

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

REVISED

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

LLS NO. 19-1074.01 Gregg Fraser x4325

SENATE BILL 19-233

SENATE SPONSORSHIP

Lee, Court, Moreno

HOUSE SPONSORSHIP

Snyder and Gray,

Senate Committees
Finance

House Committees
Appropriations

A BILL FOR AN ACT

101 **CONCERNING COMBINED REPORTING BY A CORPORATION FOR**
102 **COLORADO STATE INCOME TAX PURPOSES.**

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>.)

Two or more corporations controlled by the same interests are required to file a combined report in certain instances for apportioning income for Colorado income tax purposes. The Colorado court of appeals recently interpreted existing law to exclude all holding companies purportedly without property or payroll from combined reports. The bill clarifies that only corporations with property and payroll located outside

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

HOUSE
Amended 2nd Reading
May 1, 2019

SENATE
3rd Reading Unamended
April 27, 2019

SENATE
2nd Reading Unamended
April 26, 2019

the United States are excluded from a combined report. The bill further clarifies when the treatment of the activities of a partnership is treated as the activity of a member of an affiliated group of corporations.

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

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

4 (a) In *Oracle Corp. v. Dep't of Revenue*, 2017 COA 152 (2017),
5 and *Agilent Technologies, Inc. v. Dep't of Revenue*, 2017 COA 137
6 (2017), the Colorado court of appeals held that holding companies
7 purportedly without property or payroll are excluded from combined
8 reports under section 39-22-303, Colorado Revised Statutes;

9 (b) The general assembly adopts this act to assert that section
10 39-22-303 (8), (11), and (12)(c), Colorado Revised Statutes, does not
11 exclude holding companies from a combined return due to lack of
12 property and payroll or failure to satisfy the tests described in section
13 39-22-303 (11)(a), Colorado Revised Statutes;

14 (c) Section 39-22-303 (8) and (12)(c), Colorado Revised Statutes,
15 excludes only corporations with property and payroll located outside the
16 United States from a corporation's combined report; and

17 (d) This act also asserts that section 39-22-303 (11)(a)(I) to
18 (11)(a)(IV), Colorado Revised Statutes, treats the activities of any
19 partnership or other pass-through entity owned by a member of the
20 affiliated group of C corporations as activities performed by that
21 member of the affiliated group of C corporations if the partnership is
22 more than fifty percent owned by the members of the affiliated group.

23 **SECTION 2.** In Colorado Revised Statutes, 39-22-303, **amend**
24 (8); **repeal** (12)(c); and **add** (11)(f), (11)(g), and (15) as follows:

1 **39-22-303. Dividends in a combined report - foreign source**
2 **income - affiliated groups - definitions.** (8) NEITHER THE TAXPAYER
3 NOR the executive director shall ~~not require the inclusion~~ INCLUDE in a
4 combined report ~~of the income of~~ any C corporation which conducts
5 business outside the United States if eighty percent or more of the C
6 corporation's property and payroll, as determined by factoring pursuant
7 to section 24-60-1301, ~~C.R.S.~~, is assigned to locations outside the United
8 States. For the purpose of this subsection (8), "United States" ~~shall be~~ IS
9 restricted to the fifty states and the District of Columbia.

10 (11) (f) FOR PURPOSES OF THIS SECTION, ANY C CORPORATION
11 FORMED UNDER THE LAWS OF ANY STATE OR THE UNITED STATES WITH DE
12 MINIMIS OR NO PROPERTY AND PAYROLL, AS DETERMINED BY FACTORING
13 PURSUANT TO SECTION 24-60-1301, SHALL BE DEEMED TO SATISFY THE
14 REQUIREMENTS OF SUBSECTION (11)(a) OF THIS SECTION. THE
15 DEPARTMENT OF REVENUE SHALL ADOPT RULES TO DETERMINE THE
16 MANNER IN WHICH THE DE MINIMIS STANDARD WILL BE UNIFORMLY
17 APPLIED TO TAXPAYERS.

18 (g) FOR THE PURPOSE OF SATISFYING THE REQUIREMENTS OF
19 SUBSECTIONS (11)(a)(I) TO (11)(a)(IV) OF THIS SECTION, THE ACTIVITIES
20 OF ANY ENTITY FORMED UNDER THE LAWS OF ANY STATE OR THE UNITED
21 STATES THAT IS TREATED AS A PARTNERSHIP PURSUANT TO PART 2 OF THIS
22 ARTICLE 22, SHALL BE TREATED AS ACTIVITIES PERFORMED BY THE
23 MEMBER OF THE AFFILIATED GROUP OF C CORPORATIONS THAT OWNS A
24 PORTION OF THE ENTITY IF MORE THAN FIFTY PERCENT OF THE ENTITY'S
25 OWNERSHIP INTEREST IS HELD IN THE AGGREGATE BY ONE OR MORE
26 MEMBERS OF THE AFFILIATED GROUP. IF THE ENTITY IS OWNED BY MORE
27 THAN ONE MEMBER OF THE AFFILIATED GROUP, THE ACTIVITIES OF THE

1 ENTITY SHALL BE TREATED AS ACTIVITIES PERFORMED BY EACH MEMBER
2 THAT OWNS A PORTION OF THE ENTITY.

3 (12) (c) ~~As used in this subsection (12), the term "includable C~~
4 ~~corporations" means any C corporation which has more than twenty~~
5 ~~percent of the C corporation's property and payroll as determined by~~
6 ~~factoring pursuant to section 24-60-1301, C.R.S., assigned to locations~~
7 ~~inside the United States.~~

8 (15) THE DEPARTMENT OF REVENUE SHALL CONVENE A
9 STAKEHOLDER WORKING GROUP ON OR BEFORE SEPTEMBER 1, 2019, TO
10 DISCUSS TAX POLICIES AND ISSUES ARISING FROM THE RELEVANT
11 STATUTORY PROVISIONS GOVERNING COMBINED TAX REPORTING. THE
12 DEPARTMENT SHALL INCLUDE A REPORT REGARDING THE ACTIVITIES OF
13 THE STAKEHOLDER WORKING GROUP IN ITS PRESENTATION MADE
14 PURSUANT TO SECTION 2-7-203.

15 **SECTION 3. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly (August
18 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within such period, then the act, item, section, or part will not take effect
22 unless approved by the people at the general election to be held in
23 November 2020 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.