INCOME TAX

1 CCR 201-2 *Eff. 04/30/2007*

[Editor's Notes follow the text of the rules at the end of this CCR Document.] Eff. 04/30/2007

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 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)

(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)(l) - 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)(l)(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 only in tax years in which state revenues exceed the limitation on state fiscal year spending. The subtraction is not available to those 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 IRC section 170 and exceed a $500 threshold. The limits applicable to IRC section 170 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 during the November 2005 statewide election, the subtraction is available for tax years beginning on or after January 1, 2006 but prior to January 1, 2011 and is not reliant on a budget surplus that exceeds the amounts established in §39-22-104(4)(m)(III) C.R.S.

39-22-104(4)(m)(II) Charitable Contribution Subtraction For Non-Itemizing Taxpayers

Status Table:

Maximum	FiscalYear[1]	Tax Year[2]	Is Subtraction Available[3]:
1999-2000	2000	NO	
2000-2001	2001	YES	$500
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 Depa rtment of Revenue upon request.

(c) Documentation to support the tax return from another state must also be submitted to the Depa rtment 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). (New.)

(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 fullyear 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 fullyear 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 asrelating 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 table below are refund mechanisms for surplus funds required to be refunded under TABOR. 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.

Credit/Subtraction	CRS Statute	1999	2000
Agricultural value-added cash fund credit	39-22-528	no	no
Agricultural value-added credit	39-22-527	no	no
Child care/child tax credits - expanded credits	39-22-119(5)	no	yes
Colorado Institute of	39-22-525	no	no

Technology contribution credit			
Colorado source capital gain subtraction-pre 5/9/94 assets	39-22-518(5)(a)	yes	yes
Colorado source capital gain subtraction-one year holding period	39-22-518(5)(c)	no	no
Earned income credit	39-22-123	yes	yes
Foster care credit	39-22-127	no	no
Health benefit plan credit	39-22-125	no	yes
Health care professional credit	39-22-126	no	yes
High technology scholarship contribution credit	39-22-523	no	no
Individual development account contribution credit	39-22-524	no	no
Interest, dividend and capital gain subtraction	39-22-104(4)(l)	no	yes
Qualifying charitable contribution subtraction	39-22-104(4)(m)	no	no

2) **Sales and Property Tax Refund Mechanism Table.** The credits and refunds listed in the table below are refund mechanisms for surplus funds required to be refunded under TABOR.

a) The business personal property tax refund is available for taxes paid during the fiscal year ending during the year indicated if sufficient excess revenues existed in the July1-June 30 fiscal year ending during that year, and are issued early in the fiscal year beginning during the year indicated.

b) The sales tax reduction on certain commercial trucks is 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 are 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
Business personal property tax refund	39-22-124	yes	yes
Sales tax reduced rate on commercial trucks over 26,000 GVW	39-26-106	no	no

Sales/Use tax refund for pollution control equipment	39-26-502	no	yes
Sales/Use tax refund for research and development property	39-26-602	no	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.

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
Single filers enter	$142	$195	$276
Joint filers enter	$284	$390	$552

c) 1999

If applicable income is	$25,000 or less	$25,001 - $50,000	$50,001 - $75,000
Single filers enter	$159	$212	$244
Joint filers enter	$318	$424	$488

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 – 2010

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.

Credit/Attribute	CRS Statute	1998	1999
Child care/child tax credits - 50% / $200	39-22-119(1.5)	yes	yes
Gross conservation easement credit – refundability of credit	39-22-522	no	no

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.

The amount of credit generated in any one tax year may not exceed $100,000. 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, 2009.

(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.

(A) The child care center can compute the percentage of children in its care that qualify for the credit. This percentage can by used to allocate donations that are made to the facility.

(B) 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.

(A) The expenses of the various programs must be accounted for and donations can be directly allocated to the qualified programs.

(B) 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.

(A) 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).

(B) 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.

(C) If construction costs are reasonably allocated using the method in paragraph A 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 that 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.

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.

Regulation 39-22-301.1.

Doing business in Colorado. A corporation will be considered to be doing business in Colorado whenever the minimum standards of Public Law 86-272 are exceeded. Public Law 86-272 protects manufacturers whose only business activity conducted in a state is soliciting orders for sale of tangible personal property. Sales of services are not protected by Public Law 86-272. 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 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.

Election of apportionment method. 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.

Regulation 39-22-303.3.

(a) 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.

(b) “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.

a. “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.

b. 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 39-22-303.6.

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 39-22-303.8

(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 by a corporation in the combined report, from another corporation included in the same combined report, are not included in taxable income.

Regulation 39-22-303.10

“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 dividend), 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.

Regulation 39-22-303.10(a)

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.

Regulation 39-22-303.10(b)

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 revenue factor. The percentage excluded is equal to the sum of foreign taxes from all foreign countries, divided by forty-six percent of all foreign source income, including IRC Sec. 78 dividend.

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 lessor of:

(1) FOREIGN SOURCE INCOME (EXCLUDING SEC. 78 DIVIDEND), or

(2)

FOREIGN TAXES PAID	× FOREIGN SOURCE INCOME (EXCLUDING SEC. 78 DIV
46% × FOREIGN SOURCE INCOME (INCLUDING SEC. 78 DIVIDEND)	

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

Regulation 39-22-303.10(b)(5).

For tax years commencing on or after January 1, 2000, the denominator of the formula in regulation 39-22-303.10(b) above will use the effective federal corporation tax rate in place of the 46% figure in the prior statute and regulation39-22-303.10(b) above. 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:

Effective federal corporate tax rate = federal corporate taxable income	<u>federal corporate income tax</u>

Regulation 39-22-303.10(c)

When determining foreign source income from 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.

Regulation 39-22-303.11(a).

Combined returns. (i) 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.

(ii) 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.

(iii) 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 (I) through (VI) following.

(I) 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.

(II) 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.

Service	Total Value of services provided to F from all Sources	Value of Services provided to F by E	Percent provided by
Adveristing & Public Relations	$150,000	$110,000	73%
Accounting & Bookkeeping	$ 80,000	70,000	87.5%
Legal Services	$ 50,000	$ 35,000	70%
Personnel Services	$120,000	$120,000	100%
Sales Services	$235,000	$141,000	60%

(III) 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.

(IV) 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.

(V) 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 corporations L's board of directors. Corporations J and K have met the fifth test of unity. Corporations J and L have not.

(VI) 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.

(iv) 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 have 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). (Repeal entire regulation and replace as follows.)

Apportionment of income on a combined report. When filing a combined report, the affiliated group of corporations shall file one return, apportioning income under the provisions of either the Colorado Income Tax Act or the Multistate Tax Compact, (C.R.S. 24-60-1301), summing the numerators to derive one set of factors 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 revenue factors of the three corporations are as follows:

Corporation A:	Colorado revenue	$5,160,118
Total revenue	$7,652,492	
Corporation B:	Colorado revenue	$ 183,290
Total revenue	$ 314,005	
Corporation C:	Colorado revenue	$ 1,642,720
Total revenue	$80,009,652	

The combined revenue factor would be as follows:

Colorado revenue (A+B)	$5,343,408	= 6.0737%
Total revenue (A+B+C)	$87,976,149*	

*assuming no intercompany eliminations

The property factor would be computed in the same manner. The revenue and property of Corporation C are not included in the numerators of the factors because Corporation C is not doing business in Colorado.

Assuming a combined average property factor of 3.0080%, the average of the two factors is 4.5409% which 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.

Regulation 39-22-303.11(d)

Refer to Regulation 39-22-305.2

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

Regulation 39-22-303.12(a)

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.

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).

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, C.R.S., or §24-60-1301, C.R.S. The apportionment factors of such consolidated group shall be based solely on the consolidated property, payroll and revenue, 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. The credit allowed by section 39-22-308. C.R.S., for the purchase of Colorado coal — except for the pass-back provisions of subsection (2) of such section — may be claimed only by the ultimate user of the coal. Brokers or middlemen involved in purchasing and selling the coal to the ultimate user are not eligible for the credit.

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).

(i) 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.

(ii) 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.

(iii) (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.

Regulation 39-22-504.6. (New.)

(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. (New.)

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). (New.)

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 CodeSection 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 CodeSection 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. The Colorado Income Tax Historic Property Preservation Credit was enacted in 1990 and amended in 1994. Regulations were first issued effective 12/30/94, 17 CR 12. In 1999 the credit was amended for several changes and extended to January 1, 2010. The 1999 amending Act, HB99-1345, states at Section 2, Applicability: "This act shall apply to the restoration, rehabilitation or preservation of historic properties commenced on or after the effective date of this act." The act was approved June 3, 1999. Therefore the 1994 regulations are reenacted with clarifications, and are effective for restorations commenced prior to June 3, 1999. New sections are added for the changes made in 1999, and noted as effective for restorations commenced on or after June 3, 1999.

(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 C.R.S. 39-30-105.6; 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, 2010. 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 allowed 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 allowed the enterprise zone credit, but are allowed the credit where they meet the 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 of 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 is allowed to claim the enterprise zone rehabilitation of vacant building credit as allowed by C.R.S. 39-30-105.6, may not claim the historic property preservation credit with respect to the same rehabilitation. (Taxpayers who are allowed to 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) Taxpayer 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, 2010.

(b) 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.)

(c) 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 (6) below.

(4) Reserved.

(5) Reserved.

(6) 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.

(6.5) 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, 2010, the taxpayer may claim a credit for such last taxable year with respect to the qualified expenditures incurred prior to January 1, 2010.

(7) 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:

Certification level	Tax year beginning prior to January 1, 2010	Tax year beginning prior to January 1, 2012
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 ... 3 5%

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” 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 Source Capital Gain Subtraction.

1) **General Rule.** For tax years beginning on or after January 1,1999, qualified taxpayers can subtract from the federal taxable income reported on their Colorado income tax return qualifying net capital gains on assets acquired on or after May 9,1994 and held for at least five years. This subtraction is available regardless of whether there are excess state revenues.

2) **Expanded Subtractions.** There are two expanded versions of the general rule for tax years in which State revenues exceed limitations on state fiscal spending by amounts established in 39-22-518 C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make these two expanded versions of the general rule available. 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 is modified to eliminate the acquisition date requirement for tax years beginning on or after January 1,1999.

   b. **Subparagraph E and F.** Pursuant to 39-22-518(2)(b)(I)(E) and (F), C.R.S., the general rule is 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.

The expanded credits of paragraph 2(a) and (b), above, and the general rule are not mutually exclusive. For example, the general rule applies even in tax years where there are excess revenues. Similarly, if the excess revenues in a tax year are not sufficient to make available the expanded credit of paragraph 2(b), above, but sufficient to make available the credit in paragraph 2(a), then the credit is available for gains that qualify under paragraph 2(a) and/or the general rule. See Regulation 39-22-120 for years in which the subtractions are available.

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,

ii. The acquisition date is met by the pass-through entity, and

iii. The asset that created the gain passed through to the taxpayer was either: (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 deminimis 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.

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 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 for 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:

    A) the taxpayer has a carryover gross conservation easement credit from a prior tax year, or

    B) 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:

    A) the taxpayer has a carryover gross conservation easement credit from a prior tax year, or

    B) 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:

A) the taxpayer has a carryover gross conservation easement credit from a prior tax year, or

B) 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:

A) the taxpayer claimed a credit generated from the donation of a single perpetual conservation easement in gross made during the tax year, or

B) the taxpayer has a carryover gross conservation easement credit available during the tax year from a prior year, or

C) 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.

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

A) the taxpayer claimed a credit generated from the donation of a single perpetual conservation easement in gross made during the tax year, or

B) the taxpayer has a carryover gross conservation easement credit available during the tax year from a prior year, except that this paragraph B will not apply if the carryover credit is a result of an unused purchased credit from a prior year, or

C) 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.

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 claim an unlimited number of credits subject to the limitations in paragraph ii. The total value of the purchased credits claimed 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.

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 claimed 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.

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 claimed 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 claim the credit during that tax year. A purchased credit cannot be claimed 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 claimed. 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 claimed 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) A pass through entity can not qualify as 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 subsections iv and v 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 Transfer Item ("Transfer Item Adjustment"), made by the Department against the TMR shall also be binding on the transferee. Final resolution of disputes between the Department of Revenue and the TMR shall be binding on transferees of the credit.

(1) **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. However, because the Department cannot release confidential tax information regarding the TMR's credit, the transferee must contact the TMR for details of the Transfer Item Adjustment.

(2) **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 it deems appropriate.

(3) **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. The Department will issue pursuant to §39-21-103, C.R.S. a notice of final determination regarding the Transfer Item Adjustment. The TMR, not the transferee, may appeal the determination in accordance with §39-21-105, C.R.S.

(4) **Notification.** Notification of the results of the hearing and appeal process to the transferees will be the responsibility of the TMR.

ii) **Gross Conservation Easement 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 transferees.

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.** The TMR designation can be changed upon a written request by a transferee 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 or cannot perform the functions of a TMR for any reason, except that lack of cooperation with the Colorado Department of Revenue by the representative is not a basis for finding that the representative cannot perform the functions of a TMR.

v) **Criteria for Representation.** The Department of Revenue will determine the appropriate person to serve as TMR and whether a request to change the designation of a TMR is valid. Criteria to be considered when determining who will serve as the TMR includes:

(1) The general knowledge of the donor or transferor regarding the gross conservation easement transfer items at issue.

(2) The donor's or transferor's access to the records of the conservation easement.

(3) The views of the transferee's involved in the transaction.

vi) **Statute of Limitations.** 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 claimed 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 claim 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 claim a refund created by this credit. Similarly, the total of all credits claimed 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 claim 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 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.

b) A taxpayer who later moves to another state remains eligible to claim 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.

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 mat 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 Colorado Institute of Technology Contribution Credit

(1) Tax Credit

(a) The income tax credit for contributions to the Colorado Institute of Technology 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. 39-22-525. 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.

