

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 23-0469.02 Megan McCall x4215

HOUSE BILL 23-1189

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A BILL FOR AN ACT

101 **CONCERNING AN INCOME TAX CREDIT FOR EMPLOYER ASSISTANCE TO**
102 **EMPLOYEES IN MAKING A HOME PURCHASE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates a state income tax credit for employers who make a monetary contribution to an employee for use by the employee in purchasing a primary residence. The amount of the credit allowed is 5% of an employer's contribution to an employee, but the credit is capped at \$5,000 per employee per year and an employer cannot receive a credit of more than \$750,000 for all contributions made in a year to employees.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

SENATE
Amended 2nd Reading
May 5, 2023

HOUSE
3rd Reading Unamended
May 1, 2023

HOUSE
Amended 2nd Reading
April 29, 2023

The employee must use the money contributed for eligible expenses which include a down payment and closing costs, including fees for appraisals, mortgage origination, and inspections. An employee may authorize their employer to withhold a specified amount of the employee's earnings as an employee contribution into the savings account established by the employer that holds the employer contribution. If an employee ends their employment with the employer or if the employee intends to use the employee contribution in a manner that is not consistent with an eligible expense, the employee forfeits any unexpended amount of the employer contribution and the amount of the credit allowed to the employer for the employer contribution is subject to recapture. In such an occurrence, the employee is entitled to the employee contribution, plus any interest earned. The credit is not refundable but may be carried forward by the employer for a period of not more than 5 years. The amount contributed by the employer may be subtracted by the employee from the employee's federal taxable income for the purpose of determining their state taxable income; except that, if an employee forfeits the employer contribution, then the amount that the employee had subtracted from their federal taxable income is added back to their federal taxable income for the purpose of determining their state taxable income for the subsequent tax year. The executive director of the department of revenue may promulgate rules related to the implementation of the credit.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 39-22-549 as
3 follows:

4 **39-22-549. Tax credit for employer's contribution to employee**
5 **for eligible expenses in connection with a qualifying home purchase**
6 **- legislative declaration - definitions.** (1) (a) IN ACCORDANCE WITH
7 SECTION 39-21-304 (1), THE GENERAL ASSEMBLY FINDS AND DECLARES
8 THAT THE PURPOSE OF THIS TAX EXPENDITURE IS TO INDUCE CERTAIN
9 DESIGNATED BEHAVIOR BY TAXPAYERS TO ENCOURAGE HOME OWNERSHIP
10 BY PROVIDING TAX RELIEF TO EMPLOYERS WHO CONTRIBUTE MONEY TO AN
11 EMPLOYEE FOR A DOWN PAYMENT AND RELATED CLOSING COSTS ON A
12 HOME PURCHASE.

13 (b) THE GENERAL ASSEMBLY AND THE STATE AUDITOR SHALL

1 MEASURE THE EFFECTIVENESS OF THE CREDIT IN ACHIEVING THE PURPOSES
2 SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION BASED ON THE
3 INFORMATION REQUIRED TO BE MAINTAINED BY AND REPORTED TO THE
4 STATE AUDITOR UPON REQUEST BY THE DEPARTMENT PURSUANT TO
5 SUBSECTION (4) OF THIS SECTION.

6 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
7 REQUIRES:

8 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

9 (b) "ELIGIBLE EXPENSES" MEANS A DOWN PAYMENT AND ANY
10 CLOSING COSTS INCLUDED ON A REAL ESTATE SETTLEMENT STATEMENT,
11 INCLUDING BUT NOT LIMITED TO APPRAISAL FEES, MORTGAGE
12 ORIGINATION FEES, AND INSPECTION FEES.

13 (c) "EMPLOYEE CONTRIBUTION" MEANS THE AMOUNT AN
14 EMPLOYEE AUTHORIZES AN EMPLOYER TO WITHHOLD FROM THE
15 EMPLOYEE'S EARNINGS FOR DEPOSIT INTO THE SAVINGS ACCOUNT
16 ESTABLISHED PURSUANT TO SUBSECTION (3)(b)(I) OF THIS SECTION FOR
17 USE BY AN EMPLOYEE FOR ELIGIBLE EXPENSES IN CONNECTION WITH A
18 QUALIFYING HOME PURCHASE.

19 (d) "EMPLOYER" MEANS A PRIVATE, NONPUBLIC PERSON THAT
20 EMPLOYS ONE OR MORE EMPLOYEES WITHIN THE STATE.

