DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

INCOME TAX

1 CCR 201-2

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

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. [Repealed eff. 08/14/2014]

Regulation 22-103.6. Executive Director. [Repealed eff. 08/14/2014]

Regulation 39-22-103(8)(A) RESIDENT INDIVIDUAL

(1) **General Rule.** A natural person is a resident individual of Colorado if either.

(a) The person is domiciled in Colorado, or

(b) The person satisfies the six-month rule (statutory residency rule).

(2) **Domicile.**

(a) *General Rules regarding Domicile.*

(i) A person's domicile is in Colorado if the person's place of abode is in Colorado and that person, whenever absent, has the present intention of returning after a departure or absence, regardless of the duration of the absence. A place of abode is not limited to a specific structure, but rather refers to a place or area to which the person expects to return.

(ii) An intention to initially establish domicile without being physically present in the intended domicile is insufficient to establish a domicile in such place.

(iii) A person can have only one domicile at any given instant, even if such person has homes in more than one state. See, paragraph (2)(d) regarding having more than one domicile during the same tax year.

(iv) A person who is domiciled in a state remains a domiciliary of that state even if the person temporarily resides outside that state.

(v) Once a person's domicile is established in a state, it will continue to be the person's domicile until the person establishes domicile in another state.

(vi) A determination of residency or domicile by a Colorado state or local government agency for non-tax purposes is not a determination of domicile for purposes of Colorado income tax.

(b) *Intent to Establish Domicile*. The intent to establish a domicile is essential in the determination of a person's domicile.

(i) Because a person's subjective intent is difficult to determine, a person's intention is determined only by objective, verifiable evidence. The indicia of domicile and presumptions set forth in paragraphs (2)(c) and (4), below, will determine a person's domicile, unless there is sufficient objective evidence to overcome the presumptions.

(ii) A person's reason for changing domicile, including to take advantage of tax benefits of a place of abode, is irrelevant so long as the person has an absolute and fixed intention to abandon one domicile and acquire another. For example, a person can lawfully establish domicile in Nevada solely for the purpose of living in a state with no income tax, but whether that person truthfully has a present intention to establish domicile in Nevada and abandon their domicile in Colorado is a matter of proof.

(c) *Indicia of Domicile*. The Department will consider a number of factors to determine a person's domicile. These factors include, but are not limited to:

(i) Place of domicile in prior years;

(ii) Length of time in a purported domicile. Although domicile can be established on the first day that a person is physically present in a state, the greater the length of time a person is present in a place tends to indicate that that place is the person's domicile;

(iii) Location of, and length of time residing in, a place of abode by a spouse or dependent children;

(iv) Jurisdiction that issued person's current driver's license;

(v) Jurisdiction where motor vehicle is registered;

(vi) Jurisdiction where person is registered to vote;

(vii) Employment status, including whether employment or employment duties in the state are permanent or temporary and the location where the person performs most of their employment duties.

(viii) In the case of a sole proprietorship or other entity under the control of the person, the location of business assets owned by the person or by an entity controlled by the person;

(ix) Receipt of government benefits, such as unemployment benefits, welfare, and other government benefits;

(x) Location of living accommodations;

(xi) Jurisdiction that issued a professional license;

(xii) Jurisdiction where person filed a resident or nonresident individual state income tax return;

(xiii) Statements of residency made publicly, to third parties, and in documents, including applications for insurance, federal income tax forms, or social media comments, particularly if such statements are contrary to the person's interests;

(xiv) Primary mailing address for financial documents and other important correspondence;

(xv) Business and social ties to the community, including child's school, location of family, business memberships, religious institution membership and social memberships;

(xvi) Location of primary care physician and dentist;

(xvii) Location of real property owned or controlled by the person and the attributes of such property, such as size, value, and purposes for which it is used;

(xviii) Location of personal property and its attributes, such as monetary and sentimental value and whether it was located in prior place of domicile.

No one factor is determinative and not all factors may be relevant or equally weighted. For example, a person may register a vehicle where their vacation home is located and where the vehicle is primarily used, but that registration does not, by itself, create domicile. The amount of time spent in one place also does not always explain the difference between temporary home and domicile. A person may live in a temporary home or residence for months or years on a temporary work assignment or to attend school and maintain domicile in another state. The person's intent as shown by objective facts is the primary factor used to determine domicile.

(d) *Periodic and Seasonal Changes in Domicile.*

(i) In limited cases, a person may periodically or seasonally abandon their domicile in one state and establish domicile in another. For example, a person who has a house in Colorado and Arizona and who seasonally moves from one home to another, may be a domiciliary of Colorado and Arizona for different parts of a tax year if the person treats both homes as their primary place of abode for the season.

(ii) A person who lives in a motorized home and does not own or lease residential real property that they treat as their home in another state will be treated as a (full-year) domiciliary of Colorado if they have permanent ties to the state and spend, in the aggregate, more time in this state than in any other. However, a person who owns a home in another state but travels seasonally or periodically to Colorado will not, in the absence of other factors, be treated as a domiciliary of Colorado.

(e) *Status as a student*. A student who moves to another state to attend college but who does not intend to remain in that state after graduation has not changed domicile. Moreover, a student who is being supported by a parent or parents does not establish a domicile separate from the parent(s) simply by attending school in another state regardless of whether the student takes such steps as acquiring a driver's license or registering to vote in the state in which he or she attends school.