(b) The credit is computed as 15% of total monetary contributions to the Institute during a qualifying year. Individuals are limited to a credit of $10,000 except the limit is $5000 for individuals filing a federal tax return as married filing separately. Affiliated groups of 'C' or 'S' corporations, Limited Liability Companies or partnerships are limited to a credit of $10,000 per tax year.

(c) A certificate verifying contributions received must be issued by the Colorado Institute of Technology to the taxpayer and must be included with any tax return claiming a credit under this section.

(2) Nonrefundable credit. There is no carryforward or carryback of this credit. No refund is allowed for credit amounts which exceed the income tax liability of the taxpayer.

(3) Previous statute: Contribution to Colorado institute for telecommunications education - Colorado Institute for Telecommunications Education. The credit for contributions to the

Colorado Institute for Telecommunications Education is moot for income tax year 2001 and for all tax years beginning on or after January 1, 2001 as the statute establishing the Institute was repealed before its formation (section 23-20.3-102, C.R.S., repealed effective August 2, 2000, see 2000 Session Laws page 18.)

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 sction.

(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 interment 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. 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 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 Section39-22-604(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 12month 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.

Installment Due date	*Income annualized from*	*Income annualized through*	*Applicable percentag*
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 multipiled 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 15^{th} day of the 4^{th}, 6^{th}, 9^{th} and 12^{th} month of the tax year. Payments is due for a short tax year on the 15^{th} day of the 4^{th}, 6^{th}, 9^{th} months, whichever applies, plus a final payment on the 15^{th} 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.

Installment Due date	*Income annualized from*	*Income annualized through*	*Applicable percentag*
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 22-608.1. Reserved.

Regulation 39-22-608.2.

Due date for filing income tax returns. (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.

Regulation 39-22-608.2(b)

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 regulation39-22-621.2(j).

Cross References: Interest and penalties: C.R.S. 39-22-621, Regulation 39-22-621.2(j)

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

Regulation 22-608.3

[Repealed 26 CR 8]

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 22-622. Reserved.

Regulation 22-623. Reserved.

Regulation 22-624. Reserved.

Regulation 22-625. Reserved.

Regulation 22-626. Reserved.

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 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 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.

RAILROADS

The following special regulations are established in respect to railroads.

I. When allocating and apportioning income in accordance with the provisions of article IV of the Multistate Tax Compact, 24-60-1301 CRS 1973, as amended:

A. In General. Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under Article IV.1 and Reg. IV.1 thereunder. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Article IV.5 to Article

IV.8, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this regulation. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

B. <u>Business and Nonbusiness Income.</u> For definitions, rules and examples for determining business and nonbusiness income, see Reg. IV.1.

C. <u>Apportionment of Business Income.</u>

1. <u>The Property Factor.</u>

a. <u>In General.</u> The property factor shall be determined in accordance with Reg. IV.10.–.12., inclusive, the payroll factor in accordance with Reg. IV.13.–.14., and the sales factor in accordance with Reg. IV.15.–.17, inclusive, except as modified in this regulation.

b. <u>The Denominator and Numerator of the Property Factor.</u> In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives, and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in accordance with Article IV.10.–.12., inclusive, and Reg. IV.10.–.12., inclusive.

Mobile or movable property such as passenger cars, freight cars, locomotives, and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which “locomotive-miles” and “car-miles” in this state bear to the total everywhere.

2. <u>The Payroll Factor.</u> The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business income. (See Article IV.13.–.14. and Reg. IV.13.–.14.) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator as provided in Article IV.13.–.14. and Reg. IV.13.–.14.

With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services are performed in this state bear to their services performed everywhere. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

3. <u>The Sales (Revenue) Factor.</u>

a. <u>In General.</u> All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor. (See Article IV.1. and Reg. IV.1.)

The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail, and express, shall be attributable to this state in accordance with Article IV.15.–.17. and Reg. IV.15.–.17.

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

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

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

c. Numerator of Sales (Revenue) Factor from Passengers. The numerator of the sales (revenue) factor shall include:

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

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

II. When apportioning income in accordance with the provisions of 39-22-303 CRS 1973 as amended:

A. The Property Factor. The numerator and the denominator of the property factor shall be determined in the same manner as set forth in part I with the following exceptions:

1. Real property rented by the railroad is valued at eight (8) times the net annual rental rate. Tangible personal property rented by the railroad is valued at three (3) times the net annual rental rate.

2. The property owned by the railroad may be valued at its original cost or at its adjusted basis for federal income tax purposes in accordance with 39-22-303(3), CRS 1973 as amended.

B. The Sales (Revenue) Factor. The numerator and the denominator of the sales (revenue) factor shall be determined in the same manner as set forth in part I.

THESE SPECIAL REGULATIONS ARE PROMULGATED TO BETTER PROVIDE FOR A SPECIFIC BUSINESS AND SPECIAL CIRCUMSTANCES. THEY SHALL APPLY IN ADDITION TO AND HAVE THE SAME EFFECT AS THE NUMBERED REGULATIONS.

AIRLINES

The following special regulations are established in respect to airlines:

I. When allocating and apportioning income in accordance with the provisions of article IV of the

Multistate Tax Compact, 24-60-1301, C.R.S. 1973, as amended.

A. In General

An airline that has income from sources both within and without Colorado shall determine income in accordance with this regulation. Income shall first be categorized as to “business” or “nonbusiness” income pursuant to Article IV.1 and Regulation IV.1. Nonbusiness income will be directly allocated to specific states in accordance with Article IV.5 to Article IV.8 inclusive. Business income will be apportioned to those states in which business is conducted based on the property, payroll and sales apportionment factors as set forth in this regulation. The amount of net income subject to tax by Colorado will be the sum of (1) the amount of nonbusiness income allocated to Colorado plus (2) the amount of business income attributable to Colorado.

B. Business and Nonbusiness Income

For definitions and rules for determining business and nonbusiness income, see Regulation IV.I.

C. Apportionment of Business Income

The same method in the reporting of items for all factors must be consistent for both the numerator and denominator.

1. The Property Factor

a. Property Valuation

Owned property shall be valued at its original cost and rented property shall be valued at eight (8) times the net annual rental rate in accordance with Article IV.11 and Regulation IV.11. The use of the taxpayer's owned or rented aircraft in an exchange program with another air carrier will not constitute a rental or subrental. Such aircraft shall be accounted for in the property factor of the taxpayer. Rotables, parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.

b. General Definitions

The following definitions will be for both the numerator and denominator of the property factor:

(1) “Value” of owned real and tangible personal property. (See Regulation IV.11.(a).)

(2) “Original Cost”. (See Regulation IV.11(a).)

(3) “Average Value” of property. (See Regulation IV.12.)

(4) The “value” of rented real and tangible personal property. (See Regulation IV.11(b).)

(5) “Net Annual Rental Rate”. (See Regulation IV.11(b).)

(6) “Property Used During the Tax Period”. (See Regulation IV.10(b).)

(7) “Aircraft Ready for Flight” means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer's routes. It includes aircraft temporarily out of service for routine maintenance. It shall not include aircraft removed from service and held for resale.

