

Initiative #139 - Policy Changes to State Income Taxes



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S. WARD
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Be it Enacted by the People of the State of Colorado:

Colorado Secretary of State

Section 1. The people of Colorado find that:

- (1) To share the responsibility for paying Colorado income taxes more fairly, high income taxpayers should begin paying additional taxes on income that exceeds \$500,000.
- (2) A higher tax rate on a higher level of income will allow the state to reduce taxes for middle class and lower income taxpayers through a new Colorado working families tax credit.
- (3) This reallocation of the state income tax has long been needed and has been prevented by the state constitution's rule that there can only be one income tax rate, regardless of how much a taxpayer earns.
- (4) Colorado voters support a change in the income tax system so middle and lower income taxpayers no longer pay a higher percentage of their income in taxes than high income taxpayers.

Section 2. In the constitution of the state of Colorado, section 8 of Article X, amend (8)(a) as follows:

(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. ~~Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter approved tax credits, with no added tax or surcharge.~~

Section 3. In the Colorado Revised Statutes, 39-22-104, amend (1.7) and (2) as follows:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - legislative declaration - definitions - repeal

- (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 2019, 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 (UP TO THE LEVEL OF FEDERAL TAXABLE INCOME SET BY SUBSECTION (1.8)), estate, and trust.
- (2) Prior to the application of the rate of tax prescribed in subsection (1), (1.5), ~~or~~ (1.7), OR (1.8) of this section, the federal taxable income shall be modified as provided in subsections (3) and (4) of this section.

Section 4. In the Colorado Revised Statutes, 39-22-104, add (1.8) as follows:

(1.8) (a) SUBJECT TO SUBSECTION (2) OF THIS SECTION, FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2019, A TAX OF 11.8% IS IMPOSED ON THE PORTION OF AN INDIVIDUAL'S FEDERAL TAXABLE INCOME, AS DETERMINED PURSUANT TO SECTION 63 OF THE INTERNAL REVENUE CODE, THAT IS GREATER THAN \$500,000.

(b) THE AMOUNT OF FEDERAL TAXABLE INCOME SUBJECT TO THE TAX RATE SPECIFIED IN THIS SUBSECTION (1.8) MUST BE ADJUSTED ANNUALLY FOR INFLATION, AS DEFINED IN SECTION 1(f) OF THE U.S. INTERNAL REVENUE CODE OF 2017, BEGINNING WITH THE TAXABLE YEAR COMMENCING ON JANUARY 1, 2020.

Section 5. In the Colorado Revised Statutes, add section 39-22-123.3 as follows:

39-22-123.3. Earned income tax credit – lower and middle income taxpayers

(1) AN INDIVIDUAL WHO IS A RESIDENT OF COLORADO MAY, BASED UPON THIS SECTION, RECEIVE A CREDIT AGAINST THE TAX IMPOSED BY SECTION 39-22-104(1.7). TO RECEIVE A CREDIT, AN INDIVIDUAL MUST BE ELIGIBLE FOR A CREDIT UNDER SECTION 32 OF THE U.S. INTERNAL REVENUE CODE OF 2017 AS MODIFIED BY SUBSTITUTING "AGE 19" FOR "AGE 25" IN SECTION 32(c)(1)(A)(ii)(II), EXCEPT THAT AN INDIVIDUAL MAY ALSO RECEIVE A CREDIT IF THE INDIVIDUAL:

(a) IS AN ELIGIBLE CAREGIVER, OR AN ELIGIBLE STUDENT, WITH OR WITHOUT ANY EARNED INCOME, WHO MEETS THE CRITERIA OF SECTION 32 OF THE U.S. INTERNAL REVENUE CODE OF 2017 EXCEPT FOR CRITERIA REGARDING MINIMUM AMOUNT OF EARNED INCOME; OR

(b) HAS AN EARNED INCOME OR A FEDERAL ADJUSTED GROSS INCOME THAT IS GREATER THAN THE MAXIMUM EARNED INCOME AMOUNT ALLOWED FOR THE CREDIT UNDER SECTION 32 OF THE U.S. INTERNAL REVENUE CODE OF 2017 BUT DOES NOT EXCEED THE MAXIMUM EARNED INCOME AS DEFINED IN SUBSECTION (9) OF THIS SECTION.

