

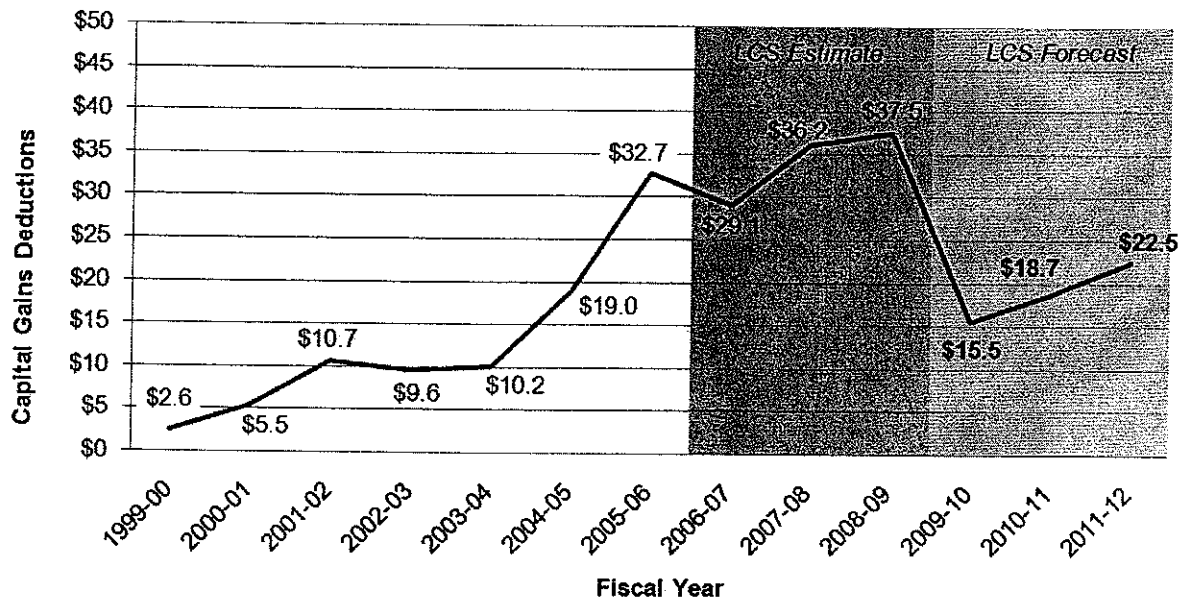
# Colorado's Capital Gains Deduction

## Fact #1: Current capital gains deductions for Colorado assets violate the commerce clause.

In *Fulton Corp. v. Faulkner*, the United States Supreme Court held that a North Carolina tax scheme that resulted in higher taxation of ownership of out-of-state corporate stock relative to taxation of ownership of in-state corporate stock violated the Commerce Clause. Colorado's similar laws on capital gains taxes on income derived from Colorado businesses, much like North Carolina's tax scheme, results in higher taxation of capital gains derived from out-of-state property and stock relative to taxation of capital gains derived from in-state property and stock.

Legislative Legal Services stated "Application of the analysis used by the *Fulton* Court to the state income tax deduction allowed by section 39-22-518, C.R.S., which, much like North Carolina's invalidated intangibles tax scheme, results in higher taxation of capital gains derived from out-of-state property and stock relative to taxation of capital gains derived from in-state property and stock, leads to the conclusion that section 39-22-518, C.R.S., probably violates the Commerce Clause."

## Fact #2: The Colorado Government lost \$32,693,834 in revenue in FY2005 from capital gains deduction.



## Fact #3: Over 93% of capital gains deductions in Colorado are attributed to individuals making over \$100,000.

In Colorado the majority of capital gains are claimed by tax filers whose federal adjusted gross income is greater than \$100,000. The chart at left shows the percent distribution of Colorado-source capital gains by federal adjusted gross income tier. In tax year 2005, 93.9 percent of Colorado-source capital gains came from taxpayers whose federal adjusted gross incomes were greater than \$100,000. Additionally, over half of taxpayers who deduct capital gains make over \$100,000.

2005		
Income Tax Reduction	Number of Taxpayers	Adjusted Gross Income
\$764,512.55	1105	\$0K to \$50K
\$1,226,470.33	1522	\$50K to \$100K
\$4,808,514.28	1983	\$100K to \$250K
\$25,894,336.66	1400	\$250K+

## Fact #4: The Colorado capital gains tax deduction, section 39-22-518, C.R.S, is unconstitutional and should be repealed.

Because the Colorado capital gains tax "probably violates the commerce clause", it is time to repeal it. This funding could be used in a residential boarding school for at-risk students. An opportunity like this school could give students who struggle through traditional schooling a real opportunity to succeed.

**State Income Tax Deduction for Colorado Source Capital Gains  
Tax Years 2004 and 2005**

Adjusted Gross Income	2004		2005		Adjusted Gross
	Income Tax Amount	Number of Average	Income Tax Amount	Number of Average	
Negative	\$31,693.74	31	\$1,022	52	\$3,834
\$0 to \$5K	\$7,767.29	24	\$324	34	\$1,854
\$5K to \$10K	\$14,405.78	43	\$335	64	\$859
\$10K to \$15K	\$12,950.57	89	\$146	69	\$171
\$15K to \$20K	\$26,567.87	88	\$302	113	\$232
\$20K to \$25K	\$26,434.99	75	\$352	121	\$526
\$25K to \$35K	\$65,457.09	189	\$346	254	\$575
\$35K to \$50K	\$207,242.97	318	\$652	398	\$501
\$50K to \$75K	\$370,917.17	506	\$733	761	\$665
\$75K to \$100K	\$491,957.87	469	\$1,049	761	\$946
\$100K to \$250K	\$3,085,673.22	1,169	\$2,640	1,983	\$2,425
\$250K and Over	\$14,611,082.68	758	\$19,276	1,400	\$18,496
<b>Total</b>	<b>\$18,952,151.24</b>	<b>3,759</b>	<b>\$5,042</b>	<b>6,010</b>	<b>\$5,440</b>

Limit on Capital Gains Subtraction	Colorado-Source Capital Gains Tax Deduction					Fiscal Impact - State Revenue	
	Colorado-Source Capital Gains Subtractions	Number of Returns	State Revenue Impact from Subtraction	State Revenue Impact for 2005	Reduction in Revenue Impact	FY 2009-10 (Millions)	FY 2010-11 (Millions)
Current Law (No limit)	\$706,130,320	6,010	(\$32,693,834)				
\$500,000	\$452,700,000	5,733	(\$20,960,010)	\$11,733,824	36%	\$2.8	\$6.1
\$400,000	\$421,200,000	5,656	(\$19,501,560)	\$13,192,274	40%	\$3.1	\$6.9
\$250,000	\$355,700,000	5,462	(\$16,468,910)	\$16,224,924	50%	\$3.8	\$8.5
\$100,000	\$230,400,000	4,713	(\$10,667,520)	\$22,026,314	67%	\$5.2	\$11.5
Bill as Introduced	\$0	0	\$0	\$32,693,834		\$7.7	\$17.1

Source: Colorado Department of Revenue