

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

## ALLOCATION AND APPORTIONMENT FOR CORPORATE INCOME TAX UNDER MULTI-STATE TAX COMPACT

### 1 CCR 201-3

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

## REGULATION IV COLORADO MULTI-STATE COMPACT TAX REGULATION IV – APPLICABILITY [Eff. 03/02/2009]

For tax years beginning prior to January 1, 2009 taxpayers may elect the multi-state tax apportionment option set forth in Article III and Article IV of the Multistate Tax Compact and the regulations thereunder as those regulations existed prior to January 1, 2009. For tax years beginning on or after January 1, 2009, taxpayers must file in accordance with sections 39-22-303.5 and 39-22-303.7, C.R.S. and any regulations thereunder.

### Reg. IV.1.(a). Business and Nonbusiness Income Defined.

- (1) Article IV. 1. (a) defines “business income” as income arising from transactions and activity in the regular course of the 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. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of Article IV, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.
- (2) Nonbusiness income means all income other than business income.
- (3) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is “business income” or “nonbusiness income” is the identification of the transactions and activity which are the elements of a particular trade or business. In general all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of, a trade or business. (See Regulation IV. 1. (b) for further explanation of what constitutes a trade or business.)

### Reg. IV.1.(b).

- (1) **Two or More Businesses of a Single Taxpayer.** A taxpayer may have more than one “trade or business.” In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula which takes into consideration the instate and outstate factors which relate to the trade or business the income of which is being apportioned.
- (2) **Single trade or business.** The determination of whether the activities of the taxpayer constitute a single trade or business or more than one trade or business will turn on the facts in each case. In

general, the activities of the taxpayer will be considered a single business if there is evidence to indicate that the segments under consideration are integrated with, dependent upon or contribute to each other and the operations of the taxpayer as a whole. The following factors are considered to be good indicia of a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a single trade or business:

- (A) Same type of business. A taxpayer is generally engaged in a single trade or business when all of its activities are in the same general line.
- (B) Steps in a vertical process. A taxpayer is almost always engaged in a single trade or business when its various divisions or segments are engaged in different steps in a large, vertically structured enterprise.
- (C) Strong centralized management. A taxpayer which might otherwise be considered as engaged in more than one trade or business in properly management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing.

**Reg. IV.1.(c). Business and Nonbusiness Income: Application of Definitions (1).**

- (1) The following are rules for determining whether particular income is business or nonbusiness income.
- (2) **Rents from real and tangible personal property.** Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or incidental thereto and therefore is includable in the property factor under Regulation IV.10.
- (3) **Gains or losses from sales of assets.** Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized for the production of nonbusiness income or otherwise was removed from the property factor before its sale, exchange or other disposition, the gain or loss will constitute nonbusiness income. (See Regulation IV. 10.)
- (4) **Interest.** Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.
- (5) **Dividends.** Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to such trade or business operations.
- (6) **Patent and copyright royalties.** Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related to or incidental to such trade or business operations.

**Reg. IV.1.(d). Proration of Deductions**

- (1) In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business incomes of more than one trade

or business and/or to several items of nonbusiness income. In such cases the deduction shall be prorated among such trades or businesses and such items of nonbusiness income in a manner which fairly distributes the deduction among the classes of income to which it is applicable.

**(2) Consistency and uniformity in reporting.**

(A) **Year-to-Year consistency.** In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modifications.

(B) **State-to-State uniformity.** If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under Article IV of this Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

**Reg. IV.2.(a). Definitions.**

- (1) "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person, acting as a business entity in more than one state.
- (2) "Apportionment" refers to the division of business income between states by the use of a formula containing apportionment factors.
- (3) "Allocation" refers to the assignment of nonbusiness income to a particular state.
- (4) "Business activity" refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.

**Reg. IV.2.(b)(1). Application of Article IV: Appointment.**

If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with Article IV.9 through IV.17.

**Reg. IV.2.(b)(2). Application of Article IV: Combined Report.**

If a particular trade or business is carried on by a taxpayer and one or more affiliated corporations, nothing in Article IV or in these regulations shall preclude the use of a "combined report" whereby the entire business income of such trade or business is apportioned in accordance with Article IV.9 through IV.17.

**Reg. IV.2.(b)(3). Application Article IV: Allocation.**

Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Article IV.4 through IV.8.

**Reg. IV.2.(c). Consistency and Uniformity in Reporting.**

- (1) **Year-to-year consistency.** In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

- (2) **State-to-state consistency.** If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under Article IV of this Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

**Reg. IV.3.(a). Taxable in Another State.**

- (1) **In general. Under Article IV. 2.** the taxpayer is subject to the allocation and apportionment provisions of Article IV if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if such taxpayer, by reason of such business activity (i.e., the transactions and activity occurring in the regular course of a particular trade or business), is taxable in another state within the meaning of Article IV.3.
- (2) **Applicable tests.** A taxpayer is taxable within another state if it meets either one of two tests: (1) If by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Article IV.3.(1), namely: A net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or (2) If by reason of such business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.
- (3) **Producing nonbusiness income.** A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in such other state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

**Reg. IV.3.(b). Taxable in Another State: When a Corporation Is "Subject to" a Tax under Article IV.3.(1).**

- (1) A taxpayer is "subject to" one of the taxes specified in Article IV.3.(1) if it carries on business activities in such state and such state imposes such a tax thereon. Any taxpayer which asserts that it is subject to one of the taxes specified in Article IV.3.(1) in another state shall furnish to the executive director upon his request evidence to support such assertion. The executive director may request that such evidence include proof that the taxpayer has filed the requisite tax return in such other state and has paid any taxes imposed under the law of such other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one of the taxes specified in Article IV.3.(1) in such other state.
- (2) **Voluntary tax payment.** If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but
- (A) does not actually engage in business activity in that state, or
- (B) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such state, the taxpayer is not "subject to" one of the taxes specified within the meaning of Article IV.3.(1).
- (3) **Taxability.** The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in Article IV.3.(1) which may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes specified in Article IV.3.(1) in another state.

