

CHAPTER 256

TAXATION

HOUSE BILL 08-1380

BY REPRESENTATIVE(S) Jahn, Rice, Massey, Liston, Buescher, Carroll T., Casso, Frangas, Gagliardi, Gardner B., Gardner C., Kerr J., Labuda, Marostica, Marshall, McFadyen, McNulty, Riesberg, Romanoff, Scanlan, Stafford, Todd, Garza-Hicks, Green, King, Looper, May M., Summers, Borodkin, Lambert, and Lundberg;
also SENATOR(S) Shaffer, Boyd, Kester, McElhany, Tapia, and Groff.

AN ACT**CONCERNING THE METHOD FOR ATTRIBUTING NET INCOME TO COLORADO FOR PURPOSES OF CALCULATING THE STATE INCOME TAX.**

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

SECTION 1. 22-55-102 (6), Colorado Revised Statutes, is amended to read:

22-55-102. Definitions. As used in this article, unless the context otherwise requires:

(6) "Federal taxable income, as modified by law" means federal taxable income as modified by sections 39-22-104, 39-22-304, 39-22-509, and 39-22-518, C.R.S., and as apportioned AND ALLOCATED under ~~section 39-22-303 or 39-22-303.1, C.R.S.~~ SECTION 39-22-303.5 OR 39-22-303.7, C.R.S., to the extent federal taxable income is not being modified to effectuate a refund of excess state revenues required pursuant to section 20 of article X of the state constitution, earned on or after December 28, 2000.

SECTION 2. Repeal. Paragraph 1 of Article III of the Multistate Tax Compact, as contained in section 24-60-1301, Colorado Revised Statutes, is repealed as follows:

24-60-1301. Execution of compact. The governor is hereby authorized to enter into a compact on behalf of this state with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

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

Article III.

Elements of Income Tax Laws.

Taxpayer Option, State and Local Taxes.

1. ~~Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party State or pursuant to the laws of subdivisions in two or more party States may elect to apportion and allocate his income in the manner provided by the laws of such State or by the laws of such States and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party States or subdivisions thereof or in any one or more of the party States or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from State taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a State may the sum of all apportionments and allocations to subdivisions within a State be greater than the apportionment and allocation that would be assignable to that State if the apportionment or allocation were being made with respect to a State income tax.~~

SECTION 3. Part 13 of article 60 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-60-1308. Applicability of article IV of compact. FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, A TAXPAYER MAY NOT USE THE PROVISIONS OF ARTICLE IV OF THE MULTISTATE TAX COMPACT TO APPORTION AND ALLOCATE INCOME TO COLORADO.

SECTION 4. 39-21-113, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-21-113. Reports and returns - repeal. (16) (a) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY PROVIDE THE OFFICE OF ECONOMIC DEVELOPMENT WITH ANY INFORMATION THAT IS NECESSARY TO PREPARE THE REPORT REQUIRED PURSUANT TO SECTION 39-22-303.5 (10), C.R.S.

(b) THIS SUBSECTION IS REPEALED, EFFECTIVE JULY 1, 2015.

SECTION 5. 39-22-109 (4), Colorado Revised Statutes, is amended to read:

39-22-109. Income of a nonresident individual for purposes of Colorado income tax. (4) In any case, where the nature of income earned by a nonresident individual is such as to render the computations described in subsections (1) to (3) of this section impracticable and where the books of account and records of the taxpayer do not clearly reflect the income subject to tax by this article, apportionment shall be made in accordance with ~~section 39-22-303~~ SECTION 39-22-303.5.

SECTION 6. 39-22-203 (1) (a), Colorado Revised Statutes, is amended to read:

39-22-203. Nonresident partners. (1) (a) In determining Colorado nonresident federal taxable income of a nonresident partner of any partnership, there shall be included only the portion of such partner's distributive share of items of partnership income, gain, loss, deduction, or credit derived from sources within Colorado determined in accordance with the provisions of section 39-22-109 or, at the partnership's election, apportioned or allocated to this state pursuant to ~~either section 39-22-303 or section 24-60-1301, C.R.S.~~ SECTION 39-22-303.5.

