

CHAPTER 369

TAXATION

HOUSE BILL 18-1185

BY REPRESENTATIVE(S) Kraft-Tharp and Wist, Humphrey, Kennedy, McKean, Neville P., Reyher, Van Winkle, Williams D., Winkler, Covarrubias, Rosenthal, Sandridge, Sias, Duran;
also SENATOR(S) Neville T. and Moreno, Jahn, Kefalas, Marble, Martinez Humenik, Priola, Tate.

AN ACT**CONCERNING CHANGES TO THE STATE INCOME TAX APPORTIONMENT STATUTE BASED ON THE MOST RECENT MULTISTATE TAX COMMISSION'S UNIFORM MODEL OF THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Most states have historically used the cost-of-performance method to source service revenue to a particular state, which means that service revenue is sourced to the state where the income-producing activity is performed;

(b) As the nation is moving to a more service-based economy it is important to align the income tax laws to current realities;

(c) Market-based sourcing assigns the service revenue to the state in which the service is delivered and is most likely to subsequently be used, leading to greater efficiency for taxpayers; and

(d) As more states adopt market-based sourcing in response to the shift in the economy, this act will add to greater uniformity across the states and thus ease the tax administration for multi-state businesses, consequently making Colorado more attractive to such businesses when they consider locating in the state.

(2) The general assembly further finds and declares that the purpose of this act is to conform the state's income tax laws to the Multistate Tax Commission's model act, which simplifies the collection and administration of income taxes for the state

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

and relieves taxpayers' compliance burden. The revenue increase, if any, is an incidental effect of this act.

SECTION 2. In Colorado Revised Statutes, **add** 39-22-303.6 as follows:

39-22-303.6. Market-based apportionment of the income of a taxpayer engaged in business - allocation of nonapportionable income - rules - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "APPORTIONABLE INCOME" MEANS:

(I) ANY INCOME THAT WOULD BE ALLOCABLE TO THIS STATE UNDER THE UNITED STATES CONSTITUTION, BUT THAT IS APPORTIONED RATHER THAN ALLOCATED PURSUANT TO THE LAWS OF THIS STATE; AND

(II) ALL INCOME THAT IS APPORTIONABLE UNDER THE UNITED STATES CONSTITUTION AND IS NOT ALLOCATED UNDER THE LAWS OF THIS STATE, INCLUDING:

(A) INCOME ARISING FROM TRANSACTIONS AND ACTIVITY IN THE REGULAR COURSE OF A TAXPAYER'S TRADE OR BUSINESS; AND

(B) INCOME ARISING FROM TANGIBLE AND INTANGIBLE PROPERTY IF THE ACQUISITION, MANAGEMENT, EMPLOYMENT, DEVELOPMENT, OR DISPOSITION OF THE PROPERTY IS OR WAS RELATED TO THE OPERATION OF THE TAXPAYER'S TRADE OR BUSINESS.

(b) "COMMERCIAL DOMICILE" MEANS THE PRINCIPAL PLACE FROM WHICH THE TRADE OR BUSINESS OF THE TAXPAYER IS DIRECTED OR MANAGED.

(c) "NONAPPORTIONABLE INCOME" MEANS ALL INCOME OTHER THAN APPORTIONABLE INCOME.

(d) "RECEIPTS" MEANS ALL GROSS RECEIPTS OF THE TAXPAYER THAT ARE NOT ALLOCATED UNDER SUBSECTION (7) OR (9) OF THIS SECTION, AND THAT ARE RECEIVED FROM TRANSACTIONS AND ACTIVITY IN THE REGULAR COURSE OF THE TAXPAYER'S TRADE OR BUSINESS; EXCEPT THAT RECEIPTS OF A TAXPAYER FROM HEDGING TRANSACTIONS AND FROM THE MATURITY, REDEMPTION, SALE, EXCHANGE, LOAN, OR OTHER DISPOSITION OF CASH OR SECURITIES ARE EXCLUDED.

(e) "STATE" MEANS ANY STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, ANY TERRITORY OR POSSESSION OF THE UNITED STATES, AND ANY FOREIGN COUNTRY OR POLITICAL SUBDIVISION THEREOF.

(f) "TAXPAYER" MEANS ANY PERSON THAT IS PERMITTED OR REQUIRED PURSUANT TO ANOTHER PROVISION OF LAW TO APPORTION AND ALLOCATE INCOME PURSUANT TO THIS SECTION.

