

## DEPARTMENT OF REVENUE

### Taxpayer Service Division - Tax Group

#### INCOME TAX

##### 1 CCR 201-2

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

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#### **Regulation 22-101. Reserved.**

#### **Regulation 22-102. Reserved.**

#### **Regulation 22-103.1. Assessment.**

The filing of a return by a taxpayer is an assessment for the amount of the tax due thereon together with the penalty and interest shown to be due thereon. The mailing of a notice with a demand for payment of any tax, penalty and interest imposed under the Act or for payment of any deficiency is an assessment. A deficiency arises from the failure of a taxpayer to pay the full amount of the tax due or to make a proper return or because an additional tax is found to be due. A notice to a taxpayer that the executive director believes a deficiency exists is not an assessment. (See 39-21-103, C.R.S. 1973) Any assessment under this Act is a debt due from the taxpayer to the state of Colorado for the amount shown (a) in the return as of the due date of that return or, (b) in a notice of final determination accompanied by a demand for payment which is not paid or against which an appeal is not filed within 30 days after date of mailing. Any notice and demand under the Act mailed to the last known address of the taxpayer shall be prima facie evidence of service of such notice and demand

#### **Regulation 22-103.2. Basic Date.**

Any income accrued or any appreciation in asset value occurring prior to July 1, 1937 is not subject to income taxation by the state of Colorado.

#### **Regulation 22-103.4. Reserved.**

#### **Regulation 22-103.5. Reserved.**

#### **Regulation 22-103.6. Executive Director.**

See also subsection 39-21-101 (2), C.R.S. 1973, wherein Executive Director is defined to include the Deputy Director of the Department of Revenue when authorized to act on behalf of the Executive Director.

#### **Regulation 22-103.7. Reserved.**

#### **Regulation 39-22-103(8).**

#### **Regulation 39-22-103(8)(a). Resident individual**

A resident individual means a natural person who is domiciled in Colorado. A resident individual can also be a natural person who maintains a fixed dwelling within Colorado and who spends in the aggregate more than six months of the taxable year within Colorado. If a person is domiciled in Colorado, that person remains a Colorado resident even though he or she temporarily resides outside of Colorado. Once

a domicile is established, it will continue to determine a taxpayer's residency until it has been abandoned as a domicile.

**Regulation 39-22-103(8)(b). Resident Individual — Military Serviceperson.**

For tax years beginning on or after January 1, 2001 (returns filed in 2002), a serviceperson who is a full-year Colorado resident who spends at least 305 days of the tax year outside of the 50 state boundary of the United States of America while stationed outside of the United States of America for active military duty may file as a nonresident on their Colorado income tax return for that year. The serviceperson's spouse may also file as a nonresident if they accompany the serviceperson outside of the country for at least 305 days of the tax year while the spouse is stationed there on active military duty. A serviceperson or their spouse who meets the above criteria to file as a nonresident is not required to do so and may continue to file as a Colorado resident if they wish.

**Regulation 22-103.9. Reserved.**

**Regulation 22-103.11. Reserved.**

**Regulation 22-103.12. Reserved.**

**Regulation 22-103.13. Reserved.**

**Regulation 22-103-5. Reserved.**

**Regulation 39-22-104(3)(g). Gross Conservation Easement Addition.**

If a charitable deduction is claimed on the federal income tax return for any donation upon which the gross conservation easement credit is also claimed, the amount deducted from federal taxable income must be added back to taxable income to determine the taxpayer's Colorado taxable income. If the federal deduction for this donation exceeds the amount of the credit created by the donation, the addback will not exceed amount equal to the credit claimed, including any credit transferred to another taxpayer or carried forward to future tax years.

**Regulation 22-104.1. Reserved.**

**Regulation 39-22-104.1.7 Income Tax Filing Status**

1. **General Rule.** Because the Colorado income tax return begins with federal taxable income, all taxpayers shall file their Colorado income tax return using the same status that they use on their federal income tax return.
2. **Any couple that files a joint federal income tax return must also file a joint state income tax return. State income tax provisions that depend upon federal income tax filing status will be administered in accordance with federal income tax filing status.**
3. Any taxpayer filing as single, separate, or head-of-household shall file their Colorado income tax return in the individual taxpayer's name only. Taxpayers filing a joint federal return shall file a Colorado income tax return jointly for both taxpayers.

**Regulation 22-104.2. Reserved.**

**Regulation 22-104.3. Reserved.**

**Regulation 22-104.4. Gross Receipts Tax.**

The gross receipts tax applies to businesses being carried on in Colorado. It does not apply to such items as wages, salaries, and salesmens' commissions.

**Regulation 39-22-104(4)**

- (1). Sequence of modifications decreasing federal taxable income. Modifications decreasing federal taxable income may be claimed in the sequence most advantageous to the taxpayer.
- (2). Modification for Railroad Retirement and Railroad Unemployment benefits. Railroad retirement benefits are exempt from state taxation under 45 U.S.C. paragraph 231m and railroad unemployment benefits are exempt under 45 U.S.C. paragraph 352(e). Thus, to the extent that such income is included in federal taxable income, it may be modified out in determining Colorado taxable income.
- (3). Taxation of full-year Colorado resident on income earned before becoming Colorado resident. Colorado taxable income of a full-year Colorado resident is defined as his federal taxable income plus and/or minus certain modifications none of which relate to non-Colorado source income as such. A Colorado resident is subject to tax by Colorado on his entire income from all sources. Credit for tax paid other states will be allowed with respect to income from sources within such states. See 39-22-108 C.R.S.

**Regulation 39-22-104(4)(a). Repurchase agreements.**

- (1). Repurchase agreements. Interest income earned on short term agreements to repurchase United States government obligations is not United States federal interest exempt from Colorado income tax.

**Regulation 39-22-104(4)(f). Pension and Annuity Subtraction**

- (1) Qualified Pension and Annuity Income. The following income may be excluded from Colorado taxable income to the extent a taxpayer is eligible for the pension/annuity subtraction:
  - (a) Pension and annuity income, IRA distributions, and social security income reported on the federal income tax return as taxable.
  - (b) A distribution reported as a "lump sum distribution addition" under §39-22-104(3)(c), C.R.S. in computing Colorado taxable income.
  - (c) Taxable disability retirement benefits received by persons 55 years of age or older, even if such payments are reported as wages for federal income tax purposes.
  - (d) Taxable nonqualified deferred compensation payments that qualify as retirement income under 4 USC Section 114(b)(1)(I) received by persons 55 years of age or older, even if such payments are reported as wages for federal income tax purposes.
- (2) Premature Distributions. Premature distributions for federal income tax purposes, regardless of the source, do not qualify for the pension/annuity subtraction.
- (3) Examples. The following are examples of payments that do not qualify as pension or annuity income for purposes of the Colorado pension/annuity subtraction:
  - (a) Sick leave and vacation leave payouts,
  - (b) Early retirement incentive payouts,

- (c) Interest income from a bank plan that is distributed to a surviving spouse as retirement income upon death of first spouse,
- (d) The portion of military pension awarded to a nonmilitary spouse as a result of a divorce settlement that is classified as alimony,
- (e) Distributions from an otherwise qualified profit sharing plan to an employee prior to retirement,
- (f) Distributions from an otherwise qualified employer sponsored savings plan or employee stock ownership plan prior to retirement,
- (g) Lump-sum distributions from a qualified or nonqualified pension or profit-sharing plan as defined in section 401 of the Internal Revenue Code except to the extent such distributions are included in subparagraph (1)(b) of this regulation,
- (h) Deferred payments received under personal service contracts.

(4) Trusts/Estates

- (a) The pension/annuity subtraction is available to trusts and estates to the extent the amount is received as a result of the death of the person who earned the pension/annuity. The amount of the subtraction is the smaller of \$20,000 or the taxable pension/annuity income that is not distributed to the beneficiaries of the trust or estate.
- (b) Each beneficiary who receives pension/annuity income distributed from the trust or estate will be eligible for a separate pension/annuity subtraction of up to \$20,000 if the amount is received as a result of the death of the person who earned the pension/annuity.

(5) Railroad Retirement Benefits.

- (a) Railroad retirement benefits (Tier I and Tier II) and disability payments are exempt from state taxation under Section 231m of the Railroad Retirement Act.
- (b) To the extent the benefits in paragraph (5)(a) above are included in federal taxable income, the benefits will be subtracted when computing Colorado taxable income as a "railroad retirement benefits subtraction." The income may not be subtracted a second time under the pension/annuity subtraction and the amount of any railroad retirement benefits subtraction will not count against the \$20,000 or \$24,000 limitation of the pension/annuity subtraction.

**Regulation 39-22-104(4)(I) - Interest, Dividend and Capital Gain Subtraction.**

1) Interest, dividends and net capital gains can be subtracted from federal taxable income reported on a taxpayer's Colorado income tax return. This subtraction is available only in tax years in which state revenues exceed the limitation on state fiscal year spending by the amounts established in 39-22-104(4)(I)(III) and (IV). In October or November of each year, the State will certify whether there are sufficient excess revenues to make this subtraction available. See Regulation 39-22-120 for years in which the subtraction is available.

2) The maximum amount a taxpayer can subtract in a tax year pursuant to this subsection 104(4)(1) is:

Tax year 2000.....\$ 1,200 single, \$2,400 joint,

Tax year 2001 and later.....\$1,500 single, \$3,000 joint.

- 3) The subtraction is allowed only to the extent the interest, dividend, or net capital gain is included in taxpayer's federal taxable income, and only to the extent the interest, dividend, or net capital gain is not also subtracted from federal taxable income on the taxpayer's Colorado income tax return pursuant to 39-22-104(4) or 39-22-518, C.R.S.

**Regulation 39-22-104(4)(M) QUALIFYING CHARITABLE CONTRIBUTION SUBTRACTION FOR TAXPAYERS CLAIMING FEDERAL STANDARD DEDUCTION**

- 1) The subtraction for charitable contributions in excess of \$500 for taxpayers who made their federal income tax election to claim the basic standard deduction under Internal Revenue Code (IRC) section 63(c)(2) is available in tax year 2001 in which state revenues exceeded the limitation on state fiscal year spending and tax years beginning on or after January 1, 2006. The subtraction is not available to taxpayers who are not allowed to claim the federal basic standard deduction, such as:
- a) Taxpayers for whom a dependency exemption is allowable to another taxpayer, even where a partial standard deduction is allowed under IRC 63(c)(5)
  - b) Married individuals filing separate returns, when one spouse itemizes deductions
  - c) Non-resident aliens
  - d) Any individual with a short tax year who is denied the federal standard deduction.
  - e) Estates, trusts, or other entities which are not "individuals."
- 2) To be eligible for subtraction contributions must qualify as a federal itemized deduction under §170 I.R.C. and collectively exceed a \$500 threshold for the tax year. The limits applicable to §170 I.R.C. deductions apply in computing the maximum subtraction allowed. The subtraction is available to all individual Colorado taxpayers and will be applied in computing the tentative tax before apportionment for part-year and non-residents of Colorado.
- 3) Except as specified in paragraph 4) below, the subtraction is available only in tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in §39-22-104(4)(m)(III), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this subtraction available. See Regulation 39-22-120 for years in which the subtraction is available.
- 4) Due to the passage of Referendum C ( §24-77-103.6, C.R.S.) during the November 2005 statewide election, the subtraction is available for tax years beginning on or after January 1, 2006 and is not reliant on a budget surplus.

**Regulation 39-22-104(4)(m)(II) Charitable Contribution Subtraction For Non-Itemizing Taxpayers Status Table:**

Fiscal Year (1)	Tax Year (2)	Is Subtraction Available (3) :	Subtraction allowed for contributions in excess of:	Maximum Subtraction Allowed
1999-2000	2000	NO		
2000-2001	2001	YES	\$500	IRC §170 max.
2001-2002	2002	No	None	
2002-2003	2003	unknown		

(1) July 1 to June 30.

(2) Any tax year beginning on or after January 1 of that calendar year.

(3) Sufficient excess revenues exist in years where subtraction is available.

**Regulation 22-105. Reserved.**

**Regulation 22-107. Reserved.**

**Regulation 39-22-108. Credit for Taxes Paid to Another State.**

(1) Source of Income.

(a) Source of income is not to be confused with source of payment of income. Source of income means the geographical location of the activity that gave rise to the income. Unless such income arises from the active conduct of a trade or business, the source of interest and dividend income and other income from intangible assets shall be deemed to reside with the owner of the stocks, bonds or other intangible assets.

(b) The source of income reported by a shareholder of a Subchapter S corporation or a member of any other pass through entity shall be determined by the source of the corporation/entity's income.

(2) Tax year. Credit for tax paid to another state is not allowed if paid for a different tax year. If a Colorado resident pays Colorado tax on income from sources within another state, which was taxed by the other state in a different tax year, no Colorado tax credit will be allowed. §39-22-108(2), C.R.S., limits the credit for any given tax year to the Colorado tax applicable to non-Colorado source income for the same tax year.

(3) Documentation.

(a) Any taxpayer claiming a credit for taxes paid to another state shall file a copy of the income tax return from the other state(s) with the Department of Revenue at the time of the tax return claiming the credit.

(b) Any electronically filed income tax return must include requested information from the return and the actual return must be submitted to the Department of Revenue upon request.

(c) A member of a pass through entity whose taxes are paid on their behalf by the entity on the entity's tax return may attach or provide a copy of the state-by-state detail provided by the entity in lieu of the actual income tax returns filed with the other states. The actual income tax returns must be submitted to the Department of Revenue upon request.

(d) Documentation to support the tax return from another state must also be submitted to the Department of Revenue upon request.

**Regulation 39-22-108.5 Dual Resident Trust Credit**

(1) Limitations.

(a) A taxpayer cannot claim both the dual resident trust credit and the credit for tax paid to another state (§39-22-108, C.R.S.) for the same tax year. If a taxpayer qualifies for both credits for the same tax year, the taxpayer shall elect which credit will be claimed on the return.

(b) The credit is not available to a trust that became a Colorado resident trust prior to May 26, 2006.

(c) The credit is available for tax years beginning on or after January 1, 2006.

- (d) Any excess credit is not refundable and cannot be carried forward or back to another tax year.

(2) Documentation.

- (a) A taxpayer claiming a dual resident trust credit shall file a copy of the income tax return from the other state(s) with the Department of Revenue at the time of filing the Colorado tax return in which the credit is claimed.
- (b) A taxpayer who electronically files the Colorado income tax return must include such information from the other state's tax return as may be required by the Department and submit a written copy of the same to the Department of Revenue upon request.
- (c) Documentation to support the tax return from another state must also be submitted to the Department of Revenue upon request.

**Regulation 22-109. Reserved.**

**Regulation 39-22-109(1). Apportionment of tax in the case of a nonresident individual.**

A nonresident individual's Colorado income tax shall be what his Colorado tax would have been were he a full-year Colorado resident apportioned in the ratio of his Colorado-source modified federal adjusted gross income to his total modified federal adjusted gross income. If the Colorado-source modified federal adjusted gross income is larger than the total modified federal adjusted gross income, the Colorado tax shall be proportionately larger than what it would have been were he a full-year Colorado resident.

**Regulation 39-22-109(2). Colorado source income of a nonresident athlete employed by a Colorado sports franchise.**

- (1). Colorado source income of a nonresident athlete employed by a Colorado sports franchise. The Colorado-source employment income of a nonresident athlete employed by a Colorado sports franchise shall be the current year contract income reported for federal income tax purposes apportioned in the ratio of the number of days of services performed in Colorado over the total number of days during the tax year for which the athlete is required to make his services available to the franchise under the terms of his contract.
- (2). Colorado passive losses of nonresident individuals. A nonresident of Colorado may source to Colorado passive losses carried over from prior tax years and claimed in arriving at federal adjusted gross income to the extent such nonresident had Colorado source passive losses in prior tax years not previously claimed for Colorado income tax purposes.

**Regulation 22-110. Reserved.**

**Regulation 39-22-110(1). Apportionment of tax in the case of a part-year resident individual.**

A part-year resident individual's Colorado income tax shall be what his Colorado tax would have been were he a full-year Colorado resident apportioned in the ratio of his modified federal adjusted gross income applicable to that part of the year he was a Colorado resident over his total modified federal adjusted gross income. If the modified federal adjusted gross income applicable to that part of the year he was a Colorado resident is larger than his total modified federal adjusted gross income, his Colorado tax shall be proportionately larger than it would have been were he a full-year Colorado resident.

**Regulation 22-111. Reserved.**

**Regulation 22-112. Reserved.**

**Regulation 22-113. Reserved.**

**Regulation 22-114. Reserved.**

**Regulation 22-115. Reserved.**

**Regulation 22-116.2. Income and Deductions Relating to Resident Portion of Tax Year.**

Certain items of income and deductions can be easily identified as relating to the resident or to the nonresident portion of the tax year. Where no clear distinction exists, the inclusion of income or the deductibility of expenses shall be determined as though the taxpayer's federal tax year began on the day he became a Colorado resident or ended on the day he became a nonresident and as if he or she were on the accrual basis of accounting for federal income tax purposes.

**Regulation 22-116.3. Part-Year Resident and Nonresident Combination.**

If a part-year resident had income from Colorado sources during that part of the year he was a nonresident, his Colorado taxable income shall be the total of his nonresident Colorado taxable income computed under the provisions of section 39-22-115 C.R.S. 1973 and his part-year resident Colorado taxable income as computed under the provisions of section 39-22-116 C.R.S. 1973, with each portion of the year being treated as a short period tax year for Colorado purposes.

**Regulation 22-117. Reserved.**

**Regulation 39-22-119. Child Care/Child Tax Credit.**

- 1) **Child Care/Child Tax Credit in tax years without excess revenues.** For tax years beginning on or after January 1, 1996, resident individual taxpayers who claim the federal credit for child care expenses on their federal income tax return shall be allowed a credit against their Colorado income tax liability as follows:
  - a. A credit equal to 50% of the federal credit for taxpayers whose federal adjusted gross income is \$25,000 or less.
  - b. A credit equal to 30% of the federal credit for taxpayers whose federal adjusted gross income is between \$25,001 and \$35,000.
  - c. A credit equal to 10% of the federal credit for taxpayers whose federal adjusted gross income is between \$35,001 and \$60,000.
  - d. This credit cannot be claimed by taxpayers whose federal adjusted gross incomes exceeds of \$60,000, except to the extent allowed in subparagraph (2)(b), below.
- 2) **Child Care/Child Tax Credit in Tax Years with Excess State Revenues.** The child care/child tax credit described in paragraph (1), above, is expanded in two circumstances, each depending on whether state revenues exceed limitations on state fiscal year spending by amounts established in either 39-22-119(1.5) or (7)(a), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make either of these two expanded versions of the credit available. The child care credit of paragraph (1), above, is not available in tax years in which either expanded version child care credit of this paragraph (2) is available. See Regulation 39-22-120 for years in which the expanded credits are available.
  - a. **Subsection 119(1.5) Expanded Child Care/Child Tax Credit.** Subject to there being sufficient excess revenues in the applicable tax year as set forth in 39-22-119(1.5),



C.R.S., an expanded child care/child tax credit is available for income tax years beginning on or after January 1, 1998, as follows:

I. The greater of:

A. A child care/child tax credit of 50% of the credit claimed on the taxpayer's federal tax return, or

B. For resident individuals who claim the child tax credit on their federal income tax return, a credit equal to \$200 for each qualifying child who is 5 years of age or under at the end of the taxable year for which the credit is claimed.

II. Resident individuals whose adjusted gross income exceeds \$60,000 are not allowed a credit pursuant to 39-22-119(1.5), C.R.S.

b. **Subsection 119(5) Expanded Child Care/Child Tax Credit.** For tax years beginning on or after January 1, 2000, and subject to there being sufficient excess revenues in the applicable tax year as set forth in 39-22-119(7)(a), C.R.S., the child care credit of subsection 119(1.5) and subsection 119(5) are combined, and allow:

I. For taxpayers with federal adjusted gross incomes less than or equal to \$64,000, a child care credit equal to the greater of (A) or (B)(i) plus B(ii):

(A) child care credit of 70% of the federal child care credit taken by the taxpayer, or

(B)

i) For a resident individual who claims the child tax credit on the federal income tax return, a credit equal to \$300 for each qualifying child who is 5 years of age or under at the end of the taxable year for which the credit is claimed, plus

ii) For a resident individual licensed or legally exempt from licensing, who operates a family child care home and who claims a tax credit pursuant to section 24 of the Internal Revenue Code for one or more of the individuals qualifying children who are in full-time care or before-and-after school care in the family child care home, shall be allowed a child tax credit in the amount of \$300 for each qualifying child who is six years of age or older, but less than thirteen years of age.

II. If Federal Adjusted Gross Income exceeds \$64,000 then no credit is available.

3. Ages of children eligible for the child tax credits are based on the child's age at the end of the taxable year for which the credit is claimed. Ages of children eligible for the child care credit are determined in the same manner as determined for the federal child care credit.

4. **Part-year residents.** A part-year Colorado resident is allowed only that portion of the Colorado child care credit and the family child care credit that is equal to the applicable credit multiplied by the ratio (not to exceed 100%) of the taxpayer's Colorado modified adjusted income over the taxpayer's entire federal modified taxable income.

#### **Regulation 39-22-120 TABOR CREDITS AND SUBTRACTIONS SUBJECT TO EXCESS REVENUES**

1) **Income Tax Refund Mechanism Table.** The credits and subtractions listed in the tables below are refund mechanisms for a revenue surplus that is required to be refunded under TABOR. Some credits and subtractions have been discontinued as refund mechanisms (paragraphs b) and c)). The credit or subtraction is available for tax years beginning on or after January 1 of the year indicated if sufficient excess revenues existed in the July 1-June 30 fiscal year ending during that year. These credits and subtractions were not available in years 1998 or earlier.

a) The following credit is currently an applicable refund mechanism when a sufficient surplus exists:

Credit/Subtraction	CRS Statute	1999	2000	2001	2002-2011
Earned income credit	39-22-123	yes	yes	yes	no

b) The following credits and subtractions were refund mechanisms for revenue surplus, but have since been discontinued as refund mechanisms:

Credit/Subtraction	CRS Statute	1999	2000	2001	2002 or later
Agricultural value-added cash fund credit	39-22-528	no	no	yes	no
Agricultural value-added credit	39-22-527	no	no	yes	no
Child care/child tax credits - expanded credits	39-22-119(5)	no	yes	yes	no
Colorado Institute of Technology contribution credit	39-22-525	no	no	no	no
Colorado source capital gain subtraction-pre 5/9/94 assets	39-22-518(5)(a)	yes	yes	yes	no
Colorado source capital gain subtraction-one year holding period	39-22-518(5)(c)	no	no	yes	no
Foster care credit	39-22-127	no	no	yes	no
Health benefit plan credit	39-22-125	no	yes	yes	no
Health care professional credit	39-22-126	no	yes	yes	no
High technology scholarship contribution credit	39-22-523	no	no	yes	no
Individual development account contribution credit	39-22-524	no	no	yes	no
Interest, dividend and capital gain subtraction	39-22-104(4)(l)	no	yes	yes	no
Qualifying charitable contribution subtraction	39-22-104(4)(m)	no	no	yes	no (see paragraph c) below)

c) Although the qualifying charitable contribution subtraction has been discontinued as a refund mechanism, it is available for tax years beginning on or after 2006 regardless of whether there is a revenue surplus.

2) **Sales and Property Tax Refund Mechanism Table.** The credits and refunds listed in the table below were refund mechanisms for surplus funds required to be refunded under TABOR, but have been discontinued. The table below lists the tax years in which these credits and subtractions are available.

a) The business personal property tax refund was available for taxes paid during the fiscal year ending during the year indicated if sufficient excess revenues existed in the July 1-June 30 fiscal year ending during that year, and were issued early in the fiscal year beginning during the year indicated.

- b) The sales tax reduction on certain commercial trucks was available for the fiscal year beginning on July 1 of the year indicated if sufficient excess revenues existed in the July 1-June 30 fiscal year ending during that year.
- c) The sales and use tax refunds were available for the fiscal year ending in the year indicated if sufficient excess revenues existed in the July 1-June 30 fiscal year ending during that year, and must be claimed in the following calendar year as required.
- d) These credits and refunds were not available in years 1998 or earlier.

Credit/Refund	CRS Statute	1999	2000	2001	2002 or later
Business personal property tax refund	39-22-124	yes	yes	yes	no
Sales tax reduced rate on commercial trucks over 26,000 GVW	39-26-106(3)	no	no	yes	no
Sales/Use tax refund for pollution control equipment	39-26-502	no	yes	yes	no

- 3) **State Sales Tax Refund.** The state sales tax refund was available for the income tax years beginning on or after January 1 of the year listed below based on the gross income reported on the Colorado income tax return. [§ 39-22-2002, C.R.S.]

a) 1997

If federal AGI is	\$15,000 or less	\$15,001 - \$100,000	\$100,001 or more
Single filers enter	\$37	\$60	\$80
Joint filers enter	\$74	\$120	\$160

b) 1998

If federal AGI is	\$20,000 or less	\$20,001 - \$50,000	\$50,001 - \$95,000	\$95,001 or more
Single filers enter	\$142	\$195	\$276	\$384
Joint filers enter	\$284	\$390	\$552	\$768

c) 1999

If applicable income is	\$25,000 or less	\$25,001 - \$50,000	\$50,001 - \$75,000	\$75,001 - \$100,000	\$100,001 - \$125,000	\$125,001 or more
Single filers enter	\$159	\$212	\$244	\$290	\$312	\$502
Joint filers enter	\$318	\$424	\$488	\$580	\$624	\$1,004

d) 2000

If applicable income is	\$26,000 or less	\$26,001 - \$53,000	\$53,001 - \$78,000	\$78,001 - \$103,000	\$103,001 - \$126,000	\$126,001 or more
Single filers enter	\$182	\$245	\$288	\$325	\$363	\$574
Joint filers enter	\$364	\$490	\$576	\$650	\$726	\$1,148

e) 2001

If applicable income is	\$27,000 or less	\$27,001 - \$56,000	\$56,001 - \$83,000	\$83,001- \$110,000	\$110,001- \$135,000	\$135,001 or more
Single filers enter	\$144	\$187	\$220	\$252	\$283	\$451
Joint filers enter	\$288	\$374	\$440	\$504	\$566	\$902

f) 2002 - 2004 No refund available.

g) 2005 Single filers \$15; Joint filers \$30

h) 2006 - 2011 No refund available.

4) **Surplus Controlled Table.** The credits and attributes listed in the table below are not refund mechanisms for surplus funds to be refunded under TABOR but are only available for income tax years beginning on or after January 1 of the year indicated if sufficient excess revenues existed in the July 1-June 30 fiscal year ending during that year. These credits and attributes were not available in years 1997 or earlier.

a) The following attribute is currently an applicable surplus controlled attribute when a surplus exists:

Credit/Attribute	CRS Statute	1998	1999	2000	2001	2002-2004	2005	2006-2011
Gross conservation easement credit - refundability of credit	39-22-522	no	no	yes	yes	no	yes	no

b) The following credit was a surplus controlled credit for the tax years listed below, but has been discontinued and is no longer a surplus controlled credit:

Credit/Attribute	CRS Statute	1998	1999	2000	2001	2002 or later
Child care/child tax credits - 50% / \$200	39-22-119(1.5)	yes	yes	yes	yes	no

5) **Income Tax Rate Refund Mechanism.** The income tax rate reduction from 4.63% to 4.5% is a refund mechanism for surplus funds required to be refunded under TABOR. The rate reduction was not available in tax years 2011 or earlier. [§ 39-22-627, C.R.S.]

**Regulation 39-22-121 CHILD CARE CONTRIBUTION CREDIT**

1) Computation of the credit.

a) Any taxpayer that makes a monetary contribution to promote child care in Colorado may claim an income tax credit of fifty percent of the total value of the contribution.

b) A credit for in-kind contributions, such as stock and other non-monetary items, is not available for tax years 2000 and later.

2) Limitation on amount of credit that may be generated. Carryovers.

a) The amount of credit generated in any one tax year may not exceed \$100,000.

- b) If the amount of credit generated in one tax year exceeds the amount of tax, the excess may be carried forward for up to five tax years. A credit carry forward does not restrict additional credits from being generated in future years.

3) Qualifying contributions.

a) Qualifying contributions made March 9, 2004 or later:

- i) Monetary contributions made to a qualifying child care organization, as defined in paragraph 4)a) below, to the extent the organization utilizes the donation for child care provided to children twelve years of age or under.
- ii) Monetary contributions made to a qualifying child care organization, as defined in paragraph 4)b) below, to the extent the organization is a grandfathered organization, as defined in paragraph 6) below, and utilizes the donation for child care provided to children eighteen years of age or under.

b) Qualifying contributions made prior to March 9, 2004:

- i) Monetary contributions made to a qualifying child care organization, as defined in paragraph 4)b) below, to the extent the organization utilizes the donation for child care provided to children eighteen years of age or under.

4) Qualifying child care organizations.

a) Qualifying donations made March 9, 2004 or later to the following child care organizations are eligible for the child care contribution tax credit. Programs specified in paragraphs i) through vii) are qualified only if the program is licensed by the Department of Human Services. Programs specified in paragraphs viii) through xii) are only qualified if the facility or program is registered with the Department of Revenue.

- i) A child care center as defined in 26-6-102(1.5), C.R.S.,
- ii) A child placement agency as defined in 26-6-102(2), C.R.S.,
- iii) A family child care home as defined in 26-6-102(4), C.R.S.,
- iv) A foster care home as defined in 26-6-102(4.5), C.R.S.,
- v) A homeless youth shelter as defined in 26-6-102(5.1), C.R.S.,
- vi) A residential child care facility as defined in 26-6-102(8), C.R.S.,
- vii) A secure residential treatment center as defined in 26-6-102(9), C.R.S.,
- viii) An unlicensed child care facility that provides child care services similar to those provided by a licensed child care center as defined in 26-6-102(1.5), C.R.S. This includes child care provided for the whole or part of a day. The program must provide for the care of five or more children who are not related to the owner, operator, or manager. This does not include facilities or programs that provide services identical or similar to day treatment centers, guest child care facilities, family child care homes, foster care homes, homeless youth shelters, medical foster care, residential care facilities, secure residential treatment centers, specialized group facilities, or therapeutic foster care. This also does not include facilities or programs to which contributions qualify for the enterprise zone

administrator credit or school programs maintained during regular school hours including kindergartens maintained in connection with a public, private, or parochial elementary school system of at least six grades or operated as a component of a school district's preschool program operated pursuant to article 28 of title 22, C.R.S.

- ix) A grant or loan program for a parent or parents in Colorado requiring financial assistance for child care.
  - x) A training program for child care providers in Colorado.
  - xi) An information dissemination program in Colorado to provide information and referral services to assist a parent or parents in obtaining child care.
  - xii) A grandfathered child care organization as defined in paragraph 6) below.
- b) Qualifying donations made prior to March 9, 2004 to the following child care organizations or programs are eligible for the tax credit.
- i) A "child care center" as defined in 26-6-102(1.5), C.R.S. or a "family child care home" as defined in 26-6-102(4), C.R.S. and licensed by the Dept of Human Services. This includes monetary contributions for the establishment or operation of the program.
  - ii) An unlicensed child care program that provides child care services similar to those provided by a licensed child care center as defined in 26-6-102(1.5), C.R.S. This includes child care provided for the whole or part of a day. The program must provide for the care of five or more children who are not related to the owner, operator or manager. This does not include facilities or programs that provide services identical or similar to day treatment centers, guest child care facilities, foster care homes, homeless youth shelters, medical foster care, residential care facilities, secure residential treatment centers, specialized group facilities, or therapeutic foster care. This also does not include facilities or programs to which contributions qualify for the enterprise zone administrator credit or school programs maintained during regular school hours including kindergartens maintained in connection with a public, private, or parochial elementary school system of at least six grades or operated as a component of a school district's preschool program operated pursuant to article 28 of title 22, C.R.S.
  - iii) A grant or loan program for a parent or parents in Colorado requiring financial assistance for child care.
  - iv) A training program for child care providers in Colorado.
  - v) An information dissemination program in Colorado to provide information and referral services to assist a parent or parents in obtaining child care.

#### 5) Registration of Unlicensed Organizations

- a) Facilities, organizations or programs that are licensed by the Department of Human Services as a child care organization do not need to separately register with the Department of Revenue. However, unlicensed facilities, organizations or programs must register with the Department of Revenue to be a qualified organization for the purposes of this credit. The application for registration must include:

- i) an explanation why they are a qualified organization,
    - ii) an explanation why licensing with the Department of Human Services is not required,
    - iii) Brochures, newspaper articles, community publications and other documentation describing the facility or program.
  - b) Applicants for registration, either pursuant to this paragraph 5) or 6), below, whose application has been denied in whole or in part, may appeal the denial by filing a request for hearing to the Executive Director pursuant to the Colorado Administrative Procedures Act ( §24-4-104, C.R.S.) and not pursuant to §39-21-103, C.R.S.
- 6) Grandfathered organizations.
- a) A grandfathered child care program is considered a qualifying organization on or after March 9, 2004 if the organization:
    - i) received contributions prior to January 1, 2004 for which a child care contribution credit was properly allowed and claimed,
    - ii) no longer qualifies for the credit under the new rules because the program no longer meets the qualifications of the law and/or some or all children cared for in the program are age thirteen through eighteen,
    - iii) has applied for eligibility with the Department of Revenue and been approved to continue to accept donations that qualify for the credit.
  - b) The grandfather application must include:
    - i) documentation proving the program qualified for the credit under the law as it existed prior to March 9, 2004,
    - ii) documentation regarding the children age thirteen through eighteen that were assisted by donations received in 2003 or prior, and
    - iii) a list of taxpayers who claimed the credit in tax year 2003 or prior.
- 7) Exceptions. Contributions will not qualify for this credit if any of the following apply:
- a) The contribution is made to a child care program in which the taxpayer or a person related to the taxpayer has a financial interest.
  - b) The contribution is made to a for-profit business, unless the contribution is directly used for the acquisition or improvement of facilities, equipment, or services, including the improvement of staff salaries, staff training, or the quality of child care.
  - c) The contribution is not directly related to promoting child care in Colorado as defined in this regulation.
  - d) The contribution is made after December 31, 2019.
  - e) The donor receives consideration from the donee organization in exchange for the contribution. If this is the case, there is a sale rather than a contribution. However, this will not restrict a company from contributing to a child care center and claiming a credit based on that contribution if the employees of the company receive a benefit in the form

of discounted child care. One of the prime goals of this tax credit is to encourage employers to contribute to child care for their employees, assuming that the employer has no financial interest in the child care facility.

8) Contributions that are split between qualified and nonqualified purposes.

- a) Organizations may accept contributions that are used in part for qualified child care but are used in part for nonqualified purposes. Examples of this include:
  - i) a child care center that cares for children both 12 and under and 13 and over,
  - ii) a church that uses part of the contribution to fund its child care center and part to fund other charitable functions,
  - iii) contributions to a community center construction project for which a child care center is only part of the overall project.
- b) The donee organization must allocate the portion of a contribution that qualifies for the child care contribution credit for the donor. This allocation must be done in a reasonable manner based on the facts of the situation. Examples of methods that can be used to allocate the contribution include:
  - i) A child care center that cares for children of various ages, some of which are 13 or older who do not qualify for the credit.
    - (1) The child care center can compute the percentage of children in its care that qualify for the credit. This percentage can be used to allocate donations that are made to the facility.
    - (2) The child care center can document the expenses incurred in caring for children who are 12 and younger versus children who are 13 and older. The donations would be allocated using this percentage. This method requires extensive supporting documentation.
  - ii) A facility or program that operates several different programs, not all of which qualify for the credit.
    - (1) The expenses of the various programs must be accounted for and donations can be directly allocated to the qualified programs.
    - (2) The donations can be allocated on a percentage basis utilizing total expense figures for the entire facility.
  - iii) The construction of a community center, which includes a child care facility.
    - (1) A percentage of area method can be utilized if this provides an equitable calculation of the credit (i.e. 30% of the floor space is for the child care center so 30% of the costs are allocated to the child care center).
    - (2) If construction costs vary greatly between the child care area of the building and other areas, a more equitable allocation of the donation would be achieved by determining the difference between the cost of the facility with and without the child care facility. That difference can be used to determine the percentage of costs to allocate to the child care center.



(3) If construction costs are reasonably allocated using the method in paragraph (1) above but the costs of equipping the child care center varies significantly from other areas of the building, a hybrid method of allocating donations can be used. Construction costs can be allocated using a percentage of area method with equipment costs directly allocated. These factors could then be combined into one overall percentage to be used in allocating the donations.

iv) If the methods above do not equitably allocate the donation to the child care program, a written request to the Director of the Department of Revenue may be made to obtain permission to use an alternate method of allocation.

c) If contributions are accepted as earmarked for only the child care center despite the existence of nonqualified programs, the full contribution will qualify for the 50% credit. The organization must have accounting procedures in place to verify that those donations are indeed utilized 100% for the child care function and no funds are utilized for nonqualified purposes. Any excess funds left over at the end of the year must be carried forward for eligible expenses in the next year. Accounting procedures must be in place to track and document this allocation process. A separate fund cannot be arbitrarily set up to accept donations for the child care facility while funds from other sources (such as federal or state funds, charitable organizations, nonresident donors) are used to pay other expenses that would not qualify for the credit.

#### 9) Documentation.

Any contribution must be supported by a signed statement from the child care center or donee organization and furnished to the donor.

a) The statement must state the amount of the cash contribution.

b) The statement must list the name and Department of Human Service's license number, if applicable, of the eligible organization, or the name and Department of Revenue registration number of a pre-registered organization that qualifies for the credit.

c) The statement must include a detailed description of the eligible purpose(s) that the contributions will be used for and that the donation will be utilized one-hundred percent for purposes directly related to promoting child care.

d) If the contribution is not being utilized one-hundred percent for purposes directly related to promoting child care the statement must clearly state the portion of the contribution that qualifies for the credit computation. It will be the responsibility of the donee organization to prove that the percentage of the contribution reported as utilized for purposes directly related to promoting child care is accurate and no portion has been expended on any other organizational expense or purpose. Example: A contribution of \$1,000 is made to an intermediary organization. Seventy percent of the contribution is expended on qualifying purposes and the other thirty percent is expended on unrelated overhead expenses of the organization. The statement must clearly state that only \$700 of the contribution is eligible for calculating the fifty percent credit.

e) The donor must provide the statement to the Department of Revenue with an income tax return filed on a paper form. In the case of an income tax return filed electronically, the certification must be provided to the Department of Revenue upon request with only information specified by the department provided with the electronic filing.

#### 10) Investment Funds

Money donated to a qualified organization may be invested by that organization in an account that provides future payments to the organization. The interest and the principal, when removed from the account in any future year, must be utilized 100% for qualifying child care in order for the original donation to qualify for the credit.

11) Definitions:

- a) A "person related to the taxpayer" means a person connected with another by blood or marriage. Related taxpayer also includes a corporation, partnership, limited liability company, trust or association controlled by the taxpayer; an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer; or a corporation, limited liability company, partnership, trust, or association controlled by an individual, corporation, limited liability company, partnership, trust, or association under the control of the taxpayer.
- b) An "in-kind contribution" is any contribution of an asset other than the official currency of the U.S. government. An in-kind contribution's value will not be a set amount, but will vary based on fair market value or current exchange rates. Examples include employee labor, materials, computer equipment, gold and stock.
- c) "Child care" means care provided to a child twelve years of age or younger.

12) Conditional Availability

- a) For tax years beginning on or after January 1, 2011, but before January 1, 2013 the credit will not be allowed unless the December legislative council revenue forecast issued prior to the tax year indicates that the total state general fund appropriations grew by at least six percent over such appropriations for the previous fiscal year. In the event that the credit is not allowed for the tax year in which the contribution is made because of the preceding limitation the taxpayer making the contribution will be allowed to claim the credit in the next tax year in which the forecast indicates that the total state general fund appropriations grew by at least six percent over such appropriations for the previous fiscal year.
- b) If the amount of the credit allowed exceeds the amount of the tax due for the tax year in which the credit is allowed, the excess credit shall not be refunded, but may be carried forward to the next tax year. The restriction set forth in paragraph a) of this subsection 12) does not apply to any excess credits claimed and allowed in prior years and carried forward.
- c) Notwithstanding the provisions of paragraph a) of this subsection 12) no credit claim shall be allowed in any tax year commencing on or after January 1, 2020.

13) Limitation to the Credit for Tax Years 2013 and 2014

- a) For tax years beginning on or after January 1, 2013 but prior to January 1, 2014 (tax year 2013), the maximum credit that can be used to offset tax is limited to 50% of the total of the carryforward credits from 2012 and any credit generated by donations made during 2013. Any unused credits must be carried forward to tax year 2014.
- b) For tax years beginning on or after January 1, 2014 but prior to January 1, 2015 (tax year 2014), the maximum credit that can be used to offset tax is limited to 75% of the total of the carryforward credits from 2013 and any credit generated by donations made during 2014. Any unused credits must be carried forward to tax year 2015.

c) There will be no similar limitation to the percentage of the credit that can be used in tax years 2015 or later.

d) Example:

Taxpayer carries \$100 of credit from 2010 to 2011. Additional credits are earned as follows:

Year	Donation	Credit generated
2011	\$1,000	\$500
2012	\$600	\$300
2013	\$200	\$100
2014	\$400	\$200
2015	\$2,000	\$1,000
2016	\$0	\$0

The credits are reported as follows:

Tax year	Net tax	Credit claimed (column a)	Credit used (column b)	Carryforward credit
.	.	.	.	.
2011	\$700	\$600	\$100	\$500
2012	\$3,500	\$800	\$0	\$800
2013	\$1,500	\$900	\$450	\$450
2014	\$1,700	\$650	\$488	\$162
2015	\$100	\$1,162	\$100	\$1,062
2016	\$2,000	\$1,062	\$1,062	\$0

e) Example:

Taxpayer carries \$102,000 of credit from 2010 to 2011 (generated in 2009 and 2010). Additional credits are earned as follows:

Year	Donation	Credit generated
2011	\$250,000	\$100,000
2012	\$20,000	\$10,000
2013	\$70,000	\$35,000
2014	\$50,000	\$25,000
2015	\$55,000	\$27,500
2016	\$30,000	\$15,000

The credits are reported as follows:

Tax year	Net tax	Credit claimed (column a)	Credit used (column b)	Carryforward credit
.	.	.	.	.
2011	\$40,000	\$202,000	\$40,000	\$162,000
2012	\$45,000	\$172,000	\$45,000	\$127,000
2013	\$150,000	\$162,000	\$81,000	\$81,000
2014	\$80,000	\$106,000	\$79,500	\$26,500
2015	\$78,000	\$54,000	\$54,000	\$0
2016	\$63,000	\$15,000	\$15,000	\$0

**Regulation 39-22-123. Earned Income Credit.**

- 1) The Colorado earned income tax credit is 10% (8.5% for 1999) of the federal earned income credit claimed on the taxpayer's federal income tax return. The credit is available only to full and part-year Colorado residents. The credit is available only in tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-123(4), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess

revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.

- 2) **Part-Year Residents of Colorado.** The Colorado earned income credit of a part-year resident is computed by multiplying the percentage for the tax year times that portion of the federal earned income credit earned in Colorado. The portion of the federal earned income credit earned in Colorado is the federal earned income credit multiplied by the ratio (not to exceed 100%) of the modified Colorado adjusted gross income over the total modified federal adjusted gross income, as these amounts are determined by 39-22-110, C.R.S.

#### **Regulation 39-22-125. Health Benefit Plan Credit.**

- 1) **Credit.** For tax years beginning on or after January 1, 2000 eligible resident individuals may take a credit against Colorado income tax for certain health benefit plan premiums paid. The credit is available only in those tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in C.R.S. 39-22-125(6). In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.

#### **2) Credit Allowed.**

- a) The credit allowed is the amount paid for a health benefit plan up to a maximum of \$500, but the credit shall not exceed the income tax due for the tax year for which it is claimed. Any unused credit may not be refunded or carried forward as credit toward a subsequent year's income tax. No more than one health benefit plan credit is allowed for any one household.
- b) Payments made by a taxpayer or their employer for a health plan provided through the employer do not qualify for this credit. The credit applies only to fully insured funds and does not apply to Medicare, Medicaid or self-funded insurance plans. Further, this credit is not allowed for health plan payments that were deducted from federal adjusted gross income for that tax year.

#### **3) Eligible Individuals.**

Colorado resident individuals who purchase or pay premiums for a health benefit plan for themselves, their spouse or their dependents are allowed a credit against Colorado income tax under the following conditions and income limits:

##### **a) Benefit Plan Conditions**

- The resident individual, their spouse or their dependent were not covered by a health benefit plan for any part of the income tax year immediately preceding the income tax year for which they are claiming this credit; or
- The resident individual was allowed and was eligible to claim this credit for the income tax year immediately preceding the income tax year for which they are claiming this credit.

##### **b) Income Limits**

The following limitations are based on income for the calendar year immediately preceding the tax year for which the credit is claimed. For example, a taxpayer claiming this credit for the tax year ending December 31, 2001, is limited based on his/her calendar year 2000 income.

- For individuals filing a single return with no dependents, federal adjusted gross income may not exceed \$25,000.
- For two individuals filing a joint return with no dependents, federal adjusted gross income may not exceed \$30,000.
- For two married individuals with no dependents filing separate returns, combined federal adjusted gross income may not exceed \$30,000.
- For individuals with dependents, couples with dependents filing jointly or two married individuals with dependents filing separately, federal adjusted gross income may not exceed \$35,000.

#### **4) Part-year and Nonresidents.**

Part-year residents may only claim this credit on qualifying payments made while they were residents of Colorado. Nonresidents may not claim this credit.

#### **Regulation 39-22-126. Health Care Professional Credit.**

- 1) The credit for student loans of health care professionals is available only in those tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-126(9), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.
- 2) The amount of the credit is the smaller of:
  - a. One-third of the sum of the balance due on the loan(s) as of the beginning of the first income tax year for which the credit is claimed, or
  - b. The total of the taxpayer's Colorado income tax plus Colorado alternative minimum tax liability, if any, for the year.
- 3) The health care professional credit is limited to the amount of the taxpayer's income tax liability (i.e., the tax liability before any credits are applied). See, 39-22-126(3), C.R.S. If other income tax credits reduce the income tax liability to an amount smaller than the amount of the health care professional credit (calculated in subparagraph (b), above), then that amount of the health care professional credit that is greater than the net income tax liability (as reduced by the other credit(s)) will be refunded.
- 4) Certification forms issued annually by the Department of Public Health and Environment must be attached to the income tax return for each year the credit is claimed, and for returns filed after January 1, 2002 the form must identify the loan(s) and certify the amount of the qualifying loan(s) as of the beginning of the first income tax year for which the credit is claimed.
- 5) Taxpayers who claimed this credit but then move their residence out of, or cease practicing their profession in, a shortage area before the end of their commitment period must repay the entire amount of the total credit claimed. This repayment liability must be reported on, and paid with, the income tax return for the tax year in which the move occurs or their practice ceases, whichever is earlier.
- 6) For income tax years commencing on or after January 1, 2000 health care professional means physician, physician assistant, or advanced practice nurse who is licensed or certified as such under the laws of this state. For any income tax year commencing on or after January 1, 2001,

dentists licensed as such under the laws of this state qualify as health care professionals, and for any income tax year commencing on or after January 1, 2002, dental hygienists licensed as such under the laws of this state qualify as health care professionals.

**Regulation 39-22-127. Foster Care Credit.**

- 1) A refundable Colorado income tax credit of \$500 for operating a qualified foster care home is effective for the 2001 income tax year. The credit is available only to full and part-year Colorado residents. The credit is available only in tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-127(5), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.
- 2) **Part-Year Residents of Colorado.** The Colorado income tax credit for operating a qualified foster care home is available to individuals who operate a foster care home during the period they are Colorado residents that meets all the requirements of the credit statute.
- 3) **Qualifications:**
  - a. The taxpayer must operate the foster care home as defined in Section 26-6-102(4.5), C.R.S. for a child under the age of 18. The taxpayer may not be related to the individual with the exception of relative care.
  - b. The taxpayer must have provided 24-hour family care in the foster home in Colorado for at least 180 days during the taxable year.
  - c. The taxpayer must be a resident of Colorado during the same 180 day period.
  - d. The taxpayer must have incurred nonreimbursed expenses in connection with the operation of the foster care home during the taxable year.
  - e. The taxpayer must be identified by the Colorado Department of Human Services as the individual responsible for the operation of the foster care home.

**Regulation 39-22-128. Credit for forced sale of livestock due to weather conditions -credit of 4.63% for income deferred from federal taxable income under IRC section 451(e).**

- (1) For any income tax year commencing on or after January 1, 2002 but prior to January 1, 2004, a taxpayer that defers income under Internal Revenue Code (IRC) section 451(e) will be allowed a credit against Colorado income tax. The credit is earned and may be used in the same year the income is deferred on the federal tax return. The credit is computed as 4.63% of the income deferred under IRC section 451(e).
- (2) If the credit under (1) exceeds the income tax due, excess credit may be carried forward for five years. Excess credit is not refundable in any tax year.
- (3) This section does not create any modification, subtraction or addition to federal taxable income related to deferral of income or deferred reporting of income under IRC 451(e).

**Regulation 22-201. Reserved.**

**Regulation 22-202. Reserved.**

**Regulation 22-203. Reserved.**

**Regulation 22-204. Reserved.**

**39-22-301.1 DOING BUSINESS IN COLORADO**

(1) A corporation is doing business in Colorado for income tax purposes whenever the minimum standards of Public Law 86-272 (15 U.S.C. 381) are exceeded, and it has substantial nexus with this state as further provided in this regulation.

(2) Substantial Nexus Standard

(a)

(i) Business entities that are organized or commercially domiciled in this State have substantial nexus with this State.

(ii) Business entities organized outside the State are doing business in this State, have substantial nexus, and are subject to Colorado filing requirements and, if applicable, Colorado income tax imposed by Article 22 of Title 39 when in any tax period the property, payroll or sales of the business in the State, as such property, payroll, and sales are defined below in Subsection (c), exceeds the thresholds set forth in Subsection (b).

(b) Substantial nexus is established if any of the following thresholds is exceeded during the tax period:

(i) a dollar amount of \$50,000 of property; or

(ii) a dollar amount of \$50,000 of payroll; or

(iii) a dollar amount of \$500,000 of sales; or

(iv) twenty-five percent of total property, total payroll or total sales.

(c) Property, payroll and sales are defined as follows:

(i) Property counting toward the threshold is the average value of the taxpayer's real property and tangible personal property owned or rented and used in this State during the tax period. Property owned by the taxpayer is valued at its original cost basis. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period; but the executive director may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(ii) Payroll counting toward the threshold is the total amount paid by the taxpayer for compensation in this State during the tax period. Compensation means wages, salaries, commissions and any other form of remuneration paid to employees and defined as gross income under Internal Revenue Code § 61. Compensation is paid in this State if (A) the individual's service is performed entirely within the State; (B) the individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or (C) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the

service is directed or controlled is in the State, or (2) 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 individual's residence is in this State.

- (iii) Sales counting toward the threshold include the total dollar value of the taxpayer's gross receipts from
  - (A) the sale, lease or license of real property located in this State;
  - (B) the lease or license of tangible personal property located in this State;
  - (C) the sale of tangible personal property other than software or digital products received in this State as indicated by receipt at a business location of the seller in this State or by instructions, known to the seller, for delivery or shipment to a purchaser (or to another at the direction of the purchaser) in this State;
  - (D) the sale of software or digital products for primary use by a purchaser known to the seller to be in this state; and
  - (E) the sale, lease or license of services and intangibles for primary use by a purchaser known to the seller to be in this State. If the seller knows that a service or intangible will be used in multiple States because of separate charges levied for, or measured by, the use at different locations, because of other contractual provisions measuring use, or because of other information provided to the seller, the seller shall apportion the receipts according to usage in each State.
  - (F) If the seller does not know where a service or intangible will be used or where a tangible (including software or a digital product) will be received, the receipts shall count toward the threshold of the State indicated by an address for the purchaser that is available from the business records of the seller maintained in the ordinary course of business when such use does not constitute bad faith. If that is not known, then the receipts shall count toward the threshold of the State indicated by an address for the purchaser that is obtained during the consummation of the sale, including the address of the purchaser's payment instrument, if no other address is available, when the use of this address does not constitute bad faith.
- (iv) Notwithstanding the other provisions of this Subsection (c), for a taxpayer subject to the special apportionment methods under Colorado Special Regulations for Allocation and Apportionment of Corporate Income, the property, payroll and sales for measuring against the nexus thresholds shall be defined as they were for tax periods prior to 1/1/09 for apportionment purposes under those regulations. Such regulations are maintained and are available at the Colorado Department of Revenue, 1375 Sherman Street, Denver, Colorado 80202. Financial institutions subject to an apportioned income or franchise tax shall determine property, payroll and sales for nexus threshold purposes the same as for apportionment purposes under the Financial Institutions special regulation.
- (v) Pass-through entities, including, but not limited to, partnerships, limited liability companies, S corporations, and trusts, shall determine threshold amounts at the entity level. If property, payroll or sales of an entity in this State exceeds the



nexus threshold, members, partners, owners, shareholders or beneficiaries of that pass-through entity are subject to tax on the portion of income earned in this State and passed through to them.

- (vi) For purposes of the application of this rule and in order to clearly reflect the activity of a taxpayer in the state, the executive director may combine the payroll, property, or sales of two or more entities within a combined group if the payroll, property, or sales of those entities have been manipulated in order to artificially fall below the de minimis thresholds of (2)(b)(i) of this rule.

(3) A "safe harbor" lease transaction, by itself, does not create nexus for Colorado income tax purposes.

#### **Regulation 22-301.2.**

Any corporation electing to compute its Colorado income tax liability under this section must attach a statement to its return clearly establishing such election and the computation of tax thereunder. The corporation must meet the following qualifications:

- (a) The only activity of the corporation within this state consists of making sales,
- (b) The corporation does not own or rent real estate within this state, and
- (c) Gross annual sales in or into Colorado by the corporation do not exceed \$100,000.00.

#### **Regulation 22-302. Subchapter S income**

Subchapter S income attributable to an individual shall be treated as ordinary income subject to normal tax. A nonresident taxpayer will be taxed on his share of Subchapter S income from a Colorado business pursuant to 39-22-115 (2) (b) C.R.S. 1973. A credit will be allowed a Colorado resident for taxes paid to another state attributable to Subchapter S income. Cohen v . Department of Revenue , Colo., 593 P2d. 957 (1979).

#### **REGULATION 39-22-303.1. APPORTIONMENT FOR TAX YEARS BEGINNING PRIOR TO JANUARY 1, 2009.**

For income tax years beginning prior to January 1, 2009, every corporation doing business in Colorado and one or more other states has an annual election to apportion income under the provisions of section 39-22-303, C.R.S. (the Colorado Income Tax Act) or under the provisions of section 24-60-1301, C.R.S. (the Multistate Tax Compact). The election must be made with the filing of the Colorado income tax return and cannot be changed after the due date of the return. Statutory references in this regulation refer to those sections as they existed prior to January 1, 2009.

#### **REGULATION 39-22-303.3. Inclusion of Tangible Drilling Costs in the Property Factor.**

- (1) The provisions of this regulation apply for income tax years beginning prior to January 1, 2009. Statutory sections referenced in the regulation refer to those sections as they existed prior to January 1, 2009.
- (2) **Inclusion of intangible drilling costs in the property factor.** Intangible drilling costs should be included in both the numerator and the denominator of the property factor as computed under section 39-22-303(3), C.R.S. Since intangible drilling costs represent long range investments in the hope of producing oil or gas income, they are properly includable in the computation of the property factor.

