

This guidance document replaces the Department’s previously-issued guidance regarding the impact of recent federal legislation on Colorado income tax. The prior guidance explained that, as a consequence of Rule 39-22-103(5.3), certain retroactive provisions of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) and the Consolidated Appropriations Act, 2021 (CAA), did not affect a taxpayer’s Colorado income tax liability.

A recent court decision determined that Rule 39-22-103(5.3) was incorrect and that retroactive changes in federal law can affect a taxpayer’s Colorado taxable income.¹ In light of this ruling, the Department expects to repeal Rule 39-22-103(5.3). The rule should be disregarded in the meantime. This publication explains changes resulting from the court decision invalidating Rule 39-22-103(5.3), as well as additions and subtractions related to the CARES Act which remain in effect.

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.

As discussed in this publication, taxpayers may need to file amended Colorado income tax returns to correct their federal taxable income, additions, or subtractions previously reported on their Colorado returns. Forms and instructions are available online at [Tax.Colorado.gov/individual-income-tax-forms](https://tax.colorado.gov/individual-income-tax-forms) and [Tax.Colorado.gov/business-income-tax-forms](https://tax.colorado.gov/business-income-tax-forms).

¹ *Anschutz v. Department of Revenue*, 2022 COA 132, 524 P.3d 1203.

² Sections 39-22-103(5.3), -104(1.7), and -304(1), C.R.S.

³ In the case of an affiliated group of C corporations filing a combined, consolidated, or combined-consolidated Colorado

Federal taxable income

Colorado income tax is based on federal taxable income as determined pursuant to the Internal Revenue Code, as amended.² For any tax year, including tax years ending either before or after the enactment of the CARES Act and CAA, a taxpayer’s federal taxable income for Colorado income tax purposes is the same as their federal taxable income for federal income tax purposes for that tax year.³

The Department’s prior guidance advised that federal changes made by the CARES Act (enacted March 27, 2020) and the CAA (enacted December 27, 2020) for tax years ending prior to their enactment did not apply for Colorado income tax purposes. As a result, the Department directed taxpayers not to amend their previously filed Colorado returns for these years and, where necessary, to adjust the federal taxable income reported on their Colorado return pursuant to federal law as existed prior to the enactment of the CARES Act and CAA. In general, taxpayers were advised to compute federal taxable income by applying the law in effect immediately prior to the CARES Act and the CAA and to report that amount on line 1 of the Colorado income tax return.

In light of the court decision invalidating Rule 39-22-103(5.3), the prior guidance should be disregarded. Now, for any tax year, the federal taxable income reported on a taxpayer’s Colorado income tax return should match the federal taxable income reported on their federal return for that year, or as subsequently amended or adjusted by the IRS, if applicable.

return, federal taxable income for Colorado income tax purposes is determined with respect to only the C corporations that are included in such combined, consolidated, or combined-consolidated Colorado return.



If a taxpayer is unsure if the federal taxable income reported on their Colorado return matches their federal taxable income reflected in IRS records, they can request records from both the IRS and the Department for comparison. Individuals can request an IRS Record of Account online at [IRS.gov/individuals/get-transcript](https://irs.gov/individuals/get-transcript). Other taxpayers can request an IRS Record of Account by filing IRS Form 4506-T, available online at www.irs.gov/forms-pubs/about-form-4506-t. Information about a taxpayer's federal taxable income currently reflected in Department records can be obtained online at Colorado.gov/RevenueOnline.

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.

Individuals⁴

The following sections discuss certain provisions of the CARES Act and CAA, their impact on Colorado individual income tax, related addbacks required for tax year 2020, and the associated subtraction allowed for tax year 2021. For clarity, and because nearly all individuals file their Colorado income tax returns on a calendar year basis, parts of the discussion of individual income tax in this publication refers to calendar tax years (e.g. "tax years 2018 and 2019"). Please see the footnotes for additional information about the application of the guidance in this publication to individuals whose tax year is not a calendar year.

⁴ Department guidance on amending returns to claim the deduction for unemployment compensation allowed by the

As discussed in greater detail in the following sections, individuals must file an *Amended Colorado Individual Income Tax Return* (DR 0104X) to make any necessary corrections to their previously filed Colorado returns. Any amended return filed by a taxpayer must be completed in full, including all applicable forms and attachments. Forms and instructions are available online at Tax.Colorado.gov/individual-income-tax-forms. Individuals may also file amended returns electronically online at Colorado.gov/RevenueOnline. In general, any amended return claiming a refund must be filed within four years of the due date of the original return, including extensions, but please see the following section for information about the statute of limitations relating to net operating loss carrybacks.

