

Secure 2.0 Act of 2022

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SECURE 2.0 ACT BACKGROUND

- Secure 1.0 (Setting Every Community Up for Retirement Enhancement Act)
 - December 20, 2019
- Consolidated Appropriations Act of 2023
- Secure 2.0 Act of 2022
 - H.R. 2954 – Securing a Strong Retirement Act of 2022
 - S. 4808 – Enhancing American Retirement Now (EARN)
(Final bill most closely aligned with Senate version)
 - S. 4353 Retirement Improvement and Savings Enhancement to Supplement Health Investments for the Nest Egg (RISE & SHINE)

SECURE 2.0 ACT – BIG PICTURE: WHAT DOES IT DO?

- Expands automatic enrollment programs
- Enhances various credits
- Improves various investment options
- Streamlines plan administration
- Changes required minimum distributions (RMDs)

SECURE 2.0 ACT – EFFECTIVE IN 2023

- Required Minimum Distribution Age Increase (Sec. 107)
- Reduction in RMD Distribution Penalty (Sec. 302)
- RMD and the Statute of Limitations (Sec. 313)
- Removal of Certain RMD Barriers for Annuities (Sec. 201)

SECURE 2.0 ACT – EFFECTIVE IN 2023

- Roth Matching and Non-Elective Contributions (Sec. 603)
- Financial Incentives for Plan Contributions (Sec. 113)
- Qualifying Longevity Annuity Contracts (QLACSs) (Sec. 202)
- Qualified Charitable Distributions (Sec. 307)

SECURE 2.0 ACT – EFFECTIVE IN 2023

- Hardship Self-Certification (Sec. 312)
- Sec. 45E credit for small-employer pension plan startup costs (Sec. 102)
- Elimination of 10% penalty on correction of excess contributions (Sec. 333)

SECURE 2.0 ACT – EFFECTIVE IN 2023

- Recovery of Retirement Plan Overpayments (Sec. 301)
- Reducing Paperwork (Sec. 320)
- Penalty Relief for Individuals with a Terminal Illness (Sec. 326)

SECURE 2.0 ACT – EFFECTIVE IN 2023

- Repayment of Qualified Birth or Adoption Distribution Limited to Three Years (Sec. 311)
- Using Retirement Funds Related to Qualified Federal Declared Disasters (Sec. 331)
- Retroactive first-year elective deferrals for sole proprietors (Sec. 317)

SECURE 2.0 ACT – EFFECTIVE IN 2023

- Distributions to Firefighters (Sec. 308)
- Pooled Employer Plans Modification (Sec. 105)
- Application of Credit for Small Employer Pension Plan Startup Costs to Employers That Join an Existing Plan (Sec. 111)

SECURE 2.0 ACT – EFFECTIVE IN 2023

- Modification of Credit for Small Employer Pension Plan Startup Cost (Sec. 102)
- Military Spouse Retirement Plan Eligibility Credit for Small Employers (Sec. 112)

SECURE 2.0 ACT – EFFECTIVE IN 2024

- Withdrawals for Certain Emergency Expenses (Sec. 115)
- Emergency Savings Accounts Linked to Individual Account Plans (Sec. 127)
- Matching Contributions for Student Loan Borrowers (Sec. 110)

SECURE 2.0 ACT – EFFECTIVE IN 2024

- Starter 401(k) Plans for Employers with No Retirement Plan (Sec. 121)
- Elective Deferrals Generally Limited to Regular Contribution Limit (Sec. 603)
- Penalty-Free Withdrawal from Retirement Plans for Individual in Case of Domestic Abuse (Sec. 314)

SECURE 2.0 ACT – SO FAR OUT, WHO CARES?

- Higher Catch-Up Contributions (Sec. 109) (after 12/31/2024)
 - (let's just say 2025)
- Expanding Automatic Enrollment (Sec. 101) (after 12/31/2024)
 - (let's just say 2025)
- Saver's Match (Sec. 103/104) (after 12/31/2026)
 - (let's just say 2027)

SECURE 2.0 ACT – SO FAR OUT, WHO CARES?

- Improving coverage for part-time workers (Sec. 125)
(after 12/31/2024)
 - (let's just say 2025)
- Modification of age requirement for qualified ABLE programs (Sec. 124) (after 12/31/2025)
 - (let's just say 2026)

FEDERAL CONFORMITY

- ▶ “The net income of a C Corporation means the C Corporation’s federal taxable income, as defined in the internal revenue code, for the taxable year, with the modifications specified in this section.”
 - CRS § 39-22-304(1)

- ▶ “Internal Revenue Code” means the provisions of the federal “Internal Revenue Code of 1986”, as amended, and other provisions of the laws of the United States relating to federal income taxes, as the same may become effective at any time or from time to time, for the taxable year.”
 - CRS §39-22-103(5.3)

FEDERAL CONFORMITY

- ▶ “Although Colorado adopts the Internal Revenue Code on a rolling basis, Colorado’s definition of “Internal Revenue Code” does not incorporate federal statutory changes that are enacted after the last day of the tax year (and thus, neither do Colorado statutory references to “federal taxable income”). Accordingly federal statutory changes enacted after the end of a tax year do not impact the taxpayer’s Colorado tax liability for that tax year.”
 - *CARES Act Tax Law Changes & Colorado Impact*, Colorado Department of Revenue (August 2021)

- ▶ *Anschutz v. Colorado*, Dist. Ct. 21CV31103 (August 5, 2021)

ANSCHUTZ V. DEP'T OF REVENUE, 524 P.3D 1203 (COLO. APP. 2022)

- ▶ Terrible lower court decision fixed!

- ▶ But now what?

WHAT ABOUT AN APOLOGY?

CARES Act Tax Law Changes & Colorado Impact



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.

ANSCHUTZ V. DEP'T OF REVENUE, 524 P.3D 1203 (COLO. APP. 2022)

► Options

- Do nothing (not advised, but . . .)
- Amend 2018 through 2020 (is 2018 still open?)
- But what about House Bill 21-1002?

Wayfair LLC v. City of Lakewood, Case No. 2022CV30710, Jefferson County Dist. Ct. (2022)

- ▶ Fair legal questions: *e.g.*, does 2018 *Wayfair* ruling support collection based on economic nexus under Colorado's still complex home rule system?
- ▶ ... but is this the right case?
- ▶ Potential for bad facts to make questionable law.