

Income 65: Wildfire Mitigation Measures Subtraction

Individuals, estates and trusts may claim a subtraction on their Colorado income tax return for certain costs incurred in performing wildfire mitigation measures on their property in a wildland-urban interface area within Colorado. The subtraction is equal to either 50% or 100% (depending on the tax year) of the qualifying costs for performing wildfire mitigation measures. The total subtraction a taxpayer can claim per tax year is limited to \$2,500.

WHO CAN CLAIM THE WILDFIRE MITIGATION MEASURES SUBTRACTION?

The wildfire mitigation measures subtraction is available to taxpayers who meet certain qualifications and who perform wildfire mitigation measures on their property in a wildland-urban interface area within Colorado. In order to qualify, the taxpayer must be an individual, estate, or trust. Corporations, partnerships, and similar legal entities cannot claim the subtraction. The taxpayer must also be an owner of record of the private land upon which the mitigation measures are performed, but such ownership may include various ownership interests described below.

Qualifying ownership interests

In order to qualify for the subtraction, a taxpayer must have a qualifying ownership interest in the private land upon which the wildfire mitigation measures are performed. Qualifying ownership interests include:

- *Fee Simple Interest*: an absolute and unconditional ownership interest in real property
- *Easement*: a non-possessory interest in real property to enter on to land and use the land, or to restrict the use of such land, for an indefinite or specific period of time, such as a right-of-way to travel across land or to use the land for recreational purposes (e.g., fishing, hunting, camping)
- *Right-of-way*: a type of easement
- *Lease*: a possessory interest in land evidenced by a properly recorded lease contract or agreement

A taxpayer's qualifying ownership interest in real property may be held solely, jointly, or in common. However, in the case of real property owned as tenants in common, the subtraction is allowed to only one of the individuals of the ownership group.

Non-qualifying ownership interests

Taxpayers cannot claim the subtraction for any wildfire mitigation measures performed on public land, regardless of whether the taxpayer holds any ownership interest in the public land (such as an easement, right-of-way, or lease). Additionally, the subtraction is not allowed for wildfire mitigation measures a taxpayer performs on any real property in which they have no ownership interest.

WHAT COSTS QUALIFY FOR THE WILDFIRE MITIGATION MEASURES SUBTRACTION?

The wildfire mitigation measures subtraction is allowed for the actual out-of-pocket expenses incurred and paid by the taxpayer primarily for wildfire mitigation measures. In order to qualify for the subtraction, the wildfire mitigation measures must be performed on real property in which the taxpayer has an ownership interest (see *Qualifying ownership interests*, above) and that is located in a wildland-urban interface area within Colorado. A wildland-urban interface area is an area where structures and other human development are built close to or within natural terrain and flammable vegetation, and where high potential for wildland fire exists.

Wildfire mitigation measures

Wildfire mitigation measures that qualify for the subtraction are any of the following activities so long as such activities meet or exceed any applicable standards established by the Colorado State Forest Service or the Division of Fire Prevention and Control:

- creating a defensible space around structures;
- establishing fuel breaks;
- thinning of woody vegetation for the primary purpose of reducing risk to structures from wildland fire; or
- secondary treatment of woody fuels by lopping and scattering, piling, chipping, removing from the site or prescribed burning.

For information about standards established by the Colorado State Forest Service and the Division of Fire Prevention and Control, see:

- Wildfire Information Resource Center - colorado.gov/pacific/dfpc/wildfire-information-resource-center
- Colorado State Forest Service - csfs.colostate.edu/wildfire-mitigation/

Qualifying costs

In order to qualify for the subtraction, a cost must be an actual out-of-pocket expense incurred and paid by the taxpayer primarily for wildfire mitigation measures. A taxpayer must have a receipt documenting the cost of any wildfire mitigation measure for which the subtraction is claimed. Qualifying costs include:

- payment to a contractor to perform wildfire mitigation measures;
- the cost of a chainsaw if purchased primarily for wildfire mitigation measures; or
- the cost to rent an all-terrain vehicle, truck, tractor, or trailer if rented primarily to perform wildfire mitigation measures.