(2) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2019, A TAXPAYER SHALL APPORTION AND ALLOCATE THE TAXPAYER'S ENTIRE NET INCOME

AS PROVIDED IN THIS SECTION.

(3) (a) A TAXPAYER THAT HAS NO INCOME FROM BUSINESS ACTIVITY OUTSIDE OF COLORADO SHALL ALLOCATE ALL NET INCOME TO COLORADO.

(b) A TAXPAYER THAT HAS INCOME FROM BUSINESS ACTIVITY THAT IS TAXABLE BOTH WITHIN AND WITHOUT COLORADO SHALL APPORTION AND ALLOCATE THE TAXPAYER'S NET INCOME AS PROVIDED IN THIS SECTION.

(c) FOR PURPOSES OF APPORTIONMENT AND ALLOCATION OF INCOME UNDER THIS SECTION, A TAXPAYER'S INCOME IS TAXABLE IN ANOTHER STATE IF:

(I) IN THAT STATE, THE TAXPAYER IS SUBJECT TO A NET INCOME TAX, A FRANCHISE TAX MEASURED BY NET INCOME, A FRANCHISE TAX FOR THE PRIVILEGE OF DOING BUSINESS, A CORPORATE STOCK TAX, OR ANY SIMILAR TAX; OR

(II) THAT STATE HAS JURISDICTION TO SUBJECT THE TAXPAYER TO A NET INCOME TAX REGARDLESS OF WHETHER, IN FACT, THE STATE SUBJECTS THE TAXPAYER TO SUCH TAX.

(4) (a) A TAXPAYER'S APPORTIONABLE INCOME SHALL BE APPORTIONED TO COLORADO BY MULTIPLYING SUCH APPORTIONABLE INCOME BY A FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL RECEIPTS OF THE TAXPAYER IN COLORADO DURING THE TAX PERIOD AND THE DENOMINATOR OF WHICH IS THE TOTAL RECEIPTS OF THE TAXPAYER EVERYWHERE DURING THE TAX PERIOD.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FOREIGN SOURCE INCOME THAT IS INCLUDED IN TAXABLE INCOME IS NOT INCLUDED AS RECEIPTS OF THE TAXPAYER IN COLORADO FOR PURPOSES OF APPORTIONING APPORTIONABLE INCOME PURSUANT TO THIS SECTION.

(5) RECEIPTS FROM THE SALES OF TANGIBLE PERSONAL PROPERTY ARE IN COLORADO IF:

(a) THE PROPERTY IS DELIVERED OR SHIPPED TO A PURCHASER IN COLORADO REGARDLESS OF THE F.O.B. POINT OR OTHER CONDITIONS OF THE SALE; OR

(b) THE PROPERTY IS SHIPPED FROM AN OFFICE, STORE, WAREHOUSE, FACTORY, OR OTHER PLACE OF STORAGE IN COLORADO AND THE TAXPAYER IS NOT TAXABLE IN THE STATE TO WHICH THE PROPERTY IS SHIPPED.

(6) RECEIPTS, OTHER THAN RECEIPTS DESCRIBED IN SUBSECTION (5) OF THIS SECTION, ARE IN COLORADO IF THE TAXPAYER'S MARKET FOR THE SALES IS IN COLORADO. THE TAXPAYER'S MARKET FOR SALES IS IN COLORADO IF:

(a) IN THE CASE OF THE SALE OF A SERVICE, TO THE EXTENT THE SERVICE IS DELIVERED TO A LOCATION IN COLORADO;

(b) IN THE CASE OF THE SALE, RENTAL, LEASE, OR LICENSE OF REAL PROPERTY, TO THE EXTENT THE REAL PROPERTY IS LOCATED IN COLORADO;

(c) IN THE CASE OF THE RENTAL, LEASE, OR LICENSE OF TANGIBLE PERSONAL PROPERTY, TO THE EXTENT THE TANGIBLE PERSONAL PROPERTY IS LOCATED IN COLORADO;

(d) IN THE CASE OF INTANGIBLE PROPERTY:

(I) THAT IS RENTED, LEASED, OR LICENSED, TO THE EXTENT THE INTANGIBLE PROPERTY IS USED IN COLORADO, PROVIDED THAT THE INTANGIBLE PROPERTY UTILIZED IN MARKETING A GOOD OR SERVICE TO A CONSUMER IS USED IN COLORADO IF THAT GOOD OR SERVICE IS PURCHASED BY A CONSUMER WHO IS IN COLORADO; OR

(II) THAT IS SOLD, TO THE EXTENT THE INTANGIBLE PROPERTY IS USED IN COLORADO, PROVIDED THAT:

(A) A CONTRACT RIGHT, GOVERNMENT LICENSE, OR SIMILAR INTANGIBLE PROPERTY THAT AUTHORIZES THE HOLDER TO CONDUCT A BUSINESS ACTIVITY IN A SPECIFIC GEOGRAPHIC AREA IS USED IN COLORADO IF THE GEOGRAPHIC AREA INCLUDES ALL OR PART OF COLORADO; AND

(B) RECEIPTS FROM INTANGIBLE PROPERTY SALES THAT ARE CONTINGENT ON THE PRODUCTIVITY, USE, OR DISPOSITION OF THE INTANGIBLE PROPERTY ARE TREATED AS RECEIPTS FROM THE RENTAL, LEASE, OR LICENSING OF THE INTANGIBLE PROPERTY UNDER SUBSECTION (6)(d)(I) OF THIS SECTION;

(III) ALL OTHER RECEIPTS FOR SALES OF INTANGIBLE PROPERTY THAT ARE NOT DESCRIBED IN SUBSECTION (6)(d)(II) OF THIS SECTION ARE EXCLUDED FROM THE NUMERATOR AND DENOMINATOR OF THE APPORTIONMENT FRACTION SET FORTH IN SUBSECTION (4)(a) OF THIS SECTION;

(e) IF THE STATE OR STATES OF ASSIGNMENT UNDER THIS SUBSECTION (6) CANNOT BE DETERMINED, THE STATE OR STATES OF ASSIGNMENT MUST BE REASONABLY APPROXIMATED; AND

(f) WITH RESPECT TO ANY RECEIPT, IF THE STATE OF ASSIGNMENT CANNOT BE DETERMINED UNDER THIS SUBSECTION (6) OR REASONABLY APPROXIMATED UNDER SUBSECTION (6)(e) OF THIS SECTION, SUCH RECEIPTS ARE EXCLUDED FROM THE DENOMINATOR OF THE APPORTIONMENT FRACTION SET FORTH IN SUBSECTION (4)(a) OF THIS SECTION.

(7) A TAXPAYER'S RENTS AND ROYALTIES FROM REAL OR TANGIBLE PERSONAL PROPERTY, CAPITAL GAINS, INTEREST, DIVIDENDS, PATENT OR COPYRIGHT ROYALTIES, OR OTHER INCOME, TO THE EXTENT THAT THEY CONSTITUTE NONAPPORTIONABLE INCOME, ARE ALLOCATED AS FOLLOWS:

(a) NET RENTS AND ROYALTIES FROM REAL PROPERTY LOCATED IN COLORADO ARE ALLOCATED TO COLORADO;

(b) (I) NET RENTS AND ROYALTIES FROM TANGIBLE PERSONAL PROPERTY ARE ALLOCATED TO COLORADO:

(A) IF AND TO THE EXTENT THAT THE PROPERTY IS UTILIZED IN COLORADO; OR

(B) IN THEIR ENTIRETY IF THE TAXPAYER'S COMMERCIAL DOMICILE IS IN COLORADO AND THE TAXPAYER IS NOT ORGANIZED UNDER THE LAWS OF, OR THE TAXPAYER'S INCOME IS NOT TAXABLE IN, THE STATE IN WHICH THE PROPERTY IS UTILIZED.