**Reg. IV.3.(c). Taxable in Another State: When a State Has Jurisdiction To Subject a Taxpayer to a Net Income Tax.**

The second test, that of Article IV.3.(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. § §381–385. In the case of any “state” as defined in Article IV.1.(h), other than a state of the United States or political subdivision of such state, the determination of whether such “state” has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that “state.” If jurisdiction is otherwise present, such “state” is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

**Reg. IV.9. Apportionment Formula.**

All business income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Article IV.9. The elements of the apportionment formula are the property factor (see Regulation IV.10.), the payroll factor (see Regulation IV.13.) and the sales factor (see Regulation IV.15.) of the trade or business of the taxpayer.

**Reg. IV.10.(a). Property Factor: In General.**

The property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term “real and tangible personal property” includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor. (See Regulation IV.12.)

**Reg. IV.10.(b). Property Factor: Property Used for the Production of Business Income.**

Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. Property or equipment under construction during the tax period, (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for sale.

**Reg. IV.10.(c). Property Factor: Consistency and Uniformity in Reporting.**

- (1) **Year-to-Year consistency.** In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
- (2) **State-to-State uniformity.** If the returns or reports filed by the taxpayer with all states to which the

taxpayer reports under Article IV of this Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

**Reg. IV.10.(d). Property Factor: Numerator.**

The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

**Reg. IV.11.(a). Property Factor: Valuation of Owned Property.**

- (1) Property owned by the taxpayer shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

- (2) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.
- (3) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

**Reg. IV.11.(b). Property Factor: Valuation of Rented Property.**

- (1) **Multiplier.** Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. (See Regulation IV.18 (b) for special rules where the use of such net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.)

**Subrentals.** Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

- (2) "Annual rental rate" is the amount paid as rental for property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting

period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

(3) "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

"Annual rent" does not include incidental day-to-day expenses.

(4) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

#### **Reg. IV.12. Property Factor: Averaging Property Values.**

As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the executive director may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Example: The monthly value of the taxpayer's property was as follows:

January	\$2,000	July	\$15,000
February	2,000	August	17,000
March	3,000	September	23,000
April	3,500	October	25,000
May	4,500	November	13,000
June	10,000	December	2,000
.	-----	.	-----
.	\$25,000	.	\$95,000
.	.	.	Total \$120,000.

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$$\frac{\$120,000}{12} = \$10,000$$

Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property asset forth in Reg. IV.11.(b).

**Reg. IV.13.(a). Payroll Factor: in General**

- (1) The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.
- (2) The total amount "paid" to employees is determined upon the basis of the taxpayer's accounting method, if the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.
- (3) The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.
- (4) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code.
- (5) The term "employee" means (A) any officer of a corporation, or (B) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this regulation.
- (6) **Consistency and Uniformity in Reporting.**
  - (A) **Year-to-Year Consistency.** In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
  - (B) **State-to-State uniformity.** If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of this Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

**Reg. IV.13.(b). Payroll Factor: Denominator.**



The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, is included in the denominator of the payroll factor.

**Reg. IV.13.(c). Payroll Factor: Numerator.**

The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Article IV.14. to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under Regulation IV.13.(a) through IV.14. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

**Reg. IV.14. Payroll Factor: Compensation Paid in this State.**

Compensation is paid in this state if any one of the following tests, applied consecutively, are met:

- (1) The employee's service is performed entirely within the state.
- (2) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.
- (3) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:
  - (A) if the employee's base of operations is in this state; or
  - (B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or
  - (C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.
- (4) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points.
- (5) The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

**Reg. IV.15.(a). Sales Factor.**

- (1) **In General.** Article IV 1.(g) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under paragraphs (5) through (8) of Article IV. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means

all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business. The following are rules for determining “sales” in various situations:

- (A) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, “sales” includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.
  - (B) In the case of cost-plus-fixed fee contracts, such as the operation of a government-owned plant for a fee, “sales” includes the entire reimbursed cost, plus the fee.
  - (C) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, “sales” includes the gross receipts from the performance of such services including fees, commissions, and similar items.
  - (D) In the case of a taxpayer engaged in renting real or tangible property, “sales” includes the gross receipts from the rental, lease, or licensing the use of the property.
  - (E) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, “sales” includes the gross receipts therefrom.
  - (F) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute “sales.”
- (2) **Exceptions.** In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business (See Regulation IV.18(c).)
- (3) **Consistency and Uniformity in Reporting.**
- (A) **Year-to-year consistency.** In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
  - (B) **State-to-State uniformity.** If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of this Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

**Reg. IV.15.(b). Sales Factor: Denominator.**

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Regulation IV.18.(c).

**Reg. IV.15.(c). Sales Factor: Numerator.**

The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of (1) the place where the accounting records are maintained or (2) the location of the contract or other evidence of indebtedness.

**Reg. IV.16.(a). Sales Factor: Sales of Tangible Personal Property in this State.**

- (1) Gross receipts from sales of tangible personal property (except sales to the United States Government; see Regulation IV.16.(b)) are in this state:
  - (A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or
  - (B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.
- (2) Property shall be deemed to be delivered or shipped to a purchaser, within this state if the recipient is located in this state, even though the property is ordered from outside this state.
- (3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.
- (4) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.
- (5) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, the sales are in this state.
- (6) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.
- (7) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:
  - (A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.
  - (B) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

**Reg. IV.16.(b). Sales Factor: Sales of Tangible Personal Property to United States Government in this State.**

- (1) Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purpose of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute

sales to the United States Government.

**Reg. IV.17. Sales Factor: Sales Other than Sales of Tangible Personal Property in this State.**

(1) In General, Article IV.17. provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government); under this section gross receipts are attributed to this state if the income-producing activity which gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income-producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

(2) **Income-Producing Activity: Defined.** The term “income producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, income-producing activity includes but is not limited to the following:

- (A) The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service.
- (B) The sale, rental, leasing, licensing or other use of real property.
- (C) The rental, leasing, licensing or other use of tangible personal property.
- (D) The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, of itself, an income-producing activity.

(3) **Costs of Performance: Defined.** The term “costs of performance” means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(4) **Application.**

(A) In General. Receipts (other than from sales of tangible personal property) in respect to a particular income-producing activity are in this state if:

- (a) the income-producing activity is performed wholly within this state; or
- (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(B) **Special Rules.** The following are special rules for determining when receipts from the income-producing activities described below are in this state:

- (a) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.
- (b) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income-

producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.