(2) FOR AN INDIVIDUAL WHO HAS NO QUALIFYING CHILD:

(i) FOR AN EARNED INCOME LESS THAN THE BASIC CREDIT DIVIDED BY THE INITIAL RATE, THE CREDIT EQUALS EARNED INCOME TIMES THE INITIAL RATE, EXCEPT THAT IF THE INDIVIDUAL IS AN ELIGIBLE CAREGIVER OR AN ELIGIBLE STUDENT AND IF EARNED INCOME MULTIPLIED BY THE INITIAL RATE IS LESS THAN THE BASIC CREDIT, THEN THE CREDIT EQUALS THE BASIC CREDIT;

(ii) FOR AN EARNED INCOME LESS THAN THE MAXIMUM EARNED INCOME AND GREATER THAN THE BASIC CREDIT DIVIDED BY THE INITIAL RATE, THE CREDIT EQUALS THE BASIC CREDIT; EXCEPT THAT THE CREDIT IS REDUCED BY THE EARNED INCOME (OR, IF GREATER, FEDERAL ADJUSTED GROSS INCOME) IN EXCESS OF THE STATE PHASEOUT AMOUNT MULTIPLIED BY THE PHASEOUT RATE.

(3) FOR AN INDIVIDUAL WHO HAS ONE OR MORE QUALIFYING CHILDREN:

(i) FOR AN EARNED INCOME LESS THAN THE FEDERAL PHASEOUT AMOUNT, THE CREDIT EQUALS THE FEDERAL MATCH MULTIPLIED BY THE CREDIT ALLOWED UNDER SECTION 32 OF THE U.S. INTERNAL REVENUE CODE OF 2017, EXCEPT THAT IF THE INDIVIDUAL IS AN ELIGIBLE CAREGIVER OR AN ELIGIBLE STUDENT AND IF THE CREDIT AMOUNT COMPUTED IN THIS WAY IS LESS THAN THE BASIC CREDIT, THEN THE CREDIT EQUALS THE BASIC CREDIT.

(ii) FOR AN EARNED INCOME LESS THAN THE MAXIMUM EARNED INCOME AND GREATER THAN THE FEDERAL PHASEOUT AMOUNT, THE AMOUNT OF THE CREDIT IS THE GREATER OF THE FEDERAL MATCH MULTIPLIED BY THE CORRESPONDING CREDIT UNDER SECTION 32 OF THE U.S. INTERNAL REVENUE CODE OF 2017 OR THE BASIC CREDIT; EXCEPT THAT THE CREDIT IS REDUCED BY THE PRODUCT OF THE EARNED INCOME (OR, IF GREATER, FEDERAL ADJUSTED GROSS INCOME) IN EXCESS OF THE STATE PHASEOUT AMOUNT MULTIPLIED BY THE PHASEOUT RATE.

(4) THE AMOUNT OF THE EARNED INCOME TAX CREDIT ALLOWED UNDER THIS SUBSECTION THAT EXCEEDS THE INDIVIDUAL'S INCOME TAXES DUE MUST BE REFUNDED TO THE INDIVIDUAL. SUCH EARNED INCOME TAX CREDIT IS AVAILABLE IN ADDITION TO ANY OTHER EARNED INCOME TAX CREDITS PROVIDED BY LAW FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2019.

(5) REFUNDS OF \$240 OR MORE OWED TO AN ELIGIBLE CLAIMANT PURSUANT TO THIS SECTION WILL BE DISBURSED ON A MONTHLY BASIS, INCLUDING ANY ACCRUED INTEREST, UNLESS THE CLAIMANT NOTIFIES THE DEPARTMENT OF REVENUE USING A SEPARATE INCOME TAX FORM FOR SINGLE EARNED INCOME TAX CREDIT PAYMENTS THAT HE OR SHE CHOOSES TO RECEIVE A SINGLE REFUND PAYMENT.

