



In response to taxpayer inquiries, this publication addresses how recently enacted retroactive federal tax provisions interact with Colorado income taxation. In particular, Public Law 116-136, the Coronavirus Aid, Relief and Economic Security Act (CARES Act), enacted in March 2020, modified numerous parts of the Internal Revenue Code, including provisions for net operating loss deductions, business interest expense limitations, excess loss limitations for taxpayers other than corporations, and cost recovery for qualified improvement property.¹ Additional modifications related to the CARES Act were made by Public Law 116-260, the Consolidated Appropriations Act, 2021 (CAA), enacted in December 2020, including provisions pertaining to the paycheck protection program (PPP) and Economic Injury Disaster Loans (EIDL) advances.

This publication also discusses state income tax legislation enacted in 2020 and 2021 prescribing certain Colorado modifications to federal taxable income in relation to the CARES Act.

This publication is designed to provide taxpayers with general guidance regarding Colorado income tax requirements. Additional information can be found in the Colorado’s statutes, regulations, forms and guidance. Nothing in this publication modifies or is intended to modify the requirements of Colorado’s statutes and regulations. Taxpayers should consult their tax advisors for guidance regarding specific situations.

¹ Discussions of federal tax laws, regulations, and procedures in this publication are provided for the sole purpose of clarifying related Colorado laws, rules, and procedures and

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should not be relied upon. Taxpayers should consult their tax advisors for guidance on federal tax laws.

Colorado Taxable Income

Colorado taxable income is calculated from “federal taxable income,” as determined pursuant to the Internal Revenue Code.² Colorado adopts the Internal Revenue Code on a rolling basis. Colorado’s definition of “Internal Revenue Code” does not incorporate federal statutory changes that are enacted after the last day of a tax year (and thus, neither do Colorado statutory references to “federal taxable income”).³ Accordingly, federal statutory changes enacted after the end of a tax year do not impact a taxpayer’s Colorado tax liability for that tax year.

Both the CARES Act and the CAA made federal statutory changes that impacted current tax years and years that ended before the passage of the relevant act. This publication discusses the applicability of some of those changes to Colorado income taxes.

In general, amended returns reporting only CARES Act adjustments for tax years ending before March 27, 2020 or CAA adjustments for tax years ending before December 27, 2020 should not be filed⁴ unless the original return reflected federal adjustments allowed by the act.⁵ Some taxpayers may need to adjust federal taxable income reported to Colorado for tax years ending before the effective dates of the CARES Act and the CAA when preparing their original return.

In the event that a taxpayer’s federal taxable income for Colorado purposes differs from their federal taxable income for federal purposes as the result of the retroactive provisions of the CARES Act, the taxpayer may be allowed to claim a subtraction on their 2021 Colorado income tax return. Please see the sections of this publication titled *House Bill 21-1002 Subtraction* for additional information.

Because different state and federal rules apply to individuals (as well as estates and trusts) and C corporations, this publication addresses individuals (along with estates and trusts) and C corporations separately.

² Sections 39-22-104(1.7) and 39-22-304(1), C.R.S.

³ Section 39-22-103(5.3), C.R.S.; 1 CCR 201-2, Rule 39-22-103(5.3).

⁴ Although section 39-22-601(6)(a), C.R.S., generally requires an amended return to be filed after a taxpayer files an amended return with the Internal Revenue Service, such returns are only required when the federal amended return reflects changes in federal taxable income reportable to Colorado. Because Colorado statutes do not incorporate federal statutory changes enacted after the end of a tax year, federal amended returns reflecting only changes made

by the CARES Act and CAA do not change federal taxable income reportable to Colorado.

⁵ Some taxpayers will not have filed an original return for the tax year beginning in 2019 until after the passage of the CARES Act. As discussed below, adjustments to federal taxable income as reported on the Colorado income tax return may be required to reflect the fact that Colorado applies changes to the federal Internal Revenue Code on a prospective basis. Taxpayers that filed a Colorado return for tax years ending before the enactment of the CARES Act without making such adjustments must file an amended Colorado return.

Individuals⁶

Net Operating Losses

Net Operating Loss Carryback Provisions

The CARES Act allowed taxpayers to carry back net operating losses arising in tax years beginning after December 31, 2017 and before January 1, 2021 to the five tax years preceding the year of the loss.⁷ Loss carrybacks adjusting federal taxable income for tax years ending before March 27, 2020 will not impact a taxpayer's Colorado tax liability for the carryback years and should not be reported to Colorado for those years.

An individual filing an original Colorado return for a tax year ending before March 27, 2020 must adjust federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) to the extent it reflects a net operating loss carryback from a tax year beginning before January 1, 2021. This requirement does not apply to any farming losses carried back pursuant to section 172(b)(1)(B) of the Internal Revenue Code.

Because taxpayers must use pre-CARES Act provisions to calculate their federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) for tax years ending prior to March 27, 2020, taxpayers who carried back a loss arising in a tax year beginning after December 31, 2017 for federal income tax

purposes may adjust federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) to carry such loss forward to a tax year ending before March 27, 2020. Such carry forward is subject to the deduction limitations discussed below.

Net Operating Loss Deduction Limitations

Prior to the CARES Act, the Internal Revenue Code limited deductions for net operating losses arising in tax years beginning after December 31, 2017 to 80 percent of taxable income for the year of the deduction.⁸ The CARES Act suspended the 80 percent limitation for net operating loss deductions claimed for tax years beginning before January 1, 2021.⁹ Additionally, the CARES Act imposed the 80 percent limitation for subsequent tax years based on taxable income computed without regard to the deduction allowed for qualified business income pursuant to section 199A of the Internal Revenue Code.¹⁰

For Colorado, the limitation of 80 percent of taxable income for the year of the deduction will continue to apply to any net operating loss arising in tax years beginning after December 31, 2017. Furthermore, the limitation is computed for Colorado purposes with respect to federal taxable income after any deduction allowed for qualified business income pursuant to section 199A of the Internal Revenue Code.

⁶ The Colorado taxable income of estates and trusts is generally based upon federal taxable income as modified by section 39-22-104, C.R.S. §§ 39-22-401 and -403, C.R.S. Therefore, the discussion in this section also applies to estates and trusts. References to line 1 of the Colorado individual income tax return (form DR 0104) similarly apply to line 1 of the Colorado fiduciary income tax return (form DR 0105).

⁷ CARES Act, Pub. L. 116-136, section 2303(b).

⁸ IRC section 172(a)(2); Pub. L. 115-97, section 13302.

⁹ CARES Act, Pub. L. No. 116-136, section 2303(a).

¹⁰ CARES Act, Pub. L. No. 116-136, section 2303(a).

For tax years ending before March 27, 2020, taxpayers should not amend their Colorado returns to reflect decreases in federal taxable income resulting from the suspension of this limitation. A taxpayer filing an original Colorado return for a tax year ending before March 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) to the extent it reflects net operating loss deductions in excess of the pre-CARES Act limit. Taxpayers who filed a return reporting federal taxable income reflecting changes made by the CARES Act must file an amended return (form DR 0104X).

Add-Back Required for Certain Tax Years

For tax years ending or beginning between March 27, 2020 and January 1, 2021, sections 39-22-104(3)(l) and 39-22-504(1)(b), C.R.S., require taxpayers to add back to federal taxable income net operating loss deductions taken on the federal return to the extent they are in excess of the taxable income limitation imposed by section 172(a) of the Internal Revenue Code prior to the amendment of that section by section 2303 of the CARES Act. In general, the add-back is equal to the amount by which a net operating loss deduction claimed on a taxpayer's federal income tax return exceeds 80 percent of the taxpayer's federal taxable income determined without regard to the net operating loss deduction.

¹¹ Section 39-22-504(1)(b), C.R.S.

¹² Section 39-22-104(4)(z), C.R.S.

¹³ CARES Act, Pub. L. 116-136, section 2306.

Subtraction Allowable for Tax Year 2021

Other than the add-back requirement described in the immediately preceding section,¹¹ any part of a federal net operating loss deduction claimed by a taxpayer for a tax year beginning prior to January 1, 2021 that is not allowed for Colorado tax purposes, as described above, may be allowed as a subtraction on the Colorado return for the tax year beginning in 2021.¹² Please see the section titled *House Bill 21-1002 Subtraction* on page 7 of this publication for additional information.

Business Interest Expense Limitation

The CARES Act made temporary changes to section 163(j) of the Internal Revenue Code.¹³ In general, the CARES Act increased the limitation on the deduction of business interest from 30 percent of adjusted taxable income to 50 percent of adjusted taxable income for tax years beginning in 2019 and 2020.¹⁴

Under the CARES Act, the increased limit does not apply to partnerships for tax years beginning prior to January 1, 2020.¹⁵ However, unless a partner elects otherwise, 50 percent of any business interest allocated to a partner in 2019 is deductible in the tax year beginning in 2020 and is not otherwise subject to the 50 percent (formerly 30 percent) limitation. The remaining 50 percent of excess business interest from 2019 allocated to the partner is subject to the adjusted taxable income limitation.

¹⁴ CARES Act, Pub. L. 116-136, section 2306(a).

¹⁵ CARES Act, Pub. L. 116-136, section 2306(a).

For Colorado, the limitation of 30 percent of adjusted taxable income for the year of the deduction will continue to apply to tax years ending before March 27, 2020. Taxpayers should not amend Colorado returns for tax years ending before March 27, 2020 to reflect decreases in federal taxable income resulting from the increase in this limitation.

An individual filing an original Colorado return for a tax year ending before March 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) to the extent it reflects business interest deductions in excess of the pre-CARES Act limit as a result of the CARES Act. Taxpayers who filed a return reporting federal taxable income reflecting changes made by the CARES Act must file an amended return (form DR 0104X).

Add-Back Required for Certain Tax Years

For tax years beginning or ending between March 27, 2020 and December 31, 2020, section 39-22-104(3)(n), C.R.S., requires taxpayers to add back to federal taxable income business interest deductions taken on the federal return to the extent they are in excess of the limits imposed under section 163(j) of the Internal Revenue Code prior to the amendment of that section by section 2306 of the CARES Act. This includes, but is not limited to, additional deductions related to the increase in the applicable percentage and additional deductions resulting from the election to use 2019 adjusted taxable income in lieu of 2020 adjusted taxable income to calculate the limitation under section 163(j) of the Internal Revenue Code.

¹⁶ Section 39-22-104(4)(z), C.R.S.

Subtraction Allowable for Tax Year 2021

If any part of a business interest expense deduction claimed by a taxpayer for a tax year beginning prior to January 1, 2021 is not allowed for Colorado tax purposes, as described above, the taxpayer may be able to claim a subtraction on their Colorado return for their tax year beginning in 2021.¹⁶ Please see the section titled *House Bill 21-1002 Subtraction* on page 7 of this publication for additional information.

Excess Loss Limitation

The CARES Act suspended the excess business loss limitation under section 461(l) of the Internal Revenue Code for tax years beginning prior to January 1, 2021 (tax years 2018, 2019, and 2020).¹⁷ In Colorado, for individual income tax purposes, the excess loss limitation will continue to apply to tax years ending before March 27, 2020. Taxpayers should not amend Colorado returns for tax years ending before March 27, 2020 to reflect decreases in federal taxable income resulting from the suspension of this limitation.

An individual filing an original Colorado return for a tax year ending before March 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) to the extent it reflects business loss deductions in excess of the pre-CARES Act limit. Taxpayers who filed a return reporting federal taxable income reflecting changes made by the CARES Act must file an amended return (form DR 0104X).

¹⁷ CARES Act, Pub. L. 116-136, section 2304.

Add-Back Required for Certain Tax Years

For tax years beginning or ending between March 27, 2020 and December 31, 2020, section 39-22-104(3)(m), C.R.S., requires taxpayers to add back to federal taxable income business losses to the extent they are in excess of the limits imposed under section 461(l) of the Internal Revenue Code. This amount of the addback is computed without regard to the amendment of section 461(l) by section 2304 of the CARES Act except for the technical correction made by section 2304(b)(2)(B) of the CARES Act. In general, for tax year 2020, if a business loss reported on a taxpayer’s return exceeds \$259,000 (\$518,000 if married filing joint), the addback is equal to the amount of the loss exceeding \$259,000 (\$518,000 if married filing joint). This excess is determined without regard to any deductions, gross income, or gains attributable to any trade or business of performing services as an employee.¹⁸

Subtraction Allowable for Tax Year 2021

If any part of a business loss claimed by a taxpayer for a tax year beginning prior to January 1, 2021 is not allowed for Colorado tax purposes, as described above, the taxpayer may be able to claim a subtraction on their Colorado return for their tax year beginning in 2021.¹⁹ Please see the section titled *House Bill 21-1002 Subtraction* on page 7 of this publication for additional information.

¹⁸ CARES Act, Pub. L. 116-136, section 2304(b)(2)(B).

¹⁹ Section 39-22-104(4)(z), C.R.S.

²⁰ See CARES Act, Pub. L. 116-136, section 2307.

Qualified Improvement Property

The CARES Act amended the 2017 Tax Cuts and Jobs Act²⁰ to retroactively treat certain interior, non-load-bearing building improvements (so-called “qualified improvement property”) as 15-year property under the Modified Accelerated Cost Recovery System.²¹ This class life accordingly makes qualified improvement property eligible for the additional first-year depreciation allowed by section 168(k) of the Internal Revenue Code. Finally, qualified improvement property that is required to be treated as alternative depreciation system property now has a class life of 20 years.²²

Taxpayers that change depreciation methods or make late elections, and file related amended returns or administrative adjustment requests, pursuant to Revenue Procedure 2020-025²³ for tax years ending prior to March 27, 2020, should not amend their Colorado returns.

An individual filing an original Colorado return for a tax year ending before March 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) to the extent it reflects the changes in depreciation methods, class lives, or elections permitted by Revenue Procedure 2020-025. Taxpayers who filed a return reporting federal taxable income reflecting changes made by the CARES Act must file an amended return (form DR 0104X).

²¹ CARES Act, Pub. L. 116-136, section 2307(a)(1)(A).

²² CARES Act, Pub. L. 116-136, section 2307(a)(2).

²³ 2020-19 I.R.B. 785 (eff. Apr. 17, 2020).

Examples illustrating the depreciation of qualified improvement property appear on pages 20 through 22 of this publication.

Subtraction Allowable for Tax Year 2021

If any depreciation claimed by a taxpayer for qualified improvement property for a tax year beginning prior to January 1, 2021 is not allowed for Colorado tax purposes, as described above, the taxpayer may be able to claim a subtraction on their Colorado return for their tax year beginning in 2021.²⁴ Please see the section titled *House Bill 21-1002 Subtraction*, below, for additional information.

House Bill 21-1002 Subtraction

House Bill 21-1002 enacted section 39-22-104(4)(z), C.R.S., which allows a subtraction for tax year 2021 in relation to certain retroactive provisions of the CARES Act. The allowable subtraction is an aggregate amount, calculated in multiple steps, based on the taxpayer's Colorado taxable income for each of the preceding tax years that were affected by the CARES Act. Taxpayers with Colorado taxable income that differed from federal taxable income as a result of the retroactive provisions of the CARES Act may claim the subtraction as follows.

²⁴ Section 39-22-104(4)(z), C.R.S.

²⁵ Tax years ending before January 1, 2013 should not be affected.

²⁶ Section 39-22-104(4)(z)(l), (4)(z)(IV)(D), and (4)(z)(IV)(E), C.R.S.

Calculation

First, for each affected tax year ending before March 27, 2020,²⁵ the taxpayer must calculate the difference between two amounts:

- (1) Colorado taxable income for the tax year, as calculated under Colorado law; and
- (2) The amount that Colorado taxable income would have been had certain retroactive provisions of the CARES Act applied to the calculation of the taxpayer's federal taxable income. A taxpayer may account for CARES Act modifications only to the extent the taxpayer appropriately applied those provisions to their federal income tax returns for the tax year.²⁶

For the purpose of this calculation, a taxpayer's Colorado taxable income is their federal taxable income as modified by Article 22, Title 39, C.R.S.²⁷ The retroactive provisions of the CARES Act considered in this calculation are limited to the changes made to the Internal Revenue Code by sections 2303, 2304, 2306, and 2307 of the CARES Act.²⁸

Aggregate Total

Next, the taxpayer must aggregate the difference amounts calculated as described above for all tax years ending before March 27, 2020.²⁹ The aggregate total, and therefore, the subtraction amount, will increase for tax years where the first amount (Colorado taxable income) is greater than

²⁷ Section 39-22-104(4)(z)(IV)(B), C.R.S.

²⁸ Section 39-22-104(4)(z)(IV)(C), C.R.S.

²⁹ Section 39-22-104(4)(z)(l), C.R.S.

the second (modified Colorado taxable income). The aggregate total, and therefore, the resulting subtraction, must be reduced for any tax year that the taxpayer's Colorado taxable income exceeds modified Colorado taxable income. This might occur, for example, if a net operating loss that was carried back for federal income tax purposes was instead carried forward for Colorado income tax purposes.

Combine Aggregate Amount with Other Addbacks

Finally, the taxpayer must add to the aggregated amount, described above, the sum of the addbacks reported on lines 3, 4, and 5 of their 2020 Colorado income tax return for the business interest expense deduction, excess business losses, and net operating losses, respectively.³⁰ The result of this calculation is the subtraction the taxpayer may claim on their 2021 Colorado return, subject to the limitations described below.

Subtraction Limitations and Carryforwards

The subtraction described above applies only after all other subtractions provided for in section 39-22-104(4), C.R.S. The amount of the subtraction that can be applied for tax year 2021 is limited to the lesser of the taxpayer's Colorado taxable income or \$300,000.³¹ Any amount of the allowable subtraction that a taxpayer may not claim for tax year 2021 as a result of this limitation may be carried forward to subsequent tax years as a subtraction from the taxpayer's federal taxable income until exhausted.

This carryforward is subject to the following limitations.³²

- For tax years commencing on or after January 1, 2022, but before January 1, 2026, each tax year's subtraction may not exceed the lesser of the taxpayer's Colorado taxable income or \$150,000.
- For each tax year thereafter, the \$150,000 limitation does not apply, but the subtraction claimed may not exceed the taxpayer's Colorado taxable income.

The subtraction must be applied first to the earliest income tax year possible.

Subtraction for Qualified Improvement Property

A taxpayer that applies the subtraction described above with respect to qualified improvement property must calculate the gain or loss on a sale of such property, for purposes of the subtraction in section 39-22-104(4)(b), C.R.S., using the basis reported on their federal income tax return at the time of the sale.³³

³⁰ Section 39-22-104(4)(z)(l), C.R.S. These addbacks were required under section 39-22-104(3)(l), (m), and (n), C.R.S.

³¹ Section 39-22-104(4)(z)(II)(A), C.R.S. For the purpose of the limitation, "Colorado taxable income" is a taxpayer's federal taxable income as modified by Article 22 of Title 39,

C.R.S., without regard to section 39-22-104(4)(z), C.R.S. Section 39-22-104(4)(z)(IV)(B), C.R.S.

³² Section 39-22-104(4)(z)(II)(B), C.R.S.

³³ Section 39-22-104(4)(z)(III), C.R.S.

Residential Rental Real Estate

The CAA amended certain provisions in the Tax Cuts and Jobs Act of 2017 regarding depreciation for certain residential rental property. The amendment provides that the applicable recovery period for residential rental property placed in service before January 1, 2018, is 30 years if it is held by an electing real property trade or business (as defined in section 163(j)(7)(B) of the Internal Revenue Code).³⁴ This provision applies only if the alternative depreciation system did not apply with respect to such property prior to January 1, 2018.

For Colorado, the 40-year recovery period applicable prior to the CAA for residential rental property placed in service before January 1, 2018, and held by an electing real property trade or business will continue to apply to tax years ending before December 27, 2020. Taxpayers should not amend Colorado returns for tax years ending before December 27, 2020 to claim additional depreciation under the CAA for such property.

An individual filing an original Colorado return for a tax year ending before December 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) to the extent it reflects additional depreciation claimed under the CAA for residential rental property placed in service before January 1, 2018, and held by an electing real property trade or business. Federal taxable income for tax years ending on and after December 27, 2020 will reflect the 30-year recovery period without adjustment.

³⁴ CAA, Pub. L. 116-260, Division EE, Title II, section 202; see also IRS, Publication 527: Residential Rental Property (2020), p.9, Table 2-1, available at <https://www.irs.gov/pub/irs-pdf/p527.pdf>.

Because the recovery period for Colorado income tax purposes was longer for certain tax years, the taxpayer's adjusted basis in the property for Colorado income tax purposes will be higher than the basis for federal income tax purposes. Therefore, the taxpayer may be entitled to a subtraction under section 39-22-104(4)(b), C.R.S., upon disposition of the property.

PPP Loans

The CARES Act created the paycheck protection program (PPP), which authorized forgivable loans.³⁵ The CARES Act further provided that loans forgiven through the program would be excluded from the gross income of an eligible recipient for federal income tax purposes.³⁶ PPP loans forgiven and excluded from gross income for federal income tax purposes will be similarly excluded for Colorado tax purposes.

In Notice 2020-32, 2020-21 IRB 837, and Revenue Ruling 2020-27, 2020-50 IRB 1552, the Internal Revenue Service stated that, because forgiven PPP loans are excluded from gross income, no deduction would be allowed for an expense that was otherwise deductible if the payment of the expense resulted in the forgiveness of a PPP loan or the taxpayer reasonably expects to receive forgiveness of a PPP loan on the basis of the expense. However, the Consolidated Appropriations Act, 2021 (CAA), enacted December 27, 2020, subsequently amended federal law retroactively to provide expressly that no deduction shall be denied

³⁵ CARES Act, Pub. L. 116-136, sections 1101-07.

³⁶ CARES Act, Pub. L. 116-136, section 1106(i).

by reason of the exclusion of a forgiven PPP loan from the taxpayer's gross income.³⁷

For Colorado, the disallowance of deductions described in Notice 2020-32, 2020-21 IRB 837, and Revenue Ruling 2020-27, 2020-50 IRB 1552 will continue to apply to tax years ending before December 27, 2020. Taxpayers should not amend Colorado returns for tax years ending before December 27, 2020 to claim additional deductions under section 276(a) of the CAA.

An individual filing an original Colorado return for a tax year ending before December 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) to the extent it reflects any deduction for an expense the payment of which resulted in the forgiveness of a PPP loan or for an expense the taxpayer reasonably expects will be the basis for the forgiveness of a PPP loan. Taxpayers who filed a Colorado return for a tax year ending prior to December 27, 2020 reflecting any such deduction must file an amended return (form DR 0104X).

Emergency EIDL Grants

The CARES Act authorized emergency EIDL grants, which were not required to be repaid.³⁸ However, the CAA, enacted December 27, 2020, expressly provided that no deduction shall be denied by reason of the exclusion of an emergency EIDL grant from the taxpayer's gross income.³⁹

³⁷ CAA, Pub. L. 116-260, section 276.

³⁸ CARES Act, Pub. L. 116-136, section 1110(e).

³⁹ CAA, Pub. L. 116-260, section 278(b).

Taxpayers should not amend Colorado returns for tax years ending before December 27, 2020 to claim additional deductions under section 278(b) of the CAA.

An individual filing an original Colorado return for a tax year ending before December 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado individual income tax return (form DR 0104) to the extent it reflects any deduction for an expense paid by a forgiven EIDL grant. Taxpayers who filed a Colorado return for a tax year ending prior to December 27, 2020 reflecting any such deduction must file an amended return (form DR 0104X).

C corporations

Net Operating Losses

Net Operating Loss Carryback Provisions

The CARES Act allowed taxpayers to carry back net operating losses arising in tax years beginning after December 31, 2017 and before January 1, 2021 to the five tax years preceding the year of the loss.⁴⁰ Loss carrybacks adjusting federal taxable income for tax years ending before March 27, 2020 will not impact a taxpayer's Colorado tax liability and should not be reported to Colorado.

Corporations are not allowed to carry back losses for Colorado income tax purposes.⁴¹ Colorado net

⁴⁰ CARES Act, Pub. L. 116-136, section 2303(b).

⁴¹ Section 39-22-504(3), C.R.S.

operating losses may be carried forward to the extent allowed by statute.⁴²

Net Operating Loss Deduction Limitations

Prior to the CARES Act, the Internal Revenue Code limited deductions for net operating losses arising in tax years beginning after December 31, 2017 to 80 percent of taxable income for the year of the deduction.⁴³ The CARES Act suspended the 80 percent limitation for net operating loss deductions claimed for tax years beginning before January 1, 2021.⁴⁴

For Colorado, a limitation of 80 percent of taxable income for the year of the deduction will continue to apply to tax years ending before March 27, 2020. Taxpayers should not amend Colorado returns for tax years ending before March 27, 2020 to reflect decreases in federal taxable income resulting from the suspension of this limitation. For tax years beginning in 2019, and ending before March 27, 2020, the Colorado corporate income tax return for 2019 (form DR 0112) reflects the calculation of this limitation.

Pre-CARES Act Limits Made Permanent

House Bill 20-1420 amended section 39-22-504(1) adding a new paragraph (b). The amendment permanently applies the 80 percent limitation in section 172(a)(2) of the Internal Revenue Code to losses incurred after December 31, 2017 without regard to the amendments made by section 2303 of the CARES Act. In particular, the limit is calculated after the deductions allowed under section 250 of the Internal Revenue Code. The Colorado

corporate income tax return (form DR 0112) will reflect the calculation of this limitation.

Business Interest Expense Limitation

The CARES Act made temporary changes to section 163(j) of the Internal Revenue Code.⁴⁵ In general, the CARES Act increased the limitation on the deduction of business interest from 30 percent of adjusted taxable income to 50 percent of adjusted taxable income for tax years beginning in 2019 and 2020.⁴⁶

For partnerships, the increased limit does not apply for tax years beginning prior to January 1, 2020.⁴⁷ However, unless a partner elects otherwise, 50 percent of any business interest allocated to a partner in 2019 is deductible in the tax year beginning in 2020 and is not otherwise subject to the 50 percent (formerly 30 percent) limitation. The remaining 50 percent of excess business interest from 2019 allocated to the partner is subject to the adjusted taxable income limitation.

For Colorado corporate income tax purposes, the limitation of 30 percent of adjusted taxable income for the year of the deduction will continue to apply to tax years ending before March 27, 2020. Taxpayers should not amend Colorado returns for tax years ending before March 27, 2020 to reflect decreases in federal taxable income resulting from the increase in this limitation.

For tax years ending before March 27, 2020, taxpayers will need to adjust federal taxable income reported on line 1 of the Colorado

⁴² Section 39-22-504(1) and (3), C.R.S.

⁴³ IRC section 172(a)(2); Pub. L. 115-97, section 13302.

⁴⁴ CARES Act, Pub. L. No. 116-136, section 2303(a).

⁴⁵ CARES Act, Pub. L. 116-136, section 2306.

⁴⁶ CARES Act, Pub. L. 116-136, section 2306(a).

⁴⁷ CARES Act, Pub. L. 116-136, section 2306(a).

C corporation income tax return (form DR 0112) to the extent it reflects business interest deductions in excess of the pre-CARES Act limit. Taxpayers that filed a return reporting federal taxable income reflecting changes made by the CARES Act must file an amended return (form DR 0112X).

Add-Back Required

For tax years beginning or ending between March 27, 2020 and December 31, 2020, section 39-22-104(2)(i), C.R.S.,⁴⁸ requires taxpayers to add back to federal taxable income business interest deductions taken on the federal return to the extent they are in excess of the limits imposed under section 163(j) of the Internal Revenue Code prior to the amendment of that section by section 2306 of the CARES Act. This includes, but is not limited to, additional deductions related to the increase in the applicable percentage and additional deductions resulting from the election to use 2019 adjusted taxable income in lieu of 2020 adjusted taxable income to calculate the limitation under section 163(j) of the Internal Revenue Code.

Subtraction Allowable for Tax Year 2021

If any part of a business interest expense deduction claimed by a taxpayer for a tax year beginning prior to January 1, 2021 is not allowed for Colorado tax purposes, as described above, the taxpayer may be able to claim a subtraction on their Colorado return for their tax year beginning in 2021.⁴⁹ Please see the section titled *House Bill 21-1002 Subtraction* on page 13 of this publication for additional information.

⁴⁸ This section was added by HB20-1420, which took effect upon signature by the Governor on July 11, 2020.

⁴⁹ Section 39-22-304(3)(p), C.R.S.

Qualified Improvement Property

The CARES Act amended the 2017 Tax Cuts and Jobs Act to retroactively treat certain interior, non-load-bearing building improvements (so-called “qualified improvement property”) as 15-year property under the Modified Accelerated Cost Recovery System.⁵⁰ This class life accordingly makes qualified improvement property eligible for the additional first-year depreciation allowed by section 168(k) of the Internal Revenue Code. Finally, qualified improvement property that is required to be treated as alternative depreciation system property now has a class life of 20 years.⁵¹

Taxpayers that change depreciation methods or make late elections, and file related amended returns or administrative adjustment requests, pursuant to Revenue Procedure 2020-025⁵² for tax years ending prior to March 27, 2020 should not amend their Colorado returns.

For tax years ending before March 27, 2020, taxpayers will need to adjust federal taxable income reported on line 1 of the Colorado C corporation income tax return (form DR 0112) to the extent it reflects the changes in depreciation methods, class lives, or elections permitted by Revenue Procedure 2020-025. Taxpayers that filed a return reporting federal taxable income reflecting changes made by the CARES Act must file an amended return (form DR 0112X).

⁵⁰ CARES Act, Pub. L. 116-136, section 2307(a)(1)(A).

⁵¹ CARES Act, Pub. L. 116-136, section 2307(a)(2).

⁵² 2020-19 I.R.B. 785 (eff. Apr. 17, 2020).

Federal taxable income for tax years ending on and after March 27, 2020 will reflect any changes or elections without adjustment.

Examples illustrating the depreciation of qualified improvement property appear on pages 20 through 22 of this publication.