- (3) **"Safe Harbor" lease property.** "Safe Harbor" lease property shall be included in the property factor of the lessee/user and shall be excluded from the property factor of the lessor/owner.

**REGULATION 39-22-303.4. "Safe Harbor" Lease Income.**

- (1) The provisions of this regulation apply for income tax years beginning prior to January 1, 2009. Statutory sections referenced in the regulation refer to those sections as they existed prior to January 1, 2009.
- (2) **"Safe Harbor" lease income.** All income and deductions created by "safe harbor" lease transactions shall be included in the numerator of the Colorado revenue factor only if the lessor's commercial domicile is located in Colorado. All income and deductions created by "safe harbor" lease transactions shall not be included in the numerator of the Colorado revenue factor if the lessor's commercial domicile is not in Colorado.
- (3) **Colorado destination sales of a corporation not having nexus in Colorado when such corporation is an includable member of an affiliated group of corporations.** In the case of a corporation that does not have nexus (is not doing business) in Colorado even though it is an "includable corporation" in an affiliated group of unitary corporations filing a combined Colorado return, the sales of such corporation of property delivered to purchasers in Colorado shall not constitute Colorado sales for purposes of determining the revenue factor.

**REGULATION 39-22-303.5.1(A) BUSINESS AND NONBUSINESS INCOME**

- (1) Section 39-22-303.5(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. All income that arises from the conduct of trade or business operations of a taxpayer is business income. The income of the taxpayer is business income unless clearly classifiable as nonbusiness income under the standards set forth in this regulation, under constitutional law or otherwise as explicitly provided by law.
- (2) 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, non-operating 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 activities that are the elements of a particular trade or business. In general all transactions and activities of the taxpayer that are dependent upon or contribute to the operation 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 paragraph (3) of regulation 39-22-303.11(c) concerning the calculation of income when a taxpayer engages in more than one line of business.)
- (3) **Business and Nonbusiness Income: Application of Definitions.** The following are rules for determining whether particular income is business or nonbusiness income:
- (a) **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 is incidental thereto.
- (b) **Gains or losses from sales of assets.**

- (i) 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 exclusively for the production of nonbusiness income the gain or loss will constitute nonbusiness income. If the property was used both for the production of business income and nonbusiness income then the gain from the sale is business income. If the property was held for sale after having been used for the production of business income, the gain or loss shall be business income.
  - (ii) Gain or loss from the sale, exchange or other disposition of property shall be included in business income if such property 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. Gain or loss from the disposition of property held as reserves or standby facilities or property held as a reserve source of materials shall be included in business income. Gain or loss from the disposition of property or equipment under construction during the tax period shall be included in business income if such property was intended to be used in the regular course of the trade or business of the taxpayer.
- (c) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of, is used, 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.
- (d) 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.
- (e) 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.

#### (4) Proration of Deductions.

- (a) 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 that fairly distributes the deduction among the classes of income to which it is applicable.
- (b) Consistency and uniformity in reporting.
  - (i) 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.
  - (ii) State-to-State uniformity. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under this section, Article IV of the Multistate Tax

Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction then the taxpayer shall disclose in its return to this state the nature and extent of the variance or variances, except where such non-uniformity in reporting is a direct and necessary consequence of differences between the law of this state and the law of another state.

#### **REGULATION 39-22-303.5.1(B) OTHER DEFINITIONS**

In addition to the definitions provided in §39-22-303.5 C.R.S., the following terms are defined or further defined as follows:

- (1) "Apportionment" refers to the division of business income among states by use of a formula containing apportionment factors.
- (2) "Allocation" refers to the assignment of nonbusiness income to one or more particular states.
- (3) "Business activity" refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.
- (4) "Sales" – See regulation 39-22-303.5.4

#### **REGULATION 39-22-303.5.3 APPORTIONMENT AND ALLOCATION.**

- (1) Apportionment. 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 that is derived from sources within this state shall be determined by apportionment in accordance with §39-22-303.5(4), C.R.S.
- (2) Allocation. Unless electing to treat all income as business income (see regulation 39-22-303.5.6), 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 §39-22-303.5(5), C.R.S.
- (3) Combined Report. If a particular trade or business is carried on by a taxpayer and one or more affiliated corporations, nothing 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 §39-22-303, §39-22-303.5, or §39-22-303.7. However, the income in the combined report may be required to be calculated pursuant to regulation 39-22-303.11(c), section (3) and pursuant to any applicable special regulations for allocation and apportionment of corporate income.
- (4) Consistency and Uniformity in Reporting. 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, except for nonbusiness income with respect to which an election has been made pursuant to §39-22-303.5(6), C.R.S. in the returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
- (5) Taxable in Another State.
  - (a) In general. Under §39-22-303.5(3)(b), C.R.S., the taxpayer is subject to the allocation and apportionment provisions of this section 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 §39-22-303.5(3)(c), C.R.S.

- (b) 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 §39-22-303.5(3)(c)(I), C.R.S., namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, or other similar 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.
- (c) 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.
- (d) A taxpayer is "subject to" one of the taxes specified in §39-22-303.5(3)(c)(I), C.R.S., if it carries on business activities in such state and such state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in §39-22-303.5(3)(c)(I), C.R.S., in another state shall furnish to the executive director upon his or her 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 §39-22-303.5(3)(c)(I), C.R.S., in such other state.
- (e) 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
- i. does not actually engage in business activity in that state, or
  - ii. 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 §39-22-303.5(3)(c)(I), C.R.S.
- (f) 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 that do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in §39-22-303.5(3)(c)(I), C.R.S. that 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 §39-22-303.5(3)(c)(I), C.R.S. in another state. By way of illustration and not of limitation, regulatory measures could include fees charged out-of-state cigarette and tobacco vendors for access to the state's market or out-of-state alcoholic beverage vendors to ensure compliance with local liquor laws.
- (g) The second test, that of §39-22-303.5(3)(c)(II), C.R.S., 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 provision of Public Law 86-272, 15 U.S.C.A., paragraphs 381-385. In the case of any "state" as defined in §39-22-303.5(1)(e) C.R.S. 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 applies 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.

#### **REGULATION 39-22-303.5.4(A) CALCULATION OF SALES FACTOR**

- (1) In General. Section 39-22-303.5(1)(d), C.R.S. generally defines the term "sales" to mean all gross receipts of the taxpayer not allocated under subsection (5) of section 303.5, C.R.S. Thus, except as otherwise specifically provided, 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 that 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, the performance of equipment service contracts, or 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 assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.
  - (f) In the case of a taxpayer engaged in the sale of intangible personal property, including patents and copyrights, "sales" means the gain therefrom.
  - (g) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales".
  - (h) "Safe Harbor" lease income. All income and deductions created by "safe harbor" lease transactions shall be included in the numerator of the Colorado sales factor only if the lessor's commercial domicile is located in Colorado. All income and deductions created by "safe harbor" lease transactions shall not be included in the numerator of the Colorado sales factor if the lessor's commercial domicile is not in Colorado.
- (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.

- (3) Colorado destination sales of a corporation not having nexus in Colorado when such corporation is an includable member of an affiliated group of corporations. In the case of a corporation that does not have nexus (is not doing business) in Colorado even though it is an "includable corporation" in an affiliated group of unitary corporations filing a combined Colorado return, the sales of such corporation of property delivered to purchasers in Colorado shall not constitute Colorado sales for purposes of determining the sales factor.
- (4) Denominator. The denominator of the sales factor shall include the total sales derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under §39-22-303.5(7)(b), C.R.S.
- (5) Numerator. The numerator of the sales factor shall include sales 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.
- (6) Consistency and Uniformity in Reporting.
  - (a) Numerator/denominator consistency. In filing returns with this state, the taxpayer must use the same methodology in calculating both the numerator and the denominator of the sales factor.
  - (b) 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.
  - (c) State-to-State uniformity. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under this section, Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, then the taxpayer shall disclose in its return to this state the nature and extent of the variance or variances, except where such non-uniformity in reporting is a direct and necessary consequence of differences between the law of this state and the law of another state.

#### **REGULATION 39-22-303.5.4(B) SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE**

- (1) Gross receipts from sales of tangible personal property 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 condition 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 to which the property is shipped.
- (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 en route 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 salesperson 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 this state only if the third party ships the property from this state.
  - (b) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

**REGULATION 39-22-303.5.4(C) SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE.**

- (1) Gross receipts from services rendered are included in the Colorado sales factor numerator if the service that gave rise to the gross receipt is performed wholly within Colorado. If the service is performed within and without Colorado, and except as otherwise provided by §39-22-303.7, C.R.S. or applicable special regulations for allocation and apportionment of corporate income or other regulation, the portion of the gross receipt included in the Colorado numerator is found by multiplying the gross receipt by a fraction, the numerator of which is the direct costs incurred in the performance of that service in Colorado and the denominator of which is the direct costs incurred in the performance of that service everywhere.
  - (a) Direct costs include
    - i. wages of employees engaged in the performance of the service;
    - ii. taxpayer's payments to an agent or independent contractor for the performance of personal services on behalf of the taxpayer which give rise to the particular item of gross receipts;
    - iii. a reasonable measure of the real and tangible-personal property used in the performance of the service. Such reasonable measure could be a market lease rate, depreciation, or other reasonable method. However, the same method must be used consistently from year to year and from state to state.
    - iv. Services on Behalf of the Taxpayer. An activity giving rise to gross receipts performed on behalf of a taxpayer by an agent or independent contractor is attributed to this state if such activity giving rise to gross receipts is in this state. In order to be included as a sale of the taxpayer in either the numerator or denominator of the sales factor, the activities described in this subparagraph iv must themselves directly give rise to gross receipts of the taxpayer. By way of illustration and not of limitation, such costs could include, for an accounting firm, amounts paid to an independent contractor accountant whose time or activities directly relate to the accounting of the firm's client and which time or activities directly give rise to a billing item presented to the firm's client. Such costs would not include, for the same firm, amounts paid to an independent contractor accountant whose services consist of accounting services related to the firm's accounting, because these activities do not give rise to gross receipts of the taxpayer.



1. Such activity giving rise to gross receipts is in this state:
  - a. when the taxpayer can reasonably determine at the time of filing that the activity is actually performed in this state by the agent or independent contractor, but if the activity occurs in more than one state, the location where the activity is actually performed shall be deemed to be not reasonably determinable at the time of filing under this subparagraph (1)(a)(iv)(1)(a);
  - b. if the taxpayer cannot reasonably determine at the time of filing where the activity is actually performed, when the contract between the taxpayer and the agent or independent contractor indicates it is to be performed in this state and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract;
  - c. if it cannot be determined where the activity is actually performed and the agent or independent contractor's contract with the taxpayer does not indicate where it is to be performed, when the contract between the taxpayer and the taxpayer's customer indicates it is to be performed in this state and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract; or
  - d. if it cannot be determined where the activity is actually performed and neither contract indicates where it is to be performed or the portion of the payment associated with such performance, when the domicile of the taxpayer's customer is in this state. If the taxpayer's customer is not an individual, "domicile" means commercial domicile.
2. If the location of the activity giving rise to gross receipts by an agent or independent contractor, or the portion of the payment associated with such performance, cannot be determined under subparagraphs (1)(a)(iv)(1)(a) through (1)(a)(iv)(1)(c), or the taxpayer's customer's domicile cannot be determined under subparagraph (1)(a)(iv)(1)(d), or, although determinable, such activity is in a state in which the taxpayer is not taxable, such income producing activity shall be disregarded.

(b) Direct costs do not include

- i. Overhead costs,
  - ii. Management costs, unless such management was directly involved in the performance of the service, and
  - iii. The costs of property not directly used in the performance of the service.
- (2) Rents and royalties from real property located in Colorado are included in the Colorado sales factor numerator.
- (3) Gross proceeds from the sale of real property located in Colorado are included in the Colorado sales factor numerator.

- (4) Interest and dividend income is included in the Colorado sales factor numerator if the taxpayer's commercial domicile for that trade or business is located in Colorado.
- (5) Gain from the sale of intangible property is included in the Colorado sales factor numerator if the taxpayer's commercial domicile for that trade or business is located in Colorado.
- (6) Patent and copyright royalties are included in the Colorado sales factor numerator if:
  - (a) The patent or copyright is utilized by the payer in Colorado, or
  - (b) The patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile for that trade or business is located in Colorado.
- (7) Revenue from the performance of purely personal services is included in the Colorado sales factor numerator if the income producing activity is performed in Colorado.
  - (a) Purely personal services consist of services that are performed by individuals with only incidental contributions either from individuals not directly engaged in the performance of the service or from property.
  - (b) Such services include, but are not limited to
    - i. legal, accounting, or other professional services,
    - ii. entertainment and sporting services.
  - (c) In general, the performance of each individual is a separate income producing activity. Where sales are generated by the performance of services of a number of individuals, such sales must be divided among the several individuals performing the services. Such division must be reasonably related to the generation of the revenue. The contributions of individuals whose services are not the direct object of the contract (such as para-professionals and support and administrative staff) are not considered income producing activities. Their contributions are not considered in performing the calculation described in subparagraph (d) of this paragraph (7). If the contributions of such personnel are more than incidental, then the activity is not a purely personal service and would be apportioned pursuant to 39-22-303.5(4)(c)(I), C.R.S.
  - (d) Each income producing activity is performed in Colorado to the extent that the individual is in Colorado when performing the service. Thus, an income producing activity for the performance of purely personal services is in Colorado in the ratio of the time spent in Colorado in performing the service to the total time spent in performing the service. Time spent in performing the service includes the amount of time expended in the performance of a contract or other obligation that gives rise to the revenue. 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 computation.

**REGULATION 39-22-303.5.5 NON-BUSINESS INCOME**

- (1) Reserved
- (2) Reserved
- (3) Reserved

- (4) Tangible personal property has a situs in Colorado at the time of the sale if it is physically located in Colorado immediately prior to the sale of the property. The movement of property in anticipation of sale or as part of the sale transaction is not considered in determining its situs immediately prior to the time of sale.

#### **REGULATION 39-22-303.5.6 ELECTION TO TREAT NON-BUSINESS INCOME AS BUSINESS INCOME**

- (1) Every year, taxpayers have an election to treat all non-business income as business income.
- (a) The election must be made with the original return on the appropriate departmental form filed prior to the extended due date of the return (the fifteenth day of the tenth month following the close of the tax year). If no departmental form is available, the taxpayer may make the election on its own form in a clear and unequivocal manner filed together with the original return. The taxpayer's form must be clearly marked "Election to treat non-business income as business income for the tax year ending MM, YYYY" (enter the appropriate month and year in which the tax year for which the election is being made ends).
  - (b) Once the election has been filed for the year, it may not be changed, even if the extended due date for the year has not passed.
  - (c) The filing of a return without the election constitutes the non-exercise of the election for that tax year, even if the return is calculated with all income as business income.
  - (d) The failure to file a return prior to the extended due date of the return constitutes the non-exercise of the election for that tax year.
- (2) If the election described in this regulation is made for the income tax year, all sales of the taxpayer are included in the denominator and, if appropriate, the numerator of the taxpayer's sales factor.

#### **REGULATION 39-22-303.5.7(A)**

For special regulations for allocation and apportionment of corporate income of certain industries for tax years beginning before January 1, 2009, see special regulations issued pursuant to the Multistate Tax Compact, title 24, article 60, part 13. The following special regulations implement the single sales factor apportionment methodology set forth in §39-22-303.5, C.R.S. as modified pursuant to §39-22-303.5(7)(a), C.R.S., and apply to tax years beginning on or after January 1, 2009.

Special Regulation 1A – Airlines

Special Regulation 2A – Contractors

Special Regulation 3A– Publishing

Special Regulation 4A – Railroads

Special Regulation 5A – Television and Radio Broadcasting

Special Regulation 6A – Trucking

Special Regulation 7A – Financial institutions

Special Regulation 8A - Telecommunications

## **REGULATION 39-22-303.5.7(B)**

- (1) Section 39-22-303.5(7)(b), C.R.S. permits a departure from the allocation and apportionment provisions of §39-22-303.5, C.R.S. (hereinafter “303.5” ) only in limited and specific cases. Paragraph (7)(b) of 303.5 may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in section 303.5.
- (2) In the case of certain industries, the general regulations under section 303.5 in respect to the apportionment formula do not set forth appropriate procedures for determining the apportionment factors. Nothing in §39-22-303.5(7)(b), C.R.S. or in this regulation 39-22-303.5.7(b) shall preclude the executive director from establishing appropriate procedures under 303.5 and paragraph (7)(a) of 303.5 for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.
- (3) In the case of certain taxpayers, the general regulations under § 39-22-303, C.R.S. and 303.5 do not set forth appropriate procedures for determining income or the apportionment factors. Nothing in §39-22-303.5(7)(b), C.R.S. or in this regulation 39-22-303.5.7(b) shall preclude the executive director from distributing or allocating income and deductions under §39-22-303(6), C.R.S.
- (4) Special rules
  - (a) 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.
  - (b) 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.
  - (c) Where business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, and such income cannot be assigned to the numerator of the sales factor for any state, such income shall be excluded from the denominator of the sales factor.
  - (d) 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.

## **REGULATION 39-22-303.5.8 INCOME FROM FORECLOSURES – LIMITED IN-STATE ACTIVITY**

A taxpayer who qualifies under the provisions of §39-22-303.5(8), C.R.S. must file using the rules of that provision (direct allocation). A taxpayer may not make an election pursuant to §39-22-303.5(6), C.R.S. to treat such income as business income.

## **REGULATION 39-22-303.5.9 APPORTIONMENT RULES AND REGULATIONS ISSUED PURSUANT TO ARTICLE IV OF THE MULTISTATE TAX COMPACT**

Apportionment rules and regulations issued pursuant to Article IV of the Multistate Tax Compact, § 24-60-1301, C.R.S., remain in effect for tax years beginning prior to January 1, 2009. Those rules and regulations are not applicable with respect to tax years beginning on or after January 1, 2009, except as otherwise referred to in regulations effective for tax years on or after January 1, 2009.

**Regulation 39-22-303.6. Distributions and allocation of gross income and deductions between or among C corporations.**

Even though subsection 39-22-303(6), C.R.S. has been superseded by subsection 39-22-303(11), C.R.S., as a vehicle for requiring combined reporting for affiliated C corporations, subsection 39-22-303(6) is still available for use by the Department of Revenue or by the taxpayer for determining Colorado taxable income by use of methodology such as that contained in section 482 of the Internal Revenue Code in applying “arm’s length pricing” procedures.

**REGULATION 39-22-303.7.1 OTHER DEFINITIONS**

In addition to the definitions provided in §39-22-303.7, C.R.S., and for the purpose of implementing § §39-22-303.5, 304, and 303.7, C.R.S. and related regulations, the following terms are defined or further defined as follows:

- 1) “Affiliate of” or “affiliated with” another person means any person directly or indirectly controlling, controlled by, or under common control with such other person.
- 2) “Affiliated regulated investment company” or “affiliated RIC” means a regulated investment company that (1) is a shareholder in another regulated investment company and (2), in common with such other regulated investment company, obtains management or distribution services, as described in 4)a) and 4)b), from the same provider of such services or a related provider.
- 3) “Direct” and “indirect” services
  - a) Direct services. Amounts are derived directly from the performance of management, distribution, or administration services when they are received as compensation for providing such services to a RIC or to a RIC’s officers, directors or trustees acting on behalf of the RIC. For example, the fee received by a person hired by a RIC’s trustees to manage the RIC’s assets is derived directly from the performance of management services.
  - b) Indirect services. Amounts are derived indirectly from the performance of management, distribution, or administration services when they are received as compensation for providing such services to a person who is directly responsible for providing management, distribution or administration services to a RIC pursuant to a contract between such person and the RIC or the RIC’s officers, directors, or trustees acting on behalf of the RIC. For example, the fee received by a brokerage firm hired by a person that is under contract to provide management services to a RIC is derived indirectly from the performance of management services.
- 4) “Mutual Fund Sales”: Mutual fund sales means gross receipts derived, directly or indirectly, from the performance of the following services:
  - a) Management services. The term management services includes, but is not limited to, the rendering of investment advice or investment research to or on behalf of a RIC, making determinations as to when sales and purchases of securities are to be made on behalf of the RIC, or the selling or purchasing of securities constituting assets of a RIC. Such activities must be performed:
    - i) pursuant to a contract with the RIC entered into pursuant to 15 U.S.C. section 80a-15(a);
    - ii) for a person that has entered into a contract referred to in subsection i) with the RIC;  
or

- iii) for a person that is affiliated with a person that has entered into a contract referred to in i) with the RIC.
- 5) “Distribution services.” The term distribution services includes, but is not limited to, advertising, servicing, marketing or selling shares of a RIC, including the receipt of contingent deferred sales charges and fees received pursuant to 17 CFR § 270.12b-1 (Sept. 9, 2004), which is incorporated herein by reference, but such incorporation by reference 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.
- a) In the case of an open end company, advertising, servicing or marketing shares must be performed by a person who is either engaged in or affiliated with a person that is engaged in the services of selling shares of a RIC. The service of selling shares of a RIC must be performed pursuant to a contract entered into pursuant to 15 U.S.C. section 80a-15(b).
  - b) In the case of a closed end company, advertising, servicing or marketing shares must be performed by a person who was either engaged in or affiliated with a person that was engaged in the services of selling shares of a RIC.
- 6) “Administration services.” The term administration services includes, but is not limited to, clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for a RIC. The provider of administration services must also provide or be affiliated with a person that provides management or distribution services to any RIC.
- 7) “Average Number of Shares” means the average of the number of shares owned by a class of shareholders at the beginning of each year and by the same class of shareholders at the end of the year, where “the year” refers to the RIC’s taxable year that ends with or within the mutual fund service corporation’s taxable year.
- 8) “RIC” or “regulated investment company” or “fund” means a regulated investment company as defined in section 851 of the federal internal revenue code of 1986, as amended. For purposes of the apportionment of income pursuant to §39-22-303.7, §39-22-303.5(7), and these regulations, if the mutual fund service corporation principally provides management, distribution, or administration services to regulated investment companies as defined in section 851 of the federal internal revenue code, such terms also include pension and employee retirement plans and foreign entities similar to regulated investment companies as defined in section 851 of the federal internal revenue code.
- 9) “Shareholder factor” or “Colorado shareholder factor” means the Average Number of Shares owned by the RIC’s shareholders domiciled in Colorado divided by the Average Number of Shares owned by the RIC’s shareholders everywhere.

#### **REGULATION 39-22-303.7.2 APPLICATION**

- 1) The Colorado net income of mutual fund service corporations shall be calculated pursuant to § 39-22-303.5 and 304, C.R.S. with the modification to apportionment set out in §39-22-303.7, C.R.S. and related regulations.
- 2) Colorado receipts from mutual fund sales – To determine Colorado receipts from mutual fund sales, a mutual fund service corporation must calculate mutual fund sales by fund and apply the Colorado shareholder factor for each fund to such mutual fund sales by fund.

- a) Colorado receipts by fund are calculated by multiplying mutual fund sales by fund by each fund's shareholder factor.
  - b) The total Colorado receipts from mutual fund sales are then calculated by adding together the Colorado receipts for each separate fund.
- 3) If the domicile of a shareholder is unknown to the mutual fund service corporation because the shareholder of record is a person that holds the shares of a regulated investment company as a depositor for the benefit of others, §39-22-303.7(2)(b) provides that the mutual fund service corporation may use any reasonable basis, such as ZIP codes of underlying shareholders or US census bureau data, in order to determine the proper location for the assignment of the shares. If no other basis appears reasonable, and if the number of such shares is not a majority of the total shares of the fund, then it shall be reasonable to exclude such shares from both the numerator and the denominator of the shareholder factor calculation.

**Regulation 39-22-303.8**

- (1) For tax years beginning on or after Jan. 1, 1986, corporations are not includible in a combined report if eighty percent or more of the property and payroll are assigned to locations outside the United States. The eighty percent threshold is determined by averaging the property and payroll factors. The property and payroll factors shall be determined in accordance with section 24-60-1301, C.R.S. and all regulations thereunder.

**Regulation 39-22-303.9 DIVIDENDS RECEIVED [Repealed eff. 03/03/2014]**

**REGULATION 39-22-303.10 "Foreign Source Income"**

"Foreign source income" is taxable income from sources outside the United States as defined in section 862 of the internal revenue code. "Foreign source income" includes, but is not limited to, interest, dividends (including Sec. 78 "gross-up,") compensation for personal services, rents and royalties, and net income from the sale of property. "Foreign source income" is gross income, less expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions that cannot be allocated to some item or class of gross income.

IRC Sec. 78 dividend shall be subtracted from federal taxable income in accordance with 39-22-304(3)(j), C.R.S.

- (1) If a taxpayer elects to claim foreign income taxes as a deduction for federal income tax purposes, such deductions shall also be allowed for Colorado income tax purposes.

Colorado modifications to federal taxable income shall include any foreign source income and related foreign income taxes included in a combined report but not included in the federal return.

- (2) (a) If a federal election is made to claim foreign taxes as a credit, a percentage of foreign source income shall be excluded from Colorado income subject to apportionment and from the numerator and denominator of the sales factor.

For purposes of this regulation, foreign tax includes tax paid or accrued, deemed paid, or carried over or carried back to the tax year, per the federal income tax return. Not included are taxes carried over from, or carried back to, a tax year beginning before Jan. 1, 1986.

The foreign source income exclusion shall be the lesser of:

- (i) Foreign source income (Excluding Sec. 78 Dividend), or

- (ii) The product of Foreign Taxes Paid ("FT") and the Foreign Source Income (Excluding Sec. 78 Dividend) ("FSI net §78" ) divided by the product of the effective federal corporation tax rate ("Fed Rate" ) and the Foreign Source Income (Including Sec.78 Dividend) ("FSI" ). This is expressed as the following formula:

$$(FT \times \text{"FSI net §78"}) / (\text{Fed Rate} \times \text{FSI})$$

The effective federal corporation tax rate means the combined taxpayer's federal corporate income tax (calculated in accordance with section 11(a) and (b) of the internal revenue code for such tax year) divided by the combined taxpayer's federal taxable income. As a formula:

$$\text{Effective federal corporate tax rate} = \text{federal corporate income tax} / \text{federal corporate taxable income}$$

Modifications computed per this regulation shall be claimed as "other" additions or subtractions in the modification section of the Colorado corporate income tax return.

- (b) For tax years commencing prior to January 1, 2000, the denominator of the formula in subsection (b)(i) will use 46% in place of the effective federal corporation tax rate.
- (3) When determining foreign source income for a foreign corporation, such income shall not include any income of the foreign corporation that is derived from the conduct of a trade or business within the United States.
- (4) For income tax years beginning on or after January 1, 2009, the excess, if any, of a taxpayer's foreign source income over the foreign source income exclusion shall not be included in the numerator of the Colorado sales factor (see 39-22-303.5(4)(e)).

#### **Regulation 39-22-303.11(A) COMBINED RETURNS**

- 1) In any case, when two or more C corporations which are members of an affiliated group as defined in subsection 39-22-303(12), C.R.S., qualify under the provisions of subsection 39-22-303(11) to file a combined report for Colorado income tax purposes, they must do so.
- 2) Section 39-22-303(11)(a), C.R.S., provides that only those members of an affiliated group of C corporations that satisfy three of the six tests of unity as provided therein for the current tax year and the two preceding tax years may join in the filing of a combined report. Thus, corporations that were not in existence for the two preceding tax years may not join in the filing of a combined report.
- 3) In order to be included in a combined report, an affiliated C corporation must meet at least three of six tests of unity with one or more other affiliated C corporations includable in the combined report. The six tests of unity are discussed in paragraphs a) through f) following:
- a) The first test of unity is met if 50% or more of the gross operating receipts of one affiliated C corporation is from sales or leases to another affiliated C corporation; or if 50% or more of the cost of goods sold and/or leased by one affiliated C corporation is paid to another affiliated C corporation.

Example: \$85,000 of A corporation's gross operating receipts of \$100,000 are from sales to affiliated corporation B. A and B have met the first test of unity.



Example: \$69,000 of C corporation's total costs of goods sold of \$75,000 are purchases from affiliated corporation D. C and D have met the first test of unity.