(II) FOR PURPOSES OF THIS SUBSECTION (7)(b), THE EXTENT OF UTILIZATION OF TANGIBLE PERSONAL PROPERTY IN COLORADO IS DETERMINED BY MULTIPLYING THE RENTS AND ROYALTIES BY A FRACTION, THE NUMERATOR OF WHICH IS THE NUMBER OF DAYS OF PHYSICAL LOCATION OF THE PROPERTY IN COLORADO DURING THE RENTAL OR ROYALTY PERIOD IN THE TAXABLE YEAR AND THE DENOMINATOR OF WHICH IS THE NUMBER OF DAYS OF PHYSICAL LOCATION OF THE PROPERTY EVERYWHERE DURING ALL RENTAL OR ROYALTY PERIODS IN THE TAXABLE YEAR. IF THE PHYSICAL LOCATION OF THE PROPERTY DURING THE RENTAL OR ROYALTY PERIOD IS UNKNOWN OR UNASCERTAINABLE BY THE TAXPAYER, TANGIBLE PERSONAL PROPERTY IS UTILIZED IN THE STATE IN WHICH THE PROPERTY WAS LOCATED AT THE TIME THE RENTAL OR ROYALTY PAYER OBTAINED POSSESSION.

(c) CAPITAL GAINS AND LOSSES FROM SALES OF REAL PROPERTY LOCATED IN COLORADO ARE ALLOCATED TO COLORADO;

(d) CAPITAL GAINS AND LOSSES FROM SALES OF TANGIBLE PERSONAL PROPERTY ARE ALLOCATED TO COLORADO IF:

(I) THE PROPERTY HAD A SITUS IN COLORADO AT THE TIME OF THE SALE; OR

(II) THE TAXPAYER'S COMMERCIAL DOMICILE IS IN COLORADO AND THE TAXPAYER'S INCOME IS NOT TAXABLE IN THE STATE IN WHICH THE PROPERTY HAD A SITUS;

(e) CAPITAL GAINS AND LOSSES FROM SALES OF INTANGIBLE PROPERTY ARE ALLOCATED TO COLORADO IF THE TAXPAYER'S COMMERCIAL DOMICILE IS IN COLORADO;

(f) INTEREST AND DIVIDENDS ARE ALLOCATED TO COLORADO IF THE TAXPAYER'S COMMERCIAL DOMICILE IS IN COLORADO;

(g) (I) PATENT AND COPYRIGHT ROYALTIES ARE ALLOCATED TO COLORADO IF AND TO THE EXTENT THAT:

(A) THE PATENT OR COPYRIGHT IS UTILIZED BY THE PAYER IN COLORADO; OR

(B) THE PATENT OR COPYRIGHT IS UTILIZED BY THE PAYER IN A STATE IN WHICH THE TAXPAYER IS NOT TAXABLE AND THE TAXPAYER'S COMMERCIAL DOMICILE IS IN COLORADO.

(II) FOR PURPOSES OF THIS SUBSECTION (7)(g), A PATENT IS UTILIZED IN A STATE TO THE EXTENT THAT IT IS EMPLOYED IN PRODUCTION, FABRICATION, MANUFACTURING, OR OTHER PROCESSING IN THE STATE OR TO THE EXTENT THAT A PATENTED PRODUCT IS PRODUCED IN THE STATE. IF THE BASIS OF THE RECEIPTS FROM THE PATENT ROYALTIES CANNOT BE REASONABLY ASSIGNED TO STATES OR IF THE ACCOUNTING PROCEDURES DO NOT REFLECT THE STATES OF UTILIZATION, THE

PATENT IS UTILIZED IN THE STATE IN WHICH THE TAXPAYER'S COMMERCIAL DOMICILE IS LOCATED.

(III) FOR PURPOSES OF THIS SUBSECTION (7)(g), A COPYRIGHT IS UTILIZED IN A STATE TO THE EXTENT THAT PRINTING OR OTHER PUBLICATION ORIGINATES IN THE STATE. IF THE BASIS OF RECEIPTS FROM COPYRIGHT ROYALTIES CANNOT BE REASONABLY ASSIGNED TO STATES OR IF THE ACCOUNTING PROCEDURES DO NOT REFLECT THE STATES OF UTILIZATION, THE COPYRIGHT IS UTILIZED IN THE STATE IN WHICH THE TAXPAYER'S COMMERCIAL DOMICILE IS LOCATED.

(h) NONAPPORTIONABLE INCOME THAT IS NOT OTHERWISE ALLOCATED PURSUANT TO THIS SUBSECTION (7) IS ALLOCATED PURSUANT TO SUBSECTION (9) OF THIS SECTION.

(8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, FOR EACH TAXABLE YEAR COMMENCING ON OR AFTER JANUARY 1, 2019, A TAXPAYER MAY ELECT TO TREAT ALL INCOME AS APPORTIONABLE INCOME. THIS ELECTION MUST BE MADE IN ACCORDANCE WITH RULES ADOPTED BY THE DEPARTMENT OF REVENUE AND MADE BY THE EXTENDED DUE DATE OF THE TAX RETURN. ONCE MADE, THE ELECTION IS IRREVOCABLE FOR THE TAX YEAR.

(9)(a)(I) IF THE ALLOCATION AND APPORTIONMENT PROVISIONS IN THIS SECTION DO NOT FAIRLY REPRESENT THE EXTENT OF BUSINESS ACTIVITY IN COLORADO OF TAXPAYERS ENGAGED IN A PARTICULAR INDUSTRY OR IN A PARTICULAR TRANSACTION OR ACTIVITY, THE EXECUTIVE DIRECTOR MAY, IN ADDITION TO THE AUTHORITY PROVIDED IN SUBSECTION (9)(b) OF THIS SECTION, AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION, ESTABLISH APPROPRIATE RULES, INCLUDING THE APPLICATION OF A VARIANCE ALLOWED UNDER SUBSECTION (9)(b) OF THIS SECTION ON AN INDUSTRY-WIDE, TRANSACTION-WIDE, OR ACTIVITY-WIDE BASIS, FOR DETERMINING ALTERNATIVE ALLOCATION AND APPORTIONMENT METHODS FOR SUCH TAXPAYERS.

(II) A RULE ADOPTED PURSUANT TO THIS SUBSECTION (9)(a) MUST BE APPLIED UNIFORMLY; EXCEPT THAT, WITH RESPECT TO ANY TAXPAYER TO WHOM SUCH RULE APPLIES, THE TAXPAYER MAY PETITION FOR, OR THE EXECUTIVE DIRECTOR MAY REQUIRE, ADJUSTMENT PURSUANT TO SUBSECTION (9)(b) OF THIS SECTION.

(b) IF THE APPORTIONMENT AND ALLOCATION PROVISIONS OF THIS SECTION DO NOT FAIRLY REPRESENT THE EXTENT OF THE TAXPAYER'S BUSINESS ACTIVITIES IN COLORADO, THE TAXPAYER MAY PETITION FOR, OR THE EXECUTIVE DIRECTOR MAY REQUIRE, WITH RESPECT TO ALL OR ANY PART OF THE TAXPAYER'S BUSINESS ACTIVITIES, IF REASONABLE:

(I) SEPARATE ACCOUNTING;

(II) THE INCLUSION OF ONE OR MORE ADDITIONAL FACTORS THAT WILL FAIRLY REPRESENT THE TAXPAYER'S BUSINESS ACTIVITY IN COLORADO;

(III) THE INCLUSION OF ANY RECEIPTS OF A TAXPAYER OTHERWISE EXCLUDED UNDER SUBSECTION (1)(d) OF THIS SECTION, INCLUDING THOSE FROM HEDGING TRANSACTIONS OR FROM THE MATURITY, REDEMPTION, SALE, EXCHANGE, LOAN, OR

OTHER DISPOSITION OF CASH OR SECURITIES; OR

(IV) THE EMPLOYMENT OF ANY OTHER METHOD, NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, TO EFFECTUATE AN EQUITABLE APPORTIONMENT OR ALLOCATION OF THE TAXPAYER'S INCOME, FAIRLY CALCULATED TO DETERMINE THE NET INCOME DERIVED FROM OR ATTRIBUTABLE TO SOURCES IN COLORADO.

(c)(I) THE TAXPAYER PETITIONING FOR, OR THE EXECUTIVE DIRECTOR REQUIRING, THE USE OF ANY METHOD TO EFFECTUATE AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE TAXPAYER'S INCOME PURSUANT TO SUBSECTION (9)(b) OF THIS SECTION SHALL PROVE, BY A PREPONDERANCE OF THE EVIDENCE, THAT:

(A) THE ALLOCATION AND APPORTIONMENT PROVISIONS IN THIS SECTION DO NOT FAIRLY REPRESENT THE EXTENT OF THE TAXPAYER'S BUSINESS ACTIVITY IN COLORADO; AND

(B) THE ALTERNATIVE TO SUCH PROVISIONS IS REASONABLE.