Subtraction Allowable for Tax Year 2021

If any depreciation claimed by a taxpayer for qualified improvement property for a tax year beginning prior to January 1, 2021 is not allowed for Colorado tax purposes, as described above, the taxpayer may be able to claim a subtraction on their Colorado return for their tax year beginning in 2021.⁵³ Please see the section titled *House Bill 21-1002 Subtraction*, below, for additional information.

House Bill 21-1002 Subtraction

House Bill 21-1002 enacted section 39-22-304(3)(p), C.R.S., which allows a subtraction for the tax year beginning on or after January 1, 2021, but prior to January 1, 2022 in relation to certain retroactive provisions of the CARES Act. The allowable subtraction is an aggregate amount, calculated in multiple steps, based on the taxpayer's Colorado taxable income for each of the preceding tax years which were affected by the CARES Act. In the case of a taxpayer that apportions and allocates its net income pursuant to Colorado law, the subtraction applies to the

taxpayer's net income apportioned and allocated to Colorado.⁵⁴

Calculation

First, for each affected tax year ending before March 27, 2020,⁵⁵ the taxpayer must calculate the difference between two amounts:

- (1) Colorado taxable income for the tax year, as calculated under Colorado law; and
- (2) The amount that Colorado taxable income would have been had certain retroactive provisions of the CARES Act applied to the calculation of the taxpayer's federal taxable income. A taxpayer may account for CARES Act modifications only to the extent the taxpayer appropriately applied those provisions to their federal income tax returns for the tax year.⁵⁶

For the purpose of this calculation, a taxpayer's Colorado taxable income is their federal taxable income as modified by Article 22, Title 39, C.R.S.⁵⁷ The retroactive provisions of the CARES Act considered in this calculation are limited to the changes made to the Internal Revenue Code by sections 2306, and 2307 of the CARES Act.⁵⁸

Aggregate Total

Next, the taxpayer must aggregate the difference amounts calculated as described above for all tax years ending before March 27, 2020.⁵⁹ The

⁵³ Section 39-22-304(3)(p), C.R.S.

⁵⁴ Section 39-22-304(3)(p)(II)(C), C.R.S.

⁵⁵ Tax years ending before January 1, 2013 should not be affected.

⁵⁶ Section 39-22-304(3)(p)(I), (3)(p)(IV)(D), and (3)(d)(IV)(E), C.R.S.

⁵⁷ Section 39-22-304(3)(p)(IV)(B), C.R.S.

⁵⁸ Section 39-22-304(3)(p)(IV)(C), C.R.S.

⁵⁹ Section 39-22-304(3)(p)(I), C.R.S.

aggregate total, and therefore, the subtraction amount, will increase for tax years where the first amount (Colorado taxable income) is greater than the second (modified Colorado taxable income). The aggregate total, and therefore, the resulting subtraction, must be reduced for any tax year that the taxpayer's Colorado taxable income exceeds modified Colorado taxable income.

Combine Aggregate Amount with Other Addbacks

Finally, the taxpayer must add to the aggregated amount, described above, any business interest deduction addback included on the taxpayer's Colorado income tax return for a prior tax year pursuant to section 39-22-304(2)(i), C.R.S.⁶⁰ In the case of a taxpayer that apportions and allocates its net income, the addback amount must first be multiplied by the taxpayer's apportionment factor for the year of the addback before it is added to the aggregated amount. The result of this calculation is the subtraction the taxpayer may claim on their Colorado return for the tax year beginning on or after January 1, 2021, but prior to January 1, 2022, subject to the limitations described below.

Subtraction Limitations and Carryforwards

The subtraction described above applies only after all other subtractions provided for in section 39-22-304(3), C.R.S.⁶¹ In the case of a taxpayer that apportions and allocates its net income pursuant to Colorado law, the subtraction applies to the

taxpayer's net income apportioned and allocated to Colorado.⁶² The amount of the subtraction that can be applied for the tax year beginning on or after January 1, 2021, but prior to January 1, 2022 is limited to the lesser of the taxpayer's Colorado taxable income or \$300,000.⁶³ Any amount of the allowable subtraction that a taxpayer may not claim for the tax year beginning on or after January 1, 2021, but prior to January 1, 2022 as a result of this limitation may be carried forward to subsequent tax years as a subtraction from the taxpayer's federal taxable income until exhausted.

The carryforward is subject to the following limitations, and must be applied first to the earliest income tax years possible.⁶⁴

- For tax years commencing on or after January 1, 2022, but before January 1, 2026, each tax year's subtraction may not exceed the lesser of the taxpayer's Colorado taxable income or \$150,000.
- For each tax year thereafter, the \$150,000 limitation does not apply, but the subtraction claimed may not exceed the taxpayer's Colorado taxable income.
- In the case of a taxpayer that apportions and allocates its net income pursuant to Colorado law, the subtraction carried forward applies to the taxpayer's net income apportioned and allocated to Colorado.⁶⁵

⁶⁰ Section 39-22-304(3)(p)(I)(A) and (3)(p)(I)(B), C.R.S.

⁶¹ Section 39-22-304(3)(p)(II)(A), C.R.S.

⁶² Section 39-22-304(3)(p)(II)(C), C.R.S.

⁶³ Section 39-22-304(3)(p)(II)(A), C.R.S. For the purpose of the limitation, "Colorado taxable income" is a taxpayer's federal taxable income as modified by Article 22 of Title 39,

C.R.S., without regard to section 39-22-304(3)(p), C.R.S. Section 39-22-304(3)(p)(IV)(B), C.R.S.

⁶⁴ Section 39-22-304(3)(p)(II)(B), C.R.S.

⁶⁵ Section 39-22-304(3)(p)(II)(C), C.R.S.

Subtraction for Qualified Improvement Property

A taxpayer that applies the subtraction described above with respect to qualified improvement property must calculate the gain or loss on a sale of such property, for purposes of the subtraction in section 39-22-304(3)(c), C.R.S., using the basis reported on their federal income tax return at the time of the sale.⁶⁶

Residential Rental Real Estate

The CAA amended certain provisions in the Tax Cuts and Jobs Act of 2017 regarding depreciation for certain residential rental property. The amendment provides that the applicable recovery period for residential rental property placed in service before January 1, 2018, is 30 years if it is held by an electing real property trade or business (as defined in section 163(j)(7)(B) of the Internal Revenue Code).⁶⁷ This provision applies only if the alternative depreciation system did not apply with respect to such property prior to January 1, 2018.