- b) The second test of unity is met if 50% or more of the value of five or more of the listed services utilized by one C corporation during the tax year is furnished by an affiliated C corporation at less than an arm's length charge.

Example: Corporation E furnished the following services to corporation F during the tax year at the charges indicated. As a result, E and F have met the second test of unity.

<b>Service</b>	<b>Total value of services provided to F from all sources</b>	<b>Value of services provided to F by E</b>	<b>Percent provided by E</b>	<b>Charge</b>
Advertising and public relations	\$150,000	\$110,000	73%	\$26,000
Accounting and bookkeeping	\$80,000	\$70,000	87.5%	\$15,000
Legal services	\$50,000	\$35,000	70%	\$30,000
Personnel services	\$120,000	\$120,000	100%	-0-
Sales services	\$235,000	\$141,000	60%	\$135,000
Purchasing services	\$100,000	\$40,000	40%	\$15,000
Research and development services	\$240,000	\$240,000	100%	\$240,000
Insurance procurement and servicing exclusive of employee benefit programs	-0-	\$100,000	0%	-0-
Employee benefit programs	-0-	\$250,000	0%	-0-

- c) The third test is met if 20% or more of the long-term debt (debt lasting more than one year) is owed to or guaranteed by an affiliated corporation.

Example: Corporation G guarantees 35% of affiliated corporation H's long-term debt and 15% of corporation I's long-term debt. Corporations G and H have met the third test of unity. Corporations G and I have not met the third test of unity.

- d) The fourth test of unity is met for two affiliated C corporations if one of them substantially uses the patents, trademark, service marks, logo-types, trade secrets, copyrights, or other proprietary materials owned by the other.
- e) The fifth test of unity is met for both corporations if 50% or more of the board of directors of one affiliated C corporation are members of the board of directors or are corporate officers of another affiliated C corporation.

Example: Parent corporation J has 20 members on its board of directors. Twelve of these members are members of subsidiary corporation K's board of directors and eight are members of subsidiary corporation L's board of directors. Corporations J and K have met the fifth test of unity. Corporations J and L have not.

- f) The sixth test of unity is met for both corporations if 25% or more of the 20 highest ranking officers of one affiliated C corporation are members of the board of directors or are corporate officers of an affiliated C corporation.

Example: Five of the 20 highest ranking officers of corporation M are either officers or board members of corporation N. Corporations M and N have met the sixth test of unity.

Example: Corporation O has only 13 officers. Three of these officers were officers of P corporation and another one was a P corporation board member. Since over 25% of O corporation's highest officers ( $4/13 = 30.76\%$ ) were either board members or officers of P corporation, corporations O and P have met the sixth test of unity.

- 4) Only those members of an affiliated group of C corporations that have met at least three of the six tests of unity within a given affiliated group of corporations may join in the filing of a combined report.

Example: Parent corporation Q has met 4 tests of unity with subsidiary corporation R, 3 tests of unity with subsidiary S, 2 tests of unity with subsidiary T, and no tests of unity with subsidiary U. R has met two tests with S and 1 test with U. S has met two tests with T and two with U. Since each member of this affiliated group has met at least three tests of unity with other members of the group, a combined report is required to be filed.

Example: Unitary affiliated group Q-U acquired unitary affiliated group V-Z on October 13, 1993. The tests of unity are met between members of group Q-U on the one hand and members of group V-Z on the other but there have not been at least three tests of unity met between the two groups. Group Q-U would be required to file one combined report, and group V-Z would be required to file another combined report. The two groups could elect to file a consolidated return under section 39-22-305, C.R.S., if they so qualify.

**Regulation 39-22-303.11(C) APPORTIONMENT OF INCOME ON A COMBINED REPORT**

- 1) The provisions of this regulation apply for income tax years beginning on or after January 1, 2009. The provisions of Regulation 39-22-303-11(c), as it existed prior to January 1, 2009, apply to income tax years beginning prior to January 1, 2009.
- 2) Except as otherwise provided in regulation 39-22-303-11(e), when filing a combined report, the affiliated group of corporations shall file one return, apportioning income under the provisions of either 39-22-303.5 C.R.S. or 39-22-303.7 C.R.S., summing the numerators to derive a single apportionment factor for the combined group.

Example: Of the unitary affiliated group of C corporations, A, B, and C, A and B are doing business in Colorado, C is not. The Colorado sales factors of the three corporations are as follows:

Corporation A:	Colorado sales	\$5,160,118
.	Total revenue	\$7,652,492
Corporation B:	Colorado sales	\$1,642,720
.	Total revenue	\$80,009,652
Corporation C:	Colorado sales	\$183,290
.	Total revenue	\$814,005

The combined sales factor would be as follows:

Colorado sales (A+B) = \$6,802,838

Total sales (A+B+C) = \$88,476,149\*

Combined Sales Factor = 7.6889%

\* assuming no intercompany eliminations

The 7.6889% sales factor is applied to the combined modified federal taxable income (after intercompany eliminations) of the affiliated group to determine the Colorado taxable income to be reported on the combined filing.

- 3) A taxpayer may be engaged in activities that subject the taxpayer to more than one apportionment methodology; those activities may be engaged in by the same corporation or more than one corporation. In these cases, the factors of the lines of business may bear no logical relationship to each other and the calculation of Colorado net income shall be done according to the sales provisions of Special Regulations for Allocation and Apportionment of Corporate Income<sup>1-7</sup>.

**Regulation 39-22-303.11(D) COMBINED RETURNS [Repealed eff. 03/03/2014]**

**Regulation 39-22-303.11(e). Reserved.**

**Regulation 39-22-303.12(a). An affiliated group.**

An affiliated group is formed when more than fifty percent of the voting power of all classes of stock and more than fifty percent of each class of nonvoting stock of each includible corporation, except the common parent corporation, are owned directly by one or more of the other includible corporations, and the common parent corporation owns directly stock possessing more than fifty percent of the voting power of all classes of stock and more than fifty percent of each class of the nonvoting stock of at least one of the other includible corporations.

**Regulation 39-22-303.12(b) Reserved.**

**Regulation 39-22-303.12(c). Corporations without property and payroll factors.**

C.R.S. 39-22-303(12)(c) provides that only those corporations whose property and payroll factors are assigned twenty percent or more to locations inside the United States may be included in a combined report. Since corporations that have no property or payroll factors of their own cannot have twenty percent or more of their factors assigned to locations in the United States, such corporations, by definition, cannot be included in a combined report.

**Regulation 39-22-304(2)(f). Gross Conservation Easement Addition.**

If a charitable deduction is claimed on the federal income tax return for any donation upon which the gross conservation easement credit is also claimed, the amount deducted from federal taxable income must be added back to taxable income to determine the taxpayer's Colorado taxable income. If the federal deduction for this donation exceeds the amount of the credit created by the donation, the addback will not exceed an amount equal to the credit claimed, including any credit transferred to another taxpayer or carried forward to future tax years.

**Regulation 39-22-304(3)(i). Wages and Salaries Corporate Income Tax Modification [Eff. 1/1/2009]**

Wages and salaries that cannot be deducted on the federal level because of the limitations of section 280C of IRC can be subtracted from federal taxable income reported to the State of Colorado. Wages and salaries that qualify for this subtraction include those for which the following federal credit(s) was taken on the federal return:

- a) The Indian Employment Credit under section 45A(a),

- b) The Work Opportunity Credit under section 51(a),
- c) The Empowerment Zone Employment Credit under section 1396(a).
- d) The Orphan Drug Credit under section 45C(a).
- e) The Research Expense Credit under section 41(a).
- f) The Employee Retention Credit under Section 1400R
- g) The Welfare-To-Work Credit under Section 51A
- h) The Mine Rescue Team Training Credit under Section 45N

The Employer Social Security Credit (FICA Tip Credit) under section 45B of the IRC is not referenced in section 280C of the Internal Revenue Code and, therefore, cannot be subtracted from federal taxable income on the Colorado income tax return.

#### **REGULATION 39-22-305. CONSOLIDATED RETURNS**

##### (1) Election to file a consolidated return.

- (a) The election to file a consolidated C corporation return afforded under §39-22-305, C.R.S. may not be changed after the due date for filing the return including extensions of time for filing the return.
- (b) When an affiliated group of "C" corporations elects to file a consolidated return, such election year is included in the four-year period required by the statute. Therefore, the election to file a consolidated return is binding for the election year and the next three tax years unless permission is granted in writing from the executive director for an earlier change.
- (c) From the fifth year forward, there is an annual election to continue or discontinue the consolidated filing. When an eligible taxpayer elects and files a separate return in any year, a subsequent election to file a consolidated return will restore the taxpayer to filing on the consolidated basis for the following three years, unless permission is granted in writing from the executive director for an earlier change.
- (d) For any year a consolidated return is filed, Schedule C-Colorado Affiliation Schedule shall be included with the return when filed.

##### (2) Members of the Consolidated Return.

- (a) The Colorado income tax liability for an affiliated group of corporations making a consolidated return shall be based only on the net income of those members of the affiliated group having nexus in Colorado and for which a tax is imposed under §39-22-301, C.R.S. for that tax year. The consolidated net income of such corporations shall be apportioned in accordance with §39-22-303.5, C.R.S., or §39-22-303.7, C.R.S. The apportionment factors of such consolidated group shall be based solely on the consolidated sales, as applicable, of the consolidated group.
- (b) If all or any part of the affiliated group is required to file a combined return (pursuant to §39-22-303(11)(a), C.R.S. and the regulations thereunder), then a combined report shall be filed that includes all the corporations required to file a combined return with such affiliated group. The affiliated group electing to file a consolidated return shall be treated as one taxpayer for purposes of filing the combined report.

**Regulation 22-306. Reserved.**

**Regulation 39-22-308 THE COLORADO COAL CREDIT [Repealed eff. 03/03/2014]**

**Regulation 22-401. Reserved.**

**Regulation 22-402. Reserved.**

**Regulation 22-403. Reserved.**

**Regulation 22-404. Reserved.**

**Regulation 22-405. Reserved.**

**Regulation 22-407. Reserved.**

**Regulation 22-501. Reserved.**

**Regulation 22-503. Colorado Net Income of a Real Estate Investment Trust.**

A real estate investment trust shall be taxed as a corporation for Colorado income tax purposes.

**Regulation 39-22-504. Colorado net operating losses.**

(1) Colorado net operating losses of individuals, estates and trusts.

(a) Computation of loss. The Colorado net operating losses of individuals, estates and trusts shall be computed under the federal statutes and regulations for computing net operating losses of individuals, estates and trusts. The Colorado net operating loss of resident individuals, estates and trusts shall be the same as the federal net operating loss except to the extent the modifications required and allowed by section 39-22-104, C.R.S., affect the computation of the Colorado loss.

(b) Carrybacks and carryovers of the Colorado net operating losses of individuals, estates and trusts.

(i) Individual, estate and trust Colorado net operating losses incurred in taxable years beginning prior to January 1, 1984, could be carried back three years and forward fifteen. Such losses had to be carried back before they could be carried forward.

Example: A 1983 individual Colorado net operating loss had to be applied in the following sequence: 1980, 1981, 1982, 1984, 1985, (and so on through 1998).

(ii) Individual, estate and trust Colorado net operating losses incurred in taxable years beginning on or after January 1, 1984, but before January 1, 1987, could not be carried back to a prior tax year. They could be carried forward and claimed as a modification in determining Colorado taxable income for up to fifteen years.

(iii) Individual, estate and trust Colorado net operating losses incurred in taxable years beginning on or after January 1, 1987, but before January 1, 1990 can be carried back three years to taxable years beginning prior to January 1, 1987, but only if the taxpayer elects to carry back a federal net operating loss, if any, incurred in the same tax year.

Example: Taxpayer incurred 1988 federal and Colorado net operating losses of \$40,300. He elects to forgo his federal net operating loss carryback and to carry his federal loss forward. As he has the potential of receiving the full benefit of this federal net operating loss carryforward for Colorado income tax purposes, he may not carry his 1988 Colorado loss back to any earlier years.

- (iv) Individual, estate or trust Colorado net operating losses incurred in tax years beginning on or after January 1, 1987, may not be carried to any other tax year beginning on or after January 1, 1987. Federal net operating losses incurred in tax years beginning on or after January 1, 1987 and carried to tax years beginning on or after January 1, 1987, will be allowed for Colorado income tax purposes in lieu of any such Colorado net operating losses being allowed.

Example: A nonresident taxpayer incurred a 1990 federal net operating loss of \$150,000 which he carried back and applied as follows: 1987 — \$80,000; 1988 -\$60,000; 1989 — \$10,000. \$120,000 of the loss was from Colorado sources. The amount of the federal loss he can claim for Colorado purposes in 1988 is limited to the loss applied to 1988 for federal purposes (\$80,000) or that part of his federal loss sourced to Colorado (\$120,000).

Assume the taxpayer uses \$46,000 of the loss to zero out his 1987 Colorado income. The amount of the loss he can use for 1988 for Colorado income tax purposes is the smaller of the federal loss applied (\$60,000) or the remaining Colorado-source loss (\$74,000).

Assume the taxpayer uses \$31,000 of the loss to zero out his 1988 Colorado income. The amount of the loss he can use for 1989 for Colorado income tax purposes is the smaller of the federal loss applied (\$10,000) or the remaining Colorado-source loss (\$43,000).

The taxpayer would source the entire \$10,000 federal net operating loss applied to 1989 to Colorado. The balance of the Colorado-source loss (\$33,000) would cease to exist.

#### **Regulation 39-22-504(2) C CORPORATION NET OPERATING LOSS**

- 1) The Colorado net operating loss of a C corporation is computed the same as a federal net operating loss except that the Colorado loss is computed using the modified federal income allocated and apportioned to Colorado
- 2) Limitations on the amount of net operating loss that may be carried over where such loss was obtained by the acquisition of one C corporation by another as contained in Section 382 of the Internal Revenue Code shall also apply for Colorado income tax purposes.
- 3)
  - a) For the tax years beginning prior to January 1, 1984, the Colorado C corporation net operating loss could be carried back and forward to the same years to which a federal net operating loss could be carried.
  - b) For tax years beginning on or after January 1, 1984, but prior to August 6, 1997, Colorado C corporation net operating losses may be carried forward for fifteen years. They may not be carried back to an earlier year.
  - c) For tax years beginning on or after August 6, 1997, Colorado C corporation net operating losses may be carried forward for twenty years. They may not be carried back to an earlier year.

4)

- a) For tax years beginning on or after January 1, 2011, but prior to January 1, 2014, the amount of Colorado C corporation net operating losses used cannot exceed \$250,000 in any tax year.
- b) If the \$250,000 limitation prevents a corporation from using any part of a net operating loss carryforward in a tax year, then all net operating losses carried forward to such tax year may be carried forward one additional year for each tax year the restriction applies.
- c) Any portion of a net operating loss carryforward that cannot be used solely due to the \$250,000 limitation shall be increased by 3.25% for that tax year.
- d) For any short tax year, the 3.25% rate will be prorated to by the number of months in the tax year divided by 12.
- e) Example: A corporation carries a \$600,000 net operating loss from 2009 and a \$100,000 loss from 2010 to tax year 2011. In 2011, the corporation could have used \$300,000 of the carryforward loss to offset income, but is limited to a \$250,000 net operating loss. The 2009 and 2010 losses may be carried forward an additional year to 2030 and 2031 respectively. The 2009 net operating loss carryforward to 2012 will be \$351,625 (\$350,000 unused loss plus 3.25% of the \$50,000 that otherwise would have been used in 2011). The 2010 net operating loss carryforward to 2012 will be \$100,000 and is not increased because the limitation did not prevent any of this loss from being used in 2011.

In 2012, the corporation has a \$50,000 loss. The \$250,000 limitation does not limit the use of any loss in 2012, so the net operating loss carryforwards are not increased by the 3.25% and the 2009 and 2010 losses can still be carried forward to 2030 and 2031 respectively. The 2012 loss can be carried forward until 2031 as well.

In 2013, the corporation can use \$400,000 in net operating loss to offset its taxable income, which results in \$150,000 of 2009 net operating loss not used as a result of the \$250,000 limitation. The remaining 2009 loss may be carried forward to 2031 and the 2010 and 2011 losses may be carried forward to 2032. The 2009 net operating loss carryforward to 2014 will be \$104,928 (\$101,625 unused loss plus 3.25% of the \$101,625 that otherwise would have been used in 2013). The 2010 net operating loss carryforward to 2014 will be \$101,572 (\$100,000 unused loss plus 3.25% of the \$48,375 that otherwise would have been used in 2013). The 2012 loss is not increased because the limitation did not prevent any of this loss from being used in 2013.

In 2014, the \$250,000 limitation will no longer apply, so the carryforward period will not be adjusted and there will be no 3.25% increase to any unused net operating loss.

#### **Regulation 39-22-504.6.**

- (1) Employer as Account Administrator. In order to be a medical savings account administrator, an employer must establish or have established and must maintain a self-insured health plan meeting the requirements of the federal "employee retirement income security act", as amended.
  - (a) Such plan must meet the definition of an "employee welfare benefit plan" as defined in Section 3(1) of the federal Employee Retirement Income Security Act of 1974. (29 U.S.C., Section 1002).
  - (b) Such plan must meet the coverage requirements of Section 4 of the federal Employee Retirement Income Security Act of 1974. (29 U.S.C., Section 1003).

- (c) With respect to such plan, the employer must be subject to the filing with the United States Secretary of Labor requirements and to the furnishing information to participants requirements of Section 101 of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1021).
  - (d) The administration of such plan must comply with the fiduciary responsibility requirements of Part 4 of the federal Employee Security Act of 1974 (29 U.S.C., Sections 1101-1114).
- (4) Eligible Medical Expense.
- (a) Eligible medical expense means expense for the medical care of the account holder, the spouse of the account holder and the dependent children of the account holder as such term is defined in section 213(d) of the Internal Revenue Code.
  - (b) Premiums paid in a health insurance policy purchased by the account holder to cover the medical expenses not covered by a health insurance plan furnished to the account holder by his employer because of the deductible feature in such plan do not qualify as eligible medical expenses. 39-22-504.6(2.4) C.R.S. notwithstanding.
- (5) Employee. Employee means an individual who is employed in Colorado by an employer other than the United States government and on whose, behalf a medical savings account is established.
- (6) Employer. Employer means an employer doing business in Colorado other than the United States government.
- (7) Medical Savings Account. Medical savings account means a savings account established under the provisions of section 39-22-504.7. C.R.S. to pay eligible medical expenses of the account holder, the spouse of the account holder and the dependent children of the account holder.
- (8) Qualified Higher Deductible Health Plan. Qualified higher deductible health plan means health insurance with a deductible feature not in excess of \$3,000 purchased by an employer for the benefit of an employee who makes deposits into a medical savings account.

**Regulation 39-22-504.7. Medical Savings Accounts.**

- (1) Establishment of medical savings accounts.
- (a) On or after January 1, 1995, an employer may offer to establish medical savings accounts for his employees. Such accounts are to be established by agreement between the employer and a qualified medical savings account administrator. A separate account is to be established for each employee who elects to have a medical savings account.
  - (b) If an employer does not establish a medical savings account for an employee, the employee may establish his own medical savings account by agreement with a qualified medical savings account administrator.
- (2) Contributions to medical savings accounts. (a) Each year a maximum of \$3,000 may be contributed to an employee's medical savings account. The contribution may be made by the employer, by the employee, or by a combination of the two. If the employer established the account and the employee is making the contribution, the employer shall withhold the contribution from the employee's wages and shall immediately transmit the amount withheld to the account administrator. The timing of the withholding and the amount of the withholding shall be by agreement between the employee and the employer.



- (b) Amounts contributed to a medical savings account by or on behalf of an employee and interest earned thereon shall be an allowable modification decreasing the employee's federal taxable income for the purpose of determining Colorado taxable income.
- (c) The employee shall elect to make contributions to a medical savings account by signing an election form provided by or approved by the Department of Revenue.

(3) Distributions from a Medical Savings Account.

- (a) Money may be distributed from a medical savings account for only one of three reasons:
  - (i) to reimburse the eligible medical expenses of the account holder, the spouse of the account holder, or the dependent child of the account holder;
  - (ii) cashing out the balance in the account of a deceased account holder, or
  - (iii) cashing out an account holder's prior years' balance.
- (b) Money withdrawn from a medical savings account for any reason other than the payment of eligible medical expenses of the account holder, the spouse of the account holder or the child of the account holder shall be taxable income for Colorado income tax purposes and shall be a modification increasing federal taxable income in arriving at Colorado taxable income of the account holder, the account holder's estate, or the beneficiary receiving the money, as the case may be.

(4) Report of account administrator.

- (a) The account administrator must submit an annual report to the account holder for each calendar year within 31 days after the close of the calendar year for inclusion with the account holder's income tax return.
- (b) The annual report required by this paragraph (4) must show:
  - (i) the account holder's name and social security number;
  - (ii) the account administrator's name and Colorado income tax account number;
  - (iii) the balance in the medical savings account as of the beginning of the calendar year;
  - (iv) the contributions to the account during the calendar year;
  - (v) the distributions from the account during the calendar year to reimburse the account holder for eligible medical expenses;
  - (vi) the distributions from the account during the calendar year for other purposes;
  - (vii) the amount of interest earned by and credited to the account during the calendar year;
  - (viii) the fiduciary fees and other amounts charged to the account during the calendar year; and
  - (ix) the balance in the medical savings account as of the close of the calendar year.

(c) With regard to distributions from a medical savings account, distributions for the purpose of reimbursing the account holder for eligible medical expenses shall be deemed to be from the last monies contributed or credited to the account, and distributions for other purposes shall be deemed to be from the earliest contributions or credits remaining in the account at the time of the distribution.

(d) It shall be the responsibility of the account administrator to make an informed decision as to whether or not a distribution is made for the purpose of reimbursing an eligible medical expense.

(5) Portability. An employee may move his medical savings account from one account administrator to another only upon termination of employment. This is done by directing the first administrator to transfer the funds to the second administrator. The employee cannot move the funds himself as this would cause a taxable disbursement from the account.

**Regulation 22-506.2. Reserved.**

**Regulation 22-506.3. Reserved.**

**Regulation 22-506.4. Reserved.**

**Regulation 39-22-507.5(1). The “old” Colorado investment tax credit.**

(a) The investment tax credit allowed by section 39-22-507.5 is designated the “old” Colorado investment tax credit. The “old” Colorado investment tax credit for any given year is the sum of the old investment tax credit carried over from prior tax years, the current year “old” investment tax credit, and the “old” investment tax credit carried back from subsequent years.

(b) The current year Colorado “old” investment tax credit is 10% of the current year Internal Revenue Code Section 38 (General Business) credit as determined under the provisions of Internal Revenue Code Section 46 to the extent such credit relates to assets used in Colorado. Section 46 of the Internal Revenue Code relates to the rehabilitation credit, the energy credit, and the reforestation credit. The “old” Colorado investment credit also allowed a credit of 10% of the federal “regular percentage” investment tax credit for assets located in Colorado for those years that the “regular percentage” investment tax credit was allowed for federal income tax purposes. For tax years beginning on or after January 1, 1987, the current year “old” Colorado investment tax credit is allowed only to C corporations. Other taxpayers may still claim their carryover credits.

**Regulation 22-507.5 (2). Property Used in Colorado.**

In the case of tangible personal property used both within and without Colorado, the credit shall be apportioned based on the time the property was used in Colorado during the tax year compared to the time of total usage of such property during such year unless the taxpayer can justify a more equitable apportionment method.

**Regulation 39-22-507.5(3). Limitation on investment tax credit.**

For any given tax year the total of the “old” investment tax credit and the enterprise zone investment credit (39-30-104, C.R.S.) claimed may not exceed the first \$5,000 of the taxpayer's tax liability plus 25% of the liability in excess of \$5,000.

**Regulation 22-507.5 (3). Reserved.**

**Regulation 22-507.5 (4). Reserved.**

**Regulation 22-507.5 (5). Reserved.**

**Regulation 22-507.5 (6). Reserved.**

**Regulation 22-507.5 (7). Reserved.**

**Regulation 22-507.5 (8). Reserved.**

**Regulation 39-22-507.5(9). Investment tax credit recapture.**

Any time there is a recomputation of the federal investment tax credit with respect to which an “old” Colorado investment tax credit was computed, the “old” Colorado investment tax credit must be recomputed in accordance with the provisions of Section 47 or Section 50 of the Internal Revenue Code, depending on the year involved. If such recomputation results in a decrease of investment tax credit previously claimed for Colorado income tax purposes, such decrease must be reported as an increase in Colorado tax for the year of the recomputation. Any credit carryovers or carrybacks must be recomputed as appropriate.

**Regulation 39-22-507.5(12). Duplicate credits not allowed.**

The “old” investment credit allowed by section 39-22-507.5 will not be allowed with respect to investments which qualify for the enterprise zone investment credit allowed by section 39-30-104, C.R.S.

**Regulation 39-22-507.6. The “new” Colorado investment credit.**

- (1) The investment tax credit allowed by section 39-22-507.6, C.R.S. is designated the “new” Colorado investment tax credit. Such credit is allowed for tax years beginning on or after January 1, 1988, and was enacted as a partial replacement for the “regular percentage” investment tax credit flow-through from the federal investment credit which was allowed under section 39-22-507.5, C.R.S., but which ceased to exist when the federal credit was repealed. (The 39-22-507.5 allowable credit was 10% of the allowable federal credit.) Only C corporations may claim the “new” investment credit.
- (2) The “new” investment tax credit is limited to \$1,000 per tax year reduced by any “old” investment tax credit claimed for the same tax year. Excess credits may be carried forward for up to three tax years. The “new” investment tax credit has no recapture provisions. Within such limitations, the “new” investment tax credit is 1% of the qualifying investment in pre-1990 “Section 38 property” (disregarding the termination provisions of Internal Revenue Code Section 49 as such section existed prior to the enactment of the federal Revenue Reconciliation Act of 1990) to the extent such property qualified for the federal “regular percentage” investment tax credit and to the extent such property is used in Colorado.
- (3) Qualified investment in Section 38 property.
  - (i) For new Section 38 property subject to Internal Revenue Code Section 168 (Accelerated Cost Recovery System) the amount of qualified investment is 100% of basis of property other than three-year property and 60% of the basis for three-year property. For used Section 38 property subject to Code Section 168, the amount of qualified investment is 100% of cost for property other than three-year property and 60% of cost for three-year property. For used property, cost is limited to a maximum of \$150,000.
  - (ii) For Section 38 property not subject to Code Section 168, the basis or cost (up to \$150,000 for the cost of used property) that qualifies is limited if the property has a useful life of less than seven years. Only 66 2/3% of the basis or cost qualifies if the useful life is at least five but less than seven years. Only 33 1/3% qualifies where the useful life is at least

three but less than five years. No credit is allowed if the useful life is less than three years.

- (iii) A controlled corporate group must apportion the \$150,000 limitations on the cost of used property among its members.
- (iv) No investment tax credit is allowed to the purchaser of used property if the property is used by a person who used it before the purchase or by a related person. This would include a leaseback of used property or a purchase of leased property by the lessee.
- (v) No investment tax credit is allowed for Section 38 property to the extent such property is financed with nonqualified nonrecourse financing. This limitation applies to certain closely held corporations engaged in business activities that are subject to the loss limitation at-risk rules of Internal Revenue Code Section 465.

(4) "Section 38 property."