(8) “Airmiles” means “miles ramp to ramp” as defined in the Civil Aeronautics Board (CAB)) Uniform System of Accounts.

(9) “Airmiles in this State” means the number of miles computed from when an aircraft leaves a terminal in this State until it crosses the border of this State plus the number of miles computed from when an aircraft crosses the border of this State until it comes to rest at a terminal in this State.

(10) “Arrivals and Departures” means the number of times that an aircraft lands or takes off at an airport in revenue service.

(11) “Arrivals and Departures in this State” means the number of times that an aircraft lands or takes off in revenue service at an airport located in this State.

c. The Denominator and Numerator of the Property Factor

Both the denominator and the numerator of the property factor shall include the average value of all real and tangible personal property owned or rented and used by the taxpayer during the tax period. Aircraft held for resale will not be included. Rotables, parts and other expendables including parts for use in contract overhaul work will be valued at cost and assigned where the property is located. Aircraft ready for flight shall be included in the numerator as follows:

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

(ii) The ratio of arrivals and departures in this State bears to the total arrivals and departures everywhere by type of aircraft times the denominator cost or value of each type of aircraft, weighted at 60%.

2. The Payroll Factor

The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. (See Article IV.13 and Article IV.14 and Regulation IV.13 and Regulation IV.14) The numerator of the payroll factor is the total amount paid in this State during the tax period by the taxpayer for compensation. With respect to nonflight personnel, compensation paid to such employees shall be included in the numerator as provided in Article IV.13 and Article IV.14 and Regulation IV.13 and Regulation IV.14. With respect to flight personnel (the air crew aboard an aircraft assisting in the operation of the aircraft or the welfare of the passengers while in the air), compensation paid to such employees shall be included in the same ratio as the property factor for “aircraft ready for flight” in 1 (c) (i) and (ii) above.

3. Sales (Revenue) Factor

All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income is included in the denominator of the revenue factor. (See Article IV.1 andRegulation IV.1.) The numerator of the revenue factor is the total revenue of the taxpayer in this State during the income year. In determining the numerator of the revenue factor, revenue for hauling passengers, freight, mail, and excess baggage shall be attributed to this State based upon the same ratio as the property factor in “aircraft ready for flight” in 1 (c) (i) and (ii) above.

Airtime, arrivals, and departures by type of aircraft shall be used in computing revenue attributable to this State derived from hauling passengers, freight, and mail. Receipts from the other business activities shall be included in the numerator in accordance with the statute.

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

<u>Miles by Type ×</u>	Revenue	=	Revenue by Type
Total Revenue Passenger			
<u>Revenue Freight Ton-Miles by Type ×</u>	Total Freight Revenue	=	Freight Revenue by
Total Revenue Freight Ton-Miles All Types			

II. When apportioning income in accordance with the provisions 39-22-303 C.R.S. 1973, as amended, the only deviations allowed from the provisions of 39-22-303 are:

A. The Property Factor

The numerator and the denominator of the property factor shall be determined in the same manner as set forth in part I with the following exceptions:

1. Real property rented by the airline is valued at eight (8) times the net annual rental rate. Tangible personal property rented by the airline is valued at three (3) times the net annual rental rate.

2. The property owned by the airline may be valued at its original cost or at its adjusted basis for federal income tax purpose in accordance with 39-22-303 (3) C.R.S. 1973 as amended.

3. Construction in progress is to be included.

B. The Sales (Revenue) Factor

The numerator and the denominator of the sales (revenue) factor shall be determined in the same manner as set forth in part I. If in addition to the apportionment of business income above the taxpayer has non-business income under part I, such income shall be included in the numerator and denominator in accordance with the provisions of 39-22-303.

CONTRACTORS

The following special regulations apply to contractors who elect to report income using the completed contract method; provided, however, that:

a) such regulations shall apply only to contracts having an effective date on or after January 1, 1985; and

b) with respect to contracts with a gross revenue of $100,000 or less, such regulations shall apply only at the option of the taxpayer.

I. When allocating and apportioning income in accordance with the provisions of Article IV of the Multistate Tax Compact, 24-60-1301, C.R.S.:

A. In General

A contractor who has income from sources both within and without Colorado and elects to report income using the completed contract method, shall determine income in accordance with this regulation. Net income shall first be categorized as to “business” or “non-business” pursuant to Article IV.1 and Regulation IV.1. Net non-business income will be directly allocated to specific states in accordance with

Article IV.5 to Article IV.8 inclusive. Gross profits from completed contracts, business administrative income and business administrative expense will be apportioned to those states in which business is conducted based on property, payroll and revenue apportionment factors as set forth in this regulation. The amount of net income subject to tax by Colorado will be the sum of (1) the gross profit from completed contracts apportioned to Colorado less business administrative expense apportioned to Colorado plus (2) other business income apportioned to Colorado which is not directly attributable to completed contracts plus (3) the amount of non-business income allocated to Colorado.

B. General Definitions

1. "Job" means a long-term contract entered into to build, construct, install or manufacture which will not be completed within the tax year in which it is entered into. As used in this regulation a "job" will refer to only those contracts where a taxpayer elects to report income using the completed contract method.

2. "Job Revenue" means gross revenue recorded on the books in accordance with generally accepted accounting principles. Billings shall be adjusted for overbillings or underbillings whenever applicable.

3. "Job Costs" means costs recorded on the books as being paid or accrued that are directly attributable to a specific job.

4. "Job Profit or Loss" means the gross profit or loss attributable to a specific job, which is determined by subtracting "Job Costs" from "Job Revenue."

5. "Gross Profit Apportioned to Colorado" means Colorado's share of the sum of "Job Profits and Losses" of all jobs completed during a specific tax period.

6. "Administrative Expense Apportioned to Colorado" means Colorado's share of expense not directly attributable to a specific job.

C. Business and Non-business Income

For definitions and rules for determining business and non-business income, see Regulation IV.1.

D. Apportionment Factors

The same methods in reporting of items for all factors must be consistent for both the numerator and denominator.

1. Property Factor

Property Valuation — Owned property shall be valued at its original cost and rented property shall be valued at eight (8) times the net annual rental rate in accordance with Article IV.11. Rent expense directly attributable to incomplete and completed jobs shall be capitalized in the numerator and denominator of the factor in the tax year in which it was paid or accrued.

2. Payroll Factor

The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the tax year. (See Article IV.13 and Article IV.14 and Regulation IV.13 and Regulation IV.14) The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. Compensation directly attributable to incomplete and completed jobs shall be included in the numerator and denominator of the factor in the tax year in which it was paid or accrued.

3. Revenue Factor

All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income is included in the denominator of the revenue factor. (See Article IV.1 and Regulation IV.1) The numerator of the revenue factor is the total revenue of the taxpayer in this state during the tax year. When determining the denominator and numerator of the revenue factor, revenue directly attributable to contract jobs shall be included in the tax year on the the basis of progress billings and receipts from completed and incomplete contract. When determining the numerator the typical computation would be:

Total contract price for all jobs completed in this state during the tax year	$ XXXXXX.
Plus	
Total progress payments billed or received for all incomplete jobs in this state at the end of the tax year	$ XXXXXX.
Less	
Total progress payments billed or received in prior tax years for the above completed and incomplete jobs in this state	$(XXXXXX.)
Equals	
Total revenue directly attributable to all jobs in this state during the tax year	$ XXXXXX.
Add	
Revenue from other business activities in this state not directly attributable to jobs	$ XXXXXX.
Numerator	$ XXXXXX.

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

E. Apportionment of Income and Expense

Once the property, payroll and revenue factors have been determined and an average factor computed, income and expense shall be apportioned to this state as set forth in this regulation.

1. Gross Profit

The gross profit of each and all jobs completed during the tax year shall be apportioned to this state by weighted factors. When determining the gross profit to be apportioned to Colorado from a job spanning a three year period, the typical computation would be:

Year 1	Percent of job completed during year 1	×	Average property, pa and revenue factor ir 1
Year 2	Percent of job completed during year 2	×	Average property, pa and revenue factor ir 2
Year 3	Percent of job completed during year 3	×	Average property, pa and revenue factor ir 3
			Total Weighted Facto

Gross profit from this job completed in year 3 would be apportioned to Colorado by a factor which is the sum of the weighted factors of years 1, 2, and 3.

2. Administrative Expense

Administrative expense not directly attributable to jobs and not direct of related to allocated income shall be apportioned to Colorado by the average property, payroll and revenue factor.

3. Other Business Income

Other business income not directly attributable to jobs shall be apportioned to Colorado by the average property, payroll and revenue factor.

F. Colorado Taxable Income

Gross profit apportioned to Colorado from all jobs completed during the tax year	$ XXXXX.
Less	
Administrative expense apportioned to Colorado	($ XXXXX.)
Plus	
Other business income apportioned to Colorado not directly related to jobs	$ XXXXX.
Equal	
Total taxable income apportioned to Colorado	$ XXXXX.
Add	
Non-business income allocated to Colorado	$ XXXXX.
Colorado Taxable Income	$ XXXXX.

II. When apportioning income in accordance with the provisions of C.R.S., 39-22-303:

A. Section 39-22-303 makes no distinction between “business” and “nonbusiness” income, and provides that the entire net income shall be apportioned.

B. Income will be apportioned to Colorado via property and revenue factors rather than property, revenue and payroll factors.

1. Property Factor — The numerator and the denominator of the property factor shall be determined in the same manner as set forth in Part I with the following exceptions:

    a. The property owned by the taxpayer may be valued at its original cost or its adjusted basis for federal income tax purposes in accordance with C.R.S., 39-22-303

    b. Real property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Tangible personal property rented by the taxpayer is valued at three (3) times the net annual rental rate.

    c. Construction in progress is to be included.

2. Revenue Factor — The numerator and denominator of the revenue factor shall be determined in the same manner as set forth in Part I with the following exception:

“Business” and “non-business” income that is not directly attributable to contract jobs, shall be included in the numerator and denominator in accordance with the provisions of C.R.S., 39-22-303

3. Apportionment of Income and Expense — Income and expense apportioned to Colorado shall be determined in the same manner as set forth in Part I, with the following exception:

There will be no directly allocated income. Income that is directly allocated to specific states in Part I, shall be apportioned in accordance with C.R.S., 39-22-303.

Special Regulations Income Tax

Basis: The statutory basis for these income tax regulations is C.R.S. 39-22-303(5).

Purpose: The purpose of these regulations is to provide a standardized methodology for determining income tax apportionment factors for the trucking, publishing, and television and radio broadcasting industries.

Trucking Regulations

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

I. When allocating and apportioning income in accordance with the provisions of Article IV of the Multistate Tax Compact, C.R.S. 24-60-1301:

A. In General. As used in this regulation, the term “trucking company” means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the trucking company's income constitutes “business” income and what portion constitutes “nonbusiness” income under Article IV.1 of the Multistate Tax Compact, C.R.S. 24-601301, and Regulation IV.1 thereunder. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Article IV.5 to Article IV.8, inclusive. Business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this regulation. The sum of (i) the items of nonbusiness income directly allocated to this state and (ii) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax in this state.

B. **Business and Nonbusiness Income.** For definitions, rules, and examples for determining business and nonbusiness income, see Regulation IV.1.

C. **Apportionment of Business Income**

1. **In General.** The property factor shall be determined in accordance with Regulation IV.10 to .12, inclusive, the payroll factor in accordance with Regulation IV.13 to .14, and the sales factor in accordance with Regulation IV.15 to .17, inclusive, except as modified by this regulation.

2. **The Property Factor**

a. **Property Valuation.** Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rental rate in accordance with Article IV.11 and Regulation IV.11.

b. **General Definitions.** The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:

(1) “Average value” of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the Department of Revenue may require the averaging of monthly values during the income year or such averaging as is necessary to reflect properly the average value of the trucking company's property. (See Article IV.12 and Regulation IV.12.)

(2) “Mobile property” means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(3) A “mobile property mile” is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(4) “Original cost” is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (Regulation IV.11.(a).)

(5) “Property used during the course of the income year” includes property which is available for use in the taxpayer's trade or business during the income year.

(6) The “value” of owned real and tangible personal property means its original cost. (See Article IV.11 and Regulation IV.11.(a).)

(7) The “value” of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See Article IV.11 and Regulation IV.11.(b).)

c. The Denominator and Numerator of the Property Factor. The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In the determination of the numerator of the property factor, all property, except mobile property as defined in this regulation, shall be included in the numerator of the property factor in accordance with Article IV.10 to Article IV.12, inclusive, and Regulation IV.10 to Regulation IV.12, inclusive.

Mobile property, as defined in this regulation, which is located solely within this state during the income year shall be included in the numerator of the property factor.

Mobile property as defined in this regulation, which is located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

3. The Payroll Factor. The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business income. (See Article IV.13 and Article IV.14 and Regulation IV.13 and Regulation IV.14.) The numerator of the payroll factor is the total compensation paid in this state during the income year by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees shall be included in the numerator as provided in Article IV.13 and Article IV.14 and Regulation IV.13 andRegulation IV.14.

With respect to personnel performing services within and without this state, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere based on mobile property miles.

4. The Sales (Revenue) Factor

a. In General. All revenue derived from transactions and activities in the regular course of the taxpayer's trade or business which produce business income shall be included in the denominator of the revenue factor. (See Article IV.1 and Regulation IV.1.)

The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with Article IV.15 through Article IV.17 and Regulation IV.15 through Regulation IV.17.

b. Numerator of the Sales (Revenue) Factor From Freight, Mail, and Express. The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(1) Intrastate: All receipts from any shipment which both originates and terminates within this state; and,

(2) Interstate: That portion of the receipts from movements or shipments passing

through, into, or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

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

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

1. owns nor rents any real or personal property in this state, except mobile property; nor

2. makes any pick-ups or deliveries within this state; nor

3. travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the income tax year do not exceed three percent of the total mobile property miles traveled in all states by the trucking company during that period; nor

4. makes more than twelve trips into this state.