For Colorado, the 40-year recovery period applicable prior to the CAA for residential rental property placed in service before January 1, 2018, and held by an electing real property trade or business will continue to apply to tax years ending before December 27, 2020. Taxpayers should not amend Colorado returns for tax years ending before December 27, 2020 to claim additional depreciation under the CAA for such property.

⁶⁶ Section 39-22-304(3)(p)(III), C.R.S.

⁶⁷ CAA, Pub. L. 116-260, Division EE, Title II, section 202; see also IRS, Publication 527: Residential Rental Property (2020), p.9, Table 2-1, available at <https://www.irs.gov/pub/irs-pdf/p527.pdf>.

A taxpayer filing an original Colorado return for a tax year ending before December 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado corporate income tax return (form DR 0112) to the extent it reflects additional depreciation claimed under the CAA for residential rental property placed in service before January 1, 2018, and held by an electing real property trade or business. Federal taxable income for tax years ending on and after December 27, 2020 will reflect the 30-year recovery period without adjustment.

Because the recovery period for Colorado income tax purposes was longer for certain tax years, the taxpayer's adjusted basis in the property for Colorado income tax purposes will be higher than the basis for federal income tax purposes. Therefore, the taxpayer may be entitled to a subtraction under section 39-22-304(3)(c), C.R.S., upon disposition of the property.

PPP Loans

The CARES Act created the paycheck protection program (PPP), which authorized forgivable loans.⁶⁸ The CARES Act further provided that loans forgiven through the program would be excluded from the gross income of an eligible recipient for federal income tax purposes.⁶⁹ PPP loans forgiven and excluded from gross income for federal income tax purposes will be similarly excluded for Colorado tax purposes.

In Notice 2020-32, 2020-21 IRB 837, and Revenue Ruling 2020-27, 2020-50 IRB 1552, the Internal

⁶⁸ CARES Act, Pub. L. 116-136, sections 1101-07.

⁶⁹ CARES Act, Pub. L. 116-136, section 1106(i).

Revenue Service stated that, because forgiven PPP loans are excluded from gross income, no deduction would be allowed for an expense that was otherwise deductible if the payment of the expense resulted in the forgiveness of a PPP loan or the taxpayer reasonably expects to receive forgiveness of a PPP loan on the basis of the expense. However, the Consolidated Appropriations Act, 2021 (CAA), enacted December 27, 2020, subsequently amended federal law retroactively to provide expressly that no deduction shall be denied by reason of the exclusion of a forgiven PPP loan from the taxpayer's gross income.⁷⁰

For Colorado, the disallowance of deductions described in Notice 2020-32, 2020-21 IRB 837, and Revenue Ruling 2020-27, 2020-50 IRB 1552 will continue to apply to tax years ending before December 27, 2020. Taxpayers should not amend Colorado returns for tax years ending before December 27, 2020 to claim additional deductions under section 276(a) of the CAA.

A taxpayer filing an original Colorado return for a tax year ending before December 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado income tax return (form DR 0112) to the extent it reflects any deduction for an expense the payment of which resulted in the forgiveness of a PPP loan or for an expense the taxpayer reasonably expects will be the basis for the forgiveness of a PPP loan. Taxpayers who filed a Colorado return for a tax year ending prior to December 27, 2020 reflecting any such deduction must file an amended return (form DR 0112X).

Emergency EIDL Grants

The CARES Act authorized emergency EIDL grants, which were not required to be repaid.⁷¹ The CAA, enacted December 27, 2020, expressly provided that no deduction shall be denied by reason of the exclusion of emergency EIDL grant from the taxpayer's gross income.⁷² Taxpayers should not amend Colorado returns for tax years ending before December 27, 2020 to claim additional deductions under section 278(b) of the CAA.

A taxpayer filing an original Colorado return for a tax year ending before December 27, 2020 will need to adjust federal taxable income reported on line 1 of the Colorado income tax return (form DR 0112) to the extent it reflects any deduction for an expense the paid by a forgiven EIDL grant. Taxpayers who filed a Colorado return for a tax year ending prior to December 27, 2020 reflecting any such deduction must file an amended return (form DR 0112X).

⁷⁰ CAA, Pub. L. 116-260, section 276.

⁷¹ CARES Act, Pub. L. 116-136, section 1110(e).

⁷² CAA, Pub. L. 116-260, section 278(b).



Frequently Asked Questions

I amended my federal income tax return in response to the CARES Act in a way that changed my federal taxable income for a tax year ending before March 27, 2020. There were no other changes to my federal income tax return. Do I need to report that change to Colorado?

If the change was caused by:	Is the change reported to Colorado?
A federal net operating loss carryback	No
Increased net operating loss deduction because of the suspension of the 80% limit	No
Increased business interest expense deduction caused by the increase in the limit from 30% to 50% of adjusted taxable income	No
The suspension of the excess business loss limitation	No
Changes in the treatment of qualified improvement property	No

I filed or amended my Colorado income tax return for a tax year ending before March 27, 2020, using the federal taxable income from my federal return. My federal return incorporated provisions from the CARES Act. Do I need to amend my Colorado income tax return?

If my federal taxable income included:	Do I need to amend my Colorado return?
A federal net operating loss carryback from a tax year beginning before January 1, 2021 (other than farm losses)	Individuals: Yes
	C corporations: No
Increased net operating loss deduction because of the suspension of the 80% limit	Individuals: Yes
	C corporations: No, unless the corporation claimed an increased Colorado net operating loss because of the suspension of the 80% limit.
Increased business interest expense deduction caused by the increase in the limit from 30% to 50% of adjusted taxable income	Individuals: Yes
	C corporations: Yes
The suspension of the excess business loss limitation	Individuals: Yes
	C corporations: Not Applicable
Changes in the treatment of qualified improvement property	Individuals: Yes
	C corporations: Yes

I am preparing my federal and Colorado returns for the tax year beginning in 2019 and ending before March 27, 2020 (“tax year 2019”). My federal return incorporated provisions from the CARES Act for tax year 2019. Do I need to adjust “federal taxable income” (“FTI”) as reported on line 1 of my Colorado income tax return?