SECTION 7. 39-22-303 (1), (2), (3), (4), (5), and (7), the introductory portion to 39-22-303 (10), and 39-22-303 (11) (c), (11) (e), and (14), Colorado Revised Statutes, are amended to read:

39-22-303. Dividends in a combined report - foreign source income - affiliated groups - definitions. (1) ~~For income tax years commencing on or after January 1, 1979, in the case of C corporations, the entire net income shall be apportioned as provided in this section or section 24-60-1301, C.R.S.~~

~~(2) (a) If the C corporation carries on no business outside of Colorado, the entire net income shall be apportioned to Colorado.~~

~~(b) If the C corporation derives income from sources both within and without Colorado, the net income shall be divided into two equal parts, one part being attributed to sources within Colorado as shall be found by multiplying said one-half by the property factor as defined in subsection (3) of this section and the other part being attributed to sources within Colorado as shall be found by multiplying said other one-half by the revenue factor as defined in subsection (4) of this section.~~

~~(3) (a) The property factor is a fraction, the numerator of which is the average value of the C corporation's real and tangible personal property whether owned or rented in Colorado during the tax period and the denominator of which is the average value of all the C corporation's real and tangible personal property whether owned or rented during the tax period:~~

~~(b) Property owned by the C corporation may be valued at its original cost or at its adjusted basis for federal income tax purposes, but written permission must be secured from the executive director to change from one method to the other. Real property rented by the C corporation is valued at eight times the net annual rental rate. Tangible personal property rented by the C corporation is valued at three times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the C corporation less any annual rental rate received by the C corporation from subrentals.~~

~~(4) (a) The revenue factor is a fraction, the numerator of which is the gross receipts assignable to Colorado and the denominator of which is the entire gross receipts of the C corporation from all sources during the tax period:~~

~~(b) The gross receipts regarding the sale of intangible assets shall be the gain from the sale and not the total selling price:~~

~~(c) Subrentals as referred to in paragraph (b) of subsection (3) of this section are not receipts for computation of the sales factor:~~

(d) "~~Gross receipts assignable to Colorado~~" means:

~~(F) Sales, where the goods, merchandise, or property is delivered or shipped to a purchaser within this state, regardless of the f.o.b. point, other condition of sale, or the taxability of the C corporation in the state or foreign country in which the goods are shipped or delivered;~~

~~(H) Revenue from services rendered in Colorado;~~

~~(HH) Rents and royalties from real and tangible personal property located in Colorado;~~

~~(IV) Gross proceeds from the sale of real and tangible personal property located in Colorado;~~

~~(V) Gain from the sale of intangible personal property if the C corporation's commercial domicile is in Colorado;~~

~~(VI) Interest and dividend income to the extent included in taxable income, if the C corporation's commercial domicile is in Colorado; and~~

~~(VII) Patent and copyright royalties if, and to the extent that, the patent or copyright is utilized by the payer in Colorado. 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 C corporation's commercial domicile is located. 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 C corporation's commercial domicile is located.~~

(e) "~~Commercial domicile~~" means the principal place from which the trade or business of the C corporation is directed or managed.

(5) (a) ~~In the case of certain industries where unusual factual situations produce inequitable results under the apportionment provisions of this section, the executive director shall promulgate regulations for determining the apportionment factors for each such industry, but such regulations shall be applied uniformly.~~

~~(b) If the apportionment provisions of this section do not fairly represent the extent of the C corporation's activities in Colorado, the C corporation may petition or the executive director may require, in respect to the C corporation's business activities, if reasonable:~~

~~(f) Separate accounting;~~

~~(H) The exclusion of any one of the factors;~~

~~(III) The inclusion of one or more additional factors which will fairly represent the C corporation's business activity in Colorado; or~~

~~(IV) The employment of any other method to effectuate an equitable apportionment of the corporation's income, fairly calculated to determine the net income derived from or attributable to sources within Colorado.~~