Net operating loss carrybacks

The CARES Act allowed individuals 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.⁵ Prior Department guidance advised that the provisions of the CARES Act authorizing individuals to carry back net operating losses did not apply for Colorado income tax purposes for tax years ending prior to March 27, 2020. The Department's prior guidance regarding net operating loss carrybacks allowed by the CARES Act for individuals should be disregarded.

If an individual carries back a federal net operating loss, such carryback will apply for Colorado income tax purposes. The individual must file an *Amended Colorado Individual Income Tax Return* (DR 0104X) for the tax year to which the loss was carried to report the individual's federal taxable income after the net operating loss deduction.

American Rescue Plan Act is available at Tax.Colorado.gov/2020-unemployment-compensation-exclusion.

⁵ CARES Act, Pub. L. 116-136, section 2303(b).



In general, any claim for refund or credit of a net operating loss carryback must be filed within four years of the due date, including extensions, for the return for the tax year in which the net operating loss arose.⁶ Prior Department guidance indicated that, under certain circumstances, an individual who carried back a net operating loss for federal income tax purposes could carry that loss forward for Colorado income tax purposes to a tax year ending before March 27, 2020. That prior guidance should be disregarded. An individual's net operating losses are carried back or forward for Colorado income tax purposes in the same manner that they are carried back or forward for federal income tax purposes.

Tax years 2018 and 2019

The CARES Act and CAA include several provisions, discussed briefly below, that applied retroactively to tax years 2018 and 2019⁷ and generally had the effect of reducing an individual's federal taxable income. In general, taxpayers were advised to compute federal taxable income by applying the law in effect immediately prior to the CARES Act and the CAA and to report that amount on line 1 of the Colorado income tax return.

As noted above, that guidance should be disregarded. An individual's federal taxable income for Colorado income tax purposes is now the same as their federal taxable income for federal income tax purposes, even if the individual's federal taxable income was affected by retroactive provisions of the CARES Act or CAA. If, in accordance with prior Department guidance, an individual reported a different federal taxable income

on their Colorado return, or amended their federal return under the CARES Act or CAA without similarly amending their Colorado return, that individual must now amend their Colorado return to report their correct federal taxable income on line 1.⁸

Limitations under the Tax Cuts and Jobs Act

In general, the CARES Act modified or suspended the following limitations established by the Tax Cuts and Jobs Act of 2017 (Public Law 115-97):

- Net operating loss deduction limitation;⁹
- Business interest expense limitation;¹⁰ and
- Excess loss limitation.¹¹

Prior Department guidance stated that these retroactive CARES Act changes did not apply for Colorado income tax purposes for tax years ending prior to March 27, 2020. The Department's prior guidance regarding these retroactive changes should be disregarded and individuals must file amended Colorado returns, if necessary, to correct their federal taxable income to match their federal taxable income determined for federal income tax purpose. Please see also the section later in this publication regarding the calculation of the Colorado subtraction allowed for tax year 2021 under House Bill 21-1002.

⁶ Section 39-21-108(1), C.R.S., and 26 U.S.C. § 6511(d)(2).

⁷ The information in this section applies generally to tax years that ended prior to the enactment of the CARES Act (on March 27, 2020) and the CAA (on December 27, 2020) and were affected by provisions of the CARES Act or CAA. Different provisions of the CARES Act and CAA applied to different tax years, but, with the exception of net operating loss carrybacks discussed earlier in this publication, the provisions of the CARES Act and CAA discussed in this publication generally did not apply to tax years commencing prior to January 1, 2018.

⁸ If instead these adjustments to federal taxable income were reported as additions to or subtractions from federal taxable income, those additions and subtractions should be amended.

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

¹⁰ CARES Act, Pub. L. 116-136, section 2306.

¹¹ CARES Act, Pub. L. 116-136, section 2304.



Qualified improvement property

The CARES Act made retroactive amendments to the Tax Cuts and Jobs Act of 2017 (Public Law 115-97) regarding depreciation allowed for qualified improvement property (“QIP”).¹² Prior Department guidance stated that these retroactive amendments did not apply for Colorado income tax purposes for tax years ending prior to March 27, 2020, and the depreciation for QIP for these years must be determined under the Internal Revenue Code as it existed prior to the CARES Act. The Department’s prior guidance regarding these retroactive changes should be disregarded and individuals must file amended Colorado returns, if necessary, to correct their federal taxable income to match their federal taxable income determined for federal income tax purpose. Please see also the section later in this publication regarding the calculation of the Colorado subtraction allowed for tax year 2021 under House Bill 21-1002.