If my federal taxable income included:	Do I need to adjust FTI on line 1 of the Colorado income tax return?
Increased net operating loss deduction because of the suspension of the 80% limit	Individuals: Yes
	C corporations: No. Colorado form DR 0112 accounts for the 80% limitation on line 17. Follow the instructions for this line.
Increased business interest expense deduction caused by the increase in the limit from 30% to 50% of adjusted taxable income	Individuals: Yes
	C corporations: Yes
The suspension of the excess business loss limitation	Individuals: Yes
	C corporations: Not Applicable
Changes in the treatment of qualified improvement property	Individuals: Yes
	C corporations: Yes

Qualified Improvement Property Examples

Common Facts

Taxpayer is a C corporation doing business in Colorado. Taxpayer uses a calendar-year accounting cycle. In April 2018, Taxpayer placed in service certain qualified improvement property with a basis of \$5,000. For tax year 2018, Taxpayer treated the property as 39-year property and computed depreciation under the general depreciation system using the straight-line method and applying the mid-month convention. Accordingly, Taxpayer deducted \$91 in depreciation for tax year 2018. Taxpayer's federal taxable income reported to Colorado reflected this deduction.

Prior to filing federal and Colorado returns for tax year 2019, Congress enacted the CARES Act, and the Internal Revenue Service issued Revenue Procedure 2020-25. Taxpayer also took notice of 1 CCR 201-2, Rule 39-22-103(5.3). Taxpayer prepared its 2019 return and filed it on July 15, 2020 accordingly.

Example 1

Pursuant to Rev. Proc. 2020-25, Taxpayer amended its federal return for tax year 2018 to claim the special depreciation allowance under section 168(k) for the qualified improvement property. Taxpayer increased its 2018 deduction to \$5,000. When Taxpayer computed its federal return for tax year 2019, it did not compute a depreciation deduction for the property.

In accordance with the Colorado rule, Taxpayer did not amend its Colorado corporate income tax return for tax year 2018. Taxpayer also noted that its 2019 tax year ended prior to the enactment of the CARES Act. In accordance with the Colorado rule, Taxpayer computed a pro forma deduction for tax year 2019 of \$128 based upon the pre-CARES act classification of qualified improvement property as nonresidential real property (i.e., 39-year property ineligible for the special depreciation allowance). Taxpayer subtracted \$128 from the amount of federal taxable income reported on line 30 of IRS form 1120 and reported the result on line 1 of Colorado form DR 0112.

The CARES Act was in effect during tax years 2020 and 2021. As such, no adjustment to federal taxable income as reported to Colorado is necessary because Taxpayer's federal taxable income for both federal and Colorado purposes is calculated under the same version of the code.

However, for tax year 2021, taxpayer is entitled to a subtraction under section 39-22-304(3)(p), which was added by HB 21-1002. Taxpayer computed the subtraction as follows:

	Tax Year 2018	Tax Year 2019	Aggregate Total
Colorado taxable income for the tax year, as calculated under Colorado law.	(\$91)	(\$128)	
The amount that Colorado taxable income would have been had certain retroactive provisions of the CARES Act applied to the calculation of the taxpayer’s federal taxable income.	(\$5,000)	\$0	
Difference Amount	(\$4,909)	\$128	(\$4,781)

As a result, Taxpayer claims a subtraction of \$4,781 on its 2021 Colorado return.

In April 2023, Taxpayer abandoned the qualified improvement property. In general, depreciation is deducted in the calculation of adjusted basis. Pursuant to section 39-22-304(3)(p)(III), C.R.S., taxpayer’s basis in the property is the same for both federal and Colorado purposes. Consequently, Taxpayer is not allowed to claim any subtraction pursuant to section 39-22-304(3)(c), C.R.S., on its 2023 return.

Example 2

Pursuant to Rev. Proc. 2020-25, Taxpayer made an election under section 168(k)(7) not to deduct the additional first-year depreciation for tax year 2018 for the entire class including the qualified improvement property. Taxpayer also made a change in accounting method and computed depreciation for tax year 2018, treating the property as 15-year property and computing depreciation under the general depreciation system using the straight-line method and applying the half-year convention. As a result of this change, Taxpayer increased its federal depreciation deduction for tax year 2018 from \$91 to \$167, which in turn reduced its federal taxable income. In accordance with the Colorado rule, Taxpayer did not amend its Colorado corporate income tax return for tax year 2018.

For tax year 2019, Taxpayer again computed a federal depreciation deduction for the qualified improvement property treating the property as 15-year property and computing depreciation under the general depreciation system using the straight-line method and applying the half-year convention. As such, Taxpayer deducted \$333 on its federal income tax return with respect to such property.

Taxpayer noted that its 2019 tax year ended prior to the enactment of the CARES Act. In accordance with the Colorado rule, Taxpayer computed a pro forma deduction of \$128 based upon the pre-CARES act classification of qualified improvement property as nonresidential real property (i.e., 39-year property ineligible for the special depreciation allowance). Taxpayer computed the difference between the pro forma deduction and the deduction claimed on its federal return (\$333 - \$128). Taxpayer added \$205 to the amount

of federal taxable income reported on line 30 of IRS form 1120 and reported the result on line 1 of Colorado form DR 0112.

In tax years 2020 and 2021, Taxpayer again claimed a deduction on its federal return with respect to the qualified improvement property in the amount of \$333. Because the CARES Act was in effect during tax years 2020 and 2021, no adjustment to federal taxable income as reported to Colorado was necessary.

However, for tax year 2021, taxpayer is entitled to a subtraction under section 39-22-304(3)(p), which was added by HB 21-1002. Taxpayer computed the subtraction as follows:

	Tax Year 2018	Tax Year 2019	Aggregate Total
Colorado taxable income for the tax year, as calculated under Colorado law.	(\$91)	(\$128)	
The amount that Colorado taxable income would have been had certain retroactive provisions of the CARES Act applied to the calculation of the taxpayer’s federal taxable income.	(\$167)	(\$333)	
Difference Amount	(\$76)	(\$205)	(\$281)

As a result, Taxpayer claims a subtraction of \$281 on its 2021 Colorado return.