- (c) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state only if a greater proportion of the services was performed in the state, based on costs of performance. Usually, where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income-producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example time expended in negotiating the contract, is excluded from the computations.

#### **IV.18(a) Special Rules**

- (1) In General. Article IV.18 of §24-60-1301, C.R.S. provides that, if the allocation and apportionment provisions of Article IV do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the executive director may require, in respect to all or any of the taxpayer's business activity, if reasonable:
  - (A) separate accounting;
  - (B) the exclusion of any one or more of the factors;
  - (C) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
  - (D) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
- (2) Art.IV.18. permits a departure from the allocation and apportionment provisions of Article IV only in limited and specific cases. Article IV.18 may be invoked only in specific cases where unusual fact situations produce incongruous results under the apportionment and allocation provisions contained in Article IV.
- (3) In the case of certain industries, the foregoing regulations in respect to the apportionment formula do not set forth appropriate procedures for determining the apportionment factors. Nothing in Article IV.18. or in this Regulation IV.18 shall preclude the executive director from establishing appropriate procedures under Article IV.10 through 17 for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.
- (4) Exclusion of factors amounts or factors
  - (A) Any factor whose denominator is zero shall be excluded from the calculation of the average

apportionment factor.

- (B) Amounts in any factor of property, payroll, or sales that do not materially contribute to the generation of business income shall be excluded from the factor.

**Reg. IV.18.(b). Special Rules: Property Factor.**

The following special rules are established in respect to the property factor of the apportionment formula:

- (1) If the subrents taken into account in determining the net annual rental rate under Regulation IV.11.(b) produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the executive director or requested by the taxpayer.

In no case however shall such value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

- (2) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.

**Reg. IV.18.(c). Special Rules: Sales Factor.**

The following special rules are established in respect to the sales factor of the apportionment formula:

- (1) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor.
- (2) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state.
- (3) Where business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, such income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor.
- (4) Where the income-producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income-producing activity occurs in this state, in the numerator of the sales factor as well.

**SPECIAL REGULATIONS INCOME TAX**

**SPECIAL REGULATION 1A AIRLINES – SINGLE SALES FACTOR APPORTIONMENT**

The following special regulations are established in respect to the allocation and apportionment of income for airlines.

- 1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to subsection a) and apportion its business income using the sales factor set forth in subsection d), below. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.

- a) **In General.** An airline that has income from sources both within and without Colorado shall determine income in accordance with this regulation. Income shall first be categorized as to "business" or "nonbusiness" income pursuant to regulation 39-22-303.5.1A. Nonbusiness income will be directly allocated to specific states in accordance with §39-22-303.5 C.R.S. Business income will be apportioned to those states in which business is conducted based on the apportionment factor(s) as set forth in this regulation.

b) **Definitions:**

- i) *"Business and Nonbusiness Income."* For definitions and rules for determining business and nonbusiness income, see Regulation 39-22-303.5.1A.
- ii) *"Value"* of owned real and tangible personal property shall mean its original cost.
- iii) *"Cost of aircraft by type"* means the average original cost or value of aircraft by type that are ready for flight.
- iv) *"Original cost"* means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property.
- v) *"Average value"* of the property means the amount determined by averaging the values at the beginning and ending of the income year, but the department may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property.
- vi) The *"value"* of rented real and tangible personal property means the product of eight (8) times the net annual rental rate.
- vii) *"Net annual rental rate"* means the annual rental rate paid by the taxpayer.
- viii) *"Property used during the income year"* includes property which is available for use in the taxpayer's trade or business during the income year.
- ix) *"Aircraft ready for flight"* means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.
- x) *"Transportation revenue"* means revenue earned by transporting passengers, freight and mail as well as revenue earned from other charges associated with transportation such as baggage fees, sales of food and drink, pet crate rentals, etc.
- xi) *"Arrivals" and "Departures"* means the number of times that an aircraft lands or takes off at an airport in revenue service.
- xii) *"Arrivals and departures in this State"* means the number of times that an aircraft lands or takes off in revenue service at an airport located in this State.
- xiii) *"Revenue"* means gross sales or gross receipts, unless otherwise required by context.

- c) **Apportionment of Business Income.** The same method in the reporting of items for all factors must be consistent for both the numerator and denominator. For tax years

beginning on or after January 1, 2009, the taxpayer shall apportion business income using only the sales factor.

d) **The Sales Factor.** The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year and the denominator of which is the total sales of the taxpayer within and without this state during the taxable year. The denominator is the transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc. Proceeds and net gains or losses from the sale of aircraft and passive income items, such as interest, rental income, and dividends, shall not be included in the denominator. The numerator of the sales factor is the total revenue of the taxpayer in the State during the income year. Airtime, arrivals, and departures by type of aircraft shall be used in computing revenue attributable to this State derived from hauling passengers, freight, and mail. Receipts from the other business activities shall be included in the numerator in accordance with the statute. In determining the numerator of the sales factor, revenue for hauling passengers, freight, mail, and excess baggage shall be attributed to this State using the "aircraft ready for flight" ratio, which is calculated as follows:

- i) The ratio which the air miles of the taxpayer's aircraft flew in this State bears to the total air miles ramp to ramp of such aircraft everywhere by type of aircraft times the denominator cost or value of each type of aircraft, weighted at 40%.
- ii) The ratio of arrivals and departures in this State bears to the total arrivals and departures everywhere by type of aircraft times the denominator cost or value of each type of aircraft, weighted at 60%.

If records of actual revenue by type of aircraft are not maintained, the total revenue shall be divided into passenger and freight (which shall include express, excess baggage and mail) revenue and allocated to aircraft type on the ratio of the revenue passenger ton-miles and revenue freight (which shall include express, excess baggage and mail) ton-miles of such type, respectively.

e) **Alternative Methodologies.** If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.

## **SPECIAL REGULATION 2A CONTRACTORS – SINGLE SALES FACTOR APPORTIONMENT**

The following special regulation applies to contractors who elect to report income using the completed contract method; provided, however, that, with respect to contracts with a gross revenue of \$100,000 or less, such regulations shall apply only at the option of the taxpayer.

