HB 21-1311

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 21-0476	**Date:**	May 12, 2021
Prime Sponsors:	Rep. Sirota; Weissman Sen. Hansen; Moreno	**Bill Status:**	House Finance
		Fiscal Analyst:	Jeff Stupak | 303-866-5834 Jeff.Stupak@state.co.us

Bill Topic: **INCOME TAX**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☒ State Transfer
☒ TABOR Refund
☐ Local Government
☐ Statutory Public Entity

The bill makes various changes to state income taxes. It increases state revenue and transfers, on net, and increases expenditures beginning in FY 2021-22. The bill is expected to create a state TABOR refund obligation for FY 2022-23, to be refunded from the General Fund in FY 2023-24.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of $68,041 to the Office of Economic Development and International Trade.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 21-1311

		Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	$13.0 million	$63.2 million	$104.9 million
	Total	**$13.0 million**	**$63.2 million**	**$104.9 million**
Expenditures	General Fund	$68,041	$1,424,468	$727,701
	CollegeInvest	$62,500	-	-
	Centrally Appropriated	$8,724	$179,926	$195,913
	Total	**$139,265**	**$1,604,394**	**$923,614**
	Total FTE	**0.5 FTE**	**12.1 FTE**	**13.2 FTE**
Transfers	General Fund	($6.6 million)	($16.1 million)	($19.2 million)
	State Education Fund	$6.6 million	$16.1 million	$19.2 million
	Net Transfers	**$0**	**$0**	**$0**
TABOR Refund	General Fund	-	$18.5 million	not estimated

Summary of Legislation

The bill makes various changes to Colorado income tax policy, including taxable income additions and subtractions, income tax credits, corporate income tax policy, and the tax treatment of certain captive insurance companies.

Adjustments to Taxable Income

Social security income. Under current law, taxpayers may deduct a limited amount of pension and annuity income, which includes federally taxable social security income, when calculating their Colorado taxable income. The deduction is limited to $20,000 for taxpayers age 55 to 64, and $24,000 for taxpayers age 65 and over. Beginning for tax year 2022, the bill increases the limit so that all federally taxed social security income is deductible in Colorado. The current caps still apply to all other forms of pension and annuity income and the caps may only be exceeded when social security income specifically is higher than the cap. For taxpayers whose social security income exceeds the $20,000 and $24,000 caps, the deduction is limited to their amount of social security income.

Itemized deductions. Beginning for tax year 2022, the bill requires taxpayers with adjusted gross incomes of $400,000 or more to add back a portion of their federal itemized deductions when calculating their Colorado taxable income. Taxpayers filing singly are required to add back itemized deductions that exceed $30,000 in total, and taxpayers filing jointly are required to add back itemized deductions that exceed $60,000 in total.

Capital gains. The bill repeals the state income tax deduction for certain federally taxable capital gains after tax year 2021. More information about the current law deduction is presented in the Background section of this fiscal note.

Contributions to a 529 account. Under current law, taxpayers may deduct the amount they contribute to a CollegeInvest 529 account from their Colorado taxable income. Beginning for tax year 2022, the bill limits this deduction to $10,000 for taxpayers filing singly or $15,000 for taxpayers filing jointly.

The bill includes provisions to ensure that tax is collected if an account holder makes distributions from their 529 account that do not meet the requirements in the tax deduction. Deducted amounts that are distributed for a nonqualified purpose are required to be added to taxable income at the time of distribution. CollegeInvest is required to submit an annual report to the Department of Revenue that includes the name and social security number of account contributors who are Colorado taxpayers, the amounts contributed, and any unqualified distribution amounts.

Expenses for business meals. For 2022 only, the bill requires taxpayers to add-back to their federal taxable income an amount equal to the enhanced federal deduction for business meals when calculating their Colorado taxable income. The federal deduction for business meals was increased from 50 percent of the cost of the meal to 100 percent of the cost of the meal in December 2020 as part of a federal COVID-19 relief bill.

Qualified business income deduction. Under current law enacted in House Bill 20-1420, certain taxpayers are required to add back their federal qualified business income deduction when calculating their Colorado taxable income for tax years 2021 and 2022. The add-back applies for taxpayers filing singly with adjusted gross income over $500,000, and taxpayers filing jointly with adjusted gross income over $1,000,000. This bill extends the add-back requirement for three more years, through tax year 2025.

Income Tax Credits

Earned income tax credit. The Colorado earned income tax credit (EITC) is available to taxpayers who claim the federal EITC, and to taxpayers who would otherwise be able to claim the federal EITC but who are ineligible because they do not have a valid social security number. The Colorado EITC is a refundable credit calculated as a percentage of the federal EITC. Beginning in 2022, the bill increases the Colorado EITC from 15 percent of the federal EITC to 20 percent of the federal EITC.

Child tax credit. Under current law, the state child tax credit becomes available if Congress enacts the Marketplace Fairness Act of 2013 or similar legislation. The bill repeals the conditional availability of the credit and allows the credit to qualifying taxpayers beginning in tax year 2022.

The credit is available for single income tax filers with less than $75,000, and for joint filers with less than $85,000, in federal adjusted gross income, provided that they claimed the federal child tax credit and/or the additional child tax credit for a child under the age of six. The bill increases the amounts of the credit; amounts are based on the taxpayer's filing status and income as shown in Table 2. The tax credit is refundable. Two taxpayers who are married and may file taxes jointly, but choose to file separately, may only claim the credit on one return per year.

Table 2
Amounts of the Colorado Child Tax Credit

Single Filers		Joint Filers	
Federal AGI*	**% of Federal Credit**	**Federal AGI***	**% of Federal Credit**
Up to $25,000	60 percent	Up to $35,000	60 percent
$25,001 to $50,000	30 percent	$35,001 to $60,000	30 percent
$50,001 to $75,000	10 percent	$60,001 to $85,000	10 percent

**AGI = adjusted gross income.*

The bill extends the credit to taxpayers who would otherwise be able to claim the federal child tax credit except that one or more of their qualifying children does not have a valid social security number. If federal law is amended so that the expanded child tax credit available for tax year 2021 under the American Rescue Plan Act is extended to later tax years, then the bill reduces the state child tax credit percentages.

Business conversion income tax credit. The bill creates a temporary income tax credit equal to 50 percent of the conversion costs for a business that converts to a worker-owned cooperative, an employee stock ownership plan, or an employee ownership trust. The maximum amount of the income tax credit is up to $25,000 when converting to a worker-owned cooperative or an employee ownership trust, and up to $100,000 when converting to an employee stock ownership plan. The Office of Economic Development and International Trade (OEDIT) is responsible for administering the program, including advertising and reporting requirements. According to the most recent data available, there are 131 businesses with an employee stock ownership plan and 34 worker-owned cooperatives operating in Colorado. Employee ownership trusts are a relatively new formation, and there is no data available on the number currently operating in Colorado.

Income Tax Modifications

Corporate income tax modifications. The bill makes several changes to the Colorado corporate income tax. Under current law, multiple affiliated corporations are required to file a combined tax return if they meet at least three of six criteria, referred to as the "three of six rule." Beginning in tax year 2022, the bill establishes an alternative test for whether affiliated corporations must file as part of a combined tax return. Under the new test, an affiliated group of corporations that are members of a unitary business must file a combined tax return. The income of each member of the combined group, regardless of where a member is incorporated or domiciled, is combined and then apportioned by state to determine the combined group's Colorado income tax liability. A unitary business is defined as a single economic enterprise made up either of separate parts of a single C corporation or of an affiliated group of C corporations that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts.

The bill makes further changes to how corporate income among a combined group of affiliated corporations is apportioned to Colorado, shifting from the so called "Joyce" rule to the "Finnigan" rule beginning in tax year 2022. Under current law (the Joyce rule), each individual corporation within a combined group is treated as an individual taxpayer, and as such for a corporation to have tax liability within Colorado it must have a "nexus" to the state (i.e. a significant economic presence within the state). Under the Finnigan rule, the combined group is treated as a single taxpayer, and as such if one corporation in the combined group has a nexus to Colorado, all of the affiliated corporations are considered to have a nexus to Colorado for tax liability apportionment purposes.

Beginning in tax year 2022, the bill requires that combined groups include any affiliated corporation within their combined return that is incorporated in a foreign jurisdiction for the purpose of tax avoidance. A corporation is presumed to be incorporated in a foreign jurisdiction for the purpose of tax avoidance if they are located in any of the listed jurisdictions within the bill, unless the taxpayer proves to the satisfaction of the DOR executive director that the corporation is legitimately operating within the listed jurisdiction.

Disqualified insurance companies. Under current law, insurance companies that are subject to the insurance premium tax are exempt from the state income tax. Under this bill, a disqualified insurance company, defined as a captive insurance company with less than half of its revenue being generated from insurance premiums in a given taxable year, would be subject to the state income tax rather than the insurance premium tax.

Background

Taxable income. Colorado taxable income is equal to federal taxable income as modified in state law. Changes to federal taxable income by default change Colorado taxable income, unless state law or rule exists to preclude or alter the change.
Capital gains deduction. Current state law allows some taxpayers who record federally taxable capital gains on real or tangible personal property acquired after May 9, 1994, and owned for at least five uninterrupted years prior to its sale, to deduct the gain from their Colorado taxable income. For a gain on real property to qualify, the property must have been acquired before June 4, 2009. The deduction is limited to $100,000 per year.

Insurance premium tax. The insurance premium tax is paid by insurance companies and surplus line brokers, the latter of which offer policies on behalf of insurance companies not licensed in Colorado. The tax is assessed on policy premiums at a rate of 1 percent for insurance companies with a regional home office in Colorado, 2 percent for other licensed insurance companies, and 3 percent for surplus line brokers. Revenue is credited to the General Fund, except for portions diverted to the Division of Insurance Tax Fund, the Wildfire Emergency Response and Wildfire Preparedness Funds, and the state reinsurance program.

Assumptions

Economic forecast. All revenue estimates assume future economic activity consistent with the March 2021 Legislative Council Staff forecast update.

State Revenue

The bill is expected to increase state revenue by $13.0 million in FY 2021-22, $63.2 million in FY 2022-23, and by $104.9 million in FY 2023-24. Revenue impacts are presented in Table 3 and discussed below. The bill increases revenue from income taxes, which are subject to TABOR.

Table 3
Revenue Under HB 21-1311

	FY 2021-22	FY 2022-23	FY 2023-24
Income Tax Provisions			
Social Security Income Deduction	($3.4 million)	($7.0 million)	($7.4 million)
Itemized Deduction Limit	$59.6 million	$121.1 million	$125.0 million
Capital Gains Deduction	$10.1 million	$20.6 million	$21.3 million
529 Contribution Deduction Limit	$5.4 million	$11.1 million	$11.6 million
Business Meals Deduction Add-Back	$3.5 million	$3.5 million	-
Qualified Business Income Add-Back	-	$37.9 million	$77.6 million
Earned Income Tax Credit	($24.2 million)	($48.7 million)	($48.9 million)
Child Tax Credit	($53.4 million)	($107.4 million)	($107.9 million)
Worker-Owned Business Conversion Credit	($0.1 million)	($0.2 million)	($0.3 million)
Business Income Apportionment	$9.7 million	$20.2 million	$21.2 million
Tax Avoidance	$5.8 million	$12.1 million	$12.7 million
Total	**$13.0 million**	**$63.2 million**	**$104.9 million**