II. When apportioning income in accordance with the provisions C.R.S. 39-22-303:

A. The Property Factor. The numerator and the denominator of the property factor shall be determined in the same manner as set forth in part I with the following exceptions:

1. Real property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Tangible personal property rented by the taxpayer is valued at three (3) times the net annual rental rate.

2. The property owned by the taxpayer may be valued at its original cost or at its adjusted basis for federal income tax purpose in accordance with C.R.S. 39-22-303 (3).

B. The sales (Revenue Factor). The numerator and the denominator of the sales (revenue) factor shall be determined in the same manner as set forth in part I. If in addition to the apportionment of business income above the taxpayer has non-business income under part I, such income shall be included in the numerator and denominator in accordance with the provisions of C.R.S. 39-22-303.

Publishing Regulations

The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material.

I. When allocating and apportioning income in accordance with the provisions of Article IV of the Multistate Tax Compact, C.R.S. 24-60-1301:

A. In General. Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to Article IV. of the Multistate Tax Compact, C.R.S. 24-60-1301, and the regulations adopted thereunder.

B. Definitions. The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

1. "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

2. "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

3. "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

4. "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

C. Apportionment of Business Income.

1. The Property Factor.

a. Property Factor Denominator.

(1) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

b. Property Factor Numerator.

(1) All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor.

(2) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere.

The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere.

Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(3) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

Example: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this regulation, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of $400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the total original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, were determined to have an original cost of $4,000,000 and such mobile property was used in this state for 95 days.

The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	$3,000,000
Value of mobile property: 95/356 or (.260274) × $4,000,000:	$1,041,096
Value of leased satellite	<u>$2,000,000</u>

property used in-state: (.02) × $100,000,000:	
Total value of property attributable to state:	$6,041,096
Total property factor %: $6,041,096/ ($500,000,000):	1.2082%

2. The Payroll Factor.

The payroll factor shall be determined in accordance with Article IV.14. of the Multistate Tax Compact and the regulations promulgated thereunder.

3. The Sales Factor.

a. Sales Factor Denominator.

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under Reg.IV.15 through Reg. 18.

b. Sales Factor Numerator.

The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

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

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

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

(3) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the executive director may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not

upon the basis of the circulation factor provided by subparagraph C.3.(b).(2). Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(4) Except as provided for in C.R.S. 39-22-303(14) regarding publishers of magazines or periodicals, if the purchaser or subscriber is the United States Government or that the taxpayer is not taxable in a State, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such State, shall be included in the numerator of the sales factor of this State if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this State.

II. When apportioning income in accordance with the provisions C.R.S. 39-22-303:

A. The Property Factor. The numerator and the denominator of the property factor shall be determined in the same manner as set forth in part I with the following exceptions:

1. Real property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Tangible personal property rented by the taxpayer is valued at three (3) times the net annual rental rate.

2. The property owned by the taxpayer may be valued at its original cost or at its adjusted basis for federal income tax purpose in accordance with C.R.S. 39-22-303 (3).

B. The sales (Revenue Factor). The numerator and the denominator of the sales (revenue) factor shall be determined in the same manner as set forth in part I. If in addition to the apportionment of business income above the taxpayer has non-business income under part I, such income shall be included in the numerator and denominator in accordance with the provisions of C.R.S. 39-22-303.

Television and Radio Broadcasting Regulations

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

I. When allocating and apportioning income in accordance with the provisions of Article IV of the Multistate Tax Compact, C.R.S. 24-60-1301:

A. In General. When a person in the business of conducting television or radio broadcasts, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to Article IV. of the Multistate Tax Compact, C.R.S. 24-60-1301, and the regulations issued thereunder by this state, except as modified by this regulation. This regulation shall also apply to telecasting by cable television systems.

B. Business and Nonbusiness Income. For definitions, regulations and examples for determining whether income shall be classified as "business" or "nonbusiness" income, see Reg. IV.1.

C. Definitions. The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

1. "Film" or "film programming" means any and all performances, events or productions telecast, live or otherwise, on television, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, in the format of a motion picture, a video tape, disc or other medium.

Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more television seasons.

2. "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of telecasting or broadcasting, but which are not physically located in any particular state.

3. "Radio" or "radio programming" means any and all performances, events or productions broadcast, live or otherwise, on radio, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, in the format of an audio tape, disc or other medium.

Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

4. "Release date" means the date on which a film is placed into service. A film is placed into service when it is first telecast to the primary audience for which the film was created. Thus, a film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose. Each episode of a television series is placed in service when it is first telecast. A film is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for telecast or, merely because it is telecast to prospective sponsors or purchasers, or is shown in preview before a select audience.

5. "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

6. A "subscriber" to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

7. "Tangible personal property" used in the business, whether owned or rented, shall include, but not be limited to camera and sound equipment, sets, props, wardrobes, and other similar equipment or property, but shall not include film or radio programming.

8. "Telecast" or "broadcast" (used interchangeably) means the transmission of television or radio programming by an electronic signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, or other conduits of communications.

9. "United States" shall include and be limited to the fifty states, the District of Columbia, the Commonwealth of Puerto Rico and the possessions and territories thereof.

D. Apportionment of Business Income.

1. **In General.** The property factor shall be determined in accordance with Regulation IV.10 through 12., the payroll factor in accordance with Regulation IV.13. and 14., and the sales factor in accordance with Regulation IV.15. and 16., except as modified by this regulation.

2. **The Property Factor.**

a. In General

(1) In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage or other permanent equipment such as sound recording equipment and the like; except that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a dayto-day basis) shall be included.

Lump-sum net rental payments for a period which encompasses more than a single income year shall be assigned ratably over the rental period.

(2) No value or cost attributable to any film or radio programming shall be included in the property factor at any time.

b. Property Factor Denominator.

(1) All real property and tangible personal property (other than outer-jurisdictional and film or radio programming property), whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

(2) Audio or video cassettes, discs or similar medium containing film or radio programming and intended for sale or rental by the taxpayer for home viewing or listening shall be included in the property factor at their original cost. To the extent that the taxpayer licenses or otherwise permits others to manufacture or distribute such cassettes, discs or other medium containing film or radio programming for home viewing or listening, the value of said cassettes, discs or other medium shall include the license, royalty or other fees received by the taxpayer capitalized at a rate of eight times the gross receipts derived therefrom during the income year.

(3) Outer-jurisdictional, film and radio programming property shall be excluded from the denominator of the property factor.

c. Property Factor Numerator.

(1) With the exception of outer-jurisdictional and film or radio programming property, all real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor. If tangible personal property (other than outer-jurisdictional and film or radio programming property) is located or used in this state for part of the income year, it shall be included in the numerator of the property factor at a value determined by applying the ratio which the number of days the property is located or

used in this state bears to the total number of days such property was owned or rented by the taxpayer during the income year.

(2) Outer-jurisdictional, film and radio programming property shall be excluded from the numerator of the property factor.