(6) NO PERSON WHO CAN BE CLAIMED AS A QUALIFYING CHILD OR A QUALIFYING RELATIVE CAN QUALIFY AS AN ELIGIBLE CLAIMANT.

(7) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE OR HIS DESIGNEE MUST DETERMINE THE TOTAL MONEYS ATTRIBUTABLE TO THE INCOME TAX RATE IMPOSED UNDER SECTION 39-22-104(1.8) WHICH MONEYS MUST BE USED FOR REFUNDABLE EARNED INCOME TAX CREDITS AS DEFINED IN THIS SECTION AND PAID TO ELIGIBLE CLAIMANTS AND TO PAY THE DEPARTMENT'S REASONABLE AND NECESSARY EXPENSES TO ADMINISTER THIS SECTION.

(8) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL ADOPT SUCH RULES AS MAY BE NECESSARY TO GIVE EFFECT TO THE VOTER-APPROVED MANNER OF REALLOCATING INCOME TAX LIABILITY IN COLORADO AND IN IMPLEMENTING THE VOTERS' CHANGES TO SECTION 8(A) OF ARTICLE X OF THE CONSTITUTION AND SECTION 39-22-104(1.7) OF THE COLORADO REVISED STATUTES AS WELL AS THEIR ADOPTION OF SECTION 39-22-104(1.8) AND THIS SECTION. SUCH RULES ARE TO INCLUDE, BUT ARE NOT LIMITED TO, ESTABLISHING THE PRESUMPTIVE MEANS OF TRANSMITTING THE REFUNDS ATTRIBUTABLE TO EARNED INCOME TAX CREDITS TO ELIGIBLE CLAIMANTS THROUGH ELECTRONIC PAYMENTS INCLUDING OPTIONS FOR ELECTRONIC FUNDS TRANSFER AND PREPAID DEBIT CARD; APPROPRIATE ANNUAL NOTICES OF FORTHCOMING REFUNDS;

AND ANNUAL NOTICES TO POTENTIALLY ELIGIBLE CLAIMANTS IDENTIFIED BY THE STATE REGARDING THE PROCESS FOR QUALIFYING FOR THE EARNED INCOME TAX CREDIT.

(9) FOR PURPOSES OF THIS SECTION:

(a) "BASIC CREDIT" MEANS AN AMOUNT EQUAL AT THE TIME OF ENACTMENT TO ONE THOUSAND DOLLARS. FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2020, THE BASIC CREDIT SHALL BE ADJUSTED ANNUALLY FOR INFLATION ACCORDING TO SECTION 1(f) OF THE U.S. INTERNAL REVENUE CODE OF 2017.

(b) "EARNED INCOME" HAS THE MEANING GIVEN IN SECTION 32(c)(2) OF THE U.S. INTERNAL REVENUE CODE OF 2017.

(c) "ELIGIBLE CAREGIVER" MEANS AN INDIVIDUAL WHO IS NOT A PART-YEAR RESIDENT AND CLAIMS AS A DEPENDENT ONE OF THE FOLLOWING:

(I) A QUALIFYING CHILD WHO HAS NOT ATTAINED THE AGE OF 6 BEFORE THE END OF THE TAX YEAR;

(II) A QUALIFYING RELATIVE WHO HAS ATTAINED THE AGE OF SEVENTY BEFORE THE END OF THE TAX YEAR, OR WHO IS PERMANENTLY AND TOTALLY DISABLED AS DEFINED IN SECTION 22(e)(3) OF THE U.S. INTERNAL REVENUE CODE OF 2017, PROVIDED THAT THE NAME, YEAR OF BIRTH, AND SOCIAL SECURITY NUMBER OF THE QUALIFYING RELATIVE IS REPORTED ON THE CLAIMANT'S TAX RETURN FOR THE TAXABLE YEAR IN WHICH THE CREDIT IS CLAIMED.

(d) "ELIGIBLE CLAIMANT" MEANS AN ELIGIBLE INDIVIDUAL, ELIGIBLE CAREGIVER, OR ELIGIBLE STUDENT.

