



COLORADO
Department of Revenue

Taxation Division

Office of Tax Policy
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dor_taxpolicy@state.co.us

GIL 22-001

March 16, 2022

XXXXXXXXXXXXXXXX

Via Electronic Mail: XXXXXXXXXXXXXXXXXXXX

Re: Request for general information letter regarding social security benefits or annuity distributions.

Dear XXXXXXXXX:

You submitted a request for a general information letter regarding Colorado income tax imposed on social security benefits or annuity distributions included in federal taxable income if the social security and annuity contributions were previously taxed in another state. The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues, but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department, and requires payment of a fee. For more information about general information letters and private letter rulings, please see 1 CCR 201-1, Rule 24-35-103.5.

Issue

Whether Colorado allows a subtraction or credit with respect to social security benefits or annuity distributions included in the federal taxable income of a Colorado resident if the social security and annuity contributions were previously taxed by another state.

Discussion

Colorado imposes income tax on a full or part-year Colorado resident individual's federal taxable income.¹ Generally speaking, payments from a qualified annuity are included in federal gross income unless certain specific rules apply.² Special federal income tax rules apply to determine when social security benefits are included in an individual's federal taxable income.³

To the extent that annuity and social security income is included in an individual's federal taxable income, that income would then be included in the federal taxable income of a Colorado

¹ Sections 39-22-103(8) and 39-22-104(1.7)(b), C.R.S.

² 26 U.S.C. § 61(a)(8).

³ See Internal Revenue Service Publication 915, which explains the federal income tax rules for social security benefits. <https://www.irs.gov/publications/p915>

resident.⁴ The Colorado tax liability could be reduced by application of a state subtraction or credit, if applicable.⁵

Colorado allows a subtraction from federal taxable income, and thus a resulting reduction in Colorado taxable income, for amounts received as pensions or annuities by any individual, to the extent those amounts are included in federal taxable income.⁶ The subtraction is limited to \$20,000 per tax year for taxpayers aged 55 to 64 years, or limited to \$24,000 per tax year for taxpayers aged 65 years or older.⁷ For income tax years starting on or after January 1, 2022, the limitation for taxpayers aged 65 years or older can be increased to the amount of social security income included in federal taxable income if the amount of social security income exceeds the \$24,000 limitation.⁸

After all required additions and subtractions are made, such as the limited subtraction for pension and annuity income, the state's income tax rate is applied to the resulting Colorado taxable income.⁹ Various credits are set forth in article 22, title 39, C.R.S., which reduce, on a dollar-for-dollar basis, the amount of the individual income tax imposed.

With certain limitations, Colorado allows a credit against the Colorado income tax imposed for the amount of taxes on federal taxable income accrued to another state on income derived by a resident individual from sources in another state.¹⁰ However, the credits must be taken in the year in which the taxes of the other state accrue.¹¹ Rule 39-22-108(3)(b)¹² elaborates with an example:

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

Thus, if an individual taxpayer becomes a Colorado resident in a tax year that is after the tax year when the tax accrued in another state, then the taxpayer may not claim the credit for the tax paid in the other state.

⁴ See section 39-22-104(1.7)(b), C.R.S. (imposing the state's income tax on federal taxable income as determined pursuant to section 63 of the Internal Revenue Code).

⁵ See, e.g., section 39-22-104(2) and (4), C.R.S. (prescribing various amounts to be subtracted from federal taxable income prior to the application of the state income tax rate); section 39-22-108, C.R.S. (allowing a credit against the state tax for certain taxes paid to other states).

⁶ Section 39-22-104(4)(f), C.R.S.

⁷ *Id.*

⁸ *Id.* at (4)(f)(III)(B).

⁹ Section 39-22-104(1.7)(b) and (2), C.R.S.

¹⁰ Section 39-22-108(1), C.R.S.

¹¹ Section 39-22-108(4), C.R.S.

¹² 1 CCR 201-2, Rule 39-22-108.

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Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination on any of the issues raised and the Department is not bound by this general information letter.

Thank you for your request.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue