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## **Colorado Revised Statutes, Sections 39-22-340 to 39-22-346**

### **39-22-340. Short title - citation.**

This subpart 3 is comprised of sections 39-22-340 to 39-22-346 and may be cited as subpart 3. This subpart 3 shall be known and may be cited as the “SALT Parity Act”.

### **39-22-341. Legislative declaration.**

The general assembly hereby finds and declares that the deductibility of state income taxes should be the same for C corporations, S corporations, and partnerships.

### **39-22-342. Definitions.**

As used in this subpart 3, unless the context otherwise requires:

- (1) “Electing pass-through entity” means, with respect to a taxable period, an S corporation or partnership that has made the election under section 39-22-343 with respect to the taxable period.
- (2) “Electing pass-through entity owner” means, with respect to an S corporation, a shareholder of the S corporation and, with respect to a partnership, a partner in the partnership; except that a partner does not include a C corporation that is unitary with the partnership.
- (3) “Income attributable to the state” means, with respect to an S corporation, the portion of the items of income, gain, loss, or deduction of the S corporation apportioned or allocated to this state in accordance with the provisions of section 39-22-321 (1) and (2), and, with respect to a partnership, the portion of the income, gain, loss, deduction, or credit of the partnership derived from sources within Colorado determined in accordance with the provisions of section 39-22-203.
- (4) “Income not attributable to the state” means all items of income, gain, loss, or deduction of an electing pass-through entity other than income attributable to the state.
- (5) “Resident electing pass-through entity owner” means an electing pass-through entity owner that is a resident of Colorado as defined in section 39-22-103 (6), (7), (8), (9), and (10).
- (6) “Taxable period” means any taxable year or portion of a taxable year during which a corporation is an S corporation or a noncorporate entity is a partnership.

### **39-22-343. Election.**

- (1)
  - (a) Notwithstanding sections 39-22-201, 39-22-302, and 39-22-322, and except as provided in subsection (2) of this section, for income tax years commencing on or after January 1, 2018, an S corporation or partnership may annually elect to be subject to tax at the entity level for the taxable period.
  - (b) Except as set forth in subsection (1)(c)(I) of this section, the S corporation or partnership shall make the election on the return filed by such S corporation or

partnership under section 39-22-601. The filing of A return Filed under section 39-22-601 or subsection (1)(c)(I) of this section is binding on all electing pass-through entity owners.

(c)

(I) For income tax years commencing on or after January 1, 2018, but prior to January 1, 2022, the S corporation or partnership must make the election on or after September 1, 2023, but before July 1, 2024, in a composite amended tax return for all of the years for which the election is made that is filed on behalf of the s corporation or partnership and all of the electing pass-through entity owners. The department of revenue shall establish the return, which shall not include any changes to the past returns other than those that are directly related to the election. The provisions of sections 39-21-107 (2) and 39-21-108 (1) shall not apply to the payment or refund of the tax made pursuant to the return.

(II) Notwithstanding any other provision of law, if an s corporation or partnership files a return specified in subsection (1)(c)(I) of this section, neither the s corporation or partnership nor the electing pass-through entity owners shall incur any penalties for filing late nor owe interest on such amounts, and the department shall not be required to pay penalties or interest on any amounts owed to the taxpayers.

(III) Notwithstanding the dates provided in subsection (1)(c)(I) of this section, the department shall have one year from the date the composite amended tax return is filed to review the return and make a written proposed adjustment in accordance with section 39-21-103. The department must make any assessment within one year after a final determination is made under section 39-21-103 (8). Any final determination made as specified in this subsection (1)(c)(III) may be enforced at any time within six years from the date of the final determination.

(2) The election allowed under subsection (1) of this section is only allowed in an income tax year where there is a limitation on the deductions allowed to individuals under section 164 of the internal revenue code.

#### **39-22-344. Imposition of tax.**

(1) With respect to any taxable period for which it has made the election under section 39-22-343, an electing pass-through entity is subject to a tax in an amount equal to the tax rate set forth in section 39-22-301 for the applicable income tax year multiplied by the sum of the following, all as determined pursuant to sections 39-22-202, 39-22-203, 39-22-322, and 39-22-323:

(2) An electing pass-through entity is treated as a corporation under section 39-22-606 with respect to the tax imposed under this subpart 3; except that the requirement to make estimated payments under section 39-22-606 does not apply for income tax years commencing prior to January 1, 2023.

(3) Any credit allowed pursuant to this article 22 that is attributable to the activities of an electing pass-through entity in the taxable year is passed through to and must be claimed by the electing pass-through entity owner.

(4) The executive director of the department of revenue may promulgate rules in accordance with article 4 of title 24 to require or permit an electing pass-through entity to make returns, set forth information, or furnish copies of information as required in section 39-22-601 (2.5)(a) through (2.5)(c) and (5)(a) through (5)(c) as is necessary to execute the provisions of this subpart 3. Notwithstanding the specificity of the foregoing, the executive director may promulgate such other rules as are, in the executive director's view, necessary or expedient in enforcing the provisions of this subpart 3.

(5) The provisions of sections 39-22-601 (2.5)(d) through (2.5)(i) and (5)(d) through (5)(i) are not applicable to an electing pass-through entity.

(6) The provisions of article 21 of this title 39 regarding the collection, administration, and enforcement of tax is applicable to the tax due under this section, and, notwithstanding the provisions of sections 39-22-201, 39-22-302, and 39-22-322, an electing pass-through entity is a taxpayer.

**39-22-345. Owner exclusion.**

The basis in the hands of an electing pass-through entity owner in the interest in the partnership or the stock or indebtedness in the S corporation is determined as if the election under section 39-22-343 had not been made.

**39-22-346. Credit for tax paid in other states.**

For purposes of the resident pass-through entity owners, the credit allowed under section 39-22-108 is calculated without regard to the credit allowed under section 39-22-347.