

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0392.01 Esther van Mourik x4215

HOUSE BILL 18-1185

HOUSE SPONSORSHIP

Kraft-Tharp and Wist,

SENATE SPONSORSHIP

Neville T. and Moreno,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

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

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>.)

For income tax years commencing on and after January 1, 2019, the bill generally replaces the method for sourcing of sales for purposes of apportioning the income of a taxpayer that has income from the sale of

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.

services or from the sale, lease, license, or rental of intangible property in both Colorado and other states from the cost-of-performance test in the case of services and the commercial domicile test in the case of intangible property to a market-based sourcing system. Under this new system, receipts for the sale of services or from the sale, lease, license, or rental of intangible property are apportioned to Colorado based not on where the service is performed, but where the service is delivered.

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

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

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

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

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

20 **39-22-303.6. Market-based apportionment of the income of a**
21 **taxpayer engaged in business - allocation of nonapportionable income**
22 **- rules - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT

1 OTHERWISE REQUIRES:

2 (a) "APPORTIONABLE INCOME" MEANS:

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

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

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

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

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

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

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

27 (e) "STATE" MEANS ANY STATE OF THE UNITED STATES, THE

1 DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, ANY
2 TERRITORY OR POSSESSION OF THE UNITED STATES, AND ANY FOREIGN
3 COUNTRY OR POLITICAL SUBDIVISION THEREOF.

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

7 (2) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
8 1, 2019, A TAXPAYER SHALL APPORTION AND ALLOCATE THE TAXPAYER'S
9 ENTIRE NET INCOME AS PROVIDED IN THIS SECTION.

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

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

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

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

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

27 (4) (a) A TAXPAYER'S APPORTIONABLE INCOME SHALL BE

1 APPORTIONED TO COLORADO BY MULTIPLYING SUCH APPORTIONABLE
2 INCOME BY A FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL
3 RECEIPTS OF THE TAXPAYER IN COLORADO DURING THE TAX PERIOD AND
4 THE DENOMINATOR OF WHICH IS THE TOTAL RECEIPTS OF THE TAXPAYER
5 EVERYWHERE DURING THE TAX PERIOD.

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

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

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

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

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

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

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

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

4 (d) IN THE CASE OF INTANGIBLE PROPERTY:

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

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

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

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

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

27 (e) IF THE STATE OR STATES OF ASSIGNMENT UNDER THIS

1 SUBSECTION (6) CANNOT BE DETERMINED, THE STATE OR STATES OF
2 ASSIGNMENT MUST BE REASONABLY APPROXIMATED; AND

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

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

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

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

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

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

23 (II) FOR PURPOSES OF THIS SUBSECTION (7)(b), THE EXTENT OF
24 UTILIZATION OF TANGIBLE PERSONAL PROPERTY IN COLORADO IS
25 DETERMINED BY MULTIPLYING THE RENTS AND ROYALTIES BY A FRACTION,
26 THE NUMERATOR OF WHICH IS THE NUMBER OF DAYS OF PHYSICAL
27 LOCATION OF THE PROPERTY IN COLORADO DURING THE RENTAL OR

1 ROYALTY PERIOD IN THE TAXABLE YEAR AND THE DENOMINATOR OF
2 WHICH IS THE NUMBER OF DAYS OF PHYSICAL LOCATION OF THE PROPERTY
3 EVERYWHERE DURING ALL RENTAL OR ROYALTY PERIODS IN THE TAXABLE
4 YEAR. IF THE PHYSICAL LOCATION OF THE PROPERTY DURING THE RENTAL
5 OR ROYALTY PERIOD IS UNKNOWN OR UNASCERTAINABLE BY THE
6 TAXPAYER, TANGIBLE PERSONAL PROPERTY IS UTILIZED IN THE STATE IN
7 WHICH THE PROPERTY WAS LOCATED AT THE TIME THE RENTAL OR
8 ROYALTY PAYER OBTAINED POSSESSION.