(f) *Resident Aliens.* A person who is not a citizen of the United States but is a permanent resident alien may establish a domicile in Colorado. A person on a temporary visa is not a domiciliary. However, he or she may be a resident under the six-month rule.

(3) **Six-Month Rule or Statutory Resident Rule.**

(a) A person satisfies the six-month rule if:

(i) The person maintains a permanent place of abode in Colorado, and

(ii) Spends, in the aggregate, more than six months of the taxable year in Colorado.

(b) This six month rule does not apply to:

(i) A member of the armed forces who is stationed in Colorado pursuant to an order of the armed forces (see, Servicemembers Civil Relief Act of 2003 (50 USC App. § 501-597b));

(ii) A Colorado domiciliary who abandons their Colorado domicile during the tax year and does not maintain a permanent place of abode in Colorado after abandoning their domicile;

(iii) A person who is domiciled outside Colorado and establishes their domicile in Colorado during the tax year, unless that person has a place of abode in Colorado while maintaining a domicile outside Colorado;

(iv) A student whose domicile is not Colorado and attends college in Colorado but does not have a permanent place of abode in Colorado.

(c) A “permanent place of abode” means any place in which a person has a possessory right to live.

(i) The person need not own the permanent place of abode. For example, a lease of an apartment can constitute a permanent abode.

(ii) A recreational vehicle with sleeping and cooking accommodations can constitute a permanent place of abode.

(iii) A person need not be liable for the lease or mortgage obligation for the permanent place of abode. For example, a person, whose domicile is in another state and whose employer leases an apartment in Colorado for the person to reside while on a temporary assignment in Colorado, has a permanent place of abode in Colorado.

(d) The six month rule applies even if the person is a domiciliary of another state. For example, a person who is not domiciled in Colorado is a resident individual of Colorado for Colorado income tax purposes if the person maintains a permanent place of abode in Colorado and lives during the tax year, in aggregate, more than six months in Colorado.

(4) **Burden of Proof and Presumptions.** The burden of production and persuasion (collectively referred to in this rule as the burden of proof) is on the person asserting a change of domicile or rebutting a presumption. Whether the burden of proof has been met will be determined based only on objective evidence and cannot ordinarily be established by subjective evidence (e.g., self-serving statements of intent unless such statements are against one's interest).

(a) The place where one currently lives is presumed to be the person's current domicile.

(b) Once a domicile is established, it is presumed to continue in such place.

(c) Spouses are presumed to have the same domicile or permanent place of abode. This presumption does not apply after spouses are separated, even though no judgment or decree of separation or divorce has been rendered.

(d) A person in the armed forces does not, as a matter of law, abandon his or her domicile solely by reason of being absent from their state of domicile pursuant to orders of the armed services. However, such a person is not precluded from changing their domicile.

(e) A minor child and a dependent are presumed to have the same domicile or permanent place of abode as the custodial parent or custodial guardian. A minor child cannot, by their acts or intentions, change domicile.

(f) A person who is domiciled in Colorado and who leaves this state to accept a job assignment in a foreign nation is presumed not to have abandoned their Colorado domicile.

(g) The six-month rule does not create a presumption that a Colorado domiciliary not physically present in Colorado for more than six months has abandoned their Colorado domicile.

(h) The domicile of a person in the armed forces will initially generally be determined by the facts existing immediately prior to becoming a member of the armed forces.

(i) Presumptions regarding permanent place of abode.

(i) The mere ownership or leasing of real property in a jurisdiction is not presumed to be a place of abode in that jurisdiction.

(ii) A place of abode owned by an individual who leases it to others, not related to the owner or their spouse by blood or marriage where the individual has no right to occupy any portion of the premises and does not use such premises as their mailing address during the term of the lease is presumed not to be a permanent place of abode.

(iii) A recreational vehicle camp lot or camp ground without a hookup is presumed not to be a permanent place of abode.

(iv) A motel room or any construction which does not contain facilities ordinarily found in a place of abode, such as facilities for cooking, bathing, etc., is generally not deemed a permanent place of abode.

(v) A rented apartment, house, or condominium of an individual on a temporary work assignment in a state that returns to their state of domicile when they are not working (e.g. weekends) is generally not deemed a permanent place of abode.

(vi) An apartment, house, or condominium in a state paid for by an employer in a location that is not the person's domicile is not considered a permanent place of abode if the person is in the state on a temporary work assignment. For example, an individual domiciled in another state may reside in an apartment in Colorado while on temporary assignment for the employer, after which the person will return to their domicile. If the employer pays for an apartment in Colorado while the employee is on a temporary work assignment in Colorado, the apartment does not constitute a permanent place of abode. However, if the employee pays for an apartment while on a temporary work assignment in Colorado and remains in Colorado when not working, the employee's apartment is a permanent place of abode.

Cross References

1. See IRS Publication 555 "Community Property" regarding the definition of domicile.

2. See Department Rule 39-22-108(3)(b) for special rules relating to persons in the military and their spouses.

3. *People v. White 242 P.3d 1121 (2010), (*"The current principal-or-primary-home test for voting purposes, largely adopted by the legislature in 1979 and now expressly made applicable to motor vehicle and income tax matters as well, however, clearly resolves this ambiguity [pertaining to the meaning and proof of "residence"] in favor of an objectively determined "legal residence" or domicile.")

