

DEPARTMENT OF REVENUE

Taxation Division

INCOME TAX

1 CCR 201-2

~~Rule 39-22-104(4)(n.5). Wildfire Mitigation Measures Subtraction.~~

~~Basis and Purpose.~~ The statutory bases for this rule are sections 39-21-112(1) and 39-22-104(4)(n.5), C.R.S. The purpose of this rule is to explain the requirements for the wildfire mitigation measures subtraction and to provide examples.

- (1) ~~**General Rule.** For the tax periods specified in section 39-22-104(4) (n.5), C.R.S., and subject to the provisions of section 39-22-104(4)(n.5), C.R.S., landowners may claim a subtraction for the cost of wildfire mitigation measures performed on their privately-owned land in a wildland-urban interface area in Colorado.~~
- (2) ~~[Expired 05/15/2024 per House Bill 24-1227]~~
- (3) ~~[Expired 05/15/2024 per House Bill 24-1227]~~
- (4) ~~**Ineligible Costs.** Costs that are not eligible for the subtraction include an inspection or certification fee, in-kind contribution, donation, incentive, or a cost sharing arrangement associated with, or grants awarded for, performing wildfire mitigation measures.~~
- (a) ~~*Inspection or Certification Fees.*~~
- (i) ~~Example: The amount a landowner pays for a fire mitigation survey of their land to determine the amount of work necessary to perform wildfire mitigation measures or as means of verifying insurance compliance does not qualify as a “cost” that is eligible for the subtraction.~~
- (b) ~~*In-Kind Contributions.*~~
- (i) ~~Example. A landowner who personally performs wildfire mitigation measures for a summer camp and who also contributes the use of a chainsaw and truck as a gift to the summer camp cannot claim the value of the landowner’s personal services (because the personal service is not an actual out-of-pocket expense but rather an in-kind contribution and donation, neither of which qualify as “costs” for purposes of this rule) or the rental value for the use of the chainsaw or truck on the summer camp’s property (for the same reasons).~~
- (c) ~~*Donation.*~~
- (i) ~~Example. A landowner allows without charge the use of the landowner’s trailer by a third party to perform wildfire mitigation measures. Neither the landlord nor the third party may claim the value of the donation to rent the trailer as a subtraction.~~

- ~~(ii) — *Example.* A landowner who performs wildfire mitigation services for free to a summer camp that neighbors the landowner's property cannot claim the value of the donation as a subtraction.~~
- ~~(d) — **Cost Sharing.** Cost sharing is an arrangement by which participants, which may include landowners and non-landowners, agree to share the cost of performing wildfire mitigation measures.~~
 - ~~(i) — *Example.* Neighboring landowners who agree to share the costs of purchasing or renting equipment for, or for hiring a third-party contractor to perform, wildfire mitigation measures on their respective private lands cannot claim their portion of such costs as a subtraction.~~
- ~~(e) — *Grants and Incentives.* A cost paid from, or reimbursed by, an incentive or grant awarded to, or made available to, a landowner to perform wildfire mitigation measures is not eligible for the subtraction.~~
- ~~(5) — **Landowner.** A taxpayer claiming the subtraction must be a landowner of private land located in Colorado.~~
 - ~~(a) — *Estate in Land.* A landowner is an individual who is an owner of record of a fee interest in real property (whether held solely, jointly or in common), easement, right-of-way, or other estate in real property. An easement is a non-possessory interest in real property to enter on to land and use the land, or to restrict the use of such land, for an indefinite or specific period of time, such as a right-of-way to travel across land or to use the land for recreational purposes (e.g., fishing, hunting, camping). A right-of-way typically is a type of easement. A lease is an estate in land and, therefore, a lessee is a landowner for purposes of this rule, provided that evidence of the lease is properly recorded. The lessor is also a landowner as either the owner of a fee interest in the land or as a lessee who is acting in the capacity of a sublessor.~~
 - ~~(b) — *Taxpayer's Property Interest.* Wildfire mitigation measures must be performed on the taxpayer's property interest for the taxpayer to be eligible for the subtraction.~~
 - ~~(i) — *Examples.*~~
 - ~~(A) — A taxpayer who is a lessee of land owned by someone else can claim the subtraction for the costs they incur for wildfire mitigation measures performed on the property because the work was performed on an estate (e.g., lease) owned by the taxpayer, even though a third party owned the underlying fee interest in the land. If the lessor separately incurs costs for wildfire mitigation measures performed on the same property, they may also claim a subtraction for the costs they pay. However, if the lessor and lessee share the costs of the wildfire mitigation measures, they would be ineligible to claim the subtraction as noted in paragraph 4(d) of this rule.~~
 - ~~(B) — A taxpayer who pays for wildfire mitigation measures on a neighboring landowner's land for the purpose of protecting the taxpayer's land cannot claim the costs for such work because the wildfire mitigation measure was not performed on the taxpayer's land.~~
 - ~~(c) — *Public Property.* A person who holds an easement, right-of-way, lease, or other estate in land that is owned by a governmental entity is not a landowner because the subtraction is available only if the wildfire mitigation measures are performed on private land, not public land.~~

~~(i) — Examples.~~

~~(A) — A sole proprietor who owns or leases a building on land owned by the government is not a landowner for purposes of this rule because the land is not private land, even though the proprietor owns a private estate (lease).~~

~~(B) — An individual who has an easement or right-of-way on land owned by the federal Bureau of Land Management is not a landowner for purposes of this rule because the land is not private land, even though the proprietor owns a private estate (easement or right-of-way).~~

~~(d) — *Private Property Held by a Legal Entity.* A partnership, S corporation, or other similar legal entity cannot claim the subtraction. However, an individual who holds an easement, leasehold, right-of-way, or other estate in real property owned or leased by such legal entity is a landowner because the individual is a landowner (i.e., holds an estate) of private land. Corporations, partnerships, S corporations, and other similar legal entities are not eligible for this subtraction because section 39-22-104, C.R.S., applies only to individuals, estates, and trusts.~~