- (i) The "new" investment tax credit is available only for expenditures in Section 38 property. Section 38 property means Section 38 property as defined in Section 48 of the Internal Revenue Code as said Section 48 existed prior to the enactment of the federal Revenue Reconciliation Act of 1990.
- (ii) Section 38 property is either property subject to Internal Revenue Code Section 168 (Accelerated Cost Recovery System) or other depreciable or amortizable property having a useful life of three years or more that is: (A) tangible personal property (other than air conditioning units, heating units, and certain boilers fueled by petroleum or petroleum products and failing to meet special qualifications; (B) other tangible property (not including a building or its components) used as an integral part of (I) manufacturing, (II) extraction, (III) production or (IV) furnishing of transportation, communications, electrical energy, gas, water, or sewage disposal services; (C) elevators and escalators; (D) research facilities and facilities for the bulk storage of fungible commodities (including liquids or gases) used in connection with the activities in (B)(1) through (IV); (E) single purpose agricultural or horticultural structures; (F) in the case of qualified timber property (within the meaning of Internal Revenue Code Section 194(c)(1)), that portion of the basis of such property constituting the amortizable basis acquired during the taxable year (other than that portion of such amortizable basis attributable to property which otherwise qualifies as (pre-1991) Internal Revenue Code Section 38 property) and taken into account under Internal Revenue Code Section 194 (after application of Internal Revenue Code Section 194(b)(1); or (G) a storage facility (not including a building and its structural components) used in connection with the distribution of petroleum or any primary product of petroleum. Both new property, including property reconstructed by a taxpayer (but only to the extent of the basis that is attributable to the reconstruction), and used property qualify for the credit.
- (iii) Property used predominantly to furnish lodging (or in connection with furnishing it) is not Section 38 property except in the case of (A) a hotel or motel furnishing accommodations predominantly to transients and (B) coin-operated vending machines, washing machines and dryers in lodging facilities. Also nonlodging commercial facilities, such as tangible personal property in a drug store or restaurant situated in an apartment building or hotel, can qualify as Section 38 property if they are available to persons not using the lodging facilities.
- (iv) Livestock (not including horses) qualify for the investment credit. However, if within a one-year period starting six months before the date of acquisition, substantially identical livestock is disposed of without any federal investment credit recapture, the credit will be allowed only on the excess of the cost of the acquired livestock over the amount realized

on the disposition. The age and sex of the livestock and the use to which the livestock is put determine whether the livestock disposed of is substantially identical.

- (v) In the case of pollution control facilities, if the property has a useful life or recovery period of at least five years and the taxpayer elects to amortize under the 60-month rule of Internal Revenue Code Section 169, 100% of its amortizable basis qualifies for the investment credit. If the facility is financed by federally tax exempt industrial development bond proceeds, the applicable percentage is only 50% of the rapidly amortized basis.

(5) Leased Property.

- (i) The owner may elect to pass on the “new” investment credit to a C corporation lessee if the leased property is new Section 38 property and is qualifying property both to the owner and to the lessee. A lessor cannot pass on the credit for used property to the lessee. The credit to the lessee is computed on the fair market value of the property except where the property is leased by a corporation that is a member of a controlled corporate group to another member of the same group. In the latter event, the lessee takes the owner's basis as the basis for computing the investment credit.
- (ii) Where new Section 38 property with an asset depreciation range (ADR) class life of more than 14 years is leased (not a net lease) for a period which is shorter than 80% of its class life, the lessor may pass through to the C corporation lessee only that portion of the credit which the lease period is of the class life of the property.
- (iii) When a tax exempt entity sells depreciable property to pass the tax benefits to the new owners and then leases back the property, the “new” investment tax credit will be denied for the property.

**Regulation 22-508. Reserved.**

**Regulation 22-508.1. Reserved.**

**Regulation 22-508.1 (1). Reserved.**

**Regulation 22-508.1 (2). Reserved.**

**Regulation 22-508.2 (3). Reserved.**

**Regulation 22-508.2 (4). Reserved.**

**Regulation 22-508.2 (5)(c). Reserved.**

**Regulation 22-508.2 (5)(d). Reserved.**

**Regulation 22-508.2 (6). Reserved.**

**Regulation 22-508.2 (7). Reserved.**

**Regulation 22-508.2 (8). Reserved.**

**Regulation 22-508.2 (9). Reserved.**

**Regulation 22-508.2 (10). Reserved.**

**Regulation 22-508.3. Reserved.**

**Regulation 22-508.4. Reserved.**

**Regulation 22-508.5. Reserved.**

**Regulation 22-508.6. Reserved.**

**Regulation 22-508.7. Reserved.**

**Regulation 22-509. Reserved.**

**Regulation 22-510. Reserved.**

**Regulation 39-22-514 HISTORIC PROPERTY PRESERVATION CREDIT**

- 1) Categories of taxpayers. For purposes of determining the allowable historic property preservation credit with respect to the rehabilitation of a building in Colorado commencing prior to June 3, 1999, there are three categories of taxpayers:
  - a) Taxpayers who are allowed to claim the federal rehabilitation investment credit as provided in section 38 (and as computed in section 47) of the Internal Revenue Code;
  - b) Taxpayers who are not allowed to claim the federal rehabilitation investment credit but who are allowed to claim the Colorado enterprise zone rehabilitation of vacant building credit as provided in section 39-30-105.6, C.R.S.; and
  - c) Taxpayers who are not allowed to claim either the federal rehabilitation investment credit or the Colorado enterprise zone rehabilitation of vacant building credit.
- 1.1) Any taxpayer who is allowed to claim the enterprise zone rehabilitation of vacant building credit as allowed by section 39-30-105.6, C.R.S., may not claim the historic property preservation credit with respect to the same rehabilitation. [Taxpayers who are allowed to claim the federal income tax rehabilitation investment credit may not claim the enterprise zone rehabilitation of vacant building credit with respect to the same rehabilitation, per C.R.S. 39-30-105.6(2)].
- 1.5) Effective for projects commenced on or after June 3, 1999, the credit under this section will apply to income tax years beginning prior to January 1, 2020. Regulation 39-22-514(1) is not applicable to projects commenced on or after June 3, 1999. Effective for rehabilitation commenced on or after June 3, 1999, for purposes of determining the allowable historic property preservation credit with respect to the rehabilitation of a building in Colorado, there are two categories of eligible taxpayers:
  - a) Taxpayers who are eligible to claim the Colorado enterprise zone rehabilitation of vacant building credit as provided in section 39-30-105.6, C.R.S.; and
  - b) Taxpayers who are not eligible to claim the enterprise zone credit, but are allowed the credit where they meet specific terms of this section 514.
- 2) Amount of credit allowed - Effective for projects commenced before June 3, 1999.
  - a) The historic property preservation credit for those taxpayers who are allowed to claim the federal rehabilitation investment credit is ten percent of the federal credit as computed for the same tax year disregarding any federal carryover or carryback credits and disregarding any federal current year credit limitations. The federal rehabilitation investment credit is the sum of ten percent of the (federal) qualified expenditures with respect to any qualified rehabilitated building other than a certified historic structure, plus

twenty percent of the qualified rehabilitation expenditures with respect to any certified historic structures. (Under C.R.S. 39-22-514(2)(b), as it existed prior to amendment effective June 3, 1999.)

- b) Any taxpayer who claims the enterprise zone rehabilitation of vacant building credit as allowed by section 39-30-105.6, C.R.S., may not claim the historic property preservation credit with respect to the same rehabilitation. (Taxpayers who claim the federal rehabilitation investment credit (paragraph a) above) may not claim the enterprise zone rehabilitation of vacant building credit with respect to the same rehabilitation.) [Under C.R.S. 39-22-514(1)(b), as it existed prior to amendment effective for rehabilitation commenced on or after June 3, 1999.]
- c) Taxpayers who may claim neither the federal rehabilitation investment credit or the enterprise zone rehabilitation of vacant building credit but who incur qualified costs in an amount equaling or exceeding five thousand dollars in the qualified rehabilitation of qualified property may claim an historic property preservation credit of the lesser of \$50,000 per qualified property or an amount equal to twenty percent of the aggregate qualified costs incurred per qualified property. The credit allowed under this paragraph c) for any given tax year may not exceed \$2,000 plus 50% of the taxpayer's tax liability in excess of \$2,000. (Under C.R.S. 39-22-514(2)(a), prior to amendment effective for rehabilitation commencing on or after June 3, 1999.)

#### 2.5) Credit Limitations, Rehabilitation Commenced On or After June 3, 1999.

- a) The statute at 39-22-514(2)(b) and the regulation 39-22-514.2(a) are not applicable to projects commenced on or after June 3, 1999, but the limitation of 39-22-514(2)(b) applies for projects commenced prior to June 3, 1999,
- b) Effective June 3, 1999, taxpayers whether or not they claim the federal rehabilitation investment credit who incur qualified costs in an amount equaling or exceeding five thousand dollars in the qualified rehabilitation of qualified property may claim an historic property preservation credit of the lesser of \$50,000 per qualified property or an amount equal to 20% of the aggregate qualified costs incurred per qualified property. Effective June 3, 1999, the credit may be claimed up to the amount of Colorado income tax liability.

#### 3) Year in which credit may be claimed.

- a) The historic property preservation credit is allowed for taxable years beginning on or after January 1, 1991, but before January 1, 2020, subject to the limitations set forth in paragraph b) of this subsection 3).
- b) For tax years beginning on or after January 1, 2011, but before January 1, 2020 the credit will not be allowed unless the December legislative council revenue forecast issued prior to the tax year indicates that the total state general fund appropriations grew by at least six percent over such appropriations for the previous fiscal year. In the event that the credit is not allowed for the tax year in which the qualifying costs are incurred because of the preceding limitation, the taxpayer incurring the qualifying costs will be allowed to claim the credit in the next tax year in which the forecast indicates that the total state general fund appropriations grew by at least six percent over such appropriations for the previous fiscal year.
- c) If the amount of the credit allowed exceeds the amount of the tax due for the tax year in which the credit is allowed, the excess credit shall not be refunded, but may be carried forward

to the next tax year. The restriction set forth in paragraph b) of this subsection 3) does not apply to any excess credits claimed and allowed in prior years and carried forward.

- d) A claim for credit in a tax year beginning on or after January 1, 2020 will be allowed only if the claim of the credit has been postponed due to the restrictions set forth in paragraph b) of subsection 3).
  - e) If a taxpayer's historic property preservation credit is determined by reference to his federal rehabilitation investment credit, the historic property preservation credit shall be allowed in the same year the federal rehabilitation investment credit is allowed. (Effective for rehabilitation commenced prior to June 3, 1999.)
  - f) If the historic property preservation credit is determined under the provisions of C.R.S. 39-22-514(2)(a) and paragraph 2)c) of this regulation, the credit is to be claimed for the year in which the qualified rehabilitation is completed except as provided in paragraph 4) below.
- 4) Incomplete Rehabilitation. If the approved rehabilitation is not completed as of the close of the taxpayer's last taxable year beginning prior to January 1, 2000, the taxpayer may claim a credit for such last taxable year with respect to the qualified expenditures incurred prior to January 1, 2000. Effective for rehabilitation commenced prior to June 3, 1999.
  - 5) Incomplete Rehabilitation. If the approved rehabilitation is not completed as of the close of the taxpayer's last taxable year beginning prior to January 1, 2020, the taxpayer may claim a credit for such last taxable year with respect to the qualified expenditures incurred prior to January 1, 2020.
  - 6) For rehabilitation commenced prior to June 3, 1999, excess historic property preservation credit may be carried forward for a period of up to five years. For rehabilitation commenced prior to June 3, 1999, the amount of credit in any carry forward year, regardless of how the credit was computed, shall be limited to the first \$2,000 of the taxpayer's tax liability for such carry forward year plus 50% of such liability in excess of \$2,000. For rehabilitation commenced on or after June 3, 1999, the historic property preservation is not limited by a percentage of tax liability and may be carried forward for a period of up to ten years.

**Regulation 39-22-515. Postconsumer Waste Equipment Credit.**

- (1) Credit allowed. Section 39-22-515(1) allows C corporations to claim a Colorado income tax credit for the purchase on or after January 1, 1991, but prior to January 1, 1996, of qualified equipment which is used by the corporation to manufacture for sale products from postconsumer waste. The credit will not be allowed unless the total capacity of all qualified equipment owned by the taxpayer on the last day of the income tax year in which the credit may be claimed (See paragraph (2) following) exceeds the total capacity of all qualified equipment owned by the taxpayer on the last day of the base year.
- (2) The Postconsumer Waste Equipment Credit is 20% of the cost of qualified equipment and is allowed in the income tax year in which at least ninety percent of the total production capacity of the qualified equipment is used to manufacture products. In determining whether the 90% capacity is reached, each piece of equipment is measured separately.
- (3) Excess credit may be carried forward for up to seven years.
- (4) Reserved.
- (5) Reserved.



(6) (a) Reserved.

(b) The volume of waste the equipment is capable of handling is the design capacity of the equipment for the time the taxpayer is using the equipment but not less than 40 hours per week.

(c) A separate geographic location is one where one must cross over or pass along public property or a public right-of-way to reach.

(d) Purchase price includes freight and labor needed to construct the equipment if such costs are capitalized on the books of the taxpayer.

(e) Reserved.

(f) Reserved.

(g) Reserved.

(h) Reserved.

(i) Qualified equipment includes conveyer belts used to transport partially processed products from one piece of equipment to another. Cleaning, densification and baling equipment is qualified equipment if used on the same site as the manufacturing process. Equipment that produces an intermediate product that is not offered for sale but which is used in a functionally integrated process of the taxpayer or a related taxpayer that does produce products for sale is qualified equipment.

**Regulation 39-22-516. Credit allowed for purchase of vehicles using alternative fuel.**

(1) Credit allowed. A credit is allowed by section 39-22-516, C.R.S., against the tax imposed by sections 39-22-104, 39-22-105, or 39-22-301, C.R.S., for the purchase of vehicles licensed in Colorado which use, or which are converted within 120 days of purchase to use, clean-burning fuel.

(2) Amount of credit allowed.

(a) In general, the credit allowed by section 39-22-516, C.R.S., is allowed with respect to the first 50 vehicles purchased by the taxpayer during the income tax year and is limited to the smaller of the amount determined under paragraph (i) or paragraph (ii) following:

(i) The credit allowed by this section is limited to 5% of the purchase price of the qualified vehicles; and

(ii) The credit allowed by this section is limited to 50% of the cost of the clean-burning fuel systems option on such vehicles, or 50% of the cost of converting such vehicles to use clean-burning fuel, whichever applies.

(b) Lessees of vehicles. Lessees of qualifying vehicles are eligible for the alternative fuels tax credit. The available credit is calculated by subtracting the value of the vehicle when the lease expires from the cost of the vehicle to the lessor at the time of the lease transaction (capitalized cost). The result is then multiplied by the statutory five percent to determine the amount of the credit subject to other limitations in C.R.S. 39-22-516.

Only the lessor or the lessee of the vehicle may claim the credit. If the vehicle is converted at the factory, the lessor has the option of claiming the credit or passing the right to claim the credit to the lessee. If the lessee converts the vehicle, then only he may claim the credit. With respect to

vehicles purchased between July 1, 1992, and July 1, 1994, the lessee must discount his credit by the percentage of his personal use of the vehicle, if any, as proscribed in C.R.S. 39-22-516(l)(a).

(c) Carryover of excess credit. If the credit allowed by section 39-22-516 exceeds the tax otherwise due, such excess may be carried forward for a period of up to three years.

(3) Period for which credit may be claimed. There are two separate periods during which the section 39-22-516 credit may be claimed:

(a) The first period during which the section 39-22-516 credit is allowed begins with the beginning of the taxpayer's first taxable year beginning on or after July 1, 1992, and ends on July 1, 1994. During this first period the credit may be claimed with respect to qualifying vehicles only to the extent they are used in the taxpayer's business.

(b) The second period during which the section 39-22-516 credit is allowed begins with the beginning of the taxpayer's first taxable year beginning on or after July 1, 1994, and ends on July 1, 1998. During this second period the credit may be claimed with respect to qualifying vehicles whether or not they are used in the taxpayer's business.

(4) Clean-burning alternative fuel defined. Clean burning alternative fuel means natural gas, liquified petroleum gas, a fuel mixture containing not less than eighty-five percent ethanol or methanol, electricity, or any other alternative fuel approved by the Air Quality Control Commission pursuant to section 25-7-106.9(1), C.R.S.

**Regulation 39-22-516(2.5) Alternative Fuel Vehicle Credit**

(1) Credit allowed. For income tax years beginning on or after July 1, 1998, but prior to January 1, 2012, a Colorado income tax credit is allowed for the purchase of an alternative fuel vehicle, for a motor vehicle that is converted to use alternative fuel, or for the replacement of the power source with a power source that uses alternative fuel.

(2) Credit calculation. The credit is a percentage of:

(a) The difference between the cost of the vehicle and the cost of the same or most similar vehicle that uses a traditional fuel, or

(b) The cost incurred in converting the vehicle to an alternative fuel, or

(c) The difference between the cost of replacing the power source and the cost of the same or most similar power source that uses a traditional fuel.

In (a) and (c) above, if the cost of the traditional fuel option is greater than or equal to the cost of the alternative fuel option, then the credit will be equal to \$0.

(3) The basic percentage of the credit depends on the certification level of the vehicle and the year in which the expenditure is made, as follows:

<b>Certification level</b>	<b>Tax year beginning prior to January 1, 2010</b>	<b>Tax year beginning prior to January 1, 2012</b>
Low-emitting vehicle	50%	25%
Ultra-low-emitting vehicle or inherently-low-emitting vehicle	75%	50%
Zero-emitting vehicle	85%	75%

These percentages are doubled, up to a maximum credit of 100%, if the vehicle or power source permanently displaces (will never be operated on Colorado highways in the future) a vehicle or power source that is ten years old or older

(4) Vehicle requirements. To qualify for the credit:

(a) The vehicle must be titled and registered in Colorado, and

(b) The vehicle must meet the following business use requirements.

(I) For tax years beginning prior to July 1, 2000, the vehicle must be used in connection with a business. If a vehicle is used part of the time for business use and part of the time for personal use, the credit must be prorated in proportion to the percentage of time during the tax year that the motor vehicle was used for business purposes.

(II) For tax year tax years beginning on or after July 1, 2000, the vehicle may be used for business or personal use.

(5) A vehicle can qualify for this credit one time. To claim the credit on the purchase of a used vehicle a taxpayer must:

(a) Provide documentation that a previous owner did not claim this credit. This may include a list of the prior owners by name and address or other documentation of the history of the vehicle indicating that the credit has not been previously claimed.

(b) Provide the cost difference used in computing the credit and the basis on which it is computed.

I. The cost difference will usually decrease ratably with the decrease in the value of the vehicle. For example, if the price paid for the used vehicle is 40% of the original MSRP, then the credit allowed will be 40% of the credit available for that vehicle when new.

II. The condition of the comparison vehicle must be comparable to the alternative fuel vehicle. For example, if a ten-year old vehicle had a new alternative fuel engine put in one year ago, then the vehicle must be compared to the most similar vehicle valued with a one year old gas engine, not a ten-year old engine.

(6) Low emitting vehicle restriction.

(a) For tax years beginning prior to January 1, 1999, if the expenditure qualifies at the low-emitting vehicle level, and the purchase is made in order to satisfy the minimum requirements of the clean fuel fleet program, the expenditure will not qualify for this credit.

(b) For tax years beginning on or after January 1, 1999, the restriction in paragraph (6)(a) above, no longer applies to the credit.

(7) Lessees of vehicles.

(a) Lessees of qualifying vehicles are eligible for the alternative fuel vehicle credit. The available credit is calculated by subtracting the value of the vehicle when the lease expires from the cost of the vehicle to the lessor at the time of the lease transaction (capitalized cost), and dividing that amount by the cost of the vehicle to the lessor at the time of the lease

transaction. This percentage is then multiplied by the qualifying expenses to determine the amount of the expenditure that can be used in computing the amount of the credit.

(b) Only the lessor or lessee of the vehicle may claim the credit. If the vehicle is converted at the factory, the lessor has the option of claiming the credit or passing the right to claim the credit to the lessee. If the lessee converts the vehicle, then only the lessee may claim the credit.

(8) Credit carryovers. If the credit allowed by this section exceeds the taxpayer's tax liability, such excess may be carried forward for up to five income tax years.

(9) Limitation from other rebate programs. Any expenses reimbursed by a rebate issued by the Office of Energy Conservation or any other entity will not qualify for this credit.

(10) Zero-emitting vehicles will include near-zero emitting vehicles.

#### **Regulation 39-22-516(2.7) Alternative fuel refueling facility credit**

a) **Credit allowed.** For income tax years beginning on or after January 1, 1998, but prior to January 1, 2011, a Colorado income tax credit is allowed for the construction, reconstruction or acquisition of an alternative fuel refueling facility that is directly attributable to the storage, compression, charging or dispensing of alternative fuels to motor vehicles.

b) **Credit calculation.**

i) The basic percentage of the credit depends on the year in which the qualifying costs are incurred:

ii) Tax year beginning prior to Jan 1, 2006 ... 50%

iii) Tax year beginning prior to Jan 1, 2009 ... 35%

iv) Tax year beginning prior to Jan 1, 2011 ... 20%

c) The percentage above will be multiplied by 1.25 if:

i) 70% or more of the alternative fuel dispensed each year by the refueling facility is derived from a renewable energy source for ten years (certification must be provided upon request); and/or

ii) the refueling facility is generally accessible for use by persons in addition to the person claiming the credit.

d) The credit claimed by a taxpayer is limited to \$400,000 in any consecutive five-year period for each refueling facility.

e) This credit can not be claimed on any refueling facility, or on any equipment used in connection with that facility, for which any taxpayer has previously claimed the alternative fuel refueling facility credit.

f) Credit carryovers. If the credit allowed by this section exceeds the taxpayer's tax liability, such excess may be carried forward for up to five income tax years following the unused credit year.

g) Limitation from other rebate programs. Any expenses reimbursed by a rebate issued by the Office of Energy Conservation or any other entity will not qualify for this credit.

**Regulation 39-22-517. Tax credit for child care investments.**

- (1) Credit allowed for investment in tangible personal property to be used in a child care center or family care home. For tax years beginning on or after January 1, 1992, a Colorado income tax credit is allowed in an amount equal to 20% of the taxpayer's expenditure made during the income tax year for the purchase of qualifying tangible personal property to be used in the operation of a child care center or a family care home which is licensed pursuant to section 26-6-106, C.R.S.

**Regulation 39-22-517(2). Repealed, July 1, 1995.**

**Regulation 39-22-517(3)(a). Child care center.**

“Child care center” means a facility, by whatever name known, which is maintained for the whole or part of a day for the care of five or more children eighteen years of age or younger and not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes.

**Regulation 39-22-517(3)(b). “Family child care home”**

“Family child care home” means a facility for child care in a place of residence of a family or person for the purpose of providing less than twenty-four-hour care for children under the age of eighteen years who are not related to the head of such home.

**Regulation 39-22-517(3)(c). Repealed, July 1, 1995.**

**Regulation 39-22-517(3)(d). Qualifying tangible personal property.**

For the purposes of the income tax credits allowed by this section, the term “qualifying tangible personal property” shall mean tangible personal property purchased for use in the operation of a child care center or family child care home to the extent the property qualifies as depreciable property for federal income tax purposes with a determinable life that exceeds one year and the cost of such property is allowed as a business expense deduction for federal income tax purposes either as a current expense or as a deduction for depreciation. For example, if a taxpayer purchased a van which was to be used 50% of the time for the taxpayer's personal matters, 50% of the cost of the van would be qualifying tangible personal property.

- (4) Credit carryovers. If the credits allowed by this section exceed the taxpayer's tax liability, such excess may be carried forward for up to three income tax years.

**Regulation 39-22-518 COLORADO CAPITAL GAIN SUBTRACTION**

**1) General Rule**

- a) For tax years beginning on or after January 1, 1999 but prior to January 1, 2010, qualified taxpayers can subtract from the federal taxable income reported on their Colorado income tax return qualifying net capital gains on certain real, tangible and intangible property (pursuant to §39-22-518(2)(b), C.R.S.) acquired on or after May 9, 1994 and held for at least five years.
- b) For tax years beginning on or after January 1, 2010, qualified taxpayers can subtract from the federal taxable income reported on their Colorado income tax return up to \$100,000 of qualifying net capital gains on certain real and tangible personal property (pursuant to §39-22-518(2)(b), C.R.S.). Depending on the property generating the capital gain, the asset must have been acquired (1) on or after May 9, 1994 but prior to June 4, 2009, or (2) on or after June 4, 2009. The asset must be held for at least five years.

- 2) **Expanded Subtractions.** There were two expanded versions of the general rule for tax years in which State revenues exceeded limitations on state fiscal spending. These two expanded versions are:
- a) **Subparagraph C and D.** Pursuant to §39-22-518(2)(b)(I)(C) and (D), C.R.S., the general rule was modified to eliminate the acquisition date requirement for tax years beginning on or after January 1, 1999 but prior to January 1, 2002.
  - b) **Subparagraph E and F.** Pursuant to §39-22-518(2)(b)(I)(E) and (F), C.R.S., the general rule was modified to reduce the holding period requirement to at least one year and eliminate the acquisition date requirement for tax years beginning on or after January 1, 2001 but prior to January 1, 2002.

3) **Qualifying attributes**

a) **Installment sales**

- i) The applicable holding period must be met as of the sale transaction date and cannot be met by referring to the date any deferred gain is recognized.
- ii) In cases in which the subtraction requirements applicable to the transaction year have been met, but the recognition of some or all of the gain is deferred to subsequent tax year(s), then the subtraction is allowed in the recognition year(s) for the deferred gain if the subtraction requirements applicable to the recognition year(s) were also met in the transaction year. Conversely, the subtraction will not be allowed in the recognition year(s) for deferred gain, if the deferred gain would not have met the subtraction requirements applicable to the transaction year, even though the deferred gain meets the subtraction requirements of the recognition year. Therefore, when the subtraction is allowed under either of the expanded subtraction rules because there are sufficient excess state revenues in the transaction year, and the recognition of some or all of the gain is deferred to subsequent tax year(s), a subtraction for such deferred gain is not allowed in the recognition year(s) if there are insufficient excess revenues in the recognition year(s) or the acquisition date and holding period requirements applicable to the recognition year were not met at the time of the transaction.

b) **"Pass-through" entities.** A qualified taxpayer will be allowed to subtract qualifying gains passed through to the taxpayer by a partnership, S corporation, or other similar "pass-through" entity, if:

- i) The pass-through entity holds the asset, and the taxpayer holds the ownership interest in the pass-through entity, for the required holding period (see paragraph g) below),
- ii) The acquisition date is met by the pass-through entity (see paragraph g) below), and
- iii) The asset that created the gain passed through to the taxpayer was either:
  - (1) 2010 and later - real or tangible property that qualifies for the subtraction;
  - (2) 2009 and earlier – (1) real or tangible personal property located in Colorado at the time of the transaction, or (2) a stock ownership interest in an entity that qualifies under §39-22-518(2)(b)(ii)(A), C.R.S. It is neither necessary nor sufficient for the pass-through entity itself to qualify under §39-22-518(2)(b)(ii)(A), C.R.S. in order to allow the subtraction for gains

passed through to the taxpayer. However, gain from the sale of the partner's, S corporation stockholder's, or limited liability member's ownership interest in the pass-through entity will be allowed only if the pass-through entity qualifies under §39-22-518(2)(b)(ii)(A), C.R.S

- c) The taxpayer must hold the same interest for the required holding period. For example, a taxpayer who purchased a 50% interest in property on May 10, 1994, then acquires an additional 25% interest in the property on May 15, 1998, and subsequently sells the 75% interest on May 16, 1999, can subtract only the gain attributable to the 50% interest because the 25% interest did not meet the five-year holding period.
- d) In order to qualify under §39-22-518(2)(b)(ii)(A), C.R.S., the entity must have fifty percent or more of its property and fifty percent or more of its payroll assigned to locations within Colorado.
- e) **Shell entities holding intangible property.** When an entity has either no property or no payroll, or either such factor is de minimis in relation to the business operations of the entity, and the majority of the entity's value is attributable to stock or other ownership interests of other entities, then the Department will apply section 18 of the Multistate Tax Compact ( §24-60-1301, et seq., C.R.S.) to evaluate whether the entity qualifies under §39-22-518(2)(b)(ii)(A), C.R.S.
- f) **Non-refundable/No carry forward.** This subtraction does not create a right to a refund or carry forward. Corporations must reduce any net operating losses created in tax years in which this subtraction is taken by the lesser of the subtraction allowed under this section or the amount of the net operating loss.
- g) **Property transfers between a pass-through entity and its members.** When determining the "qualified taxpayer" in the case of a pass-through entity, the taxpayer is considered to be the pass-through entity and the individual member in aggregate.
  - i) The acquisition date for determining the members' holding period of property that is transferred by a pass-through entity to its members is the date the pass-through entity acquired the property. This assumes the members owned their share of the entity for the entire period that the property was owned by the pass-through entity. If any member acquired their share of the pass-through entity after the entity already owned the property, then the acquisition date of the property in the hands of the member would be the date they acquired their share of the entity.
  - ii) The acquisition date for determining the members' holding period of property that is transferred by one member to a pass-through entity is, for the transferor, the date that member acquired the property, and, for all other members, the date of the transfer to the pass-through entity. This assumes the members owned their share of the entity for the entire period that the property was owned by the pass-through entity. If any member acquired their share of the pass-through entity after the entity already owned the property, then the acquisition date of the property in the hands of the member would be the date they acquired their share of the entity.
  - iii) Example: Colorado property was acquired on May 1, 1994, by an individual, transferred to an S corporation on July 1, 1994, that is wholly owned by the individual, then sold by the S corporation on July 30, 1999. Therefore, the acquisition date of the asset is May 1, 1994. The holding period is May 1, 1994, through July 30, 1999. In this example the gain does not qualify as the property was acquired before May 9, 1994.