Non-qualifying costs

The subtraction is not allowed for any of the following:

- *inspection or certification fees* paid in association with the performance of wildfire mitigation measures;
- *in-kind contributions or donations* of time, labor, materials, or equipment to perform wildfire mitigation measures;
- *the value of the landowner’s time or labor* for performing wildfire mitigation measures; or
- *cost sharing, incentives, or grants* by which the cost of wildfire mitigation measures are borne, either directly or as the result of reimbursement, by someone other than the landowner.

Additionally, the subtraction is not allowed for any costs incurred primarily for some purpose other than wildfire mitigation, even if such costs yield some wildfire mitigating benefit. For example, the subtraction cannot be claimed for the purchase of an all-terrain vehicle, truck, tractor, or trailer, even if such vehicle is occasionally used to perform wildfire mitigation measures. Similarly, the subtraction cannot be claimed for the costs of landscaping performed primarily for aesthetic purposes, even if such landscaping provides some wildfire mitigating benefit.

CALCULATIONS AND LIMITATIONS FOR THE SUBTRACTION

The allowable subtraction is equal to a percentage of the qualifying costs incurred and paid by the taxpayer during the tax year, subject to the limitations discussed below. The applicable percentage is based upon the tax year for which the subtraction is claimed, as illustrated in the table to the right.

Subtraction Percentage

| Tax Years | Percentage |
|-----------|------------|
| 2014-2016 | 50% |
| 2017-2019 | 100% |
| 2020-2024 | 50% |

Limitations

The total subtraction claimed on any return cannot exceed \$2,500, regardless of whether the return is for a single filer or joint filers. Additionally, the total subtraction claimed cannot exceed the federal taxable income reported on the return. If two taxpayers are legally allowed to file a joint return, but elect to file separately, only one of the two individuals can claim the subtraction. In the case of real property owned by tenants in common, the subtraction can be claimed by only one of the taxpayers in the ownership group.

SUPPORTING DOCUMENTATION

To claim the subtraction, a taxpayer must complete and submit a Subtractions from Income Schedule (DR 0104AD) with their Colorado Individual Income Tax Return (DR 0104). The taxpayer must also submit copies of receipts documenting the qualifying costs for which the subtraction is claimed with their return. For electronically filed returns, scanned copies of receipts can be submitted either via e-file or by using the E-Filer Attachment function online at Colorado.gov/RevenueOnline.

ADDITIONAL RESOURCES

- *Colorado statutes and regulations*
 - § 39-22-104(4)(n.5), C.R.S. Wildfire mitigation measures subtraction
 - 1 CCR 201-2, Reg. 39-22-104(4)(N.5). Wildfire mitigation measures subtraction
- *Colorado forms, publications, and guidance*
 - Subtractions from Income Schedule (DR 0104AD)
- *Other resources*
 - House Bill 12-1283 – transferring wildfire-related powers, liabilities, and duties of the Colorado State Forest Service to the Division of Fire Prevention and Control within the Department of Public Safety
 - Senate Bill 14-008 – establishing the Wildfire Information Resource Center
 - Wildfire Information Resource Center - colorado.gov/pacific/dfpc/wildfire-information-resource-center
 - Colorado State Forest Service - csfs.colostate.edu/wildfire-mitigation/

FYIs represent a good faith effort to provide general information concerning a variety of Colorado tax topics in simple and straightforward language. By their nature, however, FYIs cannot and do not address all taxpayer situations nor do they provide a comprehensive overview of Colorado's tax laws. For this reason, FYIs are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations.

A taxpayer seeking additional guidance regarding the tax consequences of a particular transaction or factual scenario can request a Private Letter Ruling (PLR) or General Information Letter (GIL). Requests for PLRs and GILs must comply with certain requirements, which are currently set forth at 1 Code of Colorado Regulations 201-1, Regulation 24-35-103.5. PLRs are binding upon the Department only with respect to the specific taxpayer that requested the PLR. GILs are for informational purposes only and are not binding on the Department.