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

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

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

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

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

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

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

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

27 (B) THE PATENT OR COPYRIGHT IS UTILIZED BY THE PAYER IN A

1 STATE IN WHICH THE TAXPAYER IS NOT TAXABLE AND THE TAXPAYER'S
2 COMMERCIAL DOMICILE IS IN COLORADO.

3 (II) FOR PURPOSES OF THIS SUBSECTION (7)(g), A PATENT IS
4 UTILIZED IN A STATE TO THE EXTENT THAT IT IS EMPLOYED IN
5 PRODUCTION, FABRICATION, MANUFACTURING, OR OTHER PROCESSING IN
6 THE STATE OR TO THE EXTENT THAT A PATENTED PRODUCT IS PRODUCED
7 IN THE STATE. IF THE BASIS OF THE RECEIPTS FROM THE PATENT ROYALTIES
8 CANNOT BE REASONABLY ASSIGNED TO STATES OR IF THE ACCOUNTING
9 PROCEDURES DO NOT REFLECT THE STATES OF UTILIZATION, THE PATENT
10 IS UTILIZED IN THE STATE IN WHICH THE TAXPAYER'S COMMERCIAL
11 DOMICILE IS LOCATED.

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

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

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

1 IRREVOCABLE FOR THE TAX YEAR.

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

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

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

23 (I) SEPARATE ACCOUNTING;

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

27 (III) THE INCLUSION OF ANY RECEIPTS OF A TAXPAYER OTHERWISE

1 EXCLUDED UNDER SUBSECTION (1)(d) OF THIS SECTION, INCLUDING THOSE
2 FROM HEDGING TRANSACTIONS OR FROM THE MATURITY, REDEMPTION,
3 SALE, EXCHANGE, LOAN, OR OTHER DISPOSITION OF CASH OR SECURITIES;
4 OR

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

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

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

18 (B) THE ALTERNATIVE TO SUCH PROVISIONS IS REASONABLE.

19 (II) THE SAME BURDEN OF PROOF APPLIES WHETHER THE
20 TAXPAYER IS PETITIONING FOR, OR THE EXECUTIVE DIRECTOR IS
21 REQUIRING, THE USE OF ANY REASONABLE METHOD TO EFFECTUATE AN
22 EQUITABLE ALLOCATION AND APPORTIONMENT OF THE TAXPAYER'S
23 INCOME; EXCEPT THAT, IF THE EXECUTIVE DIRECTOR CAN SHOW THAT IN
24 ANY TWO OF THE PRIOR FIVE TAX YEARS, THE TAXPAYER HAD USED AN
25 ALLOCATION AND APPORTIONMENT METHOD AT VARIANCE WITH ITS
26 ALLOCATION AND APPORTIONMENT METHOD OR METHODS IN OTHER TAX
27 YEARS, THEN THE EXECUTIVE DIRECTOR DOES NOT BEAR THE BURDEN OF

1 PROOF DESCRIBED IN SUBSECTION (9)(c)(I) OF THIS SECTION IN IMPOSING
2 A DIFFERENT METHOD.

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

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

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

27 (g) THE DEPARTMENT OF REVENUE, FROM TIME TO TIME, SHALL

1 PUBLISH ALL RULINGS OF GENERAL PUBLIC INTEREST WITH RESPECT TO
2 ANY APPLICATION OF THIS SUBSECTION (9).

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

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

26 (11) THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES IN
27 ACCORDANCE WITH ARTICLE 4 OF TITLE 24 TO APPLY AND ADMINISTER

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

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

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

16 **39-22-303.5. Single-factor apportionment of business income**
17 **- allocation of nonbusiness income - rules - definitions.** (2) (b) For
18 income tax years commencing on or after January 1, 2009, BUT PRIOR TO
19 JANUARY 1, 2019, a taxpayer shall apportion and allocate the taxpayer's
20 entire net income as provided in this section.

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

1 **SECTION 4.** In Colorado Revised Statutes, 39-22-303.9, **amend**
2 (2) as follows:

3 **39-22-303.9. Apportionment of the income of a taxpayer with**
4 **enterprise data center operations in the state - definitions.**

5 (2) Notwithstanding any provision of section 39-22-303.5, for taxable
6 years commencing on or after the July 1 in the year in which the office
7 provides written certification to the taxpayer and to the department of
8 revenue that the requirements described in subsection (3)(a) of this
9 section have been met by the taxpayer, but no sooner than the taxable year
10 commencing July 1, 2018, pursuant to the schedule set by the office as
11 described in subsection (3)(c)(II) of this section, ~~in apportioning the~~
12 ~~income of a taxpayer with enterprise data center operations in the state~~
13 ~~sales from services are Colorado sales for purposes of section~~
14 ~~39-22-303.5 (4)(c)(I) to the extent such sales constitute revenues from~~
15 ~~services that are delivered to the taxpayer's customer's location in the~~
16 ~~state, as demonstrated by the customer's billing address~~ IS APPORTIONED
17 AND ALLOCATED PURSUANT TO SECTION 39-22-303.6.

18 **SECTION 5. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2018 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.