4. §1-2-102(1)(a)(I), C.R.S.

5. T*exas v. Florida, 307 U.S. 398 (1939)*

Regulation 39-22-103(8)(B) MILITARY SERVICEMEMBER RESIDENT INDIVIDUAL

(1) **Servicemember.** A servicemember whose domicile is Colorado and who spends at least 305 days of the tax year stationed outside of the fifty state boundary of the United States of America, the District of Columbia or a United States possession on active military may, but is not required to, elect for that tax year to be treated as a nonresident of Colorado for Colorado income tax purposes. The servicemember makes this election on their Colorado income tax return.

(2) **Servicemember Spouse.** The spouse of a servicemember described in paragraph (1), above, may also, but is not required to, elect to be treated as a nonresident of Colorado for purposes of Colorado income tax for the tax year if:

(a) the spouse spends at least 305 days of the tax year outside the United States and District of Columbia or a United States possession for the purpose of accompanying their spouse, and

(b) the servicemember elects, pursuant to paragraph (1), above, to be treated as a nonresident of Colorado.

(3) The 305 days do not have to be consecutive days, but all 305 days must occur within the tax year for which the election is made.

Cross References

1. See, Department Rule 39-22-103(8)(a) for information on what constitutes a Colorado resident.

2. Servicemembers Civil Relief Act of 2003 (50 USC App. § 501-597b) and the Military Spouses Residency Relief Act (Public Law 111-97).

39-22-104(3)(G). GROSS CONSERVATION EASEMENT ADDITION.

(1) 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 associated with the gross conservation easement must be added back to taxable income to determine the taxpayer's Colorado taxable income. This addition does not apply to a transferee because the donor is the taxpayer who claims the charitable deduction for the gross conservation easement.

(2) If the federal deduction for this donation exceeds the amount necessary to generate the maximum Colorado credit (as of 2014, this amount is $750,000), the addback shall not exceed such maximum amount.

Regulation 39-22-104(1.7) INDIVIDUAL INCOME TAX FILING STATUS

(1) **General Rule.** Because the Colorado income tax return begins with federal taxable income, taxpayers shall file their Colorado income tax return with the same status that such taxpayer files their federal income tax return.

(2) State income tax provisions that depend upon federal income tax filing status will be administered in accordance with federal income tax filing status.

(3) Any taxpayer filing as single, separate, or head-of-household shall file their Colorado income tax return in the individual taxpayer’s name only. Taxpayers filing a joint federal return shall file a Colorado income tax return jointly for both taxpayers.

Regulation 22-104.4. [Repealed eff. 04/30/2015]

Regulation 39-22-104(4) SUBTRACTIONS FROM FEDERAL TAXABLE INCOME

(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 a Colorado resident individual on income earned before becoming Colorado resident.** Colorado taxable income of a Colorado resident individual is defined as the resident’s federal taxable income, as modified by additions and subtractions set forth in §§39-22-104(3) and (4), C.R.S., respectively. A resident individual’s income is subject to Colorado taxation regardless of whether it is derived from sources inside or outside of Colorado. Income generated from sources outside Colorado prior to a taxpayer becoming a Colorado resident, but received after the taxpayer becomes a resident, is subject to Colorado income tax. Examples include, but are not limited to, pension payments, deferred compensation payments, or income from the exercise of a stock option. However, credit for income tax paid to another state in the same year will be allowed with respect to income derived from sources within such state(s) after the individual becomes a Colorado resident.

Cross Reference

1. See §39-22-108, C.R.S. and Department Rule 39-22-108 for information on the credit for taxes paid to another state.

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

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

Regulation 39-22-104(4)(F) PENSION AND ANNUITY SUBTRACTION

(1) **General Rule.**

(a) Pension and annuity benefits subject to the limitations set forth in paragraph (2) are eligible to be subtracted from a taxpayer's federal taxable income if the benefits are paid periodically, are attributable to personal services performed by an individual prior to his or her retirement from employment, paid after such retirement, and that arise from:

(i) An employee-employer relationship;

(ii) Service in the uniformed services of the United States; or

(iii) Contributions to a retirement plan that are deductible for federal income tax purposes.

(b) Periodic payments means a series of amounts paid at regular intervals (e.g., weekly, monthly, or yearly) over a period of time greater than one year.

(c) *Additional Qualifying Benefits*. The following pension and annuity benefits qualify for the subtraction, even though they are not paid periodically, are not attributable to personal services of the individual prior to retirement, and/or do not arise from one or more of the sources described in paragraphs (1)(a)(i)-(iii):

(i) Distributions from individual retirement arrangements (IRAs);

(ii) Distributions from self-employed retirement accounts;

(iii) Amounts received from fully matured privately purchased annuities;

(iv) Social security benefits; and

(v) Amounts paid from any such sources (i.e., sources described in (1)(a)(i) - (iii) and (c)(i)-(iv), above) by reason of permanent disability or death of the person entitled to receive the benefits.