Adjustments to Taxable Income

Social security income deduction. This expanded deduction is expected to decrease state revenue by $3.4 million (half-year impact) in FY 2021-22, $7.0 million in FY 2022-23, and similar amounts in subsequent years. The bill is assumed not to increase the number of taxpayers claiming the state income tax deduction for pension and annuity income, but rather only to increase deduction amounts for taxpayers who qualify. The bill only affects the share of social security beneficiaries who receive more than $20,000 (age 55 to 64) or more than $24,000 (age 65 and over) in federally taxable social security benefits per year. The expanded deduction in the bill would have applied to about 27,200 taxpayers (5.7 percent of those claiming the existing deduction) had it been in effect for tax year 2018, the most recent year for which actual data are available. This population was adjusted for growth in the number of senior households, and the deduction amount was increased for inflation.

Itemized deduction limitation. The deduction limitation is expected to increase state revenue by $59.6 million (half-year impact) in FY 2021-22, $121.1 million in FY 2022-23, and similar amounts in subsequent years. About 10,200 Colorado taxpayers claimed itemized deductions over the caps in the bill for tax year 2018. On average, each taxpayer’s deductions exceeded the bill’s limitations by about $225,000. In tax year 2022, the bill is expected to require income tax additions averaging $247,000 for 10,600 taxpayers. This amount is expected to grow with taxpayer incomes in subsequent years.

Capital gains deduction. This provision is expected to increase state revenue by approximately $10.1 million (half-year impact) in FY 2021-22, by $20.6 million in FY 2022-23, and by similar amounts in subsequent years. Eliminating the capital gains deduction will increase state taxable income, and therefore increase income tax revenue. The most recent data available regarding the Colorado capital gains deduction is from 2019. This data was inflated using the average growth rate of rent/interest/dividends income over the past several years to arrive at an estimate for FY 2021-22 and FY 2022-23.

529 account contributions. The limit on deductible 529 account contributions is expected to increase state revenue by $5.4 million (half-year impact) in FY 2021-22, $11.1 million in FY 2022-23, and similar amounts in subsequent years. In 2019, about 10,100 taxpayers made contributions exceeding the limits in the bill. In 2022, the bill is expected to increase taxable income by $238.2 million for 10,400 taxpayers.

Limiting the state income tax deduction may cause taxpayers to limit their deposits, such that they only contribute the maximum tax deductible amount. This fiscal note assumes that amounts not contributed to a 529 account would remain taxable, as opposed to being deposited in another tax-exempt account.

Business meals deduction add-back. This provision is expected to increase state revenue by approximately $3.5 million in both FY 2021-22 and FY 2022-23 (both half-year impacts). This provision is effective for tax year 2022 only.

Qualified business income deduction. Extending the add-back for federal qualified business income deductions taken by high-income taxpayers is expected to increase state revenue by $37.9 million (half-year impact) in FY 2022-23 and by approximately $77.6 million in FY 2023-24 and FY 2024-25. This provision has no fiscal impact until tax year 2023, as current state law requires this addition for tax years 2021 and 2022. Estimates are based on preliminary data reported by the Internal Revenue Service for tax year 2018 and contain an unusually high degree of uncertainty given data limitations. The addition expires after tax year 2025.

Income Tax Credits

Earned income tax credit. Increasing the EITC is expected to decrease state revenue by $24.2 million in FY 2021-22 (half-year impact), $48.7 million in FY 2022-23, and similar amounts in subsequent years. Estimates are based on actual EITC claims, adjusted for expected increases in the eligible population following the COVID-19 recession. The estimate captures the impact of increasing the EITC from 15 percent of the federal credit under current law to 20 percent under the bill. It does not incorporate an adjustment to utilization rates. If the bill causes a greater share of eligible taxpayers to claim the credit than anticipated under current law, the revenue decrease will be greater than estimated.

Child tax credit. The state child tax credit is expected to decrease state revenue by $53.4 million in FY 2021-22 (half-year impact), $107.4 million in FY 2022-23, and similar amounts in subsequent years. Estimates are based on an analysis of eligible Colorado taxpayers for tax year 2018, adjusted for increases in the eligible population following the COVID-19 recession. Consistent with current federal law, estimates assume that the credit percentages will be those shown in Table 2, as the expanded credit amounts in the American Rescue Plan will expire after 2021. The actual revenue decrease will depend on the rate at which the credit is utilized and could be greater or less than estimated.