21 (e) "EMPLOYER CONTRIBUTION" MEANS THE AMOUNT AN
22 EMPLOYER CONTRIBUTES TO A SAVINGS ACCOUNT ESTABLISHED PURSUANT
23 TO SUBSECTION (3)(b)(I) OF THIS SECTION FOR USE BY AN EMPLOYEE FOR
24 ELIGIBLE EXPENSES IN CONNECTION WITH A QUALIFYING HOME PURCHASE.

25 (f) "QUALIFYING HOME PURCHASE" MEANS A PROPERTY
26 PURCHASED BY AN EMPLOYEE AS A PRIMARY RESIDENCE.

27 (3) (a) FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER

1 JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2027, IF AN EMPLOYER MAKES
2 A CONTRIBUTION OF MONEY TO AN EMPLOYEE DURING THE INCOME TAX
3 YEAR FOR USE BY THE EMPLOYEE FOR ELIGIBLE EXPENSES IN CONNECTION
4 WITH A QUALIFYING HOME PURCHASE, THEN THE EMPLOYER IS ALLOWED
5 A CREDIT AGAINST THE INCOME TAXES IMPOSED BY THIS ARTICLE 22 IN AN
6 AMOUNT EQUAL TO FIVE PERCENT OF THE AMOUNT OF THE EMPLOYER
7 CONTRIBUTION; EXCEPT THAT AN EMPLOYER CANNOT CLAIM A CREDIT OF
8 MORE THAN FIVE THOUSAND DOLLARS FOR ANY ONE EMPLOYEE AND THE
9 MAXIMUM TOTAL CREDIT THAT AN EMPLOYER MAY CLAIM IN A TAXABLE
10 YEAR IS FIVE HUNDRED THOUSAND DOLLARS.

11 (b) (I) IN ORDER TO CLAIM THE TAX CREDIT ALLOWED BY THIS
12 SECTION, THE EMPLOYER SHALL ESTABLISH ONE OR MORE SAVINGS
13 ACCOUNTS FOR THE PURPOSE OF DEPOSITING THE MONEY FOR THE
14 EMPLOYER'S CONTRIBUTION TO AN EMPLOYEE.

15 (II) THE EMPLOYER SHALL ESTABLISH POLICIES CONCERNING THE
16 CONTRIBUTION, INCLUDING HOW THE EMPLOYER CONTRIBUTION IS TO BE
17 MADE AND PROCEDURES FOR AN EMPLOYEE TO FOLLOW TO WITHDRAW
18 MONEY FOR QUALIFYING EXPENSES AND FOR AN EMPLOYER TO FOLLOW TO
19 WITHHOLD AN EMPLOYEE'S EARNINGS AS AN EMPLOYEE CONTRIBUTION.

20 (III) AN EMPLOYEE MAY AUTHORIZE AN EMPLOYER TO WITHHOLD
21 A SPECIFIED PORTION OF THE EMPLOYEE'S EARNINGS AS AN EMPLOYEE
22 CONTRIBUTION, WHICH MONEY SHALL BE DEPOSITED IN A SAVINGS
23 ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION (3)(b)(I) OF THIS
24 SECTION.

25 (c) IF AN EMPLOYEE ENDS THE EMPLOYEE'S EMPLOYMENT WITH
26 THE EMPLOYER OR IF THE EMPLOYEE CHOOSES TO USE MONEY IN A
27 SAVINGS ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION (3)(b)(I) OF

1 THIS SECTION THAT IS AN EMPLOYEE CONTRIBUTION FOR SOMETHING
2 OTHER THAN AN ELIGIBLE EXPENSE, THE EMPLOYEE IS NOT ENTITLED TO
3 ANY UNEXPENDED AMOUNT OF THE EMPLOYER CONTRIBUTION, AND THE
4 EMPLOYER SHALL REMIT TO THE EMPLOYEE ANY AMOUNT IN THE SAVINGS
5 ACCOUNT WHICH IS ALL OR THE REMAINING AMOUNT OF THE EMPLOYEE
6 CONTRIBUTION, PLUS ANY INTEREST EARNED ON THE AMOUNT. THE
7 EMPLOYER SHALL PAY THE ENTIRE AMOUNT OF THE CREDIT RECEIVED FOR
8 THE EMPLOYER CONTRIBUTION. THE EMPLOYER SHALL REPORT THE
9 RECAPTURE REQUIRED BY THIS SUBSECTION (3)(c) BY INCREASING THEIR
10 INCOME TAX LIABILITY BY THE AMOUNT OF THE TOTAL CREDIT CLAIMED
11 FOR THE YEAR IN WHICH THE RECAPTURE OCCURS.

