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Revenue and
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November 8, 2017

Colorado Secretary of State
Licensing and Enforcement Division
Administrative Rules Program
1700 Broadway, Suite 200
Denver, Colorado 80290

RE: Colorado Department of Revenue Regulation 39-22-108, 1 CCR 201-2
Tracking Number 2017-00539

To whom it may concern:

The Colorado Department of Revenue discovered a typographical error and formatting error in regulation 39-22-108(3)(a)(iii). The figure of \$108,000 in subparagraph (3)(a)(iii)(A)(II1) should be corrected by eliminating the decimal point and substituting a comma. The negative \$459 in the same paragraph should be denoted by a negative sign (-) rather than by parentheses. The corrected paragraph (3)(a)(iii)(A)(II1) should read as follows:

(III) $\$2,917 \times (\$-17,000/\$108,000) = -\459 (limited to \$0)

It is my opinion that these changes are non-substantive. On behalf of the agency, we request that these corrections be made pursuant to section 24-4-103(11)(d)(II), C.R.S. The corrections will not change the substantive content of the rule, nor will they change the effective date. Enclosed, please find the redlined version of this regulation.

Thank you in advance for your assistance. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

FOR THE ATTORNEY GENERAL

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Enclosure

39-22-108. CREDIT FOR TAXES PAID TO ANOTHER STATE.

(1) **General Rule.** A taxpayer is allowed a credit for income tax or gross receipts tax paid to another state, regardless of the specific name each state may call such tax. A franchise tax is not a tax on income or gross receipts. This credit is allowed for taxes paid to another state, the District of Columbia, or territories or possessions of the United States, but is not allowed for income taxes paid to a city or another country.

(2) **Definitions.** State: means any state in the United States, the District of Columbia, or territories or possessions of the United States.

(3) **Limitations.**

(a) The credit for taxes paid to another State is the smaller of the following two limitations:

(i) The credit for any single State shall not exceed the total Colorado tax multiplied by the following ratio: taxpayer's Colorado modified federal adjusted gross income (including losses) from sources within the other State / taxpayer's total modified federal adjusted gross income from sources inside and outside Colorado. The credit for each State is limited to the smaller of either (1) the amount of tax actually paid the other State or (2) the amount of the credit as calculated in this subparagraph (i).

(A) The amount of tax actually paid is that amount of the other State's tax liability minus any credit or deductions allowed by the other State against such tax. For example, if the other State grants a credit to the taxpayer for new employees hired in that State, the tax actually paid the other State is the taxpayer's other State tax liability minus the credit allowed by such State.

(ii) The total amount of credits claimed for all States shall not exceed the total Colorado tax multiplied by the following ratio: taxpayer's Colorado modified federal adjusted gross income (including losses) from sources outside Colorado / taxpayer's total modified federal adjusted gross income derived from sources inside and outside Colorado.

(A) If the taxpayer is required by the other State to report zero (\$0) income on that State's income tax return, but the actual losses are reported on the taxpayer's federal income tax return, then the taxpayer must use the actual loss when computing the credit limitation.

(iii) *Example.* Taxpayer is a Colorado resident who has income of \$50,000 from a business located in Colorado and business income from sources in three other states. Taxpayer's modified federal adjusted gross income from the three states is as follows: \$43,000, \$32,000, and (\$17,000). Taxpayer accrued income tax to the other states as follows: \$1,000, \$1,300, and \$0, respectively. Taxpayer's total modified federal adjusted gross income is \$108,000 and Colorado tax liability before credits is \$2,917.

(A) The single state tax credit limitation (paragraph (3)(a)(i)) is computed for each state as follows:

(I) $\$2,917 \times (\$43,000/\$108,000) = \$1,161$ (limited to \$1,000)

(II) $\$2,917 \times (\$32,000/\$108,000) = \864 (limited to \$864)

(III) $\$2,917 \times (\$-17,000/\$108,000) = -\459 (limited to \$0)

(IV) The total credit allowed under the single state calculation is \$1,864.

(B) The combined state tax credit limitation (paragraph (3)(a)(ii)) is \$1,567, calculated as: $\$2,917 \times (\$43,000 + \$32,000 - \$17,000) / \$108,000$.

(C) The Colorado credit for taxes paid to other states is \$1,567, which is the lesser amount of the limitations set forth in paragraph (3)(a)(i) and (ii).

(b) *Tax year.* Credit for tax reported to another State is not permitted if the other State's tax accrued in a tax year different than the tax year against which the Colorado credit is claimed. For example, taxpayer, while a resident of another state, makes an I.R.C. § 1031 exchange of property located in the taxpayer's home state for property located in Colorado. The other state requires taxpayer to recognize for that state's income tax the gain at the time of such exchange. In the following year, taxpayer becomes a resident of Colorado and sells the Colorado property. Colorado income tax arising from the sale of the Colorado property cannot be offset by a credit for tax reported in the prior year in the other state. See, §39-22-108(4), C.R.S. For taxpayers that do not file on a calendar year basis in another State, see subparagraph (6)(b) of this rule for guidance on when the credit may be claimed.

(c) *Source and Calculation of Income.*

(i) *Sourcing Rules.* The credit for tax paid to another State is calculated on the Colorado modified federal adjusted gross income derived from sources within such State. In determining whether income is derived from sources within such other State, Colorado law shall govern the sourcing of income. The Department will use the sourcing rules of §39-22-109, C.R.S. and the rules promulgated thereunder.