- iv) Example: Colorado property was acquired on October 1, 1999 by an LLC and distributed to its members on November 15, 2002. The acquisition date to be used for determining if the capital gain subtraction applies when a member sells the property is October 1, 1999.
- v) Example: Colorado property was acquired on June 1, 2002 by an individual. The property was transferred to a partnership in which the individual was a 40% partner on July 1, 2003. The property is sold on June 15, 2008 by the partnership. The individual's holding period for the property was from June 1, 2002 through June 15, 2008, which qualifies for the capital gain subtraction. However, the other partners' holding period for the property was from July 1, 2003 through June 15, 2008, which does not meet the five year holding period for the subtraction.
- vi) Example: Colorado property was acquired on June 1, 1992 by an individual. The property was transferred to a partnership in which the individual was a 40% partner on July 1, 2000. The property is sold on June 15, 2008 by the partnership. The individual's acquisition date for the property was June 1, 1992, which does not qualify for the capital gain subtraction. However, the other partners' acquisition date for the property was July 1, 2000, which does qualify for the subtraction.

## **Regulation 39-22-522 GROSS CONSERVATION EASEMENT CREDIT**

### **1) Qualified Taxpayer**

- a) Taxpayers qualified to claim the gross conservation easement credit (including transferees of these credits) are:
  - i) Colorado residents,
  - ii) C corporations,
  - iii) trusts,
  - iv) estates,
  - v) partners, shareholders or members of pass-through entities who receive the credit from such entity, regardless of whether such individuals are Colorado residents.
- b) Joint tenancy, tenancy in common, pass through entity such as a partnership or S corporation, or other similar entity or group that makes a donation that generates a gross conservation easement credit must allocate the credit to the entity's owners, partners, shareholders or members in proportion to their distributive shares of income or ownership percentage from such entity or group.
- c) A limited liability company with only one member will generally be disregarded for federal tax purposes (I.R.S. Regulation 301.7701-3) as well as state income tax purposes. Therefore, the sole member does not qualify as a "member of a pass-through entity" and does not qualify for the conservation easement credit unless the member is a Colorado resident.
- d) Individuals who are not residents of Colorado cannot claim the gross conservation easement credit for a donation they make, or utilize a credit they purchase. Part-year residents may claim the credit, but only if they make the donation while they are a Colorado resident.



Only a credit apportioned to nonresident partners, shareholders or members of a pass-through entity can be claimed by the nonresidents. Nonresident owners included in a joint tenancy, tenancy in common, and similar groups cannot claim the gross conservation easement credit.

## 2) Claiming the Gross Conservation Easement Credit

- a) Donations made on or after January 1, 2000 but prior to January 1, 2003.
  - i) A credit is generated from the donation of a single perpetual conservation easement in gross.
  - ii) The credit cannot exceed \$100,000.
  - iii) A taxpayer can claim only one tax credit per income tax year.
  - iv) A taxpayer cannot claim a tax credit on a donation made during a tax year if:
    - (1) the taxpayer has a carryover gross conservation easement credit from a prior tax year, or
    - (2) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the purchased credit to the tax year.
- b) Donations made on or after January 1, 2003 but prior to January 1, 2007.
  - i) A credit is generated from the donation of a single perpetual conservation easement in gross.
  - ii) The credit cannot exceed \$260,000 (100% of the first \$100,000 plus 40% of any amount in excess of \$100,000).
  - iii) A taxpayer can claim only one tax credit per income tax year that is generated by the donation of a perpetual conservation easement in gross by the taxpayer, either directly or by a pass-through entity in which the taxpayer is a partner, shareholder or member. A taxpayer cannot earn multiple credits in one year from multiple donations even if the donations are made by different pass-through entities. [See §39-22-522(6), C.R.S.]
  - iv) A taxpayer cannot claim a tax credit on a donation made during a tax year if:
    - (1) the taxpayer has a carryover gross conservation easement credit from a prior tax year, or
    - (2) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the purchased credit to the tax year.
- c) Donations made on or after January 1, 2007.
  - i) A credit is generated from the donation of a single perpetual conservation easement in gross.
  - ii) The credit cannot exceed \$375,000 (50% of the first \$750,000).

iii) A taxpayer can claim only one tax credit per income tax year that is generated by the donation of a perpetual conservation easement in gross by the taxpayer, either directly or by a pass-through entity in which the taxpayer is a partner, shareholder or member. A taxpayer cannot earn multiple credits in one year from multiple donations even if the donations are made by different pass-through entities. [See §39-22-522(6), C.R.S.]

iv) A taxpayer cannot claim a tax credit on a donation made during a tax year if:

- (1) the taxpayer has a carryover gross conservation easement credit from a prior tax year, or
- (2) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the purchased credit to the tax year.

d) Transferred Credits.

i) A taxpayer cannot purchase a tax credit during a tax year beginning on or after January 1, 2000, but prior to January 1, 2003, if:

- (1) the taxpayer claimed a credit generated from the donation of a single perpetual conservation easement in gross made during the tax year, or
- (2) the taxpayer has a carryover gross conservation easement credit available during the tax year from a prior year, regardless of whether the credit is utilized on that taxpayer's return or transferred to another taxpayer, or
- (3) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the transferred credit to the tax year.

ii) A taxpayer cannot purchase a tax credit during a tax year beginning on or after January 1, 2003 if:

- (1) the taxpayer claimed a credit generated from the donation of a single perpetual conservation easement in gross made during the tax year, regardless of whether the credit is utilized on that taxpayer's return or transferred to another taxpayer, or
- (2) the taxpayer has a carryover gross conservation easement credit available during the tax year from a prior year, except that this paragraph (2) will not apply if the carryover credit is a result of an unused purchased credit from a prior year, or
- (3) another taxpayer that has purchased a gross conservation easement credit from the taxpayer is carrying all or part of the transferred credit to the tax year.

iii) During tax years beginning on or after January 1, 2000, but prior to January 1, 2003, a taxpayer can purchase and claim one gross conservation easement credit each tax year subject to the limitations in paragraph i).

iv) During tax years beginning on or after January 1, 2003, a taxpayer can purchase and utilize an unlimited number of credits subject to the limitations in paragraph ii).

The total value of the purchased credits utilized in any tax year is not limited to the \$260,000 or \$375,000 amounts.

- e) The total amount of credit a married couple can generate in a year, regardless of whether they file jointly or separately, is \$100,000 for tax years 2000 through 2002, \$260,000 for tax years 2003 through 2006, and \$375,000 for tax year 2007 and after. Similarly, the sum total of credits that all partners, shareholders or members of a pass-through entity, which makes a donation, can generate is \$100,000 for tax years 2000 through 2002, \$260,000 for tax years 2003 through 2006, and \$375,000 for tax year 2007 and after.
- f) Tenants in Common, Joint Tenancy, and Similar Ownership Groups. The total credit generated by the donation of a perpetual conservation easement in gross by tenants in common, joint tenants, and similar ownership groups is limited to \$100,000 for tax years 2000 through 2002, \$260,000 for tax years 2003 through 2006, and \$375,000 for tax year 2007 and after.
- g) For each tax year commencing in calendar years 2011 and 2012, the aggregate gross conservation easement credit claimed by all taxpayers is limited to \$22 million. For each tax year commencing in calendar year 2013, the aggregate gross conservation easement credit claimed by all taxpayers is limited to \$34 million.
  - i) Donors of conservation easements during the 2011, 2012 or 2013 calendar years must claim the credit first with the Division of Real Estate to obtain a Tax Credit Certificate, which will designate the tax year in which the credit may be claimed on a Colorado income tax return. The credit may be waitlisted to a later year if the \$22 million cap for each tax year commencing in calendar years 2011 and 2012, or the \$34 million cap for each tax year commencing in calendar year 2013, has been exceeded by previously claimed credits.
  - ii) The right to claim a tax credit with the Department of Revenue vests in the taxpayer when the Division of Real Estate issues the Tax Credit Certificate. To make a successful claim for the credit with the Department of Revenue, the taxpayer must establish compliance with all requirements of section 39-22-522, C.R.S., including the federal statutory and regulatory requirements incorporated therein, and with this Regulation. The determination of whether a claimed conservation easement tax credit complies with the statutory and regulatory requirements rests with the Department of Revenue and not with the Division of Real Estate.
  - iii) When a credit is waitlisted, the taxpayer may claim that credit only on their return for the designated tax year beginning in calendar year 2012 or 2013. Any limitation to the number of credits that may be claimed by the taxpayer in the designated year will include the waitlisted credit. If the taxpayer makes another easement donation in the designated year, a credit will not be allowed for that donation even if the Division of Real Estate would have waitlisted the second credit to a later year. Because the first credit is still available for use, no additional credit can be claimed in the designated year, either on a tax return or on an application to the Division of Real Estate.
  - iv) The charitable deduction addback for any waitlisted credit must still be reported beginning in the year of the donation.
  - v) The twenty year carryforward period will be based on the year the credit is actually claimed on a tax return, not on the year of the donation.

- vi) Total credits available for donations occurring in calendar years 2011 and 2012 may not exceed \$22 million per calendar year. Total credits available for donations occurring in calendar year 2013 may not exceed \$34 million. These credits can not be waitlisted until 2014.
- vii) Fiscal year filers.
  - (1) Taxpayers can not claim a credit for a donation that occurs in 2011 prior to the end of their fiscal year that begins in 2010 because the Division of Real Estate must certify all credits generated by a donation in 2011 for tax years starting on or after January 1, 2011.
  - (2) Taxpayers can not claim a credit for a donation that occurs in 2014 prior to the end of their fiscal year that begins in 2013 because the Division of Real Estate must certify all credits for tax years beginning prior to January 1, 2014 and may certify those credits only for donations made in calendar years 2011, 2012, or 2013.
- viii) The amount of the credit allowed on the Tax Credit Certificate can be further reduced if other credit limitations exist including, but not limited to, a subsequent reduction in the appraised and/or donated value of the easement or the determination that a prior year credit is not fully utilized by the taxpayer.
- ix) In certain cases due to the annual cap, a single credit generated by one easement donation will be split between two tax years with a Tax Credit Certificate being issued for each year. In this situation, the taxpayer may claim the second part of the credit in the second designated tax year in addition to using any unused carryforward from the first part of the credit. Despite the limitation on when parts of the credit can be claimed and utilized, only one credit is generated by the donation. The twenty year carryforward period for each part of the credit will be based on the designated tax year for that part of the credit. The limitation referenced in paragraph iii) above still prohibits the taxpayer from claiming another credit from a separate donation.

### **3) Transfer of credits**

- a) A taxpayer can transfer all or part of a credit to a transferee who meets the qualifications of a taxpayer who can claim the credit. The portion of the credit being transferred must not be utilized by the transferor to offset tax or to claim a refund on any income tax return.
- b) A credit can be transferred only once. A transferee, to whom a credit is transferred, cannot thereafter transfer the credit to another taxpayer. Likewise, a transferee cannot transfer the credit back to the donor of the easement for the donor to either utilize the credit to offset a tax liability, or transfer the credit to another taxpayer.
- c) For donations made during tax years beginning prior to January 1, 2003, the minimum amount of credit that can be transferred to any one taxpayer is \$20,000. For donations made during tax years beginning on or after January 1, 2003, the donor can transfer all or any pro-rated portion of the credit. Credits transferred after January 1, 2003 that arise from donations made prior to that date are subject to the \$20,000 limit.
- d) A transferred credit utilized by a transferee can never exceed the net tax liability reported on the tax return.
- e) Transfer Timing.

- i) For transfers completed prior to June 7, 2005, a transferee of a conservation easement credit must purchase the credit prior to the end of the tax year to be able to utilize the credit during that tax year. A purchased credit cannot be utilized in, or carried back to, a tax year that ended prior to the day the credit was purchased.
  - ii) For transfers completed on or after June 7, 2005, a transferee of a conservation easement credit must purchase the credit by the due date of the income tax return, not including extension of time for filing, on which the credit will be utilized. However, the donation of the conservation easement must occur prior to the end of the transferee's tax year.
- f) If a taxpayer sells a conservation easement credit to another taxpayer and that credit is later disallowed in an audit, the transferee will be held liable for the disallowed credit that was utilized plus any applicable penalty and interest.
- g) A pass through entity can directly transfer a credit if:
- i) Each partner, shareholder or member consents to the transfer, and
  - ii) Each partner, shareholder or member could, under the restrictions of the law and this regulation, have claimed and transferred their pro rata share of the credit directly.
- h) Conservation easement credits may only be transferred to individuals or C-corporations. A pass through entity may not purchase or otherwise be the transferee of a credit.
- i) Upon the death of a taxpayer, a gross conservation easement credit passes to the decedent's estate. If the decedent is the donor of the easement, the estate may use the credit to offset income tax owed by the estate or may transfer some or all of the credit according to the transfer rules. If the decedent is a transferee of the credit, the estate may use the credit to offset income tax owed by the estate but can not transfer the credit.
- j) Tax Matters Representative. The tax matters representative (TMR) is the person who donates the conservation easement and/or transfers the credit. A pass-through entity that donates the easement and passes the credit to, or sells the credit on behalf of, its partners, shareholders or members, is the TMR, unless the entity's status as the TMR is otherwise revoked or changed in accordance with paragraphs iv), v), and vi) below.
- i) Representation. The value and validity of a gross conservation easement credit held by a transferee is derived from, and dependent on, the credit generated and/or transferred by the TMR. Therefore, an adjustment of a credit, to the extent such adjustment is based on a Gross Conservation Easement Credit Transfer Item ("Transfer Item Adjustment"), made by the Department against the TMR shall also be binding on the credit held by a transferee. Final resolution of disputes between the Department of Revenue and the TMR determines the Transfer Item Adjustments and such resolution is binding on transferees of the credit.
  - ii) Gross Conservation Easement Credit Transfer Items ("Transfer Items"). Transfer items include, but are not limited to:
    - (1) the conservation easement appraisal and credit valuation,
    - (2) validity of the donation under article 30.5 of title 38, C.R.S.,
    - (3) compliance of the donation to the requirements of §170(h) IRC, and

- (4) other such matters of the donation and/or credit that affect both the donor and the transferees of the credit.
- iii) Effective Date. The rights and responsibilities of the TMR and transferee, including the right to a hearing, appeal, notification, and limitations of action set forth in 39-22-522(7)(i) and (j), C.R.S. apply to Transfer Item Adjustments initiated by the Department on or after June 7, 2005.
- iv) Changing the TMR Designation. Any person who has claimed a credit or who may be eligible to claim a credit in relation to a TMR's conservation easement donation may petition the Department to change the TMR's designation if the TMR:
    - (1) is incarcerated;
    - (2) is residing outside the United States, its possessions, or territories;
    - (3) is deceased or, if the representative is an entity, is liquidated or dissolved;
    - (4) is under eighteen years of age at the time the Transfer Item Adjustment is initiated by the Department, or a court determines the person to be legally incompetent; or
    - (5) cannot be located;
    - (6) does not make an election to waive a hearing pursuant to § 39-22-522.5(2), C.R.S., or file a written request for hearing and final determination with the Executive Director pursuant to § 39-22-522.5(3), C.R.S., provided that the petition to change the TMR's designation is filed on or before November 1, 2011;
    - (7) does not request a hearing for the Transfer Item Adjustment pursuant to §§ 39-21-103 or 104, C.R.S., provided that the petition to change the TMR's designation is filed within 10 business days after the final date for requesting a hearing;
    - (8) does not appear at hearing or fails to adequately participate in such hearing, including by failing to file a required pleading or to appear at a scheduled conference; or
    - (9) does not file an appeal of a final determination pursuant to §§ 39-21-105 and 39-22-522.5(6), C.R.S., provided that the petition to change the TMR's designation is filed within 10 business days after the final date for filing an appeal.
- v) Petition to Change TMR's Designation.
    - (1) The petition to change the TMR's designation must be in writing and filed with the Department.
    - (2) The petition must contain at least the following information:
      - (a) the petitioner's name, address, and tax account number;
      - (b) a statement that the petitioner is a person who has claimed a credit or who may be eligible to claim a credit in relation to the TMR's

conservation easement donation, including the taxable period(s) and amount of tax in dispute;

(c) a summary statement of the grounds upon which the petitioner relies for changing the TMR's designation; and

(d) a proposed replacement TMR, including the replacement TMR's qualifications to serve as TMR in accordance with the criteria for representation listed in paragraph vi) below.

(3) The Department may provide the TMR and transferees with notice of the petition and an opportunity to respond.

(4) The Executive Director will issue an order regarding the petition as soon as practicably possible.

vi) **Criteria for Representation.** The Department of Revenue will determine the appropriate person to serve as TMR and whether a TMR is unavailable or unwilling to act such that a petition to change the TMR's designation should be granted. Criteria to be considered when determining who will serve as the TMR includes:

(1) The general knowledge of the donor or transferor and any proposed replacement TMR regarding the gross conservation easement credit transfer items at issue.

(2) The donor's or transferor's and any proposed replacement TMR's access to the records of the conservation easement.

(3) The views of the transferees involved in the transaction.

vii) **Statute of Limitations.** The statute of limitations of the transferor and any extension to the statute of limitations agreed to by the TMR will also apply to the transferees of the credit, but only to the extent that it applies to Transfer Item Adjustments.

#### **4) Refundable credit**

a) Taxpayers, but not transferees of such credits, can claim a refund of the conservation easement credit if State revenues are in excess of the limitation on state fiscal year spending imposed by section 20(7)(a) of article X of the state constitution. See Regulation 39-22-120 for years in which the subtraction is available.

b) For credits arising from donations made during tax years beginning on or after January 1, 2000, but before January 1, 2003, the maximum credit that can be utilized if a portion is being refunded is \$20,000 per year. This limit increases to \$50,000 for credits arising from donations made in tax years beginning on or after January 1, 2003. The maximum credit includes the aggregate credits utilized by both donors and transferees generated by the conservation easement donation.

c) The credit a married couple can utilize each tax year, regardless of whether they file jointly or separately, is \$20,000 (\$50,000 for donations made in 2003 and after) if either or both of them request a refund created by this credit. Similarly, the total of all credits utilized in any given tax year by members of a pass-through entity, tenants in common, joint tenancy, or similar ownership group which makes a donation, is \$20,000 (\$50,000 for

donations 2003 and after) if one or more such partners, shareholders, members or owners request a refund based on this credit.

#### **5) Qualifying Donation.**

To qualify for the gross conservation easement credit, a donation must:

- a) be a donation of a perpetual conservation easement in gross on real property located in Colorado,
- b) be made to a governmental entity or a charitable organization that is exempt under section 501(c)(3) of the Internal Revenue Code of 1954, as amended,
- c) qualify as a charitable contribution for federal income tax purposes under the Internal Revenue Code.

#### **6) Credit Carry Forward**

- a) Once a credit is claimed by a Colorado resident, any excess credit not utilized or transferred may be carried forward by that taxpayer for up to twenty years from the year the perpetual conservation easement in gross that generated the credit was originally donated. A credit must be utilized in the earliest tax year possible.
- b) A taxpayer who later moves to another state remains eligible to utilize this carry forward credit during the carry forward period despite being a nonresident of Colorado.
- c) A taxpayer may elect to abandon and not carryover a credit and, thereby, avoid the prohibition in subparagraphs 2)a)iv), 2)b)iv) and 2)c)iv), above, against claiming a new credit. The abandonment of a credit should be stated on the income tax return, original or amended, in lieu of the statement of the amount of credit carryforward to the following tax year.

#### **7) Documentation**

- a) Every taxpayer who claims or utilizes a conservation easement credit on a tax return must attach a Colorado Gross Conservation Easement Credit Schedule to the return. This requirement applies to, among other returns, returns that claim a credit that has been transferred to another taxpayer, returns that report that the credit cannot be utilized during the tax year and will be carried forward to the following year, and returns that report that the balance of a carryforward credit has been transferred during the year.
- b) Every taxpayer who claims a conservation easement credit on a tax return for a donation made during that tax year must attach a Colorado Conservation Easement Donor Schedule to the return. This requirement applies without regard to whether the credit has been transferred to another taxpayer. This requirement also applies to returns filed by pass through entities that donated a conservation easement, and the partners, shareholders or members of such entities.
  - i) A summary of the appraisal, copies of the appraisal and the appraiser's affidavit submitted to the Division of Real Estate, the recorded deed including reception number and federal form 8283 must be attached to the Schedule.
  - ii) If the tax return is electronically filed, the Schedule and attachments must be submitted in paper format separately at the time the tax return is filed.



- c) Every taxpayer who claims a conservation easement credit on a tax return for a donation made during that tax year must submit a Colorado Gross Conservation Easement Public Information Schedule to the Department of Revenue separate from the tax return. This requirement applies without regard to whether the credit has been transferred to another taxpayer and applies to pass through entities that donated a conservation easement, and the partners, shareholders or members of such entities.

## **8) Appraisals**

- a) The appraiser who prepares the appraisal must hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.
- b) The appraiser who prepares the appraisal must also meet all applicable education and experience requirements established by the Board of Real Estate Appraisers in accordance with Section 12-61-719(7), C.R.S.
- c) A qualified appraisal for computing the gross conservation easement credit must meet requirements for claiming a federal charitable deduction for the donation of the easement.
- d) The Department of Revenue can require a taxpayer to submit a copy of the complete appraisal upon request.
- e) In the event that the donated property is held by the taxpayer making the donation for less than one year prior to the date of donation, the value of the conservation easement will be reduced by the gain the taxpayer would have realized had the easement been sold on the date of donation for the fair market value of the easement as established in the appraisal.
- f) The Department of Revenue may require the taxpayer to provide a second appraisal at the taxpayer's expense if the executive director:
  - i) reasonably believes that the appraisal represents a gross valuation misstatement,
  - ii) receives notice of such a valuation misstatement from the Division of Real Estate, or
  - iii) receives notice from the Division of Real Estate that an enforcement action has been taken by the Board of Real Estate Appraisers against the appraiser.
- g) Any second appraisal required pursuant to the above provision and Section 39-22-522(3.5), C.R.S. must be prepared by a certified general appraiser who is not affiliated with the appraiser who prepared the first appraisal, is in good standing and has met qualifications established by the Division of Real Estate.
- h) If, upon final determination, it is determined that an appraisal submitted in connection with a gross conservation easement credit claim is a substantial or gross valuation misstatement, the Department must submit a complaint to the Board of Real Estate Appraisers and may pursue any other penalties or remedies authorized by law.

## **9) Requests for Documents**

- a) If a TMR has not provided a document related to the gross conservation easement credit that was required to be provided as part of the taxpayer's return, including the return itself, or, if requested by the Department, a copy of the complete appraisal obtained at the time of donation, the Department may send a written request to the taxpayer for such document. Such request may be sent by certified mail. Failure to provide the requested document to

the Department within 60 days of the mailing of the Department's request shall constitute grounds for the Executive Director to issue a final determination denying the credit.

- b) Documents that may be requested by the Department include, but are not limited to, all or any part of the taxpayer's return, the Colorado Gross Conservation Easement Credit Schedule, the Colorado Conservation Easement Donor Schedule, the federal Form 8283, a summary of the appraisal, a copy of the complete appraisal, a copy of the appraiser's affidavit submitted to the Division of Real Estate, and the recorded deed of conservation easement.

#### **10) Disallowance of Conservation Easement Tax Credits**

- a) Notice to TMR and Transferee. The Department shall initiate a Transfer Item Adjustment to a credit by issuing to the TMR a notice, which shall set forth the proposed adjustment, regardless of whether the state tax liability of the TMR is affected by the proposed adjustment. The Department shall also send to the transferee a notice of the Department's proposed Transfer Item Adjustment of the transferee's credit.
- b) Multiple Transferees. If there is more than one transferee of a credit, the Department will generally allocate proportionally the Transfer Item Adjustment based on the percentage of the overall credit originally transferred to the transferees. However, the Department may allocate the adjustment among and between the transferees in any manner appropriate to the circumstances.
- c) TMR Election Pursuant to § 39-22-522.5, C.R.S. For any credit for which a notice of deficiency, notice of disallowance, or notice of rejection of refund claim has been mailed by the Department as of May 1, 2011, but for which a final determination was not issued before May 19, 2011, the TMR may elect to waive the administrative process pursuant to § 39-22-522.5(2), C.R.S., or request a hearing and final determination on or before July 1, 2014 pursuant to § 39-22-522.5(3), C.R.S. The TMR may make such election or request on or before October 1, 2011 without regard to the TMR's failure to timely protest the Department's notice in accordance with § 39-21-103, C.R.S., or the prior payment by a taxpayer of some or all of the amount of tax, penalties, or interest in dispute.
  - i) Election to Waive Administrative Process. An election pursuant to § 39-22-522.5(2), C.R.S., to waive the administrative process and appeal the notice directly to district court can be made only by the TMR. The TMR shall provide notice of its election to waive the administrative process to the transferees at the time of the mailing of the TMR's written notice of appeal and shall provide the Department with a list of all transferees so noticed. If the TMR does not elect to waive the administrative process pursuant to § 39-22-522.5(2), C.R.S., or file a written request for hearing and final determination with the Executive Director pursuant to § 39-22-522.5(3), C.R.S., a transferee may petition the Department on or before November 1, 2011 to change the TMR's designation in accordance with § 39-22-522.5(4), C.R.S., and paragraphs 3)j)iv), 3)j)v), and 3)j)vi) above.
  - ii) Request for Hearing and Final Determination on or before July 1, 2014. A request pursuant to § 39-22-522.5(3), C.R.S., for hearing and final determination on or before July 1, 2014 can be made only by the TMR. The TMR shall provide notice of its request for hearing and final determination to the transferees at the time of the mailing of the TMR's written request and shall provide the Department with a list of all transferees so noticed. If the TMR does not file a written request for hearing and final determination with the Executive Director pursuant to § 39-22-522.5(3), C.R.S., or elect to waive the administrative process pursuant to § 39-22-522.5(2), C.R.S., a transferee may petition the Department on or before

November 1, 2011 to change the TMR's designation in accordance with § 39-22-522.5(4), C.R.S., and paragraphs 3)j)iv), 3)j)v), and 3)j)vi) above.