(II) THE SAME BURDEN OF PROOF APPLIES WHETHER THE TAXPAYER IS PETITIONING FOR, OR THE EXECUTIVE DIRECTOR IS REQUIRING, THE USE OF ANY REASONABLE METHOD TO EFFECTUATE AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE TAXPAYER'S INCOME; EXCEPT THAT, IF THE EXECUTIVE DIRECTOR CAN SHOW THAT IN ANY TWO OF THE PRIOR FIVE TAX YEARS, THE TAXPAYER HAD USED AN ALLOCATION AND APPORTIONMENT METHOD AT VARIANCE WITH ITS ALLOCATION AND APPORTIONMENT METHOD OR METHODS IN OTHER TAX YEARS, THEN THE EXECUTIVE DIRECTOR DOES NOT BEAR THE BURDEN OF PROOF DESCRIBED IN SUBSECTION (9)(c)(I) OF THIS SECTION IN IMPOSING A DIFFERENT METHOD.

(d) IF THE EXECUTIVE DIRECTOR REQUIRES ANY DIFFERENT METHOD TO EFFECTUATE AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE TAXPAYER'S INCOME PURSUANT TO THIS SUBSECTION (9), THE EXECUTIVE DIRECTOR SHALL NOT IMPOSE ANY CIVIL OR CRIMINAL PENALTY WITH REFERENCE TO THE TAX DUE THAT IS ATTRIBUTABLE TO THE TAXPAYER'S REASONABLE RELIANCE SOLELY ON THE ALLOCATION AND APPORTIONMENT PROVISIONS OF THIS SECTION.

(e) A TAXPAYER THAT HAS RECEIVED WRITTEN PERMISSION FROM THE EXECUTIVE DIRECTOR TO USE A REASONABLE METHOD TO EFFECTUATE AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE TAXPAYER'S INCOME SHALL NOT HAVE THAT PERMISSION REVOKED WITH RESPECT TO TRANSACTIONS AND ACTIVITIES THAT HAVE ALREADY OCCURRED UNLESS THERE HAS BEEN A MATERIAL CHANGE IN, OR A MATERIAL MISREPRESENTATION OF, THE FACTS PROVIDED BY THE TAXPAYER UPON WHICH THE EXECUTIVE DIRECTOR REASONABLY RELIED.

(f) IF THE EXECUTIVE DIRECTOR REQUIRES THE TAXPAYER TO CHANGE ITS PRESENT METHOD OF REPORTING, THE EXECUTIVE DIRECTOR SHALL NOTIFY THE TAXPAYER IN WRITING OF THE REASON FOR THE REQUIRED CHANGE. THE NOTICE MUST BE MADE BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5 AND MUST BE SUFFICIENTLY PARTICULAR TO GIVE THE TAXPAYER ADEQUATE INFORMATION AS TO THE REASONS FOR THE CHANGE SO THAT THE TAXPAYER MAY FRAME AN ANSWER FOR AND DEFEND ITS PRESENT METHOD OF REPORTING IF IT

DECIDES TO APPEAL.

(g) THE DEPARTMENT OF REVENUE, FROM TIME TO TIME, SHALL PUBLISH ALL RULINGS OF GENERAL PUBLIC INTEREST WITH RESPECT TO ANY APPLICATION OF THIS SUBSECTION (9).

(h) IF REQUESTED BY THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL, THE EXECUTIVE DIRECTOR SHALL REQUIRE TAXPAYERS TO PROVIDE ADDITIONAL INFORMATION RELATED TO APPORTIONMENT AND ALLOCATION OF INCOME TO SUPPORT AN INCOME TAX RETURN FOR THE PURPOSE OF PROVIDING SUCH INFORMATION TO LEGISLATIVE COUNCIL STAFF TO IMPROVE THE ACCURACY OF FISCAL NOTES AND REPORTS TO THE LEGISLATURE. THE EXECUTIVE DIRECTOR SHALL AGGREGATE SUCH ADDITIONAL INFORMATION SO AS TO PRESERVE THE CONFIDENTIALITY OF THE TAXPAYER'S INFORMATION AND COMPLY WITH SECTION 39-21-113.