(2) **Limitations.** The following are limitations on the subtraction:

(a) The amount of income that can be subtracted is limited to:

(i) $20,000 for a taxpayer who is at least 55 years of age, but not more than 64 years of age, at the end of the tax year (See paragraph (3)(c) for benefits received due to the death of the person who was originally entitled to receive such benefits); or

(ii) $24,000 for a taxpayer who is at least 65 years of age at the end of the tax year.

(b) The subtraction applies only to the extent taxpayer reports, in the same tax year that the subtraction is claimed, the pension or annuity benefit as federal taxable income on his or her federal income tax return.

(c) *Premature Distributions*. Distributions from an IRA or self-employed retirement account plan (e.g., a 401(k), savings incentive match plan for employees (SIMPLE), or Simple Employee Pension (SEP) retirement plan for a self-employed taxpayer) that are deemed to be premature for federal income tax purposes do not qualify for the subtraction. A premature distribution (sometimes referred to as an early distribution) for federal tax purposes means a distribution that is subject to a federal income tax penalty (sometimes referred to as additional federal tax). See I.R.C. § 72(t). In general, a distribution made before a taxpayer reaches the minimum retirement age required by the pension or annuity plan is subject to the premature distribution penalty. However, federal law does not impose the premature distribution penalty for certain distributions made prior to the minimum retirement age (e.g., death, hardship, etc.). See I.R.C. § 72(t). These distributions are not disqualified from the subtraction if they otherwise meet the requirements and limitations of paragraphs (1) and (2). The restriction regarding premature distributions does not apply to pension and annuity benefits distributed from sources other than an IRA or self-employed retirement account plan.

(i) *Example 1.* A distribution made from a self-employed 401(k) retirement plan to a taxpayer who is 55 years old does not meet the minimum retirement age for federal tax purposes and, therefore, is considered a premature distribution subject to the federal income tax penalty. Such distribution is not eligible for this subtraction because a premature distribution from a self-employed retirement account is not eligible for the subtraction.

(ii) *Example 2*. Same facts as Example 1 except that the 401(k) plan is not a self-employed retirement plan but, rather, a retirement plan arising from an employer-employee relationship. The distribution is eligible for the subtraction even though the distribution is subject to the premature distribution penalty because premature distribution penalty only disqualifies distributions from self-employed retirement accounts and IRAs and does not disqualify distributions from other retirement plans.

(iii) *Example 3*. Same facts as Example 1 except the distribution is a lump-sum distribution of the entire fund made for hardship and, therefore, is not subject to the federal premature distribution penalty. The distribution is allowed as a subtraction. Note that the distribution is eligible for the subtraction even though it is a lump-sum payment (i.e., not a periodic payment) because distributions from a self-employed retirement plan do not have to be periodic.

(iv) *Example 4*. Same facts as Example 2 except the distribution is a lump-sum distribution of the entire fund and is subject to the premature distribution penalty. The distribution is not eligible for the subtraction because the distribution does not qualify as a periodic payment.

(d) See §39-22-104(4)(f)(III), C.R.S. for apportionment of social security income reported in a Colorado joint return.

(3) **Examples of Pension and Annuity Benefits that Qualify for the Subtraction.** The following is a non-exhaustive list of pension or annuity benefits that, if the benefit is derived from one or more of the sources described in paragraph (1), above, and is subject to the limitations of paragraph (2), qualify for the subtraction:

(a) Pension and annuity plan benefits provided by a government employer to its employees after retirement.

(b) Distributions from a 401(k) plan, tax-sheltered annuity plan (403(b) plan), 501(c)(18)(D) plan, salary reduction simplified employee pension plan (SARSEP), SIMPLE plan, thrift savings plan for federal employees, IRAs, SEP plan, profit-sharing plan, defined benefit plan, money purchase plan, employee stock ownership plan, 457 plan, governmental plan (e.g., 401(a) plan), and 409A nonqualified deferred compensation plan.

(c) Pension and annuity benefits, including any lump-sum distributions from sources in paragraph (1)(a)(i) - (iii), paid to an individual who is less than 55 years of age at the close of the tax year if such benefits were received because of the death of the person who was originally entitled to receive such benefits. This paragraph (3)(c) applies only if the benefits are paid to an individual. The $20,000 dollar limitation in paragraph (2) applies to individual beneficiaries who are, at the end of the tax year, less than 65 years of age (including beneficiaries who are less than 55 years of age), and the $24,000 limitation in paragraph (2) applies to individual beneficiaries who are at least 65 years of age at the end of the tax year. Non-individuals (e.g., trust, estate, partnership, and other legal entity) that receive such benefits and individuals who receive such benefits from non-individuals may not claim the subtraction, even if the entity that received the benefit redistributes the benefit to an individual.

(d) Taxable permanent disability benefits received by an individual described in paragraph (1)(c)(v) who meets the age limitations set forth in paragraphs (2) even if the compensation is characterized as wages rather than pension and annuity income for federal income tax purposes.

(e) Payments made pursuant to a divorce settlement or decree to the extent the payments arise from one of the sources listed in paragraph (1) and are subject to the limitations of paragraphs (2). The settlement or decree must expressly state the amount of the pension or annuity benefit allocated to the taxpayer in order for the taxpayer to claim the subtraction. A nonperiodic payment representing a future stream of periodic payments from a pension or annuity plan made pursuant to the divorce settlement or decree will not qualify for the subtraction, unless the pension or annuity plan benefit is a pension or annuity plan listed as an exception in paragraph (1)(c), above.

(4) **Examples of Pension and Annuity Benefits that Do Not Qualify for the Subtraction.** The following is a non-exhaustive list of benefits that do not qualify as a pension or annuity benefit for purposes of this subtraction:

(a) A lump-sum distribution from a qualified or nonqualified pension or profit-sharing plan as defined in I.R.C. § 401. See Public Law 102-318, § 511 (moving the provision for income averaging for lump-sum distributions set forth in I.R.C. § 402(e)(1) to § 402(d)), and Public Law 104-188, §1401 (eliminating deduction and income averaging for lump-sum distributions set forth in I.R.C. § 402).

(b) Distributions from a Roth IRA are excluded from federal gross income and, therefore, are not eligible for the subtraction. Contributions are also not eligible to be included in the subtraction.

(c) Sick leave or vacation leave payout.

(d) Early retirement incentive pay.

(e) Severance pay.

(f) Unemployment benefits.

(g) Interest income from a bank plan that is distributed to a surviving spouse as retirement income upon death of deceased spouse.

(h) Joint savings accounts or jointly held certificates of deposits that are paid to the surviving spouse or owner.

(i) Alimony payments, including that portion of military pension awarded to a nonmilitary spouse as a result of a divorce settlement that is classified as alimony, except for alimony income that meets the requirements set forth in paragraph (3)(e), above.

(j) Life insurance proceeds.

(k) Payments from a long-term care insurance contract.

(l) Disability payments that are not for permanent disability, regardless of their source, even if reported as pension and annuity income on taxpayer’s federal income tax return.

(m) Insurance or civil damages compensation for loss of use or function of a part of the body (e.g., loss of a limb).

(n) A guaranteed payment by a partnership to a partner, unless the payment is part of a plan that meets the general rule of paragraph (1) and subject to the limitations of paragraphs (2), above.

(o) Distributions from an otherwise qualified profit-sharing plan to an employee prior to retirement.

(p) Distributions from an otherwise qualified employer-sponsored savings plan or employee stock ownership plan prior to retirement.

(q) Contribution to a pension or annuity plan, regardless of whether the contribution is taxable to the beneficiary of the pension or annuity plan at the time the contribution is made.

(r) Distribution of interest income derived from an U.S. savings bond, unless the bond was an asset of a pension or annuity plan that qualifies for the subtraction.

(5) **Trusts/Estates.**

(a) Trusts and estates cannot claim the pension and annuity benefit subtraction.

(b) An individual who is a beneficiary of a trust or estate cannot claim the subtraction for distributions of pension or annuity benefits from a trust or estate.

(6) **Railroad Retirement Benefits.**

(a) Railroad retirement annuity benefits, including Tier I and Tier II, annuity benefits for spouses, divorced spouses, survivors, vested dual benefits, supplemental railroad retirement annuity benefits and railroad disability benefits are exempt from state taxation under Section 231m of the Railroad Retirement Act (45 U.S.C. 231m and 231a(a)), regardless of whether such benefits meet the qualifications set forth in paragraph (1) of this regulation. The amount of such subtraction is not limited by the dollar limitations set forth in paragraph (2), above. If a taxpayer also receives pension or annuity benefits described in paragraph (1), above, that qualify for the subtraction, then the amount of railroad retirement benefits is not included in calculating whether pension or annuity benefits of paragraph (1) have exceeded the dollar limitations set forth in paragraph (2).

(b) If the benefits described in paragraph (6)(a), above, are included in the taxpayer's federal taxable income, the benefits are subtracted when computing Colorado taxable income as a "railroad retirement benefits subtraction." The income included in the railroad retirement benefits subtraction cannot be subtracted a second time under the pension and 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.

Cross reference: Public Law 102-318, §511, and Public Law 104-188, §1401. Prior to 1996, lump-sum distributions that were subject to the income tax averaging provisions of I.R.C. §402(e)(1) qualified for the subtraction if the deduction for such distributions, authorized by I.R.C. § 402(e)(3), were added to Colorado taxable income pursuant to §39-22-104(3)(c), C.R.S. In 1992, Congress rewrote I.R.C. §402(e) and moved the lump-sum deduction and income-averaging provisions to I.R.C. §402(d) and, in 1996 (P.L. 104-188), completely eliminated the deduction and income tax averaging provisions

Regulation 39-22-104(4)(L) Interest, Dividend and Capital Gain Subtraction. [Repealed eff. 08/14/2014]

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

1) A taxpayer who claims the basic standard deduction on their federal income tax return pursuant to I.R.C. § 63(c)(2) can subtract on their Colorado income tax return the amount of charitable contributions in excess of five hundred dollars that the taxpayer could have claimed pursuant to I.R.C. § 170 if the taxpayer had not claimed the basic standard deduction. The subtraction is not available to taxpayers who are not allowed to claim the federal basic standard deduction, such as:

a) Taxpayers for whom a dependency exemption is allowable to another taxpayer, even when a partial standard deduction is allowed under I.R.C. § 63(c)(5);

b) Married individuals filing separate returns, when one spouse itemizes deductions

c) Non-resident aliens

d) Any individual who cannot claim the federal standard deduction because the individual has a short tax year; or

e) Estates, trusts, or other entities that are not “individuals.”