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Business conversion credit. The business conversion credit is expected to decrease state revenue by $0.1 million in FY 2021-22 (half-year impact), $0.2 million in FY 2022-23, and 0.3 million in FY 2023-24, and similar amounts in subsequent years. This fiscal note assumes that companies will claim the maximum allowable credit. Additionally, the fiscal note assumes the number of worker-owned cooperatives and businesses with an employee stock ownership plan will grow by approximately 5 percent per year. Employee owned trusts are relatively new, and as such slow growth in assumed. Assumed business participation is included in Table 4 below.

Table 4
Conversion Tax Credit Participation Assumptions
Number of Businesses

	Tax Year 2022	2023	2024
Worker-Owned Cooperative	1	2	3
Employee Owned Trusts	1	1	2
Employee Stock Ownership Plan	6	7	8

Income Tax Modifications

Business income apportionment. Modifying the apportionment method for interstate business income is estimated to increase state revenue by $9.7 million in FY 2021-22 (half-year impact), and by $20.2 million in FY 2022-23 and subsequent years. Under the new Finnigan method, companies without nexus in Colorado may still have tax liability in Colorado if any of their affiliated corporations have nexus in Colorado. As such, this change is expected to capture additional taxable income in Colorado. Actual data are not available on how this change may affect Colorado tax revenue, as such this estimate is based on the experiences of other states.

Tax avoidance. The provision of the bill concerning tax avoidance is estimated to increase state revenue by approximately $5.8 million in FY 2021-22 (half-year impact), and by $12.1 million in FY 2022-23 and subsequent years. This estimate is subject to significant uncertainty however, as data on the amount of revenue that may be lost to tax avoidance is not available. As such, this estimate is based on the experiences of states that have implemented or considered similar legislation.

Disqualified insurance companies. This provision is estimated to increase state revenue by an indeterminate amount beginning in FY 2021-22. Insurance companies where the majority of their income is not from insurance premiums will generally have a higher tax liability under the state income tax than under the insurance premium tax. As such, this provision is expected to increase state revenue.

State Transfers

Article IX, Section 17, of the Colorado Constitution ("Amendment 23") requires that an amount of income tax revenue equal to one-third of one percent of taxable income be transferred from the General Fund to the State Education Fund to be used for school finance purposes. The amounts transferred are exempt from TABOR as a voter-approved revenue change.

The bill increases taxable income, thereby increasing transfers from the General Fund to the State Education Fund. These impacts are presented in Table 5 and are based on the assumptions in the State Revenue Sections.

Table 5
Transfers Under HB 21-1311

	FY 2021-22	FY 2022-23	FY 2023-24
General Fund	($6.6 million)	($16.1 million)	($19.2 million)
State Education Fund	$6.6 million	$16.1 million	$19.2 million
Net Transfers	**$0**	**$0**	**$0**

State Expenditures

The bill is expected to increase General Fund expenditures by $139,265 and 0.5 FTE in FY 2021-22, by $1,604,394 and 12.1 FTE in FY 2022-23, and by $923,614 and 13.2 FTE in FY 2023-24 and subsequent years. Expenditures are summarized in Table 6 and described below.

Table 6
Expenditures Under HB 21-1311

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Department of Revenue			
Personal Services	-	$606,351	$661,472
Operating Expenses	-	$17,145	$17,145
Capital Outlay Costs	-	$80,600	-
GenTax Programming	-	$364,500	-
Computer and User Acceptance Testing	-	$54,215	-
Tax Form Changes	-	$252,574	-
Data Reporting	-	$3,500	$3,500
Centrally Appropriated Costs[1]	-	$170,863	$186,850
FTE – Personal Services	-	11.6 FTE	12.7 FTE
DOR Subtotal	**-**	**$1,549,748**	**$868,967**

Table 6
Expenditures Under HB 21-1311 (Cont.)

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
OEDIT			
Personal Services	$41,166	$44,908	$44,908
Operating Expenses	$675	$675	$675
Capital Outlay Costs	$6,200	-	-
Salesforce	$20,000	-	-
Centrally Appropriated Costs[1]	$8,724	$9,063	$9,063
FTE – Personal Services	0.5 FTE	0.5 FTE	0.5 FTE
OEDIT Subtotal	**$76,765**	**$54,646**	**$54,646**
CollegeInvest			
Computer Programming	$62,500	-	-
CollegeInvest Subtotal	**$62,500**	**-**	**-**
Total	**$139,265**	**$1,604,394**	**$923,614**
Total FTE	**0.5 FTE**	**12.1 FTE**	**13.2 FTE**

Department of Revenue. The bill is expected to increase expenditures for the department by $1.5 million and 11.6 FTE in FY 2022-23, and by $0.9 million and 12.7 FTE in FY 2023-24 and subsequent years. Personal services account for the largest portion of the increased expenditures in the Department, with an additional 12.7 FTE (prorated to 11.6 FTE in the first year due to the General Fund paydate shift). The bill makes numerous changes to the processing of individual and corporate tax returns, resulting in increased workload.

Other costs for the department are related to programming the department's GenTax software, software and related user acceptance testing, tax form changes performed in the Department of Personnel and Administration using reappropriated DOR funds, and data reporting in the DOR's Office of Research and Analysis.

Office of Economic Development and International Trade. The bill increases expenditures for OEDIT by $76,765 and 0.5 FTE in FY 2021-22, and by $54,646 and 0.5 FTE in FY 2022-23 and in subsequent years until FY 2026-27. OEDIT will require a part-time program manager to administer the new business conversion tax credit program and to comply with the advertising and reporting requirements for the program. Additionally, OEDIT will require $20,000 in FY 2021-22 to modify their Salesforce account to include this new program.

CollegeInvest. In FY 2021-22, the bill increases expenditures for CollegeInvest by $62,500 to make one-time programming changes to comply with the additional reporting requirements in the bill. No appropriation is necessary as CollegeInvest will use their own administrative funds for any costs associated with the bill.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be $8,724 in FY 2021-22 and $179,926 in FY 2022-23.

TABOR refunds. The bill increases state revenue subject to TABOR and increases amounts transferred to the State Education Fund, which are exempt from TABOR as a voter-approved revenue change. On net, the bill is expected to increase state revenue subject to TABOR by the amounts shown in Table 7.

Table 7
State TABOR Outlook Under HB 21-1311

	Budget Year FY 2021-22	Out Year FY 2022-23
Current Law TABOR Surplus or (Deficit)	($328.7 million)	($28.6 million)
Plus: Change in TABOR Revenue	$13.0 million	$63.2 million
Less: Change in SEF Transfer*	($6.6 million)	($16.1 million)
TABOR Surplus or (Deficit) under HB 21-1311	**($322.3 million)**	**$18.5 million**

Source: March 2021 Legislative Council Staff forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2022-23.
**SEF = State Education Fund.*

As shown, the bill is expected to result in a TABOR surplus of $18.5 million in FY 2022-23. The surplus will be refunded in FY 2023-24 via property tax exemptions for seniors and disabled veterans, partially offsetting the amount of FY 2023-24 General Fund revenue that would otherwise be expended for this purpose. Actual refunds will depend on state revenue collected in FY 2022-23, which will depend on economic conditions and any other enacted policy changes.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2021-22, the bill requires a General Fund appropriation of $68,041 to the Office of Economic Development and International Trade, with an allocation of 0.5 FTE.

State and Local Government Contacts

Higher Education
Information Technology
Office of Economic Development and International Trade
Office of State Planning and Budgeting
Personnel
Regulatory Agencies
Revenue