This Week in State Tax (TWIST)

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Colorado: Department of Revenue Revises CARES Act Guidance

The Colorado Department of Revenue recently revised a guidance document entitled the CARES Act Law Changes & Colorado Impact. The guidance addresses both individuals and corporate taxpayers. Recall, a few months after the enactment of the CARES Act, the Colorado Department of Revenue adopted a rule (Rule 39-22- 103(5.3)) stating that federal statutory changes enacted after the end of a taxable year do not affect a taxpayer's Colorado tax liability for that taxable year (even though Colorado is a rolling conformity state). This meant the state effectively decoupled from retroactive CARES Act changes. Later, the legislature specifically decoupled from certain CARES Act provisions for tax years beginning or ending on or after the enactment of the CARES Act (March 27, 2020), but before January 1, 2021. However, the legislature enacted House Bill 21-1002, which allowed taxpayers a subtraction (the House Bill 21-1002 subtraction) for the difference between the corporation's reported taxable income and the amount that the corporation's Colorado taxable income would have been had the CARES Act applied. The subtraction was first taken on the 2021 return. In November 2022, in the *Anschutz* case, a Colorado appeals court invalidated the Department's rule disallowing the retroactive CARES Act changes.

The Department's revised guidance notes that under the *Anschutz* decision, certain of the retroactive CARES Act changes should have been reflected on prior year returns and therefore corporate taxpayers must amend these returns. Taxpayers must also amend the 2021 return to adjust the subtraction in House Bill 21-1002, so that it does not reflect any of the CARES Act changes that will now be reported on amended prior year returns. Notably, the changes that should have been reported on a corporation's prior returns were the retroactive section 163(j) CARES Act changes that affected the 2018 and 2019 tax years, the retroactive amendments to the depreciation of Qualified Improvement Property (QIP), revisions to the rules for depreciating residential real estate, and certain changes around allowing deductions paid with PPP loans and EIDL grants. The Colorado House Bill 21-2002 subtraction will continue to reflect the statutory addback for tax years beginning or ending between March 27, 2020 and December 31, 2020 that applies to business interest expenses taken in excess of the section 163(j) limits prior to the CARES Act. Please contact [Amanda Bennett](#) with questions.

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