2) **Limitations.**

(a) In determining the amount of the subtraction, I.R.C. § 170 shall govern, including the dollar limits on the amount of the contribution that can be claimed in any given tax year, any special rules regarding certain property, any limitations on contributions of clothing and household items, and what qualifies as a charitable contribution. For example,

(i) The charitable contribution subtraction is limited by a taxpayer’s contribution base as stated in I.R.C. § 170(b).

(ii) A claim in excess of $5,000 for a noncash charitable contribution of one item or a group of similar items generally requires an appraisal.

(b) *Itemized Deduction Phase-out.* Because the subtraction is equal to the amount of any deduction based upon the amount of a qualifying charitable contribution, any itemized deduction phase-out due to the level of adjusted gross income shall be applied to the calculation of the subtraction.

(c) *Carryforward.* A carryforward of the charitable contribution subtraction is prohibited. The federal charitable contribution carryforward may never be claimed on a Colorado income tax return.

3) **Aggregation.** The dollar amount of all charitable contributions for the tax year are aggregated to determine whether the value of the charitable contributions exceed the $500 threshold (i.e., the value of each contribution need not exceed the $500 threshold so long as the sum of all qualified contribution for the tax year exceed $500).

4) **Documentation and Substantiation.**

(a) A taxpayer must comply with the substantiation requirements set forth in I.R.C. § 170, including qualified appraisals, limitations on clothing and household items, and the documentation of cash contributions.

(b) Any claims of charitable contributions in excess of the applicable federal standard deduction must be accompanied by a clear written explanation and documentation demonstrating why the federal standard deduction was claimed.

(5) **Part-year and Nonresidents.** The subtraction is available to taxpayers who are required to file a Colorado income tax return, including part-year and nonresident taxpayers. When computing the Colorado tax liability of a part-year resident or nonresident, the subtraction is applied to compute the tentative Colorado tax liability before the tentative Colorado tax is apportioned.

Regulation 39-22-104(4)(M)(II) Charitable Contribution Subtraction For Non-Itemizing Taxpayers [Repealed eff. 08/14/2014]

REGULATION 39-22-104(4)(N.5) WILDFIRE MITIGATION MEASURES SUBTRACTION

(1) **Paid Out-of-pocket Expenses.** A cost eligible for the subtraction must be an actual out-of-pocket expense incurred and paid by the landowner primarily for wildfire mitigation measures.

(a) *Examples*.

(i) A landowner who hires and pays a third-party contractor to cut down trees as a wildfire mitigation measure has incurred and paid an out-of-pocket expense.

(ii) A landowner who personally cuts down trees as a wildfire mitigation measure has not incurred or paid an out-of-pocket expense.

(iii) A chainsaw is eligible for the subtraction if it is purchased primarily for wildfire mitigation measures.

(2) **Costs Incurred Primarily for Non-Wildfire Mitigation Purposes.** Any cost must be for property or services primarily used for wildfire mitigation measures.

(a) *Examples*.

(i) Purchases of an all-terrain vehicle, truck, tractor, or trailer are not eligible for the subtraction, even though the landowner may use these items to perform wildfire mitigation measures, because these items are not primarily used for wildfire mitigation measures. However, rental charges for the items identified, above, are eligible for the subtraction if the landowner primarily uses the rented items to perform wildfire mitigation measures.

(ii) Costs for landscaping that are primarily for aesthetic purposes, such as installation of a patio, lawn, garden or similar landscaping, but also serve as a fire break or other wildfire mitigation measure, are not eligible for the subtraction because the costs were not incurred primarily for wildfire mitigation measures.

(3) **Ineligible Costs.** Costs that are not eligible for the subtraction include an inspection or certification fee, in-kind contribution, donation, incentive, or a cost sharing arrangement associated with, or grants awarded for, performing wildfire mitigation measures.

(a) *In-Kind Contributions*.

(i) *Example*. A landowner who personally performs wildfire mitigation measures for a summer camp and who also contributes the use of a chainsaw and truck as a gift to the summer camp cannot claim the value of the landowner's personal services (because the personal service is not an actual out-of-pocket expense but rather an in-kind contribution and donation, neither of which qualify as "costs" for purposes of this rule) or the in-kind contribution of the rental value for the use of the chainsaw or truck on the summer camp's property.

(b) *Donation*.

(i) *Example*. A landowner allows without charge the use of the landowner's trailer by a third party to perform wildfire mitigation measures. Neither the landlord nor the third party may claim the value of the donation to rent the trailer as a subtraction.

(ii) A landowner who performs wildfire mitigation services for free to a summer camp that neighbors the landowner's property cannot claim the value of the donation as a subtraction.

(c) *Cost Sharing*. Cost sharing is an arrangement by which participants, which may include landowners and non-landowners, agree to share the cost of performing wildfire mitigation measures.

(i) *Example*. Neighboring landowners who agree to share the costs of purchasing or renting equipment for, or for hiring a third party contractor to perform, wildfire mitigation measures on their respective private lands cannot claim their portion of such costs as a subtraction

(d) *Grants and Incentives*. A cost paid from, or reimbursed by, an incentive or grant awarded to, or made available to, a landowner to perform wildfire mitigation measures is not eligible for the subtraction.