~~(c) If the executive director requires the C corporation to change its present method of reporting, the executive director shall notify the C corporation in writing stating the reason for the required change. The notice shall be made by first-class mail as set forth in section 39-21-105.5 and shall be sufficiently particular to give the C corporation adequate information as to the basis of reasons relied upon for the change so that the C corporation may frame an answer and defend should it decide to appeal.~~

~~(d) The department of revenue, from time to time, shall publish all rulings of general public interest with respect to any application of the provisions of this subsection (5):~~

~~(7) A bank, savings and loan, credit union, or other entity making or purchasing loans whose only business activity within the state 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 period and any gains or losses realized from the sale of such foreclosed property to the state where the property is located. Such limited activities shall not render a bank, savings and loan, credit union, or other entity subject to the apportionment provision of subsection (2) of this section.~~

~~(10) As used in this subsection (10), "foreign source income" means taxable income from sources without the United States, as used in section 862 of the internal revenue code. In apportioning AND ALLOCATING income pursuant to article IV of section 24-60-1301, C.R.S., or this section SECTION 39-22-303.5 OR 39-22-303.7, foreign source income shall be considered only to the extent provided in this subsection (10):~~

~~(11) (c) At the election of the IF AN affiliated C corporations to be CORPORATION IS included in the A combined report, this section or section 24-60-1301, C.R.S.; SECTION 39-22-303.5 OR 39-22-303.7 shall be applied with the following modifications:~~

~~(I) Intercompany transactions among the affiliated C corporations shall be excluded from the numerator and denominator of the apportionment factor CALCULATION SET FORTH IN SECTION 39-22-303.5; and~~

~~(II) The numerators NUMERATOR of the apportionment factors CALCULATION SET FORTH IN SECTION 39-22-303.5 shall be, to the extent applicable, the sum of the revenue, the sum of the property, and the sum of the payroll factors SALES of those affiliated C corporations subject to Colorado income tax under 15 U.S.C. secs. 381-384, 391 DOING BUSINESS IN COLORADO.~~

(e) ~~The provisions of this subsection (11) shall apply to C corporations which apportion net taxable income by use of the two-factor formula under this section or to C corporations which apportion net taxable income by use of the three-factor formula under section 24-60-1301, C.R.S.~~

~~(14) In apportioning, pursuant to this section or pursuant to the multistate tax compact, article IV of section 24-60-1301, C.R.S., the income of a taxpayer or tax-reporting entity engaged in the business of publishing magazines or periodicals either through print or electronic media, receipts from the sale of advertising in magazines or periodicals shall be considered only to the extent that such magazines or periodicals are delivered within Colorado. The determination of the extent to which magazines or periodicals are delivered within Colorado shall be based upon the ratio which delivery of magazines or periodicals by such taxpayer or tax-reporting entity in Colorado bears to the total delivery of magazines and periodicals by such taxpayer or tax-reporting entity.~~

SECTION 8. Part 3 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

39-22-303.5. Single-factor apportionment of business income - allocation of nonbusiness income - rules - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BUSINESS INCOME" MEANS THE NET INCOME OF THE TAXPAYER ARISING FROM THE TRANSACTIONS AND ACTIVITY IN THE REGULAR COURSE OF A TAXPAYER'S TRADE OR BUSINESS AND INCLUDES INCOME FROM TANGIBLE AND INTANGIBLE PROPERTY IF THE ACQUISITION, MANAGEMENT, AND DISPOSITION OF THE PROPERTY CONSTITUTE INTEGRAL PARTS OF THE TAXPAYER'S REGULAR TRADE OR BUSINESS OPERATIONS. FOR PURPOSES OF ADMINISTRATION OF THIS SECTION, THE INCOME OF THE TAXPAYER IS BUSINESS INCOME UNLESS CLEARLY CLASSIFIABLE AS NONBUSINESS INCOME.

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

(c) "NONBUSINESS INCOME" MEANS ALL INCOME OTHER THAN BUSINESS INCOME.

