

CHAPTER 397

TAXATION

SENATE BILL 19-233

BY SENATOR(S) Lee, Court, Moreno;
also REPRESENTATIVE(S) Snyder and Gray, Lontine.

AN ACT**CONCERNING COMBINED REPORTING BY A CORPORATION FOR COLORADO STATE INCOME TAX PURPOSES.**

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. 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 2, 2019, if adjournment sine die is on May 3, 2019); 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 2020

and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 31, 2019