(4) **Landowner.** A taxpayer claiming the subtraction must be a landowner of private land located in Colorado.

(a) *Estate in Land*. A landowner is an individual who is an owner of record of a fee interest in real property (whether held solely, jointly or in common), easement, right-of-way, or other estate in real property. An easement is a non-possessory interest in real property to enter on to land and use the land, or to restrict the use of such land, for an indefinite or specific period of time, such as a right-of-way to travel across land or to use the land for recreational purposes (e.g., fishing, hunting, camping). A right-of-way typically is a type of easement. A lease is an estate in land and, therefore, a lessee is landowner for purposes of this rule, provided that evidence of the lease is properly recorded. The lessor is also a landowner as either the owner of a fee interest in the land or as a lessee who is acting in the capacity of a sublessor.

(b) *Taxpayer's Property Interest*. Wildfire mitigation measures must be performed on the taxpayer's property interest.

(i) *Examples*.

(A) Wildfire mitigation measures performed by a taxpayer who has a lease or easement on land owned by someone else can claim the subtraction because the work was performed on an estate (e.g., lease) owned by the taxpayer, even though a third party owned the underlying fee interest in the land.

(B) A taxpayer who pays for wildfire mitigation measures on a neighboring landowner's land for the purpose of protecting the taxpayer's land cannot claim the costs for such work because the wildfire mitigation measure was not performed on taxpayer's land.

(c) *Public property*. A person who holds an easement, right-of-way, lease or other estate in land that is owned by a governmental entity is not a landowner because the subtraction is available only if the wildfire mitigation measures are performed on private land, not public land.

(i) *Examples*.

(A) A sole proprietor who owns or leases a building on land owned by the government is not a landowner because the land is not private land, even though the proprietor owns a private estate (lease).

(B) An individual who has an easement or right-of-way, which includes fencing, bridging, buildings or fixtures owned by the individual, on land owned by the federal Bureau of Land Management is not a landowner of private land and cannot claim the subtraction for wildfire mitigation measures taken to protect the individual's private property interest in the fixtures to real property (i.e., fencing, bridging, and other structures on the public land).

(d) *Private Property held by a Legal Entity*. A partnership, S corporation, or other similar legal entity cannot claim the subtraction. However, an individual who holds an easement, leasehold, right-of-way, or estate in real property owned or leased by such legal entity is a landowner because the individual is a landowner (i.e., holds an estate) of private land. Corporations and other similar legal entities are not eligible for this subtraction because § 39-22-104, C.R.S. is available only to individuals, estates, and trusts.

(5) **Wildland-Urban Interface Area / Community Wildfire Protection Plan**. For tax years beginning prior to January 1, 2014, the wildfire mitigation measure must be performed in a wildland-urban interface area and authorized by a community wildfire protection plan, but this requirement does not apply for tax years beginning on or after said date.

Regulation 39-22-104(5) GROSS RECEIPTS TAX

(1) The gross receipts tax election is available to nonresident corporations or nonresident individuals who are required to file a Colorado income tax return because they have Colorado-source income exclusively from sales in or into Colorado and whose annual gross sales do not exceed one hundred thousand dollars.

(2) In order to qualify for this tax, the corporation or individual cannot own or lease any real property in Colorado.

(3) In the case of a corporation that must file a combined return or a corporation included in a consolidated Colorado income tax return, the one-hundred thousand dollar limitation is calculated using the Colorado source income of all combined or consolidated corporations.

(4) In the case of a pass-through entity, the one-hundred thousand dollar threshold is determined by the Colorado-source income earned by the pass-through entity and is not determined by reference only to the nonresident partner's, member's, or shareholder's distributive share of Colorado source income from such entity. The pass-through entity itself must make the election. A partner, member, or shareholder who is a nonresident cannot elect to pay the gross receipts tax because the pass-through entity, not the partner, member, or shareholder is the entity whose activity is the measure of whether the gross receipts tax applies.

(5) This tax does not apply to such items as wages, salaries, and sales commissions.

39-22-108. CREDIT FOR TAXES PAID TO ANOTHER STATE.

(1) **General Rule**. A taxpayer is allowed a credit for income tax or gross receipts tax paid to another state, regardless of the specific name each state may call such tax. A franchise tax is not a tax on income or gross receipts. This credit is allowed for taxes paid to another state, the District of Columbia, or territories or possessions of the United States, but is not allowed for income taxes paid to a city or another country.

(2) **Definitions.** State: means any state in the United States, the District of Columbia, or territories or possessions of the United States.

(3) **Limitations.**

(a) The credit for taxes paid to another State is the smaller of the following two limitations:

(i) The credit for any single State shall not exceed the total Colorado tax multiplied by the following ratio: taxpayer's Colorado modified federal adjusted gross income (including losses) from sources within the other State / taxpayer's total modified federal adjusted gross income from sources inside and outside Colorado. The credit for each State is limited to the smaller of either (1) the amount of tax actually paid the other State or (2) the amount of the credit as calculated in this subparagraph (i).