(e) "ELIGIBLE INDIVIDUAL" HAS THE MEANING GIVEN IN SECTION 32(c)(1) OF THE U.S. INTERNAL REVENUE CODE OF 2017.

(f) "ELIGIBLE STUDENT" MEANS AN INDIVIDUAL WHO IS NOT A PART-YEAR RESIDENT AND:

(I) IS ENROLLED AT A PUBLIC INSTITUTION OF HIGHER EDUCATION AS DEFINED IN SECTION 23-18-102(10), OR A NONPUBLIC INSTITUTION OF HIGHER EDUCATION AS DEFINED IN SECTION 23-1-125(5)(e) THAT HAS BEEN DETERMINED TO BE TAX-EXEMPT UNDER SECTION 501 OF THE U.S. INTERNAL REVENUE CODE OF 2017;

(II) IS ENROLLED FOR AT LEAST ONE-HALF THE NORMAL FULL-TIME WORK LOAD FOR THE COURSE OF STUDY THAT THE STUDENT IS PURSUING, AS INDICATED ON THE STUDENT'S INTERNAL REVENUE SERVICE FORM 1098-T;

(III) IS ENROLLED IN A COURSE OF STUDY NECESSARY FOR ENROLLMENT IN A PROGRAM LEADING TO A DEGREE OR CERTIFICATE;

(IV) HAS BEEN AWARDED A FEDERAL PELL GRANT, AS DEFINED IN SECTION 1070(A) OF THE U.S. EDUCATION CODE OF 2017, DURING THE TAXABLE YEAR OR IS ELIGIBLE TO FILE A SIMPLIFIED APPLICATION FORM FOR COMMON FINANCIAL REPORTING AS DEFINED IN SECTION 1087(ss) OF THE U.S. EDUCATION CODE OF 2017; AND

(V) CANNOT BE CLAIMED AS A DEPENDENT AS DEFINED IN IN SECTION 152(A) OF THE U.S. INTERNAL REVENUE CODE OF 2017 FOR THE TAXABLE YEAR.

(g) "FEDERAL CREDIT PERCENTAGE" MEANS THE CREDIT PERCENTAGE DETERMINED IN SECTION 32(b)(1) OF THE U.S. INTERNAL REVENUE CODE OF 2017.

(h) "FEDERAL PHASEOUT AMOUNT" MEANS THE PHASEOUT AMOUNT DETERMINED IN SECTION 32(b)(2) OF THE U.S. INTERNAL REVENUE CODE OF 2017 AND ADJUSTED FOR INFLATION PURSUANT TO SECTION 32(j) OF THE U.S. INTERNAL REVENUE CODE OF 2017.

(i) "INITIAL RATE" MEANS THE FEDERAL CREDIT PERCENTAGE FOR ELIGIBLE CLAIMANTS WITH ONE QUALIFYING CHILD IN SECTION 32(b) OF THE U.S. INTERNAL REVENUE CODE OF 2017 MULTIPLIED BY THE FEDERAL MATCH.

(j) "MAXIMUM EARNED INCOME" MEANS AN AMOUNT EQUAL AT THE TIME OF ENACTMENT TO \$70,000. FOR EACH TAXABLE YEAR COMMENCING ON AND AFTER JANUARY 1, 2020, THE MAXIMUM EARNED INCOME SHALL BE ADJUSTED ANNUALLY FOR INFLATION ACCORDING TO SECTION 1(f) OF THE U.S. INTERNAL REVENUE CODE OF 2017.

(k) "QUALIFYING CHILD" HAS THE MEANING GIVEN IN SECTION 32(c)(3) OF THE U.S. INTERNAL REVENUE CODE OF 2017.

(l) "QUALIFYING RELATIVE" HAS THE MEANING GIVEN IN SECTION 152(d) OF THE U.S. INTERNAL REVENUE CODE OF 2017.

(m) "STATE PHASEOUT AMOUNT" MEANS AN AMOUNT EQUAL TO THE MAXIMUM EARNED INCOME MINUS THE QUOTIENT OF THE BASIC CREDIT DIVIDED BY THE PHASEOUT RATE.