(d) "SALES" MEANS ALL GROSS RECEIPTS OF THE TAXPAYER NOT ALLOCATED UNDER SUBSECTION (5) OF THIS SECTION AND NOT OTHERWISE EXCLUDED FROM THE CALCULATION OF NET INCOME; EXCEPT THAT, FOR THE SALE OF INTANGIBLE PROPERTY, "SALES" MEANS THE GAIN FROM THE SALE AND NOT THE GROSS RECEIPTS.

(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 A C CORPORATION OR ANY NONRESIDENT INDIVIDUAL, NONRESIDENT PARTNER, OR S CORPORATION THAT IS PERMITTED OR REQUIRED PURSUANT TO ANOTHER PROVISION OF LAW TO APPORTION AND ALLOCATE REVENUE PURSUANT TO THIS SECTION.

(2) (a) FOR INCOME TAX YEARS COMMENCING PRIOR TO JANUARY 1, 2009, A TAXPAYER SHALL APPORTION AND ALLOCATE INCOME PURSUANT TO SECTION 24-60-1301, C.R.S., OR APPORTION INCOME PURSUANT TO SECTION 39-22-303, AS THOSE SECTIONS EXISTED IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

(b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, A TAXPAYER SHALL APPORTION AND ALLOCATE THE TAXPAYER'S ENTIRE NET INCOME AS PROVIDED IN THIS SECTION.

(3) (a) IF A TAXPAYER HAS NO INCOME FROM BUSINESS ACTIVITY OUTSIDE OF COLORADO, THE TAXPAYER'S ENTIRE NET INCOME SHALL BE ALLOCATED TO COLORADO.

(b) A TAXPAYER HAVING 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 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 BUSINESS INCOME SHALL BE APPORTIONED TO COLORADO BY MULTIPLYING SUCH BUSINESS INCOME BY A FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL SALES OF THE TAXPAYER IN COLORADO DURING THE TAX PERIOD AND THE DENOMINATOR OF WHICH IS THE TOTAL SALES OF THE TAXPAYER EVERYWHERE DURING THE TAX PERIOD.

(b) SALES OF TANGIBLE PERSONAL PROPERTY, INCLUDING GROSS RECEIPTS FROM LEASES AND OTHER USES OF TANGIBLE PERSONAL PROPERTY, ARE IN COLORADO IF:

(I) 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

(II) 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.

(c) SALES, OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY, ARE IN COLORADO AS FOLLOWS:

(I) REVENUE FROM SERVICES RENDERED IN COLORADO;

(II) RENTS AND ROYALTIES FROM REAL PROPERTY LOCATED IN COLORADO;

(III) GROSS PROCEEDS FROM THE SALE OF REAL PROPERTY LOCATED IN COLORADO;

(IV) INTEREST AND DIVIDEND INCOME TO THE EXTENT INCLUDED IN TAXABLE INCOME, IF THE TAXPAYER'S COMMERCIAL DOMICILE IS IN COLORADO;

(V) GAIN FROM THE SALE OF INTANGIBLE PROPERTY IF THE TAXPAYER'S COMMERCIAL DOMICILE IS IN COLORADO;

(VI) PATENT AND COPYRIGHT ROYALTIES, 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; AND

(VII) REVENUE FROM THE PERFORMANCE OF PURELY PERSONAL SERVICES, IF THE INCOME-PRODUCING ACTIVITY IS PERFORMED IN COLORADO.

(d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION (4), IN APPORTIONING THE INCOME OF A TAXPAYER ENGAGED IN THE BUSINESS OF PUBLISHING MAGAZINES OR PERIODICALS EITHER THROUGH PRINT OR ELECTRONIC MEDIA, SALES RELATED TO ADVERTISING IN MAGAZINES OR PERIODICALS SHALL BE PART OF THE TAXPAYER'S TOTAL SALES IN COLORADO ONLY TO THE EXTENT THAT SUCH MAGAZINES OR PERIODICALS ARE DELIVERED WITHIN COLORADO. THE DETERMINATION OF THE EXTENT TO WHICH MAGAZINES OR PERIODICALS ARE DELIVERED WITHIN COLORADO SHALL BE BASED UPON THE RATIO THAT THE DELIVERY OF MAGAZINES OR PERIODICALS BY SUCH TAXPAYER OR TAX-REPORTING ENTITY IN COLORADO BEARS TO THE TOTAL DELIVERY OF MAGAZINES AND PERIODICALS BY SUCH TAXPAYER OR TAX-REPORTING ENTITY.