(10) A BANK, SAVINGS AND LOAN, CREDIT UNION, OR OTHER TAXPAYER MAKING OR PURCHASING LOANS WHOSE ONLY BUSINESS ACTIVITY IN COLORADO IS THE OWNERSHIP OF PROPERTY ACQUIRED THROUGH THE PROCESS OF FORECLOSURE, OR WAS OBTAINED THROUGH A PROCEDURE EXERCISED IN LIEU OF THE ENTITY EXERCISING ITS RIGHT TO FORECLOSE, WHICH PROPERTY IS LATER DISPOSED OF WITHIN TWENTY-FOUR MONTHS AFTER OBTAINING OWNERSHIP, SHALL DIRECTLY ALLOCATE NET INCOME FOR SUCH PROPERTY DURING SUCH TIME AND ANY GAINS OR LOSSES REALIZED FROM THE SALE OF SUCH FORECLOSED PROPERTY TO THE STATE WHERE THE PROPERTY IS LOCATED. SUCH LIMITED ACTIVITIES DO NOT RENDER A BANK, SAVINGS AND LOAN, CREDIT UNION, OR OTHER ENTITY SUBJECT TO THE OTHER ALLOCATION AND APPORTIONMENT PROVISIONS OF THIS SECTION.

(11) THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24 TO APPLY AND ADMINISTER THIS SECTION. ANY RULES THAT THE EXECUTIVE DIRECTOR PROMULGATED IN ORDER TO APPLY AND ADMINISTER SECTIONS 39-22-303, 39-22-303.5, OR 24-60-1301 THAT MAY BE USED TO APPLY AND ADMINISTER THIS SECTION, INCLUDING PROVISIONS TO APPLY AND ADMINISTER THE SALES FACTOR FOR SPECIAL INDUSTRIES, WHICH ARE SET FORTH IN 1 CCR 201-2, CONTINUE TO BE IN EFFECT UNLESS INCONSISTENT WITH THIS SECTION OR SPECIFICALLY WITHDRAWN BY THE EXECUTIVE DIRECTOR.

(12) ON OR BEFORE JANUARY 1, 2024, THE DIRECTOR OF THE OFFICE OF ECONOMIC DEVELOPMENT SHALL PREPARE A REPORT DESCRIBING THE ECONOMIC IMPACTS RELATED TO APPORTIONMENT AND ALLOCATION OF TAXABLE INCOME PURSUANT TO THIS SECTION AND DELIVER THE REPORT TO THE FINANCE COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES.

SECTION 3. In Colorado Revised Statutes, 39-22-303.5, **amend** (2)(b) and (6) as follows:

39-22-303.5. Single-factor apportionment of business income - allocation of nonbusiness income - rules - definitions. (2) (b) For income tax years commencing on or after January 1, 2009, BUT PRIOR TO JANUARY 1, 2019, a taxpayer shall apportion and allocate the taxpayer's entire net income as provided in this section.

(6) Notwithstanding any other provision of this section, for each taxable year commencing on or after January 1, 2009, BUT PRIOR TO JANUARY 1, 2019, a taxpayer may elect to treat all income as business income. This election shall be made in accordance with rules adopted by the department of revenue and shall be made by the extended due date of the tax return. Once made, the election shall be irrevocable for such tax year.

SECTION 4. In Colorado Revised Statutes, 24-46-105, **add** (5) as follows:

24-46-105. Colorado economic development fund - creation - repeal.

(5) (a) THE DEPARTMENT OF REVENUE AND THE OFFICE OF ECONOMIC DEVELOPMENT MAY ANALYZE POTENTIAL AND EXPECTED DECREASES OF GENERAL FUND REVENUE IN THE 2018-19 STATE FISCAL YEAR AS A DIRECT RESULT OF THE STATE CONFORMING ITS INCOME TAX LAWS TO THE MODEL ACT AS SET FORTH IN HOUSE BILL 18-1185, AS ENACTED IN 2018. IF THE DEPARTMENT OF REVENUE AND THE OFFICE OF ECONOMIC DEVELOPMENT DETERMINE A REDUCTION HAS OCCURRED AS A DIRECT RESULT OF SUCH BILL, THEN THE DEPARTMENT OF REVENUE AND THE OFFICE OF ECONOMIC DEVELOPMENT SHALL NOTIFY THE STATE TREASURER TO TRANSFER UP TO TWO MILLION NINE HUNDRED THOUSAND DOLLARS, AS DETERMINED BY SUCH ANALYSIS, FROM THE FUND TO THE GENERAL FUND FOR THE 2018-19 STATE FISCAL YEAR.

(b) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JULY 1, 2020.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 4, 2018