- d) Request for Hearing. A request pursuant to § § 39-21-103 or 104, C.R.S. for hearing on a Transfer Item Adjustment, including a Transfer Item Adjustment that results in the denial or modification of the transferee's credit, can be made only by the TMR. A transferee does not have a right to protest the Notice of Deficiency or refund change issued to the transferee (including the allocation of the adjustment between or among transferees) to the extent the adjustment is based on a Transfer Item Adjustment. If the TMR does not timely request a hearing pursuant to § § 39-21-103 or 104, C.R.S., a transferee may petition the Department to change the TMR's designation within 10 business days after the final date for requesting a hearing in accordance with paragraphs 3)j)iv), 3)j)v), and 3)j)vi) above. If the Department grants the petition, the new TMR may request a hearing pursuant to § § 39-21-103 or 104, C.R.S., within 30 days of the Department's order regarding the petition.
- e) Notification and Request to be Admitted as Party. The Department will issue a notice of the hearing to the TMR and transferee of the credit. Such notice shall advise the transferee of the right to be admitted as a party to the hearing upon the filing of a written request setting forth a brief and plain statement of the facts that entitle the person to be admitted and the matters to be decided. The Executive Director may admit parties for limited purposes.
- f) Transfer of Jurisdiction. If the Executive Director issues a final order pursuant to § 39-22-522.5(5)(b), C.R.S., finding that a case cannot reasonably be resolved through the administrative process and transferring jurisdiction of the case to the district court, the Department will not oppose waiver of surety bond or other deposit in connection with the case.

#### **11) Hearing Process.**

To expedite the equitable resolution of requests for administrative hearings regarding conservation easement tax credits, avoid inconsistent determinations, and allow the Executive Director to consider the full scope of applicable issues of law and fact, such hearings will be conducted in accordance with the following provisions:

- a) The Executive Director may invite the participation in the hearing of any person who has claimed a credit or who may be eligible to claim a credit in relation to the TMR's conservation easement donation. Such participation shall include the right to be admitted as a party to the hearing upon the filing of a written request in accordance with paragraph 10)e) above.
- b) The Executive Director may resolve the issues raised by the parties in phases:
  - i) the first phase will address issues regarding the validity of the credit and any other claims or defenses touching the regulatory of the proceedings;
  - ii) the second phase will address the value of the easement; and
  - iii) the third phase will address determinations of the tax, interest, and penalties due and apportionment of such tax liability among persons who claimed a tax credit in relation to the TMR's conservation easement donation.
- c) Any request by a taxpayer to continue, stay, or otherwise postpone the hearing, including but not limited to a request for continuance to pursue mediation, shall be deemed consent by

the taxpayer to enter into a written agreement with the Executive Director to extend the time for the Executive Director to issue a final determination by a period of days equal to the requested period of postponement.

- d) Nothing in this section shall be construed to abrogate or diminish the ability of the taxpayer to assert any facts, make any arguments, and file any briefs and affidavits the taxpayer believes pertinent to the case.

## **12) Final Determination and Appeal.**

The Department will issue, pursuant to § 39-21-103, C.R.S., a notice of final determination regarding the Transfer Item Adjustment(s) to the TMR and transferee of the credit. The TMR, not the transferee, may appeal the determination in accordance with §§ 39-21-105 and 39-22-522.5(6), C.R.S. If the TMR does not file an appeal pursuant to §§ 39-21-105 and 39-22-522.5(6), C.R.S., a transferee may petition the Department to change the TMR's designation within 10 business days after the final date for filing an appeal, in accordance with § 39-22-522(6), C.R.S., and paragraphs 3)j)iv), 3)j)v), and 3)j)vi) above.

### **Regulation 39-22-523. High Technology Scholarship Contribution Credit.**

- (1) The credit for contributions to the Colorado high technology scholarship program is effective for the 2001 income tax year. The credit is available only in tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-523(3) C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.
- (2) In a qualifying year, the credit will be allowed as 25% of the total monetary contribution to the Colorado High Technology Scholarship Program created under section 23-17-103(1), C.R.S. The credit allowed cannot exceed 15% of the amount of income tax due for a tax year.
- (3) For individuals and estates, where the credit is claimed for amounts that are also deducted as federal itemized deductions under section 170 of the Internal Revenue Code, the amount of contribution on which the credit is claimed must be added to income in computing Colorado Taxable Income.
- (4) For "C" Corporations, where the credit is claimed for amounts that are also deducted from federal income, the amount of contribution on which the credit is claimed must be added to income in computing Colorado Taxable Income.

### **Regulation 39-22-524. Individual Development Account Contribution Credit.**

- (1) The Colorado Individual Development Account ("IDA") Contribution tax credit is available only in those tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-524(3), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.
- (2) Pursuant to 39-22-524(4), C.R.S., the Department designated the Mile High United Way to evaluate applications for IDA tax credits. The taxpayer must apply to, and receive a certificate of approval from, the Mile High United Way for all contributions to a sponsoring organization. The certificate must be attached to the income tax return in order to claim the credit. Applications will be evaluated on a first-come/first-serve basis.
  - a) The valuation of a contribution of stocks or bonds must be consistent with the fair market value requirements of the Internal Revenue Code for donated stocks and bonds.

b) An IDA credit is not allowed for contributions where the taxpayer shares a familial or financial relationship with the participant. For purposes of this credit, the following definitions apply:

I. Familial relationship means persons related by blood or marriage.

II. A financial relationship includes, but is not limited to, an equitable or legal ownership interest, employer/employee relationship, or debtor/creditor relationship.

**Regulation 39-22-525. Repealed Effective 11/30/2007**

**Regulation 39-22-527. Agricultural Value-Added Credit.**

- 1) The credit for approved investments in agricultural value-added cooperatives and other entities is available only in those tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-527(9), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.
- 2) The amount of the tax credit is the lesser of \$15,000 or 50% of the investment for each approved project. The maximum credit allowed per tax year is \$50,000 for a taxpayer filing as married filing separately, or \$100,000 for a single or married joint return or for an entire controlled group of corporations as defined in Internal Revenue Code Section 1563(a).
  - a. The total amount of credits allowed to all members of a cooperative or other entity with respect to any one project shall not exceed \$1.5 million.
  - b. Where a credit would otherwise exceed \$1.5 million, the \$ 1.5 million credit must be prorated to each member on a percent of investment basis, not to exceed the maximum allowed per member.
  - c. The total credits authorized by the Colorado Agricultural Value-Added Development Board each fiscal year shall not exceed \$4,000,000.
- 3) In addition to agricultural cooperatives, the credit is available to other agricultural businesses. (35-75-204(1), C.R.S.)
- 4) Entities electing pass through status for federal income tax purposes are limited to \$100,000 per year in total credit passed through to all investors subject to income tax, which must be shared on the same basis as profits and losses.
- 5) Qualified Subchapter "S" Subsidiaries (QSSS), parent corporations thereof and all limited liability companies related by at least eighty percent ownership are limited to a maximum credit of \$100,000 for all such related corporations or limited liability companies in total.
- 6) Certification forms issued annually by the Colorado Agricultural Value-Added Development Board must be attached to the income tax return for each year the credit is claimed.
- 7) The tax credit is limited to the amount of the net tax liability in the tax year certified by the Colorado Agricultural Value-Added Development Board. There is no carry forward of this credit.

**Regulation 39-22-528. Agricultural Value-Added Cash Fund Credit**

- 1) The credit for approved payments to the Colorado Agricultural Value-Added Cash Fund is available only in those tax years in which state revenues exceed limitations on state fiscal year spending by

amounts established in 39-22-528(6), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.

- 2) When allowed, the credit is up to 100% of the payment to the Board. The maximum credit allowed per tax year is \$50,000 for a taxpayer filing as married filing separately, or \$100,000 for a taxpayer filing single or married joint return or for an entire controlled group of corporations as defined in Internal Revenue Code Section 1563(a). The total credits authorized by the Colorado Agricultural Value-Added Development Board each fiscal year for this credit and the credit under 39-22-527 shall not exceed \$4,000,000.
- 3) Entities electing pass through status for federal income tax purposes are limited to \$100,000 per year in total credit passed through to all investors subject to income tax, which must be shared on the same basis as profits and losses.
- 4) Qualified Subchapter "S" Subsidiaries (QSSS), parent corporations thereof and all limited liability companies related by at least eighty percent ownership are limited to a maximum credit of \$100,000 for all such related corporations or limited liability companies in total.
- 5) Certification forms issued annually by the Colorado Agricultural Value-Added Development Board must be attached to the income tax return for each year the credit is claimed.
- 6) If the amount of the tax credit certified by the Colorado Agricultural Value-Added Development Board exceeds the amount of income tax otherwise due on the taxpayer's income in the income tax year, the amount of the credit not used as and offset against income tax shall be refunded to the taxpayer and may not be carried forward.

**Regulation 22-601. Reserved.**

**Regulation 39-22-601.1**

- (a) In the case of a paper income tax return to be filed with the Department of Revenue, the term "make a return" as such term is used in Section 39-22-601(1), C.R.S., means the completion of the appropriate Colorado income tax return form by or on behalf of the taxpayer(s), the signing of the return form under penalty of perjury in the second degree by the taxpayer(s), and the actual physical submission of the return so completed and so signed together with any required supporting documents to the Colorado Department of Revenue.
- (b) In the case of a Colorado individual income tax return that is to be electronically submitted to the Department of Revenue, the term "make a return" as such term is used in Section 39-22-601(1), C.R.S., means the completion of the appropriate Colorado income tax return form by or on behalf of the taxpayer(s), the signing of the return form under the penalty of perjury in the second degree by the taxpayer(s), and the submission of the return form so completed and so signed to an electronic return originator who has been so licensed by the Colorado Department of Revenue as an authorized agent of the Colorado Department of Revenue to accept for filing and electronic submission, individual income tax returns to the Colorado Department of Revenue directly or indirectly through the Internal Revenue Service.
- (c) Any person who prepares a Colorado income tax return for any other person who accepts a fee for so doing is required to sign such return stating that such return is accurate, complete and truthful as far as he knows. Such affirmation is not made under the penalty of perjury.
- (d) An electronic return originator must maintain for four years a copy of the Colorado Income Tax Return signed by the taxpayer(s) for each electronic transmission submitted by the electronic return originator.

**Regulation 22-602. Reserved.**

**Regulation 22-603. Reserved.**

**Regulation 22-604.1. Withholding Tax.**

Registration. Every person, firm, corporation, partnership, etc., who becomes subject to the provisions of this Act as an employer must file an Employer's Registration Report indicating that he will be required to withhold and shall request the Department of Revenue to assign a number identifying him as a withholding agent. This number will appear on the first return mailed by the Department to the employer. The number should also be noted on any inquiries by an employer to the Withholding Tax Section, Department of Revenue. Any employer previously registered with the Department of Revenue who ceases business or who not longer is required to withhold, shall immediately notify the Department of such circumstances.

If an employer goes out of business or otherwise permanently ceases to pay wages or other compensation, the employer should notify the Colorado Department of Revenue, Withholding Tax Section, immediately. Proper forms and information will be mailed upon receipt of such advice. In order to close an employer's account, it is necessary to submit:

- (i) The return of income tax withheld covering payroll since the previous report through the dates of last payment of wages (plus any adjustments for prior periods) together with payment in full.
- (ii) Annual reconciliation report for the period from January 1 through date of last payment of wages.
- (iii) Wage and tax statements showing all remuneration paid and tax withheld for each employee during the current year.

**Regulation 22-604.2. Reserved.**

**Regulation 39-22-604.3. Requirement to Withhold.**

**(a) Who Must Withhold.**

- (1) Any employer doing business in Colorado must withhold Colorado income tax from wages paid to any employee who is a Colorado resident or a nonresident of Colorado working in Colorado if such wages are subject to federal income tax withholding.
- (2) Withholding is required of employers situated outside the state upon wages, commissions, or other emoluments paid to an employee for services performed within the state, even though the employee may be a nonresident and the employee's employment in Colorado may be of short duration.
- (3) Under Colorado law the same exclusion from withholding and the same withholding exemptions exist as under the Internal Revenue Code. Therefore, agricultural workers and certain other employees specifically excluded from withholding under the Internal Revenue Code will be excluded under the Colorado Act.
- (4) The federal W-4 form should be used to determine the number of exemptions to be used for Colorado withholding tax purposes.
- (5) Whenever withholding is required under federal income tax law, the withholding deductions must be made for all persons subject to Colorado withholding.

**(b) Interstate Commerce and Transportation Employees.**

- (1) An air carrier must withhold Colorado income tax from any interstate airline employee who is a resident of Colorado or a nonresident who earns over fifty percent of his or her wages in Colorado. An air carrier employee is deemed to have earned more than fifty percent of his or her pay in Colorado if the flight time worked by that employee within Colorado exceeds fifty percent of the total flight time worked by that employee while employed during the calendar year.
- (2) A rail carrier subject to regulation by the Surface Transportation Board must withhold Colorado income tax from any interstate employee of any railroad, express company or sleeping car company who is a resident of Colorado.
- (3) A motor carrier subject to regulation by the Surface Transportation Board or a motor private carrier must withhold Colorado income tax from any employee who is a resident of Colorado and performs his or her regularly assigned duties on a motor vehicle in two or more states.
- (4) A water carrier subject to regulation by the Surface Transportation Board must withhold Colorado income tax from any interstate employee who is a resident of Colorado.
- (5) The employers described in this section (b) are not required to file an annual information report with the state of Colorado with respect to any employee described in this section (b) unless more than fifty percent of the compensation paid to such airline employee during the taxable year was earned in Colorado, or unless such employee was a resident of Colorado.

For the purposes of this section (b) "compensation" shall mean all monies received for services rendered by an employee, as defined in this regulation in the performance of his duties and shall include wages and salaries.

**(c) Nonresident Employees**

- (1) Except for those employees described in section (b), if the duties of a nonresident employee involve work both within and without the state of Colorado, tax is to be withheld from that portion of total wages primarily allocable to Colorado. The method of allocation must be submitted to and approved by the Director of Revenue.
- (2) If the activities of such employee or agent within Colorado are not in the regular course of the employer's business or if such activities are of extremely short duration, or if such employee or agent is assigned on a variable basis so that consistent and regular division of the duties performed within and without Colorado cannot be determined for withholding purposes, the employer may apply to the Executive Director for specific release from the requirement to withhold giving full particulars of the nature and extent of his Colorado venture and related employment.
- (3) Employers, to be relieved of withholding on employees who meet the foregoing conditions, must first secure from the employees an affidavit setting forth the name, address, state of residence, and domicile of the employee. The employer shall, by such reasonable means as are available to the employer, verify the statement contained in the said affidavit and shall thereupon forward such affidavits to the Department of Revenue to support the exemption from withholding claimed by the employee.
- (4) At the end of the calendar year, the employer will prepare an information report for each employee so exempted, showing in the wage block the total annual wage and wage allocable to Colorado. These reports shall be forwarded to the Department of Revenue on or before March 15 of the following year.



- (5) Failure of any nonresident employee to file a Colorado income tax return and to pay the tax, if any is due, within the time prescribed by law, even though such employee has been granted an exemption from withholding, shall void the exemption from withholding and the employer shall be required to withhold Colorado income tax as herein provided.
- (6) Except as provided by Public Law 91-569, no exemption from withholding applies to the wages of an employee who is performing all of his services within Colorado for a definite period of time and who thereafter is reassigned to performing services outside of the state of Colorado.

**Regulation 39-22-604.4. Withholding tax filing periods and due dates.**

- (a) With respect to Colorado income tax attributable to payments made after December 31, 1993, an employer is either a quarterly filer, a monthly filer, or a weekly filer based on an annual determination; or, in exceptional cases, a seasonal filer. An employer must file withholding tax returns and/or remit taxes withheld under one of four rules: The Quarterly rule in paragraph (b)(2) of this section, the Monthly rule in paragraph (b)(3) of this section, the Weekly rule in paragraph (b)(4) of this section, or the Seasonal rule in paragraph (b)(5) of this section.
  - (b) Determination of status.
    - (1) The determination of whether an employer is a quarterly, a monthly, or a weekly filer for a calendar year is based on an annual determination made by the Executive Director and depends upon the aggregate amount of Colorado withholding tax reported by the employer for the lookback period as defined in paragraph (b)(6) of this section.
    - (2) Quarterly filer. An employer is a quarterly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is less than \$7,000.
    - (3) Monthly filer. An employer is a monthly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is at least \$7,000 but not more than \$50,000. The Executive Director, upon application therefore, may approve the reclassification of monthly filers to a quarterly filing status if necessary to meet the "no more stringent than corresponding federal requirements" provision of C.R.S. 39-22-604(4).
    - (4) Weekly filer. An employer is a weekly filer for the entire calendar year if the aggregate amount of Colorado withholding tax reported for the lookback period is more than \$50,000.
    - (5) Seasonal filer. An employer is a seasonal filer for the entire calendar year if the business is not operating for the entire calendar year and if there is no Colorado withholding made during that part of the year during which the business is not operating.
    - (6) Lookback period. The lookback period for each calendar year is the twelve-month period ending the preceding June 30. The aggregate amount of Colorado withholding tax liability as originally filed for the lookback period will determine the status as a quarterly, monthly, or weekly filer. New employers shall be treated as having zero tax liability for any part of the lookback period during which they did not exist as an employer.
- (c) Due dates.
  - (1) Quarterly rule. An employer that is a quarterly filer must file a Colorado withholding tax return and pay the Colorado tax withheld for the calendar quarter on or before the last day of

the month following the close of the calendar quarter. A return must be filed for each quarter even if no taxes have been withheld.

- (2) Monthly rule. An employer that is a monthly filer must file a Colorado withholding tax return and pay the Colorado tax withheld for the month on or before the fifteenth day of the following month. A return must be filed for each month even if no taxes have been withheld.
  - (3) Weekly rule. An employer that is a weekly filer must remit any Colorado withholding taxes accumulated as of any Friday on or before the third business day following such Friday.
  - (4) Seasonal rule. In order to file on a seasonal basis, the employer must obtain approval from the Department of Revenue and supply the scheduled months in which there is withholding. An employer that is a seasonal filer must file a Colorado withholding tax return and pay the Colorado tax withheld on or before the fifteenth day of the month following each month of operation. Returns must be filed for scheduled months of operation even if no taxes have been withheld.
  - (5) Filing and payments are required only on Colorado Department of Revenue business days. If the due date falls on any day that is not a business day, the taxes will be treated as timely paid if paid on the first business day thereafter.
  - (6) Change of status. When an employer's Colorado withholding tax filing status is required to be changed as a result of a new lookback period, any resulting change in filing status shall become effective on January 1 of the following year.
- (d) Required withholding from winnings, which shall include gaming and racing, shall be filed with a return and remitted on a monthly basis on or before the fifteenth of the following month.
- (e) **Electronic funds transfer.** Any employer who has an annual estimated withheld tax liability of more than fifty thousand dollars must remit withheld tax by electronic funds transfer (EFT). The annual estimated withheld tax will be based on the tax liability for the most recent twelve month period ending June 30. The electronic funds transfer shall be made using standard banking conventions as outlined in the application and agreement for electronic funds transfer between the taxpayer and the Department.

The publication DRP-5782 describing the EFT Program and Form DR-5785, "Authorization For Electronic Funds Transfer (EFT) For Tax Payments" may be examined at an Colorado State Publications Depository Library (see <http://www.cde.state.co.us/stateinfo/sldepsit.htm> for a listing of locations). Copies of the publication DRP-5782 describing the EFT program or Form DR-5785, "Authorization For Electronic Funds Transfer (EFT) For Tax Payments" may be obtained from the Department Forms Room, on the first floor at 1375 Sherman Street, Denver, Colorado 80203 and via the Department internet web site at:

**<http://www.revenue.state.co.us/wagewithforms.html>**

Scroll down the web page to the listing of forms by form number, these forms appear near the bottom of the list.

**Regulation 39-22-604.5. Effective January 1, 2000, all state tax withholding must be deducted in whole dollar amounts.**

Effective January 1, 2000, all state tax withholding must be deducted in whole dollar amounts. Employers may utilize current withholding tables or may deduct whole dollars from employee paychecks by rounding all withholding deductions to the nearest dollar. Amounts less than fifty cents must be rounded down to zero cents and amounts from fifty to ninety-nine cents must be rounded to the nearest dollar. As a result

of deducting whole dollar amounts from employees' paychecks, amounts shown on tax returns, employee statements (including W-2s and 1099s), annual reconciliation reports, and all books and records of the employer must be shown in whole dollars.

#### **WITHHOLDING TAX STATEMENTS - INCOME TAX REGULATION 39-22-604.6**

**BASIS:** The statutory bases for these regulations are C.R.S. 39-21-112(1) and C.R.S. 39-22-604(13).

**PURPOSE:** The purpose of these regulations is to change the filing due dates of withholding tax statements as required by C.R.S. 39-22-604(6) and to change the format of such statements pursuant to C.R.S. 39-22-604(6)(b).

#### **Regulation 39-22-604.6.**

- (a) Annual Reconciliation Reports. On or before the last day of February following the close of the calendar year or within 30 days of cessation of the employer's business, the employer must file an annual reconciliation report, which is a summary of the withholding payments made to the Colorado Department of Revenue, and the reconciliation of such payments to the tax withheld as shown by the individual wage and tax statements submitted. Exception — The employer need not file an annual reconciliation report if the employer files the state copies of wage and tax statements via magnetic media or modem-to-modem transfer.
- (b) Wage and Tax Statements.
  - (i) Generally — The employer must complete a wage and tax statement for each employee. That statement must show: total wages paid and state and federal tax withheld during the calendar year or portion thereof; the name, address, and social security number of the employee; and the name, address, and federal employer identification number ("EIN" or "FEIN" ) of the employer. Employers that are not required to file the federal copies of their W-2s on magnetic media may file the state copies of the wage and tax statements on the prescribed paper form. Any employer that is required to file the federal copies of their W-2s on magnetic media must file the state copies of the wage and tax statements on magnetic media or must submit such statements electronically via the Department's modem-to-modem program.
  - (ii) Due dates for employee copies — One copy of the wage and tax statement must be given to the employee for his or her records and another copy must be given to the employee to file with his or her state income tax return. These copies must be given to the employee within thirty-one days of the close of the calendar year or within thirty-one days of the date of termination of employment.
  - (iii) Due dates for state copy — The copy to be sent to the state must accompany the annual reconciliation report or, if no annual reconciliation report is required, must be filed by the last day of February. Exception — The state copies of the wage and tax statements, if filed by modem-to-modem transfer, must be filed by the last day of March.
- (c) Rules for Substitute Wage and Tax Statements.
  - (i) Form — The State of Colorado has adopted the National Association of Tax Administrators' recommended form for use in printing of combined federal-state wage and tax statement forms. The state of Colorado no longer requires the calendar year to be pre-printed in the upper right hand corner of the form. The employer may pre-print or crash print the required year, the state identification number, the name of the state and the form number in a manner approved by the Department of Revenue, but the employer may not crash

print any of the lines or headings of the form. The employer also may include the audit block shown on the federal six part Optional Wage and Tax Statement.

- (ii) **Combination Form — Modifications —** A combination form which incorporates copy number one and copy number two of said recommended forms (containing a combined federal state wage and tax statement) and consisting of six or more copies, having the same format except for federal instructions, and also providing a file copy for both employer and employee, may be approved for one year upon submission. If any Colorado employer responsible for filing a wage and tax statement form for his or her employees wishes to modify any approved form in any way, approval of such modification will be required in advance of printing and use.

**Regulation 22-604.12. Reserved.**

**Regulation 22-604.13. Reserved.**

**Regulation 22-604.14. Reserved.**

**Regulation 39-22-604.17. Every person making payment of winnings within Colorado.**

Every person making payment of winnings within Colorado which are subject to withholding for federal income tax purposes shall withhold four percent of such winnings and shall submit such withholdings to the Colorado Department of Revenue as though such amounts withheld were amounts withheld from wages under the provisions of Section 39-22-604(3), Colorado Revised Statutes.

**Regulation 39-22-605. Estimated Individual Income Tax.**

(1) Net Colorado Tax Liability.

The net Colorado tax liability for purposes of the estimated tax computation is defined as the total amount of Colorado tax, alternative minimum tax, and recapture of prior year credits minus all income tax credits other than the state sales tax refund, withholding credits, and estimated tax credits.

(2) Required Estimated Payments.

The annual amount required to be paid is the lesser of:

- a) 70% of actual net Colorado tax liability.
- b) 100% of preceding year's net Colorado tax liability. This subparagraph (2)(b) applies only if the preceding year was a 12-month tax year, the individual filed a Colorado return, and the individual's federal adjusted gross income for the preceding year was \$150,000 or less, or \$75,000 or less if the individual federal filing status was married separate.
- c) 110% of preceding year's net Colorado tax liability. This subparagraph (2)(c) applies only if the preceding year was a 12-month tax year and the individual filed a Colorado return.

(3) Submitting Payments

- a) Estimated tax payments are due on the 15th day of the 4th, 6th, 9th month and 1st month of the following tax year. Payments will be first credited against the earliest quarterly installment due for the tax year regardless of when the payment is received.

- b) Withholding credits and state sales tax refund are treated as if 25% of such credits and refund was paid in each quarter unless the taxpayer establishes the dates on which the amounts were actually withheld. Wage withholding and other withholding credits can be treated separately when determining whether to allocate 25% to each quarter or whether to allocate the credit to the quarter in which the amount was actually paid.

(4) Annualized Income Installment Method

- a) Taxpayers who do not receive income evenly during the year may elect to use the annualized income installment method to compute their estimated tax payments but only if they elected annualized installments for the payment of their federal income tax.
- b) The required installment payment on each due date will be:
  - (i) the Colorado tax liability computed by annualizing the income received during the months of the tax year ending on the last day of the month before the due date for the installment payment, multiplied by
  - (ii) the applicable percentage listed below, minus
  - (iii) the total of any earlier installment payments made for the tax year.

<b>Installment Due date</b>	<b>Income annualized from</b>	<b>Income annualized through</b>	<b>Applicable percentage</b>
4/15	1/1	3/31	17.5%
6/15	1/1	5/31	35%
9/15	1/1	8/31	52.5%
1/15	1/1	12/31	70%

- c) A schedule and explanation of the allocation methodology must be made available to the Colorado Department of Revenue upon request in order to use this annualized method.

(5) Farmers and Fisherman

- a) Farmer or fisherman means an individual whose gross income from farming or fishing is at least 2/3 of their total gross income for the tax year or the preceding tax year.
- b) The required annual amount to be paid by a farmer or fisherman is the lesser of:
  - (i) 50% of actual net Colorado tax liability, or
  - (ii) 100% of preceding year's net Colorado tax liability. This subparagraph (5)(b) applies only if the preceding year was a 12-month tax year and the individual filed a Colorado return)
- c) Estimated tax payments from a farmer or fisherman are due in a single payment by January 15 of following tax year.

(6) Estimated Tax Penalty

- a) The estimated tax penalty will be assessed if the required estimated tax payments are not paid in a timely manner. The penalty will be the appropriate Colorado income tax interest rate multiplied by the amount of the underpayment for each quarter multiplied by the underpayment period.

- b) The estimated tax penalty will not be assessed if any of the following conditions are met:
  - (i) If the net Colorado tax liability minus any prepayments and credits, other than the estimated tax payments and credits, is less than \$1,000.
  - (ii) If the taxpayer was a full-year resident for the preceding 12-month tax year and the net Colorado tax liability in that year was — 0-.
  - (iii) If the taxpayer is a farmer or fisherman and files a return with full payment of any tax due by March 1 of the following tax year.
- c) If the tax return is filed and any tax due is paid by January 31 of the following tax year, no penalty will be computed based on any underpayment of the fourth quarter installment payment.

(7) Joint Returns

- a) Taxpayers who file a joint federal declaration of estimated tax must file a joint Colorado payment. Payment must be submitted under the same primary social security number used when the income tax return is filed.
- b) If a joint estimated tax payment is made but separate returns are filed, the estimated tax payments may be divided between the two taxpayers in any manner they desire. In the case of a disagreement between the spouses on how to claim the payments where each spouse claims 100% of the payments or together they claim over 100% of the payments, the payments will be divided in the same proportion as the net Colorado tax liability. If neither spouse has a tax liability, the payments will be split 50% for each spouse. If one spouse claims less than the allocation formula provides, then that spouse will only be credited with the payments that were claimed and the other spouse will receive the balance of the payments.

**Regulation 39-22-606. Estimated Corporate Income Tax.**

(1) Colorado tax liability

The Colorado tax liability for purposes of the estimated tax computation is defined as the total amount of Colorado tax plus the recapture of prior year credits less all income tax credits other than withholding credits and estimated tax credits.

