



Attention Tax Council Members:

This Monday, the Colorado Chamber staff received a [draft bill to "fix" mistakes](#) made in House Bill 20-1420 regarding tax credits, exemptions and the CARES Act which passed during the 2020 Legislative Session. Last night, Colorado Chamber staff and members of the Tax Council met with the bill sponsors and the Governor's staff regarding the bill and raised a couple of concerns. In response, we have included a list of amendments that will be offered on the bill today in the House Finance Committee as well as an explanation of the bill by the bill sponsors and Governor's staff:

Explanation of LLS 0711:

"An unintended consequence of House Bill 20-1420 and the accompanying DOR administrative rule was that certain businesses who carried back to previous tax years the CARES Act's expanded net operating loss, excess business loss, business interest, and qualified improvement property depreciation deductions on their federal returns ended up losing their ability to access some of their "saved" deductions on their state returns, i.e. in terms of state income tax liability, they emerged worse off than before the CARES Act, which was not the intent of the bill.

The proposed 2021 bill will correct this error by allowing businesses to carry forward these "saved" deductions on their state returns up to a certain amount each year (\$350k in the first year and \$150k in years 2-5 with no cap thereafter). This will likely cost the state around \$15-\$20M annually for the next five years (rough estimate - still waiting for fiscal note)."

Proposed Amendments to LLS 0711:

CAP

- a. cap of 5 years, then removed after 5th year. No limit on the amount of over-limit formerly disallowed deduction that may be applied against / subtracted from taxable income
- b. cap = 300K for 1st tax year
- c. cap = 150K for 2nd, 3rd, 4th, 5th tax years

Clarification:

Page 3, line 2, strike "carry forward" and insert "subtraction".
Page 5, line 19, strike "carry forward" and insert "subtraction".

Clarification on Apportionment Issues:

Page 5, line 2, strike "(p) (I)" and insert "(p) (I) (A)" and strike "(3)(p)(II)" and insert "(3)(p)(I)(B) and (3)(p)(II)".

Page 5, after line 8, insert a new sub-subparagraph (B) as follows:

(B) For any tax year included in the calculation under subsection (3)(p)(I)(A) of this section in which the taxpayer was required to apportion or allocate income to Colorado under the provisions of this article 22 applicable to that tax year, the amount included in the calculation under subsection (3)(p)(I)(A) shall be the following amount multiplied by the taxpayer's apportionment factor for the tax year: the amount by

which taxable income for the specified tax year exceeds the taxable income for the modified specified tax year, plus the amount added back by the taxpayer as specified in subsection (2)(i).

Page 5, after line 22, insert a new sub-subparagraph (C) as follows:

(C) In the case of a taxpayer that apportions and allocates net income as required by section 39-22-303.6(3)(b) in the taxpayer's tax year beginning on or after January 1, 2021, but before January 1, 2022, the subtraction applies to the taxpayer's net income apportioned and allocated to Colorado. Any carry forward amount subtracted in a subsequent tax year under subsection (3)(p)(II)(B) of this section shall be applied to net income apportioned and allocated to Colorado for that subsequent tax year.

Please contact Loren Furman at lfurman@cochamber.com or at 303-888-9387 with any questions.

Thank you!

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