Residential rental real estate

The CAA amended certain provisions in the Tax Cuts and Jobs Act of 2017 (Public Law 115-97) regarding depreciation for certain residential rental property.¹³ The amendment applied retroactively for residential rental property placed in service before January 1, 2018, and generally reduced the applicable recovery period from 40 years to 30 years if certain conditions were met. Prior Department guidance stated that this retroactive amendment did not apply for Colorado income tax purposes for tax years ending prior to December 27, 2020, and the depreciation for affected property must be determined under the Internal Revenue Code as it existed prior to the CAA. The Department’s prior guidance regarding these retroactive changes should be disregarded and individuals must file amended Colorado returns, if necessary, to correct their federal taxable income to match their federal taxable income determined for federal income tax purposes.

Additionally, prior Department guidance stated that the differing recovery periods for Colorado and federal tax purposes would result in higher adjusted basis for the property for Colorado purposes and a possible Colorado subtraction under section 39-22-104(4)(b), C.R.S., upon the disposition of the property. That prior guidance should be disregarded. This property has the same adjusted basis for Colorado tax purposes as it has for federal tax purposes. If an individual claimed a Colorado subtraction based on the Department’s prior guidance, the individual must amend their Colorado income tax return to eliminate the subtraction claimed.

PPP loans and emergency EIDL grants

The CARES Act created the paycheck protection program (PPP), which authorized forgivable loans,¹⁴ and authorized emergency EIDL grants, which were not required to be repaid.¹⁵ The CAA expressly provided that no federal income tax deduction shall be denied by reason of the exclusion of a forgiven PPP loan or an emergency EIDL grant from the taxpayer’s gross income.¹⁶ Prior Department guidance advised that these changes made by the CAA did not apply for Colorado income tax purposes for any tax year ending before December 27, 2020. The Department’s prior guidance regarding these deductions should be disregarded. Individuals must file amended Colorado returns, if necessary, to correct their federal taxable income to match their federal taxable income determined for federal income tax purpose.

¹² CARES Act, Pub. L. 116-136, section 2307.

¹³ CAA, Pub. L. 116-260, Division EE, Title II, section 202.

¹⁴ CARES Act, Pub. L. 116-136, sections 1101-07.

¹⁵ CARES Act, Pub. L. 116-136, section 1110(e).

¹⁶ CAA, Pub. L. 116-260, sections 276 and 278(b).



Required addbacks for tax year 2020

For tax years beginning or ending between March 27, 2020 and December 31, 2020, House Bill 20-1420 requires individuals to add back on their 2020 Colorado income tax returns certain deductions claimed on their 2020 federal income tax returns in excess of certain limitations. These addbacks were not affected by the court decision concerning Rule 39-22-103(5.3). Therefore, taxpayers must not adjust these addbacks when amending a return for tax year 2020.

Net operating loss addback

For tax years beginning or ending between March 27, 2020 and December 31, 2020, individuals must 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.¹⁷ In general, the addback 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.

¹⁷ Section 39-22-104(3)(l), C.R.S.

¹⁸ Section 39-22-104(3)(n), C.R.S.

Business interest expense deduction addback

For tax years beginning or ending between March 27, 2020 and December 31, 2020, individuals must 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.¹⁸ 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.

Excess business loss addback

For tax years beginning or ending between March 27, 2020 and December 31, 2020, individuals must 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.¹⁹ 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.²⁰

¹⁹ Section 39-22-104(3)(m), C.R.S.

²⁰ CARES Act, Pub. L. 116-136, section 2304(b)(2)(B).



House Bill 21-1002 subtraction

Individuals may claim a subtraction on their Colorado return for tax year 2021²¹ if they made an addition on their 2020 Colorado return, as described above, for a net operating loss deduction, business interest expense deduction, or excess business loss claimed on their 2020 federal return. Subject to limitations discussed later in this publication, the allowable subtraction is equal to the sum of the three addbacks made on the individual's 2020 Colorado return.

Prior Department guidance indicated that the calculation of the allowable subtraction also included any difference between the following amounts for any tax year ending before March 27, 2020:

- The individual's Colorado taxable income for the tax year, as calculated under Colorado law; and
- The amount that the individual's 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.

As discussed earlier in this publication, the retroactive provisions of the CARES Act apply to the calculation of an individual's federal taxable income for Colorado income tax purposes. As a result, there is no difference between the amounts described above. If an individual claimed a subtraction on their 2021 Colorado return under House Bill 21-1002 for a difference in the amounts described above, the individual must file an amended 2021 Colorado return to correct the amount of the subtraction claimed to include only the amount of the addbacks on their 2020 Colorado return for a net operating loss deduction, business interest expense deduction, or excess business loss claimed on their 2020 federal return.

