(b) If the federal taxable income of a ~~husband and wife~~, TWO TAXPAYERS, both of whom are nonresidents, is determined on a joint federal return, their tax shall be determined on their joint Colorado nonresident federal taxable income.

SECTION 6. In Colorado Revised Statutes, 39-22-522, **amend** (4) (a) (III) as follows:

39-22-522. Credit against tax - conservation easements. (4) (a) (III) In no event shall a credit claimed by a taxpayer filing a joint federal return, or the sum of the credits claimed by taxpayers ~~filing married~~ WHO MAY LEGALLY FILE A JOINT FEDERAL RETURN BUT ACTUALLY FILE separate federal returns, exceed the dollar limitations of this paragraph (a).

SECTION 7. In Colorado Revised Statutes, 39-22-604, **amend**

(11) as follows:

39-22-604. Withholding tax - requirement to withhold - tax lien - exemption from lien - definitions. (11) Separate refunds may be made by the department to ~~a husband or wife~~ TWO TAXPAYERS who have filed a joint return, at the written request of either, the amount payable to each ~~spouse~~ TAXPAYER being proportioned upon the gross earnings of each as shall be established to the satisfaction of the department. If an employee entitled to a refund dies, payment of such refund shall be made in such manner as provided for by law for distribution of moneys payable by the state of Colorado to a decedent.

SECTION 8. In Colorado Revised Statutes, 39-22-605, **amend** (6) (c) (II) as follows:

39-22-605. Failure by individual to pay estimated income tax. (6) For purposes of this section, the amount of the required installments shall be as follows:

(c) Limitation on use of preceding year's tax:

(II) In the case of ~~a married individual~~ A TAXPAYER who MAY LEGALLY FILE A JOINT FEDERAL RETURN BUT ACTUALLY files a separate return for the taxable year for which the amount of the installment is being determined, subparagraph (I) of this paragraph (c) shall be applied by substituting seventy-five thousand dollars for one hundred fifty thousand dollars.

SECTION 9. Applicability. This act applies to income tax years commencing on or after January 1, 2013, and any other income tax years that are open under section 39-21-107 or 39-21-108, Colorado Revised Statutes.

SECTION 10. 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.

Morgan Carroll
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO