

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

ENGROSSED

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

LLS NO. 19-1074.01 Gregg Fraser x4325

SENATE BILL 19-233

SENATE SPONSORSHIP

Lee,

HOUSE SPONSORSHIP

Snyder,

Senate Committees
Finance

House Committees

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.*

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 clarify that the
10 adoption of section 39-22-303 (8), (11), and (12)(c), Colorado Revised
11 Statutes, in 1985, was not intended to exclude holding companies from
12 a combined return due to lack of property and payroll or failure to satisfy
13 the tests described in section 39-22-303 (11)(a), Colorado Revised
14 Statutes;

15 (c) Under section 39-22-303 (8) and (12)(c), Colorado Revised
16 Statutes, the general assembly intended to exclude only corporations with
17 property and payroll located outside the United States from a
18 corporation's combined report; and

19 (d) This act also clarifies that, for purposes of section 39-22-303
20 (11)(a)(I) to (11)(a)(IV), Colorado Revised Statutes, the general assembly
21 intended that the activities of any partnership or other pass-through entity
22 owned by a member of the affiliated group of C corporations are treated
23 as activities performed by that member of the affiliated group of C
24 corporations if the partnership is more than fifty percent owned by the

1 members of the affiliated group.

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

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

13 (11) (f) FOR PURPOSES OF THIS SECTION, ANY C CORPORATION
14 FORMED UNDER THE LAWS OF ANY STATE OR THE UNITED STATES WITH DE
15 MINIMIS OR NO PROPERTY OR PAYROLL, AS DETERMINED BY FACTORING
16 PURSUANT TO SECTION 24-60-1301, SHALL BE DEEMED TO SATISFY THE
17 REQUIREMENTS OF SUBSECTION (11)(a) OF THIS SECTION.

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 **SECTION 3. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2020 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.