- 1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to §39-22-303.5(5) C.R.S. and apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.
  - a) **In General.** A contractor who has income from sources both within and without Colorado and elects to report income using the completed contract method shall determine income in accordance with this regulation. Net income shall first be categorized as to "business" or "non-business" and non-business income will be directly allocated to specific states in



accordance with §39-22-303.5(5) C.R.S. and the regulations thereunder. Gross profits from completed contracts, business administrative income and business administrative expense will be apportioned to those states in which business is conducted based on the sales factor as set forth in this regulation. The amount of net income subject to tax by Colorado will be the sum of (1) the gross profit from completed contracts apportioned to Colorado less business administrative expense apportioned to Colorado plus (2) other business income apportioned to Colorado that is not directly attributable to completed contracts plus (3) the amount of non-business income allocated to Colorado.

**b) General Definitions.**

- i) *"Job"* means a long-term contract entered into to build, construct, install or manufacture which will not be completed within the tax year in which it is entered into. As used in this regulation a "job" will refer to only those contracts where a taxpayer elects to report income using the completed contract method.
- ii) *"Job Revenue"* means gross revenue recorded on the books in accordance with generally accepted accounting principles. Billings shall be adjusted for overbillings or underbillings whenever applicable.
- iii) *"Job Costs"* means costs recorded on the books as being paid or accrued that are directly attributable to a specific job.
- iv) *"Job Profit or Loss"* means the gross profit or loss attributable to a specific job, which is determined by subtracting "Job Costs" from "Job Revenue".
- v) *"Gross Profit Apportioned to Colorado"* means Colorado's share of the sum of "Job Profits and Losses" of all jobs completed during a specific tax period.
- vi) *"Administrative Expense Apportioned to Colorado"* means Colorado's share of expense not directly attributable to a specific job.
- vii) *"Revenue"* , unless otherwise required by context means gross sales or gross receipts.

c) **Business and Non-business Income.** For definitions and rules for determining business and non-business income, see Regulation 39-22-303.5.1(A).

d) **Apportionment Factor.** The taxpayer shall apportion business income using the sales factor.

- i) **The Sales Factor.** The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer is included in the denominator of the sales factor. The numerator of the sales factor is the total revenue of the taxpayer in this state during the tax year. When determining the denominator and numerator of the sales factor, revenue directly attributable to contract jobs shall be included in the tax year on the basis of progress billings and receipts from completed and incomplete contracts. When determining the numerator, the typical computation is:

Total contract price for all jobs completed in this state during the tax year.

Plus

Total progress payments billed or received for all incomplete jobs in this state at the end of the tax year

Less

Total progress payments billed or received in prior tax years for the above completed and incomplete jobs in this state

Equals

Total revenue directly attributable to all jobs in this state during the tax year.

Add

Revenue from other business activities in this state not directly attributable to jobs.

Equals

Numerator of Sales Factor

The denominator of the sales factor would be computed in the same manner for all jobs everywhere and includes all other revenue from business activities not directly attributable to contract jobs.

- e) **Apportionment of Income and Expense.** Once the sales factor has been determined, income and expense shall be apportioned to this state as set forth in this regulation.
- i) *Gross Profit.* The gross profit of each and all jobs completed during the tax year shall be apportioned to Colorado by the sales factor.
  - ii) *Administrative Expense.* Administrative expense not directly attributable to jobs and not directly related to allocated income shall be apportioned to Colorado by the sales factor.
  - iii) *Other Business Income.* Other business income not directly attributable to jobs shall be apportioned to Colorado by the sales factor.

f) **Colorado Taxable Income.**

Gross profit apportioned to Colorado from all jobs completed during the tax year

Less

Administrative expense apportioned to Colorado

Plus

Other business income apportioned to Colorado not directly related to jobs

Equal

Total taxable income apportioned to Colorado

Add

Non-business income allocated to Colorado

Equals

Colorado Taxable Income

- g) **Alternative Methodologies.** If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.

### **SPECIAL REGULATION 3A PUBLISHING – SINGLE SALES FACTOR APPORTIONMENT**

When a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined using the apportionment and allocations rules set forth below.

- 1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.
- a) **In General:** Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to §39-22-303.5, C.R.S, and, where applicable, §39-22-303.5(4)(d), C.R.S. and regulations adopted thereunder.
- b) **Allocation of non-business income.** Income shall first be categorized as to "business" or "nonbusiness" income pursuant to regulation 39-22-303.5.1A and nonbusiness income will be directly allocated to specific states in accordance with §39-22-303.5(5) and regulations thereunder. Business income will be apportioned to those states in which business is conducted based on the apportionment factor as set forth in this regulation. The amount of net income subject to tax by Colorado will be the sum of (1) the amount of nonbusiness income allocated to Colorado plus (2) the amount of business income attributable to Colorado.
- c) **Definitions:** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.
- i) *"Print or printed material"* includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.
- ii) *"Purchaser" and "Subscriber"* mean the individual, residence, business or other

outlet which is the ultimate or final recipient of the print or printed materials. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

**d) Apportionment of Business Income.**

i) **Sales Factor Denominator.** The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be otherwise excluded.

ii) **Sales Factor Numerator.** The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

(1) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

(2) Except as provided in subparagraph (3) of this paragraph, gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

The circulation factor for an individual publication shall be determined by reference to the rating statistics of reputable ratings services, provided that the sources selected are consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

The circulation factor shall fairly reflect the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

(3) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the executive director may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph d)ii)(2). Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative

attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

- (4) Except as provided for in §39-22-303.5(4)(d), C.R.S. regarding publishers of magazines or periodicals, if the purchaser or subscriber is the United States Government or if the taxpayer is not taxable in a State, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such State, shall be included in the numerator of the sales factor of this State if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this State.

- 2) **Alternative Methodologies.** If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.

#### **SPECIAL REGULATION 4A RAILROADS – SINGLE SALES FACTOR APPORTIONMENT**

The following special regulations are established in respect to railroads.

- 1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to §39-22-303.5(5), C.R.S. and regulations thereunder and apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.
  - a) **In General.** Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under regulation 39-22-303.5.1A. Nonbusiness income is directly allocable to specific states pursuant to §39-22-303.5(5), C.R.S. and regulations thereunder. Business income is apportioned among the states in which the business is conducted pursuant to the apportionment factor set forth in this regulation. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state, constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.
  - b) **Business and Nonbusiness Income.** For definitions, rules and examples for determining business and nonbusiness income, see Regulation 39-22-303.5.1A
  - c) **Apportionment of Business Income.**
    - i) The Sales Factor.
      - (1) In General. The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer that produces

business income, except per diem and mileage charges that are collected by the taxpayer, is included in the denominator of the sales factor.

The numerator of the sales factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail, and express, shall be attributable to this state in accordance with §39-22-303.5(4) C.R.S. and regulations thereunder.

(2) **Numerator of Sales Factor from Freight, Mail, and Express.** The total revenue of the taxpayer in this state during the income year for the numerator of the factor from hauling freight, mail and express shall be attributable to this state as follows:

(a) All receipts from shipments which both originate and terminate within this state; and

(b) That portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bears to the total miles traveled by such movement or shipment from point of origin to destination.

(3) **Numerator of Sales Factor from Passengers.** The numerator of the sales factor shall include:

(a) All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate with this state; and

(b) That portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bears to the total everywhere.

2) **Alternative Methodologies.** If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.

#### **SPECIAL REGULATION 5A TELEVISION AND RADIO BROADCASTING – SINGLE SALES FACTOR APPORTIONMENT**

The following special rules are established with respect to the allocation and apportionment of income from television and radio broadcasting

1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to §39-22-303.5(5), C.R.S. and apportion its business income using the sales factor set forth in this regulation A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.

a) **In General.** When a person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or

any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to §39-22-303.5, C.R.S. and the regulations issued thereunder by this state, except as modified by this regulation.

- b) **Business and Nonbusiness Income.** For definitions, regulations, and examples for determining whether income shall be classified as "business" or "nonbusiness" income, see Reg. 39-22-303.5.1A.
- c) **Definitions.** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.
  - i) *"Film" or "film programming"* means any and all performances, events or productions telecast on television, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium.

Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.
  - ii) *"Radio" or "radio programming"* means any and all performances, events or productions broadcast on radio, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of an audio tape, disc or any other format or medium.

Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.
  - iii) *"Release" or "in release"* means the placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for which the program was created. Thus, for example, a film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose.

Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or, merely because it is previewed to prospective sponsors or purchasers.
  - iv) "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.
  - v) A "subscriber" to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.
  - vi) "Telecast" or "broadcast" (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.

- vii) "United States" means states and District of Columbia, but does not include the Commonwealth of Puerto Rico or territories and possessions of the United States.

**d) Apportionment of Business Income.**

- i) **In General.** The taxpayer shall apportion business income using only the sales factor. The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year.

- ii) **The Sales Factor.**

- (1) *Sales Factor Denominator.* The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts otherwise excluded.

- (2) *Sales Factor Numerator.* The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including but not limited to the following:

- (a) Gross receipts, including advertising revenue, from television, film, or radio programming in release to or by television and radio stations located in this state.

- (b) Gross receipts, including advertising revenue, from television, film, or radio programming in release to or by a television station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (or owned and affiliated stations in the case of networks) within the United States.

The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state.

If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the audience factor shall be determined by the ratio that the population of this state bears to the population of the United States, as reflected in the most current population data published by the U.S. Bureau of Census, for all states which receive the broadcasts.

- (c) Gross receipts from film programming in release to or by a cable



television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose.

If none of the foregoing resources are available, or, if available, none is in form or content sufficient for such purposes, then the audience factor shall be determined by the ratio that the population of this state bears to the population of the United States as reflected in the most current population data published by the U.S. Bureau of Census for all states in which the cable system has subscribers.

- (d) The extent that the gross receipts from live television broadcasting, film, or radio programming, as determined pursuant to paragraph 1)d)ii)(2)(b) or (c) include receipts derived from broadcasts to audiences located outside the United States ("foreign-based receipts"), the total gross receipts against which the audience factor shall be applied shall be modified so that such foreign-based receipts are not used to affect the amount of receipts that are to be apportioned to the state. Such modification shall consist of deducting from total receipts, prior to the application thereto of the audience factor, that amount of receipts derived from broadcasts to audiences located outside the United States.

*Example:* XYZ Television Network Co. has gross receipts from all broadcasting of films of \$1 billion of which a total of \$200,000,000 was derived from advertising receipts and license fees attributable to releases of its films in foreign television markets and \$800,000,000 attributable to the United States market. Assuming that foreign countries into which its programming has been telecast or sold or licensed for telecast would have jurisdiction to impose their income tax upon XYZ Network Co., then its in-state gross receipts attributable to its telecasting activity would be determined as follows:

$$\$1,000,000,000 - \$200,000,000 = \$800,000,000$$

$$\$800,000 \times (\text{audience factor}) = \text{in-state gross receipts}$$

- (e) Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in §39-22-303.5 C.R.S. and regulations thereunder.

- 2) **Alternative Methodologies.** If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.

## **SPECIAL REGULATION 6A TRUCKING – SINGLE SALES FACTOR APPORTIONMENT**

The following special rules are established with respect to the apportionment of income for trucking companies:

- 1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to §39-22-303.5(5) and regulations thereunder and apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.
  - a) **In General.** As used in this regulation, the term "trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the trucking company's income constitutes "business" income and what portion constitutes "nonbusiness" income under regulation 39-22-303.5.1A. Nonbusiness income is directly allocable to specific states pursuant to the provisions of §39-22-303.5(5), C.R.S. and regulations thereunder. Business income is apportioned among the states in which the business is conducted and pursuant to the apportionment factor set forth in this regulation. The sum of (i) the items of nonbusiness income directly allocated to this state and (ii) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax in this state.
  - b) **Business and Nonbusiness Income.** For definitions, rules, and examples for determining business and nonbusiness income, see Regulation 39-22-303.5.1A.
  - c) **Apportionment of Business Income**
    - i) *In General.* For tax years beginning on or after January 1, 2009, the taxpayer shall apportion business income using only the sales factor.
    - ii) *The Sales Factor*
      - (1) *In General.* The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. All revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produces business income shall be included in the denominator of the revenue factor.

