

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0114.02 Jason Gelender x4330

SENATE BILL 14-019

SENATE SPONSORSHIP

Steadman,

HOUSE SPONSORSHIP

Moreno and Ginal,

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires any 2 taxpayers who may legally file a joint federal income tax return to file separate state income tax returns if they file separate federal income tax returns and to file a joint state income tax return if they file a joint federal income tax return.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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

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

4 **14-15-117. Application of article to joint tax returns -**
5 **legislative declaration.** (1) THE GENERAL ASSEMBLY FINDS THAT SOME
6 PARTNERS IN A CIVIL UNION MAY LEGALLY HAVE THEIR FEDERAL TAXABLE
7 INCOME DETERMINED ON EITHER SEPARATE FEDERAL TAX RETURNS OR ON
8 A JOINT FEDERAL TAX RETURN. SINCE COLORADO INCOME TAX FILINGS
9 ARE TIED TO THE FEDERAL INCOME TAX FORM BY REQUIRING TAXPAYERS
10 TO PAY A PERCENTAGE OF THEIR FEDERAL TAXABLE INCOME AS THEIR
11 STATE INCOME TAXES:

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

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

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

22 **39-21-108. Refunds.** (3) (a) (I) (A) Whenever it is established
23 that any taxpayer has, for any period open under the statutes, overpaid a
24 tax covered by articles 22 and 26 to 29 of this title, article 60 of title 34,
25 C.R.S., and article 3 of title 42, C.R.S., and that: There is an unpaid
26 balance of tax and interest accrued, according to the records of the

1 executive director, owing by such taxpayer for any other period; there is
2 an amount required to be repaid to the unemployment compensation fund
3 pursuant to section 8-81-101 (4), C.R.S., the amount of which has been
4 determined to be owing as a result of a final agency determination or
5 judicial decision or that has been reduced to judgment by the division of
6 unemployment insurance in the department of labor and employment;
7 there is any unpaid child support debt as set forth in section 14-14-104,
8 C.R.S., or child support arrearages that are the subject of enforcement
9 services provided pursuant to section 26-13-106, C.R.S., as certified by
10 the department of human services; there are any unpaid obligations owing
11 to the state as set forth in section 26-2-133, C.R.S., for overpayment of
12 public assistance or medical assistance benefits, the amount of which has
13 been determined to be owing as a result of final agency determination or
14 judicial decision or that has been reduced to judgment, as certified by the
15 department of human services; there is any unpaid loan or other
16 obligation due to a state-supported institution of higher education as set
17 forth in section 23-5-115, C.R.S., the amount of which has been
18 determined to be owing as a result of a final agency determination or
19 judicial decision or that has been reduced to judgment, as certified by the
20 appropriate institution; there is any unpaid loan due to the student loan
21 division of the department of higher education as set forth in section
22 23-3.1-104 (1) (p), C.R.S., the amount of which has been determined to
23 be owing as a result of a final agency determination or judicial decision
24 or that has been reduced to judgment, as certified by the division; there
25 is any unpaid loan due to the collegeinvest division of the department of
26 higher education as set forth in section 23-3.1-206, C.R.S., the amount of
27 which has been determined to be owing as a result of a final agency

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

27 **SECTION 3.** In Colorado Revised Statutes, 39-22-107, **amend**

1 (1) and (2) as follows:

2 **39-22-107. Income tax filing status.** (1) If the federal taxable
3 income of a ~~husband or wife, or both~~, TWO TAXPAYERS MAY LEGALLY BE
4 DETERMINED ON A JOINT FEDERAL RETURN BUT ACTUALLY is determined
5 on separate federal returns, such income for purposes of the Colorado
6 income tax shall be separately determined.

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

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

12 **39-22-104. Income tax imposed on individuals, estates, and**
13 **trusts - single rate - definitions - repeal.** (4) There shall be subtracted
14 from federal taxable income:

15 (f) (III) For income tax years commencing on or after January 1,
16 1989, amounts subtracted under this paragraph (f) shall not exceed twenty
17 thousand dollars per tax year; except that, for income tax years
18 commencing on or after January 1, 2000, amounts subtracted under
19 subparagraph (I) of this paragraph (f) shall not exceed twenty-four
20 thousand dollars per tax year for any individual who is sixty-five years of
21 age or older at the close of the taxable year. For the purpose of
22 determining the exclusion allowed by this paragraph (f), in the case of a
23 joint return, social security benefits included in federal taxable income
24 shall be apportioned in a ratio of the gross social security benefits of each
25 ~~spouse~~ TAXPAYER to the total gross social security benefits of both
26 ~~spouses~~ TAXPAYERS. For the purposes of this paragraph (f), "pensions and
27 annuities" means retirement benefits that are periodic payments

1 attributable to personal services performed by an individual prior to his
2 or her retirement from employment and that arise from an
3 employer-employee relationship, from service in the uniformed services
4 of the United States, or from contributions to a retirement plan which are
5 deductible for federal income tax purposes. "Pensions and annuities"
6 includes lump-sum distributions from pension and profit sharing plans to
7 the extent that such distributions qualify for the tax-averaging
8 computation under section 402 (e) (1) of the internal revenue code,
9 distributions from individual retirement arrangements and self-employed
10 retirement accounts to the extent that such distributions are not deemed
11 to be premature distributions for federal income tax purposes, amounts
12 received from fully matured privately purchased annuities, social security
13 benefits, and amounts paid from any such sources by reason of permanent
14 disability or death of the person entitled to receive the benefits.

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

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

1 claim the deduction specified in this paragraph (n.5).

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

4 **39-22-109. Income of a nonresident individual for purposes of**
5 **Colorado income tax.** (3) (a) If the federal taxable income of a ~~husband~~
6 ~~or wife, or both,~~ TWO TAXPAYERS, both of whom are nonresidents, is
7 determined on separate federal returns, their Colorado taxable incomes
8 shall be separately determined.

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

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

15 **39-22-522. Credit against tax - conservation easements.**
16 (4) (a) (III) In no event shall a credit claimed by a taxpayer filing a joint
17 federal return, or the sum of the credits claimed by taxpayers ~~filing~~
18 ~~married~~ WHO MAY LEGALLY FILE A JOINT FEDERAL RETURN BUT ACTUALLY
19 FILE separate federal returns, exceed the dollar limitations of this
20 paragraph (a).

21 **SECTION 7.** In Colorado Revised Statutes, 39-22-604, **amend**
22 (11) as follows:

23 **39-22-604. Withholding tax - requirement to withhold - tax**
24 **lien - exemption from lien - definitions.** (11) Separate refunds may be
25 made by the department to a ~~husband or wife~~ TWO TAXPAYERS who have
26 filed a joint return, at the written request of either, the amount payable to
27 each ~~spouse~~ TAXPAYER being proportioned upon the gross earnings of

1 each as shall be established to the satisfaction of the department. If an
2 employee entitled to a refund dies, payment of such refund shall be made
3 in such manner as provided for by law for distribution of moneys payable
4 by the state of Colorado to a decedent.

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

7 **39-22-605. Failure by individual to pay estimated income tax.**

8 (6) For purposes of this section, the amount of the required installments
9 shall be as follows:

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

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

17 **SECTION 9. Applicability.** This act applies to income tax years
18 commencing on or after January 1, 2013.

19 **SECTION 10. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.