12 (4) (a) TO CLAIM THE CREDIT FOR AN INCOME TAX YEAR, AN
13 EMPLOYER MUST KEEP RECORDS RELATED TO THE CREDIT AS REQUIRED BY
14 THE DEPARTMENT. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY
15 PROMULGATE RULES TO IMPLEMENT THIS SECTION. NOTWITHSTANDING
16 ANY OTHER REQUIREMENTS OF THE DEPARTMENT, RECORDS MAINTAINED
17 BY AN EMPLOYER MUST SHOW:

18 (I) THE NUMBER OF EMPLOYEES TO WHOM THE EMPLOYER MADE
19 EMPLOYER CONTRIBUTIONS IN THE TAX YEAR;

20 (II) THE AMOUNT THE EMPLOYER CONTRIBUTED TO EACH
21 EMPLOYEE IN THE TAX YEAR AS EMPLOYER CONTRIBUTIONS;

22 (III) THE NUMBER OF EMPLOYEES WHO EXPENDED MONEY FROM A
23 SAVINGS ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION (3)(b)(I) OF
24 THIS SECTION ON ELIGIBLE EXPENSES FOR A HOME PURCHASE IN THE TAX
25 YEAR; AND

26 (IV) THE TOTAL AMOUNT OF ANY EMPLOYER CONTRIBUTIONS
27 MADE BY THE EMPLOYER FOR USE BY THE EMPLOYEE FOR ELIGIBLE

1 EXPENSES IN CONNECTION WITH A QUALIFYING HOME PURCHASE THAT AN
2 EMPLOYEE HAS FORFEITED PURSUANT TO SUBSECTION (3)(c) OF THIS
3 SECTION IN THE TAX YEAR.

4 (b) UPON REQUEST BY THE STATE AUDITOR, THE DEPARTMENT
5 SHALL PROVIDE TO THE STATE AUDITOR THE INFORMATION CONTAINED IN
6 RECORDS REQUIRED BY SUBSECTION (4)(a) OF THIS SECTION.

7 (5) IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SECTION
8 EXCEEDS THE AMOUNT OF INCOME TAXES OTHERWISE DUE ON THE
9 EMPLOYER'S INCOME IN THE INCOME TAX YEAR FOR WHICH THE CREDIT IS
10 CLAIMED, THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET AGAINST
11 INCOME TAXES IN THE CURRENT INCOME TAX YEAR MAY BE CARRIED
12 FORWARD AND USED AS A CREDIT AGAINST INCOME TAX LIABILITY IN
13 SUBSEQUENT YEARS FOR A PERIOD NOT TO EXCEED FIVE YEARS AND MUST
14 BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEAR POSSIBLE. ANY
15 CREDIT REMAINING AFTER THE PERIOD MAY NOT BE REFUNDED OR
16 CREDITED TO THE EMPLOYER.

17 (6) NOTHING IN THIS SECTION IS INTENDED TO PRECLUDE AN
18 EMPLOYEE WHO RECEIVES A CONTRIBUTION FROM THEIR EMPLOYER IN
19 ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION FROM HAVING A
20 FIRST-TIME HOME BUYER SAVINGS ACCOUNT PURSUANT TO PART 47 OF
21 THIS ARTICLE 22.

22

23 **SECTION 2.** In Colorado Revised Statutes, 39-22-104, **add** (3)(s)
24 and (4)(bb) as follows:

25 **39-22-104. Income tax imposed on individuals, estates, and**
26 **trusts - single rate - report - legislative declaration - definitions -**
27 **repeal.** (3) There shall be added to the federal taxable income:

1 (s) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
2 1, 2025, AN AMOUNT EQUAL TO THE AMOUNT OF EMPLOYER CONTRIBUTION
3 THAT AN EMPLOYEE FORFEITS PURSUANT TO SECTION 39-22-549 (3)(c)
4 AND THAT THE TAXPAYER HAD PREVIOUSLY SUBTRACTED FROM THE
5 TAXPAYER'S FEDERAL TAXABLE INCOME PURSUANT TO SUBSECTION
6 (4)(bb) OF THIS SECTION. ■■■

7 (4) There shall be subtracted from federal taxable income:

8 (bb) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
9 1, 2024, BUT BEFORE JANUARY 1, 2027, AN AMOUNT EQUAL TO ANY
10 EMPLOYER CONTRIBUTION RECEIVED FROM AN EMPLOYER PURSUANT TO
11 SECTION 39-22-549. THIS SUBSECTION (4)(bb) IS REPEALED, EFFECTIVE
12 DECEMBER 31, 2034.

13 **SECTION 3. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly; except
16 that, if a referendum petition is filed pursuant to section 1 (3) of article V
17 of the state constitution against this act or an item, section, or part of this
18 act within such period, then the act, item, section, or part will not take
19 effect unless approved by the people at the general election to be held in
20 November 2024 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.