(2) Required Estimated Payments

The required annual amount to be paid is the lesser of:

- a) 70% of actual Colorado tax liability, or
- b) 100% of preceding year's Colorado tax liability, but only if:
  - (i) The preceding year was 12 month tax year, and
  - (ii) The corporation filed a Colorado return, and
  - (iii) The corporation is not defined under section 6655 of the federal IRS code as a large corporation. Large corporations can base their first quarter estimated tax payment on 25% of the previous year's tax liability. However, future payments must be based on the actual tax liability for the current tax year and any

underpayment occurring in the first quarter as a result of this estimation must be repaid with the second quarterly payment

(3) Submitting payments

- a) Estimated tax payments are due on the 15th day of the 4th, 6th, 9th and 12th month of the tax year. Payments is due for a short tax year on the 15th day of the 4th, 6th, 9th months, whichever applies, plus a final payment on the 15th day of the last month of tax year.
- b) Each required installment payment must be 25% of the required annual payment. Payments will be first credited against the earliest quarterly installment due for the tax year regardless of when the payment is received.
- c) In the case of a short tax year:
  - (i) If three payments are required, each required installment payment must be 33% of the required annual payment.
  - (ii) If two payments are required, each required installment payment must be 50% of the required annual payment.
  - (iii) If one payment is required, the payment must be 100% of the required annual payment.

(4) Annualized Income Installment Method

- a) Taxpayers who do not receive income evenly during the year may elect to use the annualized income installment method to compute their estimated tax payments if they elected annualized installments or adjusted seasonal installments for payment of their federal income tax.
- b) The required installment payment on each due date will be:
  - (i) the Colorado tax liability computed by annualizing the income received during the months of the tax year ending on the last day of the month before the due date for the installment payment, multiplied by
  - (ii) the applicable percentage listed below, minus
  - (iii) the total of any earlier installment payments made for the tax year.

<b>Installment Due date</b>	<b>Income annualized from</b>	<b>Income annualized through</b>	<b>Applicable percentage</b>
4/15	1/1	3/31	17.5%
6/15	1/1	5/31	35%
9/15	1/1	8/31	52.5%
12/15	1/1	11/31	70%

These dates must be adjusted accordingly for fiscal year filers.

- c) If tax is computed by apportioning income, apportionment factors must be computed for each quarter in order to use the annualized income installment method. Use of estimated or prior year factors will not be accepted.

- d) A schedule and explanation of the allocation methodology must be made available to the Colorado Department of Revenue upon request in order to use the annualized method.

(5) Estimated Tax Penalty

- a) The estimated tax penalty for C corporations will be assessed if the required estimated tax payments are not paid in a timely manner. The penalty will be the appropriate Colorado income tax interest rate times the underpayment for each quarter times the underpayment period.
- b) No penalty is due if the Colorado tax liability is less than \$5,000.
- c) If a short taxable year is involved, the income must be placed on an annual basis, in which case the \$5,000 requirement for filing estimated tax payments will be the same as for a full-year taxpayer.

**Regulation 22-607. Reserved.**

**Regulation 39-22-608 DUE DATE FOR FILING INCOME TAX RETURNS AND PAYMENTS**

1) Weekends and legal holidays.

- a) When an income tax filing due date falls on a Saturday, Sunday or a legal holiday, returns will be considered to have been filed on the due date if they are filed on the next Department of Revenue business day.
- b) The due date of any Colorado income tax return, associated tax payment, or extension payment for a tax year ending December 31 that is due on April 15, or on April 16 or April 17 under subparagraph a) above, will be extended to coincide with the federal due date if the Internal Revenue Service has extended the federal income tax due date due to the observance of Emancipation Day in the District of Columbia.

This extension also applies to estimated income tax payments, estimated severance tax payments, and individual non-business consumer use tax that are otherwise due on April 15. This extension does not apply to wage withholding payments.

- 2) **Extension of time to file income tax return.** All taxpayers will be allowed an automatic six month extension of time for filing their income tax returns. However, interest on any net tax liability due will be assessed and penalty may also be due if the taxpayer has not complied with regulation 39-22-621.2(j).

**Regulation 39-22-608.2(c). [Emergency Rule Expired eff. 4/26/2007]**

**Regulation 39-22-608(3) [Emergency Rule Expired eff. 02/15/2012]**

**Regulation 22-609.1. Reserved.**

**Regulation 22-609.2. Reserved.**

**Regulation 22-610.1. Reserved.**

**Regulation 22-610.2. Reserved.**

**Regulation 22-611.1. Reserved.**



**Regulation 22-621.1. Reserved.**

**Regulation 22-621.2(a). Reserved.**

**Regulation 22-621.2(b). Reserved.**

**Regulation 22-621.2(c). Reserved.**

**Regulation 22-621.2(d). Reserved.**

**Regulation 22-621.2(e). Reserved.**

**Regulation 22-621.2(f). Reserved.**

**Regulation 22-621.2(g). Reserved.**

**Regulation 22-621.2(h). Reserved.**

**Regulation 22-621.2(i). Reserved.**

## **II. REGULATION 39-22-621.2(j)**

**Good cause.** Except as noted, the taxpayer must make an affirmative showing of all facts in order to prove good cause.

**Returns filed under extension:** The failure to file penalty described in C.R.S. 39-22-621(2)(a) will not be due if a taxpayer files his or her tax return within the extension period.

Unless specifically waived by the Department for good cause, the failure to pay penalty described in C.R.S. 39-22-621(2)(b) will be due if:

- (1) the taxpayer has not paid at least ninety percent of his or her net tax liability into the Department of Revenue as of the original due date of the return, or
- (2) the taxpayer does not file by the extension due date, or
- (3) the taxpayer does not pay all of the net tax due with the taxpayer's filed return.

Interest will be assessed on any net tax liability due with a return filed under extension, for the period from the original due date until payment is made.

Net tax liability means the total Colorado income tax liability for the tax year reduced by all credits other than prepayment credits.

Prepayment credits are credits for income tax paid by the taxpayer (including income tax withheld from the taxpayer's wages) before the original due date of the return.

Cross References:

Extension of time to file return: C.R.S. 39-22-608(2), Regulation 39-22-608.2(b)

Interest: C.R.S. 39-22-621(1)

The taxpayer must make an affirmative showing of all facts alleged in order to prove reasonable cause.

**Regulation 22-621.2(k). Reserved.**

**Regulation 22-621.3. Reserved.**

**Regulation 39-22-622 INCOME TAX REFUND INTEREST**

- 1) Refund interest paid on all income tax returns, including amended returns, received on or after March 25, 2009 is controlled by §39-22-622, C.R.S. A refund will include interest at the rate specified in §39-21-110.5, C.R.S. plus a 5% refund penalty if the refund is not issued within the following time frames unless an exception to the refund interest applies.
- 2) **Time Frames.**
  - a) For any return filed on or before the original due date of the return excluding any extension of time to file that is filed in January, the refund must be issued within 14 days following the date the return was physically received at the Department of Revenue.
  - b) For any return filed on or before the original due date of the return excluding any extension of time to file that is filed in February, the refund must be issued within 21 days following the date the return was physically received at the Department of Revenue.
  - c) For any return filed on or before the original due date of the return excluding any extension of time to file that is filed in March, the refund must be issued within 28 days following the date the return was physically received at the Department of Revenue.
  - d) For all other income tax returns, the refund must be issued within 45 days following the date the return was physically received at the Department of Revenue.
  - e) For any return filed in April of any year, due to the volume of income tax mail received in that month, the date the return was physically received at the Department of Revenue will be deemed to be May 1 for the purpose of computing the date on which the refund must be issued.
- 3) **Exceptions.** Refund interest will not be paid if the delay is caused by any of the following:
  - a) Errors on the return when filed (includes, but not limited to, erroneous or illegible tax id numbers, misspelled names, calculation errors, missing required documentation or certifications, and unclaimed payments)
  - b) Unforeseen delays caused by the failure of the processing equipment; equipment includes but is not limited to physical equipment and electronic processing systems
  - c) A review/audit to verify the accuracy of the return (does not include any review/audit initiated as a result of a Department of Revenue data entry error)
  - d) The return includes a Colorado job growth incentive tax credit
  - e) Effective January 1, 2012, the return includes an enterprise zone credit and the Department is awaiting confirmation from the Colorado Office of Economic Development that the taxpayer is eligible for such credit.
- 4) Refunds initially exempt from refund interest under paragraph 3) above may receive full or partial refund interest if, after the error correction or review is completed, the refund is delayed more than the time frames defined in paragraph 2) above.

5) **Excessive Prepayments.** Due to the burden articulated in §39-21-110(1.5)(b):

- a) If the total prepayments (withholding, estimated payments, extension payments, sales tax refund, and other payments) are more than double the amount of the net tax liability, then no refund interest will be paid on any refund.
- b) If an amended return or claim for refund reduces the net tax liability or increases the prepayments, no refund interest will be paid on any refund if the total prepayments and prior payments are more than double the amount of the amended net tax liability. [ §39-21-110(1.5), C.R.S.]
- c) If the taxpayer establishes that the prepayment was made incident to a bona fide and orderly discharge of an actual liability, or a liability reasonably assumed to be imposed by law, then interest will be paid.

**Regulation 22-623. Reserved.**

**Regulation 22-624. Reserved.**

**Regulation 22-625. Reserved.**

**Regulation 22-626. Reserved.**

**Regulation 39-22-652. DEFINITIONS**

1) Federal Transactions.

- a) A transaction described in either §39-22-652(5)(a) (federal listed transaction) or (7) (federal reportable transaction), C.R.S., is a “Federal Transaction” for purposes of these regulations if:
  - i) the taxpayer is required by federal law to file an IRS Form 8886, or a successor form, or amendment to such form with respect to the transaction, and
  - ii) files or is included in, or is required to file or be included in, a Colorado income tax return, including a consolidated and/or combined Colorado income tax return and such Colorado tax return reflects a Colorado Tax Benefit deriving from such transaction.

2) Colorado Listed Transactions.

a) For purposes of a Colorado Listed Transaction, the following terms apply:

- i) A captive real estate investment trust (“REIT” ) or captive regulated investment company (“RIC” ) is referred to in these regulations as a “Captive Entity.”
- ii) A more than fifty percent beneficial owner includes any entity that is controlled by the more than fifty percent beneficial owner of a Captive Entity, any of which, individually or collectively, is referred to in these regulations as the “Owner.”
- iii) “Transaction” for purposes of a Colorado Listed Transaction includes, but is not limited to:

- (1) a transaction by which the Owner creates or acquires a controlling interest in a Captive Entity, or

- (2) transactions by, among, or between the Owner and Captive Entity, and includes dividend distributions by the Captive Entity to or from an Owner, management service fees charged by or to an Owner to or from a Captive Entity, rental payments paid to a captive REIT by an Owner, loans by or to the Owner to or by the Captive Entity and repayment of those loans, interest payments paid by or to a Captive Entity to or from the Owner, and capital contributions to the Captive Entity by the Owner.
- iv) “Colorado Tax Benefit” is a tax consequence that may reduce a taxpayer’s Colorado income tax liability by affecting the amount, timing character, or source of any item of income, gain, expense, loss, or credit, including deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or absence of adjustments to the basis in property, or status as an entity exempt from federal or state income taxation. A Colorado Tax Benefit includes a tax benefit applied at the federal level or to another state’s income tax or other similar tax, but the consequence of which flows through to reduce Colorado income tax liability.
- b) A transaction described in either §39-22-652(5)(b) or (c), C.R.S. is a “Colorado Listed Transaction” for purposes of these regulations if:
- i) it is a transaction between the Owner and Captive Entity, and
- ii) the Owner or Captive Entity files, or is included in, or is required to file or be included in, a Colorado income tax return, including a consolidated and/or combined Colorado income tax return and such Colorado tax return reflects a Colorado Tax Benefit. An Owner, Captive Entity, and a material advisor do not have a disclosure obligation under subsections 653 or 656 of these regulations with respect to a Colorado Listed Transaction if such income tax return does not reflect a Colorado Tax Benefit.
- c) *Example* . Retail Store operates a retail business in a building owned by Captive REIT and is located in Colorado. The commercial domicile of Captive REIT is in Delaware. Retail Store pays rent to Captive REIT. Captive REIT distributes rental income received from Retail Store to Corporation A, which redistributes the income as a stock dividend to Holding Company. Holding Company has the controlling interest in both Retail Store and Corporation A and its commercial domicile is in Delaware. Corporation A has the controlling interest in Captive REIT and its commercial domicile is in Bermuda. Corporation A is not required to file a Colorado income tax return and is not includable in a Colorado combined income tax return because it does not have more than twenty percent of its property in the United States. See, §39-22-303(8), C.R.S. Retail Store’s Colorado taxable income is reduced by the rental payments made to Captive REIT. Holding Company receives a Colorado Tax Benefit because the tax consequence of its ownership of controlling interests in Captive REIT, Corporation A, and Retail Store is the reduction of Colorado income tax otherwise due by Holding Company’s group retail operation in Colorado. Retail Store also receives a Colorado Tax Benefit because its Colorado taxable income is reduced by its rental payments to Captive REIT.

### **Regulation 39-22-653. TAXPAYER DISCLOSURE OF REPORTABLE AND LISTED TRANSACTIONS**

#### **1) Content of Disclosure of Federal Transactions.**

A taxpayer who is required to disclose to the department a Federal Transaction shall file with the Department a copy of the entire IRS form 8886, or any successor form, and any amendments to the original filing of said form, that the taxpayer files, or should have filed, with the Internal Revenue Service.

2) Content of Disclosure of Colorado Listed Transactions.

A taxpayer who is required to disclose to the department a Colorado Listed Transaction shall file with the department a Taxpayer's Colorado Listed Transaction Disclosure Statement. The contents of the statement shall include the name and address (mailing and physical location) of each Captive Entity, the name and address (mailing and physical location) of the Owner, the Captive Entity's estimated total assets and estimated total income earned prior to dividend distribution for the tax year in which the disclosure is first due. A taxpayer who is required to disclose a transaction that is reportable under both subsections 1 and 2 of this regulation shall file IRS form 8886.

3) Disclosure by a Pass-through Entity or More Than Fifty Percent Owner.

A taxpayer who is (a) a partner, member, or shareholder (a "pass-through member" ) of a pass-through entity, (b) a Captive Entity, or (c) an entity controlled by the more than fifty percent beneficial owner of a Captive Entity, and who is required to file a disclosure statement pursuant to subsection 1 or 2, above, satisfies its disclosure obligation if the pass-through entity or more than fifty percent beneficial owner is required to disclose under subsection 1 or 2 of this regulation, files on behalf of such taxpayer an Internal Revenue Service form 8886 or a Taxpayer Colorado Disclosure Statement, as the case may be, that contains all information that would have been disclosed had the pass-through member, Captive Entity, or entity controlled by the more than fifty percent beneficial owner, filed such a disclosure statement, and the taxpayer does not have reasonable grounds to believe that the disclosure filed on its behalf is not materially incomplete or inaccurate.

a) *Known or Potential Federal Tax Benefits of pass-through members.* A pass-through entity that does not know the federal tax benefit that inures to the pass-through member has adequately disclosed a pass-through member's federal tax benefit if the pass-through entity discloses the potential federal tax benefit(s) that may inure to the pass-through member. If the pass-through entity does not have sufficient information on which to disclose the potential federal tax benefit, the pass-through entity cannot file a disclosure statement on behalf of such pass-through member. This subsection 3(a) does not apply to an Owner, Captive Entity, or a taxpayer listed in subsection 4, below, because the taxpayer in such cases is presumed to have access to the information necessary to disclose the known tax benefit of those other entities on behalf of whom the disclosure statement is filed.

4) Taxpayer included in a Colorado combined report or consolidated return.

A taxpayer that is included, or are required to be included, in a combined and/or consolidated Colorado income tax return and that is required to make a disclosure under subsections 1 or 2, above, satisfies the disclosure requirements of this regulation if an IRS form 8886 or Colorado Taxpayer Disclosure Statement, as the case may be, that contains all information that would have been disclosed had the taxpayer separately filed such disclosure statement, is filed with the combined and/or consolidated return on behalf of all such taxpayer.

**Regulation 39-22-656 MATERIAL ADVISOR DISCLOSURE OF REPORTABLE OR LISTED TRANSACTIONS**

1) Colorado Disclosure Statement for Federal Transactions and Colorado Listed Transactions

a) Federal Transactions.

A material advisor, who is required to file with the Internal Revenue Service pursuant to United States Department of the Treasury Regulation 26 C.F.R. §301.6011-3, as

effective on August 3, 2007 (hereinafter "Treasury Regulation 301.6011-3") a disclosure statement with respect to a Federal Transaction described in department regulation 39-22-652, shall file with the department a complete copy of the IRS form 8918, or any successor form, and amendments thereto, that the material advisor filed, or should have filed, with the Internal Revenue Service.

b) Colorado Listed Transactions.

i) Except as otherwise noted below, the provisions of Treasury Regulation §301.6111-3 shall apply to a material advisor with respect to a Colorado Listed Transaction.

ii) The following provisions of Treasury Regulation § 301.6111-3 are modified as follows:

(1) "Listed transaction," as defined in subsection 3(c)(2) of the Treasury Regulation § 301.6111-3 means a Colorado Listed Transaction.

(2) "Tax" or "Federal tax" means Colorado income tax.

(3) The gross Income threshold set forth in subsections 3(b)(3)(i)(B) and 3(b)(3)(ii) (but not 3(b)(3)(i)(A)) apply and without regard to the state in which the gross income is earned.

iii) The following provisions of Treasury Regulation §301.6111-3 shall not apply with respect to a Colorado Listed Transaction:

(1) Subsections 3(b)(2)(i)(B) and (D),

(2) Subsections 3(b)(2)(ii)(B) through (D),

(3) Subsection 3(b)(3), subsection 3(b)(4)(i)(B),

(4) Subsections 3(c)(1) and (13),

(5) The form and content of the disclosure statement set forth in subsection 3(d)(1); except, provisions of said subsection relating to an incomplete form (i.e., Material Advisor's Colorado Listed Transactions Disclosure Statement) and the requirement to amend such form apply.

(6) Time for providing disclosure set forth in subsection 3(e) and (f) (see, subsection (c) of department regulation 39-22-656(c), below, for applicable deadlines), but the remaining provisions of subsection (3(e) (regarding time period to file amended disclosures) and (f) (regarding designation agreements) shall apply,

(7) subsection 3(h) (regarding rulings)

(8) effective / applicability date set forth in subsection 3(i),

iv) *Content of disclosure.* A material advisor shall, with respect to a Colorado Listed Transaction, file a Material Advisor's Disclosure Statement, which shall include the following:

(1) Material advisor's name, identifying number, telephone number, mailing address; contact person's name, title, and telephone number. If the material advisor is party to a designation agreement, the name(s),

address(es), telephone number(s), contact name(s) and telephone number(s), of the other parties.

- (2) Names, including trade names, if any, mailing and physical location addresses of the Owner and of the Captive Entity.
- (3) A description of the material aid, assistance, or advice provided.
- (4) The disclosure statement shall be signed by the material advisor and shall include the following attestation: "I declare that I have examined this statement, and to the best of my knowledge and belief, it is true, correct, and complete."
- (5) For a Colorado Listed Transaction that is also Federal Transaction, the material advisor shall file a complete copy of IRS form 8918, or any successor form, and amendments thereto that the material advisor filed, or should have filed, with the Internal Revenue Service, and shall not file a Material Advisor's Colorado Listed Transaction Disclosure Statement.

v) *Retention of Information.* A material advisor shall, with respect to a Colorado Listed Transaction, retain, for a period of seven years from the date the person first becomes a material advisor, any records in the material advisor's possession or control regarding the following items:

- (1) the role of any other entity(ies) or individual(s) known or reasonably known to have provided material aid, assistance, or advice to the transaction and the name, address, identifying number (if known) and telephone.
- (2) whether a related entity or individual is needed, an entity or individual without Colorado income tax nexus is needed, a tax-exempt entity is needed, and/or an entity that is not includable in a Colorado combined return is needed, in order to obtain the intended tax benefit created by the transaction and, if so, a description of the role of each individual or entity and the name of the individual's or entity's country of existence or state of incorporation or commercial domicile if a particular country or state (including a particular type of country or state, e.g., separate filing state or combined reporting state) is required to obtain the intended tax benefit.
- (3) whether, in order to obtain the intended tax benefit, the income, or gain from the transaction, is allocated directly or indirectly to an individual or entity that has a net operating loss and/or unused loss or credit and, if so, a description of the role each individual or entity in the transaction.
- (4) a description or copy of the financial instruments used in the transaction.
- (5) a description or explanation of the intended tax benefit created by the transaction in each year.
- (6) the state and federal tax code section(s) used to claim the tax benefit(s) generated by the transaction.
- (7) a description of the transaction(s) for which material aid, assistance, or advice, was provided, including the following:

- (A) the nature of the expected tax treatment and expected tax benefits created by the transaction for all affected years,
- (B) the years the tax benefits are expected to be claimed,
- (C) the role of the entities or individuals identified in subsections 1 and 2, above,
- (D) the role of the financial instruments identified in subsection 4, above,
- (E) a description of how the state and federal tax code section(s) identified in subsection 6, above, are applied and how they allow the taxpayer to obtain the desired tax treatment.

c) Time for providing disclosure statement.

- i) The material advisor must, with respect to a Federal Transaction or Colorado Listed Transaction, file the applicable disclosure statement within six months of the date in which the transaction is entered into by the taxpayer. If the person is not a material advisor (see, Treasury Regulation §301.6111-3(b)(4)) until after the six month period, then the disclosure statement is due the month following the month in which the person first becomes a material advisor.
- ii) The material advisor is not required to file in any subsequent year a disclosure statement for the same or substantially similar transaction, unless the material advisor becomes aware of facts that indicate the disclosure statement is materially incorrect or incomplete. The material advisor shall file an amended disclosure statement on the last day of the month following the quarter in which the material advisor knew or should have known the facts that necessitate the filing of an amended disclosure statement.
- iii) Notwithstanding subparagraph i) of this paragraph c), the department shall waive the application of any penalty for any disclosure statement for a Colorado Listed Transaction that is filed by a material advisor prior to March 31, 2010. This provision is designed to allow any material advisor to comply with the provisions of this regulation.

d) *Place for filing disclosure statement.* Disclosure statements shall be filed with the:

Colorado Department of Revenue  
Field Audit Section  
720 S. Colorado Boulevard  
Suite 400N  
Denver, Colorado 80246.

2) Effective Date.

A material advisor shall file a disclosure statement concerning a transaction for which the material advisor provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out such transaction and such material aid, assistance, or advice is provided by the material advisor on or after May 9, 2009 or the transaction with respect to which the material aid, assistance or advice is provided, occurs on or after May 9, 2009, even though the material aid, assistance, or advice is provided prior to such date.



3) Incorporation by Reference.

United States Department of the Treasury Regulation 26 C.F.R. §301.6011-3, as effective on August 3, 2007 ("Treasury Regulation 301.6011-3") is hereby incorporated by reference. This regulation 39-22-656 does not incorporate later amendments to or editions of Treasury Regulation 301.6011-3. A copy of Treasury Regulation 301.6011-3 has been provided to the state publications depository and distribution center. Treasury Regulation 301.6011-3 may be examined at any state publications depository library. Additionally, the department shall maintain certified copies of the complete text of Treasury Regulation 301.6011-3, which shall be available for public inspection during regular business hours. Certified copies of the material incorporated shall be provided at cost upon request. Any member of the public wishing to obtain or examine a copy of Treasury Regulation 301.6011-3 may contact the:

Colorado Department of Revenue  
Office of Tax Policy  
1375 Sherman Street  
Denver, Colorado, 80203.

**Regulation 39-22-2101(1). Colorado Low Income Housing — Income Tax Credit. Definitions — Reserved.**

**Regulation 39-22-2102(1). Reserved.**

**Regulation 39-22-2102(2). Reserved.**

**Regulation 39-22-2102(3). The owner of a qualified development project receiving an allocation of a Colorado low income housing credit.**

The owner of a qualified development project receiving an allocation of a Colorado low income housing credit may allocate the credit among its partners, shareholders, members, or other constituent taxpayers in any manner agreed to by such persons. The owner shall certify to the Department of Revenue, Manager, Income Tax Account Services Section, Taxpayer Service Division, the amount of credit allocated to each constituent taxpayer. The certification shall set forth:

- a) the name(s) and federal taxpayer identification number(s) of the owner.
- b) the address of the property for which the credit is received,
- c) the name and federal taxpayer identification number of the constituent taxpayers who receive an allocation of the credit,
- d) the total amount of credit allocated to all constituent taxpayers,
- e) the amount of credit each constituent taxpayer received,
- f) the tax year in which the credit was allocated to each constituent taxpayer and the amount allocated to such constituent taxpayer for each such year, and
- g) the amount of credit claimable in each year.

If the constituent taxpayer of an owner is a pass-through entity, then, to the extent that the owner's records reflect such information, the owner shall identify by name and federal taxpayer number the constituent taxpayer(s) of such pass-through entity and their taxpayer identification number and beginning credit allowances.

**Regulation 39-22-2102(6). Credits not applied against tax in any taxable year may be carried forward.**

Credits not applied against tax in any taxable year may be carried forward up to, and including, tax year 2012. Any amount of credit not used during this carryforward period shall not be refunded upon claim by the taxpayer.

**Regulation 39-22-2103(1). Recapture — Waiver of Statute to Avoid Immediate Assessment.**

- (a) Where any recapture of credit claimed under 39-22-2103, C.R.S. is created by the sale of the property interest by the original owner, the liability for payment of the recapture tax may be tolled when the taxpayer that claimed the tax credit executes and signs a waiver of the statute of limitations for assessment for the tax year that recapture would be due, extending the period or assessment of the recapture tax until one year after the expiration of the credit compliance period under § 39-22-2101(3), C.R.S.

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**Editor's Notes**

**History**

Regulations. 39-22-103; 39-22-104; 39-22-305 eff. 04/30/2007.

Emer. Regulations. 39-22-608 expired eff. 04/26/2007.

Regulation. 39-22-608 eff. 05/30/2007.

Regulation. 39-22-522 eff. 11/30/2007.

Repealed Regulation. 39-22-525 eff. 11/30/2007.

Income Tax Special Regulations (Railroads, Airlines, Contractors, etc.) recodified under 1 CCR 201-3. Regulations. 39-22-121, 39-22-304(3)(i), 39-22-514, 39-22-522 eff. 01/01/2009.

Regulations. 39-22-303.1 – 39-22-303.5.9; 39-22-303.10; 39-22-303.11(C); 39-22-305; 39-22-504(2) eff. 03/02/2009.

Regulations 39-22-652, 39-22-653, 39-22-656 eff. 03/30/2010.

Regulation 39-22-301.1 eff. 04/30/2010.

Regulations 39-22-303.5.7(A), 39-22-303.7.1, 39-22.303.7.2 eff. 06/30/2010.

Regulations 39-22-104(4)(M), 39-22-120, 39-22-121, 39-22-504(2), 39-22-514, 39-22-518, 39-22-522, 39-22-622 eff. 03/02/2011.

Regulations 39-22-303.11(A)(C)(D); 39-22-608 eff. 08/15/2011.

Regulation 39-22-522 eff. 09/01/2011.

Regulation 39-22-608(3) emer. rule eff. 10/18/2011; expired eff. 02/15/2012.

Regulations 39-22-120, 39-22-121 eff. 12/30/2011.

Regulation 39-22-104.1.7 emer. rule eff. 11/27/2013.

Regulations 39-22-303.9, 39-22-303.11(D), 39-22-308 repealed eff. 03/03/2014.

### **Annotations**

**Department of Revenue's December 2003 regulation limiting the total credit garnered by donations from tenancies in common to \$100,000 was not an improper extension of the statute.** Because respondents claimed tax credits in excess of \$100,000, the Department correctly issued the notices of deficiency. A donated conservation easement held by a tenancy in common, such as the one donated by respondents, was subject to the \$100,000 aggregate limit. *Huber v. Kenna*, 205 P.3d 1158 (2009).