²¹ The information in this section applies to tax years beginning on or after January 1, 2021, but before January 1, 2022.

²² 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

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 \$300,000.²² 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:²³

- 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.

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.

²³ Section 39-22-104(4)(z)(II)(B), C.R.S.



C corporations

The following sections discuss certain provisions of the CARES Act and CAA, their impact on Colorado corporate income tax, a related addback required for tax year 2020, and the associated subtraction allowed for tax year 2021.

As discussed in greater detail in the following sections, C corporations must file an *Amended Colorado C Corporation Income Tax Return* (DR 0112X) to make any necessary corrections to their previously filed Colorado returns. Any amended return filed by a taxpayer must be completed in full, including all applicable forms and attachments. Forms and instructions are available online at [Tax.Colorado.gov/business-income-tax-forms](https://tax.colorado.gov/business-income-tax-forms). C corporations may also file amended returns electronically online at [Colorado.gov/RevenueOnline](https://colorado.gov/RevenueOnline). In general, any amended return claiming a refund must be filed within four years of the due date of the original return, including extensions.

Net operating loss carrybacks

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.²⁴ C corporations are required to add back on their Colorado returns the full amount of any federal net operating loss deducted in the calculation of their federal taxable income.²⁵ As a result, any federal deduction claimed by a C corporation for net operating losses carried forward or back to the tax year should not impact the C corporation's Colorado income tax liability.

C corporations may not carry back any Colorado net operating losses for Colorado income tax purposes.²⁶ Therefore, C corporations may not amend their returns to carry back losses despite the recent court ruling.

²⁴ CARES Act, Pub. L. 116-136, section 2303(b).

²⁵ Section 39-22-304(2)(c), C.R.S.

²⁶ Section 39-22-504(3), C.R.S.

C corporations may carry forward their Colorado net operating losses to the extent allowed by statute.²⁷

Colorado net operating loss deductions

The Colorado net operating loss deduction a C corporation may claim for losses arising in tax years beginning after December 31, 2017, is limited to 80 percent of the C corporation's Colorado taxable income after the deduction of any Colorado net operating losses arising from tax years beginning prior to January 1, 2018.²⁸ The 80 percent limitation is determined 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 C Corporation Income Tax Return (form DR 0112) for tax years 2019 and later includes a specific line for deducting Colorado net operating losses arising in tax years beginning after December 31, 2017, that are subject to the 80 percent limitation. Therefore, although the CARES Act suspended this limit, C corporations may not amend their returns to claim additional net operating losses despite the recent court ruling.

Business interest expense limitation

The CARES Act made temporary changes to section 163(j) of the Internal Revenue Code.²⁹ Prior Department guidance stated that these retroactive CARES Act changes did not apply for Colorado income tax purposes for tax years ending prior to March 27, 2020. The Department's prior guidance regarding these retroactive changes should be disregarded and taxpayers must file amended Colorado returns, if necessary, to correct their federal taxable income to match their federal taxable income determined for federal income tax purposes. Please see also the section later in this publication regarding the calculation of the Colorado subtraction allowed for tax year 2021 under House Bill 21-1002.

²⁷ Section 39-22-504(1) and (3), C.R.S.

²⁸ Section 39-22-504(1)(b), C.R.S.; House Bill 20-1420, section 4.

²⁹ CARES Act, Pub. L. 116-136, section 2306.



Qualified improvement property

The CARES Act made retroactive amendments to the Tax Cuts and Jobs Act of 2017 (Public Law 115-97) regarding depreciation allowed for qualified improvement property (“QIP”).³⁰ Prior Department guidance stated that these retroactive amendments did not apply for Colorado income tax purposes for tax years ending prior to March 27, 2020, and the depreciation for QIP for these years must be determined under the Internal Revenue Code as it existed prior to the CARES Act. The Department’s prior guidance regarding these retroactive changes should be disregarded and C corporations must file amended Colorado returns, if necessary, to correct their federal taxable income to match their federal taxable income determined for federal income tax purposes. Please see also the section later in this publication regarding the calculation of the Colorado subtraction allowed for tax year 2021 under House Bill 21-1002.