Example: XYZ Television Co. has a total value of all of its property everywhere of $500,000,000, including a satellite valued at $50,000,000 that was used to telecast programming into this state and $150,000,000 in film property of which $1,000,000's worth was located in this state the entire year. The total value of real and tangible personal property, other than film programming property, located in this state for the entire income year was valued at $2,000,000; and the movable and mobile property described in subparagraph c.(1) was determined to be of a value of $4,000,000 and such movable and mobile property was used in this state for 100 days. The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	$2,000,000
Value of mobile and movable property: (100/365 or .2739 X $4,000,000):	<u>$1,095,600</u>
Total value of property to be included in the state's property factor numerator without apportionment of outer-jurisdictional and film property:	$3,095,600
Total value of property to be used in the denominator ($500,000,000-$200,000,000)	$300,000,000
Total property factor % ($3,095,600/$300,000,000):	.0103

3. The Payroll Factor.

a. Payroll Factor Denominator.

(1) The denominator of the payroll factor shall include all compensation, including residual and profit participation payments, paid to employees during the income year, including that paid to directors, actors, newscasters and other talent in their status as employees.

(2) Amounts paid or other consideration that is provided to another person, corporation or other business entity for providing the services of directors, actors, newscasters and other talent for a live television broadcast, film or radio programming may be included in the payroll

factor only upon a finding by the executive director, supported by clear and convincing evidence, that (a) such payments or other consideration were at least twenty-five percent (25%) of the total compensation paid to employees; and (b) failure to include such other payments or consideration would prevent the apportionment formula from fairly representing the extent of the taxpayer's business activity in this state.

b. Payroll Factor Numerator.

Compensation for all employees who are engaged on location in the production of a live television broadcast, film or radio programming, as well as any payments or other consideration for the providing of those talent services that are included in the payroll denominator pursuant to paragraph D.3.a.(2), shall be attributed to the state or states as may determined by the application of the provisions of Reg.IV.13. and Reg. IV. 14. For purposes of applying said Reg.IV.13 and Reg IV.14., the persons for whom compensation was included in the payroll denominator pursuant to paragraph D.3.a.(2) shall be deemed to be employees of the taxpayer.

4. The Sales Factor.

a. Sales Factor Denominator.

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Reg.IV.18.(c) and paragraph D.4.b.(4) hereof.

b. Sales Factor Numerator.

The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

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

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

The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total United States viewing (listening) audience. In the case of television, the audience factor shall be determined by reference to the rating statistics of reputable ratings services, provided that the source selected is consistently used from year to year for such purpose. In the case of radio, the audience factor shall be determined by reference to rating statistics of reputable ratings services, provided that the source selected is consistently used from year to year for such purpose.

If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the audience factor shall be determined by the ratio that the population of this state bears to the population of the United

States, as reflected in the most current population data published by the U.S. Bureau of Census, for all states which receive the broadcasts.

(3) Gross receipts from live telecasts and films in release to or by a cable television system shall be attributed to this state in the ratio (hereafter “audience factor”) that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system in the United States. If the number of subscribers cannot be accurately determined from the records maintained by the taxpayer, the audience factor ratio shall be determined on the basis of the applicable year's subscription statistics in published market surveys.

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

(4) The extent that the gross receipts from such live television broadcasting, film, or radio programming, as determined pursuant to paragraph D.4.b.(2) or (3), include receipts derived from broadcasts to audiences located outside the United State (“foreignbased receipts”), the total gross receipts against which the audience factor shall be applied shall be modified so that such foreign-based receipts are not used to affect the amount of receipts that are to be apportioned to the state. Such modification shall consist of deducting from total receipts, prior to the application thereto of the audience factor, that amount of receipts derived from broadcasts to audiences located outside the United States.

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

$1,000,000,000 — $2,000,000,000 ($800,000,000) × (audience factor)

(5) Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in Reg.IV. 16.

II. When apportioning income in accordance with the provisions C.R.S. 39-22-303:

A. The Property Factor. The numerator and the denominator of the property factor shall be determined in the same manner as set forth in part I with the following exceptions:

1. Real property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Tangible personal property rented by the taxpayer is valued at three (3) times the net annual rental rate.

2. The property owned by the taxpayer may be valued at its original cost or at its adjusted basis for federal income tax purpose in accordance with C.R.S. 39-22-303 (3).

B. The sales (Revenue Factor). The numerator and the denominator of the sales (revenue) factor shall be determined in the same manner as set forth in part I. If in addition to the apportionment of business income above the taxpayer has non-business income under part I, such income shall be included in the numerator and denominator in accordance with the provisions of C.R.S. 39-22-303.

Special Regulations Income Tax

Financial Institution Regulations

Basis: The statutory basis for these income tax regulations is C.R.S. 39-22303.1and 39-22-303(5).

Purpose: The purpose of these regulations is to provide a uniform methodology for determining income tax apportionment factors for financial institutions.

I. When allocating and apportioning income in accordance with the provisions of Article IV of the Multistate Tax Compact, C.R.S. 24-60-1301:

Section 1. Apportionment and Allocation.

(a) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this regulation. All items of nonbusiness income (income which is not includable in the apportionable income tax base) shall be allocated pursuant to the provisions of Article IV, paragraphs 5 through 8 of the Multistate Tax Compact, C.R.S. 24-60-1301. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this regulation.

(b) All business income (income which is includable in the apportionable income tax base) shall be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor (as described in Section 3 of this article), property factor (as described in Section 4 of this article), and payroll factor (as described in Section 5 of this article) together and dividing the sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(c) Each factor shall be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for the taxable year.

(d) If the allocation and apportionment provisions of this regulation do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the executive director of the Department of Revenue (hereinafter referred to as "executive director") may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) the exclusion of any one or more of the factors,

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Section 2. Definitions.

As used in this regulation, unless the context otherwise requires:

(a) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) **"Borrower or credit card holder located in this state"** means:

(1) a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or

(2) a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(c) **"Commercial domicile"** means:

(1) the headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(2) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed for the purposes of this regulation to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.

(d) **"Compensation"** means wages, salaries, commissions and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Federal Internal Revenue Code. In the case of employees not subject to the Federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Federal Internal Revenue Code shall be made as though such employees were subject to the Federal Internal Revenue Code.

(e) **"Credit card"** means credit, travel or entertainment card.

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

(g) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) **"Financial institution"** means:

(1) Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(2) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. sections 21 et seq.;

(3) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. section 1813(b)(1);

(4) Any bank or thrift institution incorporated or organized under the laws of any state;

(5) Any corporation organized under the provisions of 12 U.S.C.sections 611 to 631;

(6) Any agency or branch of a foreign depository as defined in 12 U.S.C. section 3101;

(7) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(8) Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in subsections (1) through (7) above other than an insurance company taxable under C.R.S. 10-3-209;

(9) A corporation or other business entity that derives more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a “finance lease” shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any “direct financing lease” or “leverage lease” that meets the criteria of Financial Accounting Standards Board Statement No. 13, “Accounting for Leases” or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. (The reference to Financial Accounting Standards Board Statement No.13 does not include later amendments or editions of this referenced material. Certified copies of this material are available for review in the executive director's office of the Department of Revenue at 1375 Sherman Street, Denver, Colorado 80261.)