(ii) *Other State's Adjustments to Income.* The credit is calculated only on income that is actually taxed by both Colorado and the other State. Therefore, adjustments made to income sourced to the other State pursuant to the laws of the other State that increase the amount of income subject to tax shall not be included in the calculation of modified federal adjusted gross income from sources in the other State unless Colorado requires a similar adjustment.

(A) Example. Ms. Walker is a Colorado resident who reports \$10,000 of business income earned in California on her Colorado and federal returns. However California requires that she add \$3,000 in bonus depreciation to her taxable income in California. Colorado does not have a similar addback for bonus depreciation. Her Colorado modified federal gross income sourced to California is \$10,000, not the \$13,000 taxed by California.

(iii) The credit is calculated using the other State's income tax as ultimately determined on the other State's income tax return and not on the sum of the other State's taxes withheld from the taxpayer's wages.

(4) Documentation.

(a) Any taxpayer claiming a credit for taxes paid to another State shall file a copy of the income tax return (or so much of the return as is relevant to the calculation) from the other State(s) with the Department of Revenue at the time the taxpayer claims such credit.

(b) Any electronically filed income tax return must include any requested information from the other State's return (or so much of the return as is relevant to the calculation), and the actual return must be submitted to the Department of Revenue upon request.

(c) A member of a pass-through entity whose taxes are paid on their behalf by the entity on the entity's tax return may attach or provide a copy of the state-by-state detail provided by the entity in lieu of the actual income tax returns filed with the other States. However, the actual income tax returns must be submitted to the Department of Revenue upon request.

(d) Any taxpayer included in a composite nonresident partner or shareholder return filed with another State shall not file a copy of the other State(s) return with the Department. Rather, the taxpayer shall file with the Department a statement from the pass-through entity confirming taxpayer's inclusion in the composite return.

(e) Documentation to support the tax return from another State must be submitted to the Department of Revenue upon request.

(5) Nonresidents and Part-year Residents of Colorado.

(a) *Non-residents.* The credit for tax paid to another State cannot be claimed by a nonresident.

(b) *Part-year Residents.* The credit for tax paid to another State can be claimed by a part-year Colorado resident to the extent that the income derived in, and taxed by, the other State was earned while the taxpayer was a Colorado resident. The credit is limited as set forth in paragraph (3), above.

(i) *Example.* Taxpayer was a resident of Kansas from January 1 to June 30 and then moved her domicile to Colorado. Taxpayer had wage income of \$14,000 between January 1 and June 30. Taxpayer had wage income of \$20,000 earned after June 30 and earned \$4,000 in rental income between July 1 and December 31 from property located in Kansas. Taxpayer paid \$600 in income tax to Kansas. Taxpayer has a Colorado modified federal adjusted gross income of \$38,000 and Colorado taxable income of \$30,756 (\$38,000 minus standard deductions and exemption of \$7,244). Taxpayer's tentative (i.e., pre-apportioned) Colorado income tax is \$1,424, which is then apportioned to reflect that portion of the income which is subject to tax by Colorado for the part of the year the taxpayer was a Colorado resident [$\$1,424 \times (24,000/\$38,000)$], resulting in a Colorado tax liability of \$899. The maximum credit for tax paid to Kansas is \$150 [$\$899 \times \$4,000/(\$20,000 + \$4,000)$]. The actual tax paid to Kansas for which a credit may be claimed is only that portion of the Kansas tax that is attributable to that part of the year during which the taxpayer was a resident of Colorado, which is \$133 [$\$600 \times (\$4,000/(\$14,000 + \$4,000))$]. Therefore, the Colorado credit for tax paid to Kansas is \$133, which is smaller than the Colorado tax attributable to Colorado income sourced to Kansas while taxpayer was a resident of Colorado (\$150).

(6) Pass-through Entities.

(a) Because Colorado law treats a Subchapter S corporation, which has elected on its federal income tax return to be taxed as a partnership, as a pass-through entity, Colorado allows a Colorado resident individual to claim a credit for taxes paid to another State on the Subchapter S corporation's income, regardless of whether the other State imposed tax on the Subchapter S corporation or the Subchapter S corporation filed a composite return and paid income tax on behalf of the Subchapter S corporation shareholder. If the other State taxes a Subchapter S corporation as a corporation, then the taxpayer shall file a copy of the Subchapter S corporation's return. If the Subchapter S corporation files a composite return, the composite rules as set forth in §39-22-601(2.5), C.R.S. shall apply. **CODE OF COLORADO REGULATIONS 1 CCR 201-2 Taxpayer Service Division**

(b) If the other State treats a pass-through entity as corporation and the pass-through entity files on a fiscal year basis rather than a calendar year basis, the tax paid to the other State by the pass-through entity shall be treated as having been paid for Colorado purposes on the last day of the fiscal year. Therefore, the taxpayer receiving a K-1 or other tax statement from the pass-through entity shall claim the credit in the calendar year in which the last day of the pass-through entity's fiscal year ends.

(7) **Amended Returns.** If a taxpayer amends another State's tax return and the amendment results in a change in the amount of tax paid to such other State, taxpayer shall give the Department written notice of such change within thirty days of filing the amended tax return with the other State. The notice shall state the amount of other State's tax paid on the original return and the amount of tax refunded or additional tax paid pursuant to the amended return, and include a copy of the other State's amended return (or so much of such amended return as is relevant).

Cross References

1. See §39-22-109, C.R.S. to determine Colorado-source income.