Residential rental real estate

The CAA amended certain provisions in the Tax Cuts and Jobs Act of 2017 (Public Law 115-97) regarding depreciation for certain residential rental property.³¹ The amendment applied retroactively for residential rental property placed in service before January 1, 2018, and generally reduced the applicable recovery period from 40 years to 30 years if certain conditions were met. Prior Department guidance stated that this retroactive amendment did not apply for Colorado income tax purposes for tax years ending prior to December 27, 2020, and the depreciation for affected property must be determined under the Internal Revenue Code as it existed prior to the CAA. The Department’s prior guidance regarding these retroactive changes should be disregarded and C corporations must file amended Colorado returns, if necessary, to correct their federal taxable income to match their federal taxable income determined for federal income tax purposes.

Additionally, prior Department guidance stated that the differing recovery periods for Colorado and federal tax purposes would result in higher adjusted basis for the property for Colorado purposes and a possible Colorado subtraction under section 39-22-104(4)(b), C.R.S., upon the disposition of the property. That prior guidance should be disregarded. This property has the same adjusted basis for Colorado tax purposes as it has for federal tax purposes. If a C corporation claimed a Colorado subtraction based on the Department’s prior guidance, the C corporation must amend their Colorado income tax return to eliminate the subtraction claimed.

PPP loans and emergency EIDL grants

The CARES Act created the paycheck protection program (PPP), which authorized forgivable loans,³² and authorized emergency EIDL grants, which were not required to be repaid.³³ The CAA expressly provided that no federal income tax deduction shall be denied by reason of the exclusion of a forgiven PPP loan or an emergency EIDL grant from the taxpayer’s gross income.³⁴ Prior Department guidance advised that these changes made by the CAA did not apply for Colorado income tax purposes for any tax year ending before December 27, 2020. The Department’s prior guidance regarding these deductions should be disregarded. C corporations must file amended Colorado returns, if necessary, to correct their federal taxable income to match their federal taxable income determined for federal income tax purpose.

³⁰ CARES Act, Pub. L. 116-136, section 2307.

³¹ CAA, Pub. L. 116-260, Division EE, Title II, section 202.

³² CARES Act, Pub. L. 116-136, sections 1101-07.

³³ CARES Act, Pub. L. 116-136, section 1110(e).

³⁴ CAA, Pub. L. 116-260, sections 276 and 278(b).



Business interest expense deduction addback

For tax years beginning or ending between March 27, 2020 and December 31, 2020, C corporations must 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.³⁵ 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. This addback was not affected by the court decision concerning Rule 39-22-103(5.3). Therefore, C corporations must not adjust this addback when amending a return for a tax year beginning or ending between March 27, 2020 and December 31, 2020.

House Bill 21-1002 subtraction³⁶

C corporations may claim a subtraction on their Colorado return for their income tax year beginning on or after January 1, 2021, but before January 1, 2022, if they made an addition on their Colorado return for the prior tax year, as described above, for business interest expenses deducted on their federal return. In the case of a taxpayer that apportions and allocates its net income, the addback amount must be multiplied by the taxpayer's apportionment factor for the year of the addback to determine the amount of the subtraction. The subtraction a C corporation may claim is subject to limitations discussed later in this publication.

Prior Department guidance indicated that the calculation of the allowable subtraction also included any difference between the following amounts for any tax year ending before March 27, 2020:

- The C corporation's Colorado taxable income for the tax year, as calculated under Colorado law; and
- The amount that the C corporation's 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.

As discussed earlier in this publication, the retroactive provisions of the CARES Act apply to the calculation of an C corporation's federal taxable income for Colorado income tax purposes. As a result, there is no difference between the amounts described above. If a C corporation claimed a subtraction under House Bill 21-1002 for a difference in the amounts described above, the C corporation must file an amended Colorado return to correct the amount of the subtraction claimed to include only the amount of the business interest expense deduction addback, apportioned if applicable, as described above.

Please see the Supplement Instructions for the 2021 Colorado C Corporation Income Tax Return (DR 0112) available online at [Tax.Colorado.gov/2021-c-corporation-forms](https://tax.colorado.gov/2021-c-corporation-forms) for additional information about claiming this subtraction.

³⁵ Section 39-22-304(2)(i), C.R.S.

³⁶ The information in this section applies to tax years beginning on or after January 1, 2021, but before January 1, 2022.

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.³⁷ 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.³⁸ 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 \$300,000.³⁹ 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.⁴⁰

- 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.⁴¹

³⁷ Section 39-22-304(3)(p)(II)(A), C.R.S.

³⁸ Section 39-22-304(3)(p)(II)(C), C.R.S.

³⁹ 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.

⁴⁰ Section 39-22-304(3)(p)(II)(B), C.R.S.

⁴¹ Section 39-22-304(3)(p)(II)(C), C.R.S.