The numerator of the sales factor is the total revenue of the taxpayer in this state during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with §39-22-303.5(4) and regulations thereunder.
      - (2) *Numerator of the Sales Factor from Freight, Mail, and Express.* The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:
        - (a) *Intrastate:* All receipts from any shipment which both originates and

terminates within this state; and,

- (b) *Interstate*: That portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

- d) **Records.** The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this regulation. Such records are subject to review by the Department of Revenue or its agents.

e) **Definitions.**

- i) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.
- ii) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

- f) **De Minimis Nexus Standard.** Notwithstanding any provision contained herein, this Regulation shall not apply to require the apportionment of income to this state if the trucking company during the course of the income tax year neither:

- i) owns nor rents any real or personal property in this state, except mobile property; nor
- ii) makes any pick-ups or deliveries within this state; nor
- iii) travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the income tax year do not exceed three percent of the total mobile property miles traveled in all states by the trucking company during that period; nor
- iv) makes more than twelve trips into this state.

- 2) **Alternative Methodologies.** If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.

## **SPECIAL REGULATION 7A FINANCIAL INSTITUTIONS – SINGLE SALES FACTOR APPORTIONMENT**

The following special rules are established to provide a uniform methodology for determining the allocation and apportionment of income for financial institutions.

- 1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to §39-22-303.5(5) C.R.S. and regulations thereunder and apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.

a) **Apportionment and Allocation.**

- i) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this regulation. All items of nonbusiness income (income which is not includable in the apportionable income tax base) shall be allocated pursuant to the provisions of §39-22-303.5(5), C.R.S. and regulations thereunder. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this regulation.
- ii) All business income (income that is includable in the apportionable income tax base) shall be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is the taxpayer's sales factor (as described in subsection c of this regulation).
- iii) The sales factor shall be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for the taxable year.

b) **Definitions.** As used in this regulation, unless the context otherwise requires:

- i) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.
- ii) "Borrower or credit card holder located in this state" means:
  - (1) a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or
  - (2) a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.
- iii) "Commercial domicile" means:
  - (1) the headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or
  - (2) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed for the purposes of this regulation to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.
- iv) "*Credit card*" means credit, travel or entertainment card.

v) *"Credit card issuer's reimbursement fee"* means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

vi) *"Financial institution" means:*

- (1) Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq., as amended), or registered as a savings and loan holding company under the Federal National Housing Act (12 U.S.C. 1701, as amended);
- (2) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. sections 21 et seq.;
- (3) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. section 1813(b)(1);
- (4) Any bank, savings association, or thrift institution incorporated or organized under the laws of any state;
- (5) Any corporation organized under the provisions of 12 U.S.C. sections 611 to 631;
- (6) Any agency or branch or a foreign depository as defined in 12 U.S.C. section 3101;
- (7) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;
- (8) Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in subsections (1) through (7) above other than an insurance company taxable under §10-3-209, C.R.S.;
- (9) A corporation or other business entity that derives more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any "direct financing lease" or "leverage lease" that meets the criteria of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases" or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. (The reference to Financial Accounting Standards Board Statement No. 13 does not include later amendments or editions of this referenced material. Certified copies of this material are available for review in the executive director's office of the Department of Revenue at 1375 Sherman Street, Denver, Colorado 80261. Additionally, a copy of this material may be examined at any state publications depository library. For this classification to apply,

- (a) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent (50%) requirement; and
  - (b) gross income from incidental or occasional transactions shall be disregarded;
- (10) Any other person or business entity, other than an insurance company taxable under §10-3-209, C.R.S., that derives more than fifty percent (50%) of its gross income from activities that a person described in subsections (1) through (7) and (9) above is authorized to transact. For the purpose of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items.
- (11) The executive director is authorized to exclude any person from the application of subsection (10) upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in subsections (1) through (7) and (9) above.
- vii) *"Loan"* means an extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.
- viii) *"Loan secured by real property"* means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
- ix) *"Loan servicing fees"* include all fees not in the nature of interest charged for any service or recovery of any cost in connection with a loan.
- x) *"Merchant discount"* means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.
- xi) *"Participation"* means an extension of credit in which an undivided ownership interest is held on a pro-rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
- xii) *"Person"* means an individual, estate, trust, partnership, corporation and any other business entity.
- xiii) *"Principal base of operations"* with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled.

- xiv) *"Real property owned" and "tangible personal property owned"* mean real and tangible personal property, respectively, (1) on which the taxpayer may claim depreciation for federal income tax purposes, or (2) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and tangible personal property do not include coin, currency, or other property acquired in lieu of or pursuant to a foreclosure.
- xv) *"Regular place of business"* means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.
- xvi) "Sales" and "Revenue" mean gross sales or gross receipts, unless otherwise required by context.
- xvii) *"State"* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and territory or possession of the United States or any foreign country, except where the context otherwise requires.
- xviii) *"Syndication"* means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
- xix) *"Taxable"* means either:
  - (1) that a taxpayer is subject in another state 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 (including a bank shares tax), a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or
  - (2) that another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not impose such taxes upon the taxpayer.
- xx) *"Transportation property"* means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers or the like.

**c) The Sales Factor.**

- i) *General.* The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. The method of calculating sales for purposes of the denominator is the same as the method used in determining sales for purposes of the numerator. The sales factor shall include only those sales described herein which constitute business income and are included in the computation of the apportionable income base for the taxable year.
- ii) *Revenue from the lease of real property.* The numerator of the sales factor includes revenue from the lease or rental of real property owned by the taxpayer if the property is located within this state or revenue from the sublease of real property if the property is located within this state.

iii) *Revenue from the lease of tangible personal property.*

- (1) Except as described in paragraph ii of this subsection, the numerator of the sales factor includes revenue from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.
- (2) Revenue from the lease or rental of transportation property owned by the taxpayer is included in the numerator of the sales factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of revenue that is to be included in the numerator of this state's sales factor is determined by multiplying all the revenue from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

iv) *Interest from loans secured by real property.*

- (1) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the sales described in this subsection are included in the numerator of the sales factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the sales described in this subsection shall be included in the numerator of the sales factor if the borrower is located in this state.
- (2) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

v) *Interest from loans not secured by real property.* The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

vi) *Net gains from the sale of loans.* The numerator of the sales factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

- (1) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection iv of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.