(e) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO FOREIGN SOURCE INCOME THAT IS INCLUDED IN TAXABLE INCOME SHALL BE INCLUDED AS SALES OF THE TAXPAYER IN COLORADO FOR PURPOSES OF APPORTIONING BUSINESS INCOME PURSUANT TO THIS SUBSECTION (4).

(f) FOR PURPOSES OF SUBPARAGRAPH (V) OF PARAGRAPH (c) OF THIS SUBSECTION (4) AND PARAGRAPH (g) OF SUBSECTION (5) OF THIS SECTION:

(I) 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.

(II) 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.

(5) 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 NONBUSINESS INCOME, SHALL BE ALLOCATED AS FOLLOWS:

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

(b) (I) NET RENTS AND ROYALTIES FROM TANGIBLE PERSONAL PROPERTY SHALL BE 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 TAXABLE IN, THE STATE IN WHICH THE PROPERTY IS UTILIZED.

(II) FOR PURPOSES OF THIS PARAGRAPH (b), THE EXTENT OF UTILIZATION OF TANGIBLE PERSONAL PROPERTY IN COLORADO SHALL BE 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 SHALL BE 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 SHALL BE ALLOCATED TO COLORADO;

(d) CAPITAL GAINS AND LOSSES FROM SALES OF TANGIBLE PERSONAL PROPERTY SHALL BE 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 IS NOT TAXABLE IN THE STATE IN WHICH THE PROPERTY HAD A SITUS;

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

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

(g) PATENT AND COPYRIGHT ROYALTIES SHALL BE ALLOCATED TO COLORADO IF AND TO THE EXTENT THAT:

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

(II) 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; AND

(h) NONBUSINESS INCOME THAT IS NOT OTHERWISE ALLOCATED PURSUANT TO THIS SUBSECTION (5) SHALL BE ALLOCATED PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, FOR EACH TAXABLE YEAR COMMENCING ON OR AFTER JANUARY 1, 2009, 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.

(7) (a) IN THE CASE OF CERTAIN INDUSTRIES WHERE UNUSUAL FACTUAL SITUATIONS PRODUCE INEQUITABLE RESULTS UNDER THE APPORTIONMENT AND ALLOCATION PROVISIONS OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES FOR DETERMINING THE APPORTIONMENT AND ALLOCATION FACTORS FOR EACH SUCH INDUSTRY, BUT SUCH RULES SHALL BE APPLIED UNIFORMLY.

(b) IF THE APPORTIONMENT AND ALLOCATION PROVISIONS OF THIS SECTION DO NOT FAIRLY REPRESENT THE EXTENT OF THE TAXPAYER'S 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; OR

(III) THE EMPLOYMENT OF ANY OTHER METHOD 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) 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 SHALL BE MADE BY FIRST-CLASS MAIL AS SET FORTH IN SECTION 39-21-105.5 AND SHALL 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.

(d) THE DEPARTMENT OF REVENUE, FROM TIME TO TIME, SHALL PUBLISH ALL RULINGS OF GENERAL PUBLIC INTEREST WITH RESPECT TO ANY APPLICATION OF THE PROVISIONS OF THIS SUBSECTION (7).

(e) 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.

(8) A BANK, SAVINGS AND LOAN, CREDIT UNION, OR OTHER TAXPAYER MAKING OR PURCHASING LOANS WHOSE ONLY BUSINESS ACTIVITY WITHIN 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 SHALL NOT RENDER A BANK, SAVINGS AND LOAN, CREDIT UNION, OR OTHER ENTITY SUBJECT TO THE OTHER ALLOCATION AND APPORTIONMENT PROVISIONS OF THIS SECTION.