For this classification to apply,

(a) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent (50%)t requirement; and

(b) gross income from incidental or occasional transactions shall be disregarded;

(10) Any other person or business entity, other than an insurance company taxable under C.R.S. 10-3-209, which derives more than fifty percent (50%) of its gross income from activities that a person described in subsections (2) through (7) and (9) above is authorized to transact. For the purpose of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items.

(11) The executive director is authorized to exclude any person from the application of subsection (10) upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in subsections (2) through (7) and (9) above.

(i) **“Gross rents”** means the actual sum of money or other consideration payable for the use or possession of property. “Gross rents” shall include, but not be limited to:

(1) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise,

(2) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement, and

(3) a proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(4) The following are not included in the term “gross rents”:

(A) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and;

(D) that portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

(j) **“Loan”** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include: properties treated as loans under Section 595 of the Federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(k) **“Loan secured by real property”** means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(l) **“Merchant discount”** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) **“Participation”** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) **"Person"** means an individual, estate, trust, partnership, corporation and any other business entity.

(o) **"Principal base of operations"** with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly (1) starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer or (2) communicates with his or her customers or other persons, or (3) performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.

(p) **"Real property owned"** and **"tangible personal property owned"** mean real and tangible personal property, respectively, (1) on which the taxpayer may claim depreciation for federal income tax purposes, or (2) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) **"Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(r) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any foreign country.

(s) **"Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) **"Taxable"** means either:

(1) that a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax (including a bank shares tax), a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or

(2) that another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not.

(u) **"Transportation property"** means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers or the like.

Section 3. Receipts Factor.

(a) **General.** The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts described herein which constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) **Receipts from the lease of real property.** The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state or receipts from the sublease of real property if the property is located within this state.

(c) **Receipts from the lease of tangible personal property.**

(1) Except as described in paragraph (2), of this subsection, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(2) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to used wholly in the state in which it is registered.

(d) **Interest from loans secured by real property.**

(1) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(2) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

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

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

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

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

(g) **Receipts from credit card receivables.** The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) **Net gains from the sale of credit card receivables.** The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) **Credit card issuer's reimbursement fees.** The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) **Receipts from merchant discount.** The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) **Loan servicing fees.**

(1) (A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(2) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include such fees if the borrower is located in this state.

(l) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

(m) Receipts from investment assets and activities and trading assets and activities.

(1) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds;

securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (A) and (B) of this paragraph, the receipts factor shall include the amounts described in such subparagraphs.

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

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

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

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

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (A) of paragraph (1) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in subparagraphs (A) or (B) of this paragraph), attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (B) of paragraph (1) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of this paragraph, average value shall be determined using the rules for determining the average value of tangible personal property set forth in subsections (c) and (d) of Section 4.

(3) In lieu of using the method set forth in paragraph (2) of this subsection, the taxpayer may elect, or the executive director may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

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

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (A) of paragraph (1) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in subparagraphs (A) or (B) of this paragraph), attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (B) of paragraph (1) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(4) If the taxpayer elects or is required by the executive director to use the method set forth in paragraph (3) of this subsection, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the executive director to use, or the executive director requires a different method.

(5) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the provisions of Article IV of the Multistate Tax Compact, C.R.S. 24-60-1301.

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

Section 4. Property Factor.

(a) General. The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.

(b) Property included. The property factor shall include only property the income or expenses of which are included (or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(1) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for Federal income tax purposes without regard to depletion, depreciation or amortization.

(2) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for Federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged-off for Federal income tax purposes shall be treated as charged-off for purposes of this section.

(3) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for Federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(d) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the executive director may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the executive director or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the executive director or the executive director requires a different method of determining average value.

(e) **Average value of real property and tangible personal property rented to the taxpayer.**

(1) The average value of real property and tangible personal property that the taxpayer has rented from another and which is not treated as property owned by the taxpayer for Federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(2) Where the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the executive director or by the taxpayer when approved in writing by the executive director. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the executive director or the executive director requires a different method of valuation.

(f) **Location of real property and tangible personal property owned by or rented to the taxpayer.**

(1) Except as described in paragraph (2) of this subsection, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated or used within this state.

(2) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) **Location of loans.**

(1) (A) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(B) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if-

(i) the taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with Federal or state regulatory requirements;

(ii) such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(iii) the taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(C) The presumption of proper assignment of a loan provided in subparagraph (B) of paragraph (1) of this subsection may be rebutted upon a showing by the executive director, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan shall then be located within this state if (i) the taxpayer had a regular place of business within this state at the time the loan was made; and (ii) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(2) In the case of a loan which is assigned by the taxpayer to a place without this state which is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined by subsection (c) of Section 2, was within this state.

(3) To determine the state in which the preponderance of substantive contacts relating to a loan

have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval and administration of the loan. The terms “solicitation”, “investigation”, “negotiation”, “approval” and “administration” are defined as follows:

(A) *Solicitation.* Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(B) *Investigation.* Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(C) *Negotiation.* Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination and security required). Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(D) *Approval.* Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(E) *Administration.* Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.

(h) **Location of credit card receivables.** For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of subsection (g) of this section.

(i) **Period for which properly assigned loan remains assigned.** A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to said state for the length of the original term of the loan. Thereafter, said loan may be properly assigned to another state if said loan has a preponderance of substantive contact to a regular place of business there.

Section 5. Payroll Factor.

(a) **General.** The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without this state during the taxable year. The payroll factor shall include only that compensation which is included in the computation of the apportionable income tax base for the taxable year.

(b) **Compensation relating to nonbusiness income and independent contractors.** The compensation of any employee for services or activities which are connected with the production of nonbusiness income (income which is not includable in the apportionable income base) and payments made to any independent contractor or any other person not properly classifiable as an employee shall be excluded from both the numerator and denominator of the factor.

(c) **When compensation paid in this state.** Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(1) The employee's services are performed entirely within this state.

(2) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term “incidental” means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(3) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's principal base of operations is within this state; or

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

II. When apportioning income in accordance with the provisions of C.R.S. 39-22-303:

A. C.R.S. 39-22-303 makes no distinction between “business” and “non-business” income, and provides that the entire net income shall be apportioned.

B. Income will be apportioned to Colorado using property and receipts factors rather than property, receipts and payroll factors.

1. Property factor:

The umerator and the denominator of the property factor shall be determined in the same manner as set forth in Part I with the following exceptions:

(a) Real property rented by the financial institution is valued at eight (8) times the net annual rate. Tangible personal property rented by the financial institution is valued at three (3) times the net annual rental rate.

(b) The property owned by the financial institution may be valued at its original cost or at its adjusted basis for federal income tax purpose in accordance with C.R.S. 39-22-303(3)

(c) Construction in progress is to be included.

2. Receipts factor:

The numerator and the denominator of the receipts factor shall be determined in the same manner as set forth in Part I. If in addition to the apportionment of business income above the taxpayer has non-business income under Part I, such income shall be included in the numerator and denominator in accordance with the provisions of C.R.S. 39-22-303.

Editor's Notes

History

Regs. 39-22-103; 39-22-104; 39-22-305 eff. 4/30/2007