- (2) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection v of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.
- vii) *Revenue from credit card receivables.* The numerator of the sales factor includes interest and fees or penalties in the nature of interest from credit card receivables and revenue from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.
- viii) *Net gains from the sale of credit card receivables.* The numerator of the sales factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection vii of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.
- ix) *Credit card issuer's reimbursement fees.* The numerator of the sales factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection vii of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.
- x) *Revenue from merchant discount.* The numerator of the sales factor includes revenue from merchant discount if the commercial domicile of the merchant is in this state. Such revenue shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.
- xi) *Loan servicing fees.*
  - (1) The numerator of the sales factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection iv of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.
  - (2) The numerator of the sales factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection v of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.
  - (3) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the sales factor shall include such fees if the borrower is located in this state.

xii) *Revenue from services.* The numerator of the sales factor includes revenue from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the sales factor includes revenue from services not otherwise apportioned under this section to the extent the income-producing activity is performed in this state based on cost of performance.

xiii) *Revenue from investment assets and activities and trading assets and activities.*

(1) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities shall be included in the sales factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (a) and (b) of this paragraph, the sales factor shall include the amounts described in such subparagraphs.

(a) The sales factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(b) The sales factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest amounts paid in lieu of dividends, and losses from such assets and activities.

(2) The numerator of the sales factor includes interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities described in paragraph (1) of this subsection that are attributable to this state.

(a) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(b) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (a) of paragraph (1) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell

which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

- (c) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in subparagraph (a) or (b) of this paragraph), attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (b) of paragraph (1) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are property assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.
- (d) For purposes of this paragraph, average value shall be determined as follows:
  - (i) Value of property owned by the taxpayer.
    - 1. The value of tangible personal property owned by the taxpayer is the original cost or other basis of such property for Federal income tax purposes without regard to depreciation or amortization.
    - 2. Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for Federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged-off for Federal income tax purposes shall be treated as charged-off for purposes of this section.
    - 3. Credit card receivables are valued at this outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for Federal income tax purposes, the portion of the receivable charged-off is not outstanding.
  - (ii) *Average value of tangible personal property owned by the taxpayer.* The average value of tangible personal property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the executive director may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the executive director or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect

to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the executive director or the executive director requires a different method of determining average value.

- (3) In lieu of using the method set forth in paragraph (2) of this subsection xiii), the taxpayer may elect, or the executive director may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.
- (a) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.
- (b) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (a) of paragraph (1) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.
- (c) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in subparagraphs (a) or (b) of this paragraph), attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (b) of paragraph (1) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.
- (4) If the taxpayer elects or is required by the executive director to use the method set forth in paragraph (3) of this subsection xiii), it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the executive director to use, or the executive director requires a different method.
- (5) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place

of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

xiv) *All other revenue.* The numerator of the sales factor includes all other revenue pursuant to the provisions of §39-22-303.5, C.R.S.

xv) *Attribution of certain sales to commercial domicile.* All sales which would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the sales factor, if the taxpayer's commercial domicile is in this state.

2) **Alternative Methodologies.** If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.

#### **SPECIAL REGULATION 8A TELECOMMUNICATIONS AND ANCILLARY SERVICE PROVIDERS – SINGLE SALES FACTOR APPORTIONMENT**

The following regulation is established with respect to the allocation and apportionment of income from the sale of telecommunications and ancillary services by a person that is taxable both in this state and in one or more other states.

1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to 39-22-303.5(5) and regulations thereunder and apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.

a) **In General.** A telecommunications provider that has income from sources both within and without Colorado shall determine income in accordance with this regulation. Income shall first be categorized as to "business" or "nonbusiness" income pursuant to regulation 39-22-303.5.1A. Nonbusiness income will be directly allocated to specific states in accordance with §39-22-303.5(5) and regulations thereunder. Business income will be apportioned to those states in which business is conducted based on the apportionment factor as set forth in this regulation. The amount of net income subject to tax by Colorado will be the sum of (1) the amount of nonbusiness income allocated to Colorado plus (2) the amount of business income attributable to Colorado.

b) **Business and Nonbusiness Income.** For definitions and rules for determining business and nonbusiness income, see Regulation 39-22-303.5.1.A.

c) **Definitions.**

i) "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling,

and any subsequent numbers designated by the Federal Communications Commission.

- ii) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.
- iii) "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in Federal Communications Commission regulation 47 CFR 22.99 (December 30, 2005) (which is incorporated herein by reference, but such incorporation does not include later amendments to such regulation and copies of such regulation are available at the Office of the Executive Director, Colorado Department of Revenue), in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
- iv) "Ancillary service" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to the following subcategories: detailed telecommunications billing, directory assistance, vertical service, conference bridging service and voice mail services. The term "ancillary service" is defined as a broad range of services and is broader than the sum of the subcategories.
- v) "Bundled transaction" means the retail sale of two or more products where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. For purposes of this special regulation, a "bundled transaction" does not include the sale of any products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. A transaction that otherwise meets the definition of a "bundled transaction" is not a "bundled transaction" if it is: (1) the "retail sale" of two products where the first product is essential to the use of the second product, and the first product is provided exclusively in connection with the second, and the true object of the transaction is the second; (2) the "retail sale" of more than one product, but the products are sourced the same under this special rule; or (3) the "retail sale" of more than one product, but the sum of the "purchase price" or "sales price" of products which are sourced differently under this special rule is de minimis.
- vi) "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.
- vii) "Coin-operated telephone service" means a "telecommunications service" paid for by inserting money into a telephone accepting direct deposits of money to operate.
- viii) "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- ix) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the

telecommunications services used to reach the conference bridge.

- x) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.
- xi) "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.
- xii) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.
- xiii) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.
- xiv) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.
- xv) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.
- xvi) "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- xvii) "International" means a "telecommunications service" that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.
- xviii) "Interstate" means a "telecommunications service" that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.
- xix) "Intrastate" means a "telecommunications service" that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.
- xx) "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- xxi) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.
- xxii) "Network access service" means the provision by a local exchange telecommunication service provider of the use of its local exchange network by

an inter-exchange telecommunication service provider to originate or terminate the inter-exchange telecommunication service provider's traffic carried to or from a distant exchange.