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

(10) ON OR BEFORE JANUARY 1, 2014, 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.

39-22-303.7. Mutual fund service corporation apportionment - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADMINISTRATION SERVICES" INCLUDES, BUT IS NOT LIMITED TO, CLERICAL, FUND, OR SHAREHOLDER ACCOUNTING AND PARTICIPANT RECORD KEEPING, TRANSFER AGENCY, BOOKKEEPING, DATA PROCESSING, CUSTODIAL, INTERNAL AUDITING, LEGAL, AND TAX SERVICES PERFORMED FOR A REGULATED INVESTMENT COMPANY. SERVICES QUALIFY AS "ADMINISTRATIVE SERVICES" ONLY IF THE PROVIDER OF SUCH SERVICES DURING THE TAXABLE YEAR ALSO PROVIDES, OR IS

AFFILIATED WITH A PERSON THAT PROVIDES, MANAGEMENT OR DISTRIBUTION SERVICES TO A REGULATED INVESTMENT COMPANY DURING THE SAME TAXABLE YEAR.

(b) "DISTRIBUTION SERVICES" INCLUDES, BUT IS NOT LIMITED TO, THE SERVICES OF ADVERTISING, SERVICING, MARKETING, OR SELLING SHARES OF A REGULATED INVESTMENT COMPANY. THE SERVICES OF ADVERTISING, SERVICING, OR MARKETING SHARES QUALIFY AS "DISTRIBUTION SERVICES" ONLY WHEN THE SERVICE IS PERFORMED BY A PERSON THAT IS, OR IN THE CASE OF A CLOSED-END COMPANY WAS, EITHER ENGAGED IN THE BUSINESS OF SELLING REGULATED INVESTMENT COMPANY SHARES OR AFFILIATED WITH A PERSON THAT IS ENGAGED IN THE SERVICE OF SELLING REGULATED INVESTMENT COMPANY SHARES. IN THE CASE OF AN OPEN-END COMPANY, SUCH SERVICE OF SELLING SHARES MUST BE PERFORMED PURSUANT TO A CONTRACT ENTERED INTO PURSUANT TO 15 U.S.C. SEC. 80a-15 (b), AS AMENDED.

(c) "DOMICILE" PRESUMPTIVELY MEANS THE SHAREHOLDER'S MAILING ADDRESS ON THE RECORDS OF THE REGULATED INVESTMENT COMPANY. IF, HOWEVER, THE REGULATED INVESTMENT COMPANY OR THE MUTUAL FUND SERVICE CORPORATION HAS ACTUAL KNOWLEDGE THAT THE SHAREHOLDER'S PRIMARY RESIDENCE OR PRINCIPAL PLACE OF BUSINESS IS DIFFERENT FROM THE SHAREHOLDER'S MAILING ADDRESS, THE PRESUMPTION SHALL NOT CONTROL. IF THE SHAREHOLDER OF RECORD IS A COMPANY THAT HOLDS THE SHARES OF THE REGULATED INVESTMENT COMPANY AS DEPOSITOR FOR THE BENEFIT OF A SEPARATE ACCOUNT, THEN THE SHAREHOLDER SHALL BE THE CONTRACT OWNERS OR POLICYHOLDERS OF THE CONTRACTS OR POLICIES SUPPORTED BY THE SEPARATE ACCOUNT DETERMINED USING ANY REASONABLE BASIS, SUCH AS ZIP CODES OF UNDERLYING SHAREHOLDERS OR UNITED STATES CENSUS BUREAU DATA IN ORDER TO DETERMINE THE PROPER LOCATION FOR THE ASSIGNMENT OF THESE SHARES. IF THE REGULATED INVESTMENT COMPANY OR THE MUTUAL FUND SERVICE CORPORATION HAS ACTUAL KNOWLEDGE THAT THE SHAREHOLDER'S PRINCIPAL PLACE OF BUSINESS IS DIFFERENT FROM THE SHAREHOLDER'S MAILING ADDRESS, THE PRESUMPTION SHALL NOT CONTROL.