(n) "TAXABLE INCOME" HAS THE MEANING GIVEN IN SECTION 63 OF THE U.S. INTERNAL REVENUE CODE OF 2017.

(10) THE "PHASEOUT RATE" IS SET AT 5% AND THE "FEDERAL MATCH" IS SET AT 30%.

(11) THE CREDIT ALLOWED UNDER THIS SECTION IS NOT INCOME OR RESOURCES FOR THE PURPOSE OF DETERMINING ELIGIBILITY FOR THE PAYMENT OF PUBLIC ASSISTANCE BENEFITS AND MEDICAL ASSISTANCE BENEFITS AUTHORIZED UNDER STATE LAW OR FOR A PAYMENT MADE UNDER ANY OTHER PUBLICLY FUNDED PROGRAMS.

(12) IN THE CASE OF A PART-YEAR RESIDENT, THE CREDIT ALLOWED UNDER THIS SECTION IS APPORTIONED IN THE RATIO DETERMINED UNDER SECTION 39-22-110 (1).

(13) ALL REVENUES ATTRIBUTABLE TO THE INCOME TAX RATE IMPOSED BY SECTION 39-22-104(1.8) MUST BE COLLECTED AND SPENT AS VOTER-APPROVED REVENUE CHANGES WITHOUT REGARD TO ANY LIMITATION ON REVENUE OR SPENDING, CONTAINED IN SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION, OR ANY OTHER LAW.

Section 6. In the Colorado Revised Statutes, repeal section 39-22-123.5 as follows:

~~**C.R.S. 39-22-123.5. Earned income tax credit— not a refund of excess state revenues— trigger— legislative declaration.**~~

~~(1) The general assembly hereby finds and declares that:~~

~~(a) The federal earned income tax credit is a refundable tax credit for low- and middle-income working individuals and families whose earnings are below an income threshold;~~

~~(b) The amount of the credit increases with income until the credit reaches a maximum level and then phases out, and this structure creates an incentive for people to work and earn more income;~~

~~(c) Since its establishment in 1975, the credit has increased family income, reduced child poverty, and promoted employment by supplementing the earnings of low-wage workers, including military families;~~

~~(d) The credit has a positive impact on the education and health of children living in poverty;~~

~~(e) The credit has a positive economic impact on local economies and businesses because it puts more money in the hands of low- and middle-income working people who spend the money on immediate needs, such as groceries, school supplies, car repairs, rent, and health care;~~

~~(f) The Colorado earned income tax credit created in section 39-22-123 is ten percent of the federal earned income tax credit, but it is a mechanism to refund excess state revenues as required by section 20 of article X of the state constitution;~~

~~(g) This existing credit has not been in effect since 2001 because the refund has not been triggered; and~~

~~(h) Now, therefore, it is the intent of the general assembly to establish a permanent and refundable state earned income tax credit for eligible Colorado taxpayers, which is equal to ten percent of the federal earned income tax credit. The intended purpose of this credit is to help individuals~~

~~and families achieve greater financial security and to help Colorado's economy.~~

~~(2) For an income tax year specified in subsection (3) of this section, a resident individual who claims an earned income tax credit on the individual's federal tax return is allowed an earned income tax credit against the taxes due under this article that is equal to ten percent of the federal credit that the resident individual claimed on his or her federal tax return for the same tax year.~~

~~(3) If a credit is allowed under section 39-22-123 for an income tax year commencing on or after January 1, 2013, the credit allowed under this section may be claimed for any income tax year beginning with the income tax year after the income tax year that the credit is allowed under section 39-22-123.~~

~~(4) The amount of the credit allowed under this section that exceeds the resident individual's income taxes due is refunded to the individual.~~

~~(5) In the case of a part-year resident, the credit allowed under this section is apportioned in the ratio determined under section 39-22-110 (1).~~

~~(6) The credit allowed under this section is not considered to be income or resources for the purpose of determining eligibility for the payment of public assistance benefits and medical assistance benefits authorized under state law or for a payment made under any other publicly funded programs.~~