- xxiii) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.
- xxiv) "Pay telephone service" means a telecommunications service provided through any pay telephone.
- xxv) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" shall be within the licensed service area of the home service provider.
- xxvi) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.
- xxvii) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
- xxviii) "Prepaid wireless calling service" means the sale of a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.
- xxix) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.
- xxx) "Product" means tangible personal property (including a digital good and standardized software) or service.
- xxxi) "Service address" means:
  - (1) The location of the customer's telecommunications equipment, to which the customer's call is charged, and from which the call originates or terminates, regardless of where the call is billed or paid.



(2) If the location in subsection (1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) If the location in subsection (1) and subsection (2) are not known, the service address means the location of the customer's place of primary use.

xxxii) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

(1) The term "telecommunication service" is defined as a broad range of services. The term includes, but is broader than the sum of, the following subcategories: 800 service, 900 service, fixed wireless service, mobile wireless service, paging service, prepaid calling service, prepaid wireless calling service, private communication service, value-added non-voice data service, coin-operated telephone service, international telecommunications service, interstate telecommunications service, intrastate telecommunications service, network access service and pay telephone service.

(2) The term "telecommunications service" does not include:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including but not limited to directory advertising.

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in Federal Communications

Commission regulation 47 CFR 20.3 (December 2005). This federal regulation is incorporated herein by reference, but such incorporation does not include later amendments to or editions of such regulations. A certified copy of this regulation is available for review at the Office of the Executive Director, Colorado Department of Revenue, 1375 Sherman Street, Denver, Colorado 80261. Additionally, a copy of this material may be examined at any state publications depository library.

(h) "Ancillary services" ; or

(i) Digital products "delivered electronically" , including but not limited to software, music, video, reading materials or ring tones.

(3) Examples of Included and Excluded Services.

Example 1. An entity provides dedicated network service to an entity which will resell that service as intrastate telecommunications service. Both entities are providing a telecommunications service.

Example 2. An entity provides an interstate telecommunications service to an internet service provider which will use that service in the provision of internet access service. The entity providing interstate telecommunications service is providing a telecommunications service. The entity providing internet access service is not providing a telecommunications service.

Example 3. An entity primarily engaged in the provision of cable television provides an interstate telecommunications service. The entity is engaged in the provision of telecommunications service.

xxxiii) "Value-added non-voice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

xxxiv) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

xxxv) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

d) **Apportionment - Sales Factor:** Sales of telecommunications and ancillary services in this state. The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer is included in the denominator of the sales factor. The sales factor shall include the following types of sales to the extent that such sales constitute business income.

- i) Gross receipts from the sale of telecommunications services, other than those sourced in subsections iii) through vii), which are sold on a call-by-call basis are in this state when (1) the call originates and terminates in this state or (2) the call either originates or terminates and the service address is also located in this state.
- ii) Gross receipts from the sale of telecommunications services, other than those sourced in subsections iii) through vii), which are sold on other than a call-by-call basis, are in this state when the customer's place of primary use is in this state.
- iii) Gross receipts from the sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid calling service, are in this state when the customer's place of primary use is in this state pursuant to the Mobile Telecommunications Sourcing Act.
- iv) Gross receipts from the sale of pre-paid calling service, prepaid wireless calling service and post-paid calling service are in this state when the origination point of the telecommunications signal is first identified in this state by either (1) the seller's telecommunications system, or (2) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
- v) Gross receipts from the sale of a private communication service are in this state:
  - (1) if such service is for a separate charge related to a customer channel termination point, when the customer channel termination point is located in this state;
  - (2) if under such service all customer termination points are located entirely within one state, when the customer channel termination points are located in this state;
  - (3) if such service is for segments of a channel between two customer channel termination points located in different states and such segments of channel are separately charged, when one of the customer channel termination points is in this state, provided however that only fifty percent of such gross receipts shall be sourced to this state; and
  - (4) if such service is for segments of a channel located in more than one state and such segments are not separately billed, when the customer channel termination points are in this state, provided however that only a percentage of such gross receipts, determined by dividing the number of customer channel termination points in the state by the total number of customer channel termination points, are in this state.
- vi) A portion of the total gross receipts from sales of telecommunication services to other telecommunication service providers for resale is in this state in an amount determined by multiplying such total gross receipts by a fraction, the numerator of which is "total carrier's carrier service revenues" for this state and the denominator of which is the sum of "total carrier's carrier service revenues" for all states in which the taxpayer is doing business, as reported by the Federal Communications Commission in its report titled Telecommunications Revenues by State, Table 15.6, or successor reports which include such information, for the most recent year available as of the due date of the return, determined without regard to extensions.

- vii) Gross receipts attributable to the sale of an ancillary service are in this state when the customer's place of primary use is in this state.
- viii) Gross receipts attributable to the sale of a telecommunication or ancillary service sold as part of a bundled transaction are in this state when such gross receipts would be this state in accordance with the provisions of sections d)i) through vii).
  - (1) The amount of gross receipts attributable to the sale of a telecommunication or ancillary service which is sold as part of a bundled transaction shall be equal to the price charged by the taxpayer for such service when sold separately, adjusted by an amount equal to the quotient of a) the difference between (1) the price charged by the taxpayer for the bundled transaction, and (2) the sum of the prices charged by the taxpayer for each of the included products when sold separately, and b) the number of products included in the bundled transaction;
  - (2) If the amount of such gross receipts is not determinable under subsection viii)(1), then it may be determined by reasonable and verifiable standards from taxpayer's books and records that are kept in the regular course of business for purposes including, but not limited to, non-tax purposes.
- ix) Gross receipts from the sale of telecommunication services which are not taxable in the State to which they would be apportioned pursuant to sections d)i) through vii), shall be excluded from the denominator of the sales factor.

2) **Alternative Methodologies.** If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.

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## Editor's Notes

## History

Income Tax Special regulations (Railroads, Airlines, Contractors, etc.) recodified from 1 CCR 201-2.

Reg IV eff. 03/02/2009.

Reg IV.18(a) eff. 04/30/2010.

Special Regulations 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A eff. 06/30/2010.