(d) "MANAGEMENT SERVICES" INCLUDES, BUT IS NOT LIMITED TO, ANY OF THE FOLLOWING: THE RENDERING OF INVESTMENT ADVICE, DIRECTLY OR INDIRECTLY, TO A REGULATED INVESTMENT COMPANY, MAKING DETERMINATIONS AS TO WHEN SALES AND PURCHASES OF SECURITIES ARE TO BE MADE ON BEHALF OF THE REGULATED INVESTMENT COMPANY, OR PROVIDING SERVICES RELATED TO THE SELLING OR PURCHASING OF SECURITIES CONSTITUTING ASSETS OF A REGULATED INVESTMENT COMPANY, AND RELATED ACTIVITIES. SERVICES QUALIFY AS "MANAGEMENT SERVICES" ONLY WHEN SUCH ACTIVITY OR ACTIVITIES ARE PERFORMED PURSUANT TO A CONTRACT WITH THE REGULATED INVESTMENT COMPANY ENTERED INTO PURSUANT TO 15 U.S.C. SEC. 80a-15 (a), AS AMENDED, FOR A PERSON THAT HAS ENTERED INTO SUCH CONTRACT WITH THE REGULATED INVESTMENT COMPANY OR FOR A PERSON THAT IS AFFILIATED WITH A PERSON THAT HAS ENTERED INTO SUCH A CONTRACT WITH A REGULATED INVESTMENT COMPANY.

(e) "MUTUAL FUND SALES" MEANS TAXABLE NET INCOME DERIVED WITHIN THE TAXABLE YEAR DIRECTLY OR INDIRECTLY FROM THE RENDERING OF MANAGEMENT, DISTRIBUTION, OR ADMINISTRATION SERVICES TO A REGULATED INVESTMENT COMPANY, INCLUDING NET INCOME RECEIVED DIRECTLY OR INDIRECTLY FROM TRUSTEES, SPONSORS, AND PARTICIPANTS OF EMPLOYEE BENEFIT PLANS THAT HAVE

ACCOUNTS IN A REGULATED INVESTMENT COMPANY.

(f) "MUTUAL FUND SERVICE CORPORATION" MEANS ANY CORPORATION DOING BUSINESS IN COLORADO THAT DERIVES MORE THAN FIFTY PERCENT OF ITS GROSS INCOME FROM THE PROVISION DIRECTLY OR INDIRECTLY OF MANAGEMENT, DISTRIBUTION, OR ADMINISTRATION SERVICES TO OR ON BEHALF OF A REGULATED INVESTMENT COMPANY AND FROM TRUSTEES, SPONSORS, AND PARTICIPANTS OF EMPLOYEE BENEFIT PLANS THAT HAVE ACCOUNTS IN A REGULATED INVESTMENT COMPANY.

(g) "REGULATED INVESTMENT COMPANY" MEANS A REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION 851 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(2) NOTWITHSTANDING ANY PROVISION OF SECTION 39-22-303.5, FOR TAXABLE YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, MUTUAL FUND SALES BY A MUTUAL FUND SERVICE CORPORATION, OTHER THAN THE SALE OF TANGIBLE PERSONAL PROPERTY, SHALL BE APPORTIONED TO COLORADO TO THE EXTENT THAT SHAREHOLDERS OF THE REGULATED INVESTMENT COMPANY ARE DOMICILED IN COLORADO AS FOLLOWS:

(a) (I) BY MULTIPLYING THE MUTUAL FUND SERVICE CORPORATION'S TOTAL DOLLAR AMOUNT OF MUTUAL FUND SALES OF SUCH SERVICES ON BEHALF OF EACH REGULATED INVESTMENT COMPANY BY A FRACTION, THE NUMERATOR OF WHICH SHALL BE THE AVERAGE OF THE NUMBER OF SHARES OWNED BY THE REGULATED INVESTMENT COMPANY'S SHAREHOLDERS DOMICILED IN COLORADO AT THE BEGINNING OF AND AT THE END OF THE REGULATED INVESTMENT COMPANY'S TAXABLE YEAR THAT ENDS WITH OR WITHIN THE MUTUAL FUND SERVICE CORPORATION'S TAXABLE YEAR, AND THE DENOMINATOR OF WHICH SHALL BE THE AVERAGE OF THE NUMBER OF SHARES OWNED BY THE REGULATED INVESTMENT COMPANY SHAREHOLDERS EVERYWHERE AT THE BEGINNING OF AND AT THE END OF THE REGULATED INVESTMENT COMPANY'S TAXABLE YEAR THAT ENDS WITH OR WITHIN THE MUTUAL FUND SERVICE CORPORATION'S TAXABLE YEAR.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), A MUTUAL FUND SERVICE CORPORATION MAY USE THE YEAR-END OF THE REGULATED INVESTMENT COMPANY'S FUND ADVISOR FOR THIS CALCULATION, AS LONG AS THE MUTUAL FUND SERVICE CORPORATION CONSISTENTLY USES THIS METHOD FROM YEAR TO YEAR. FOR PURPOSES OF THIS PARAGRAPH (a), A REGULATED INVESTMENT COMPANY'S FUND ADVISOR IS THE PERSON THAT IS DIRECTLY AND PRIMARILY RESPONSIBLE FOR PROVIDING INVESTMENT ADVICE TO THE REGULATED INVESTMENT COMPANY UNDER A CONTRACT ENTERED INTO PURSUANT TO 15 U.S.C. SEC. 80a-15 (a).

(b) IF THE DOMICILE OF A SHAREHOLDER IS UNKNOWN TO THE MUTUAL FUND SERVICE CORPORATION BECAUSE THE SHAREHOLDER OF RECORD IS A PERSON THAT HOLDS THE SHARES OF A REGULATED INVESTMENT COMPANY AS A DEPOSITOR FOR THE BENEFIT OF OTHERS, THE MUTUAL FUND SERVICE CORPORATION MAY UTILIZE ANY REASONABLE BASIS, SUCH AS ZIP CODES OF UNDERLYING SHAREHOLDERS OR UNITED STATES CENSUS BUREAU DATA, IN ORDER TO DETERMINE THE PROPER LOCATION FOR THE ASSIGNMENT OF THE SHARES.

(c) A SEPARATE COMPUTATION SHALL BE MADE TO DETERMINE THE MUTUAL FUND SALES FOR EACH REGULATED INVESTMENT COMPANY, THE SUM OF WHICH SHALL EQUAL THE TOTAL MUTUAL FUND SALES APPORTIONED TO COLORADO.

SECTION 9. 39-22-321 (1), Colorado Revised Statutes, is amended to read:

39-22-321. Definitions. For the purposes of this subpart 2, unless the context otherwise requires:

(1) "Income attributable to the state" means items of income, loss, deduction, or credit of the S corporation apportioned or allocated to this state pursuant to ~~section 39-22-303 or section 24-60-1301, C.R.S.~~ SECTION 39-22-303.5 OR 39-22-303.7.

SECTION 10. 39-22-504 (5), Colorado Revised Statutes, is amended to read:

39-22-504. Net operating losses. (5) No corporation may carry forward a net operating loss to ~~any AN INCOME TAX year in which it~~ COMMENCING PRIOR TO JANUARY 1, 2009, IF, FOR SUCH YEAR, THE CORPORATION uses a different method of allocating or apportioning income from the one it used in the period in which the loss occurred, unless such different method is approved by the executive director. A CORPORATION MAY CARRY FORWARD A NET OPERATING LOSS TO ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2009, REGARDLESS OF THE METHOD OF ALLOCATING OR APPORTIONING INCOME FOR SUCH YEAR.

SECTION 11. Effective date. (1) This act shall take effect January 1, 2009.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

Approved: May 20, 2008