(A) The amount of tax actually paid is that amount of the other State's tax liability minus any credit or deductions allowed by the other State against such tax. For example, if the other State grants a credit to the taxpayer for new employees hired in that State, the tax actually paid the other State is the taxpayer's other State tax liability minus the credit allowed by such State.

(ii) The total amount of credits claimed for all States shall not exceed the total Colorado tax multiplied by the following ratio: taxpayer's Colorado modified federal adjusted gross income (including losses) from sources outside Colorado / taxpayer's total modified federal adjusted gross income derived from sources inside and outside Colorado.

(A) If the taxpayer is required by the other State to report zero ($0) income on that State's income tax return, but the actual losses are reported on the taxpayer's federal income tax return, then the taxpayer must use the actual loss when computing the credit limitation.

(iii) *Example*. Taxpayer is a Colorado resident who has income of $50,000 from a business located in Colorado and business income from sources in three other states. Taxpayer's modified federal adjusted gross income from the three states is as follows: $43,000, $32,000, and ($17,000). Taxpayer accrued income tax to the other states as follows: $1,000, $1,300, and $0, respectively. Taxpayer's total modified federal adjusted gross income is $108,000 and Colorado tax liability before credits is $2,917.

(A) The single state tax credit limitation (paragraph (3)(a)(i)) is computed for each state as follows:

(I) $2,917 X ($43,000/$108,000) = $1,161 (limited to $1,000)

(II) $2,917 X ($32,000/$108,000) = $864 (limited to $864)

(III) $2,917 X ($-17,000/$108.000) = ($459) (limited to $0)

(IV) The total credit allowed under the single state calculation is $1,864.

(B) The combined state tax credit limitation (paragraph (3)(a)(ii)) is $1,567, calculated as: $2,917 X ($43,000 + $32,000 - $17,000) / $108,000.

(C) The Colorado credit for taxes paid to other states is $1,567, which is the lesser amount of the limitations set forth in paragraph (3)(a)(i) and (ii).

(b) *Tax year.* Credit for tax reported to another State is not permitted if the other State's tax accrued in a tax year different than the tax year against which the Colorado credit is claimed. For example, taxpayer, while a resident of another state, makes an I.R.C. § 1031 exchange of property located in the taxpayer's home state for property located in Colorado. The other state requires taxpayer to recognize for that state's income tax the gain at the time of such exchange. In the following year, taxpayer becomes a resident of Colorado and sells the Colorado property. Colorado income tax arising from the sale of the Colorado property cannot be offset by a credit for tax reported in the prior year in the other state. See, §39-22-108(4), C.R.S. For taxpayers that do not file on a calendar year basis in another State, see subparagraph (6)(b) of this rule for guidance on when the credit may be claimed.

(c) *Source and Calculation of Income.*

(i) *Sourcing Rules*. The credit for tax paid to another State is calculated on the Colorado modified federal adjusted gross income derived from sources within such State. In determining whether income is derived from sources within such other State, Colorado law shall govern the sourcing of income. The Department will use the sourcing rules of §39-22-109, C.R.S. and the rules promulgated thereunder.

(ii) *Other State's Adjustments to Income*. The credit is calculated only on income that is actually taxed by both Colorado and the other State. Therefore, adjustments made to income sourced to the other State pursuant to the laws of the other State that increase the amount of income subject to tax shall not be included in the calculation of modified federal adjusted gross income from sources in the other State unless Colorado requires a similar adjustment.

(A) Example. Ms. Walker is a Colorado resident who reports $10,000 of business income earned in California on her Colorado and federal returns. However California requires that she add $3,000 in bonus depreciation to her taxable income in California. Colorado does not have a similar addback for bonus depreciation. Her Colorado modified federal gross income sourced to California is $10,000, not the $13,000 taxed by California.

(iii) The credit is calculated using the other State's income tax as ultimately determined on the other State's income tax return and not on the sum of the other State's taxes withheld from the taxpayer's wages.

(4) **Documentation.**

(a) Any taxpayer claiming a credit for taxes paid to another State shall file a copy of the income tax return (or so much of the return as is relevant to the calculation) from the other State(s) with the Department of Revenue at the time the taxpayer claims such credit.

(b) Any electronically filed income tax return must include any requested information from the other State's return (or so much of the return as is relevant to the calculation), 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. However, the actual income tax returns must be submitted to the Department of Revenue upon request.

(d) Any taxpayer included in a composite nonresident partner or shareholder return filed with another State shall not file a copy of the other State(s) return with the Department. Rather, the taxpayer shall file with the Department a statement from the pass-through entity confirming taxpayer's inclusion in the composite return.

(e) Documentation to support the tax return from another State must be submitted to the Department of Revenue upon request.

(5) **Nonresidents and Part-year Residents of Colorado.**

(a) *Non-residents*. The credit for tax paid to another State cannot be claimed by a nonresident.

(b) *Part-year Residents*. The credit for tax paid to another State can be claimed by a part-year Colorado resident to the extent that the income derived in, and taxed by, the other State was earned while the taxpayer was a Colorado resident. The credit is limited as set forth in paragraph (3), above.

(i) *Example*. Taxpayer was a resident of Kansas from January 1 to June 30 and then moved her domicile to Colorado. Taxpayer had wage income of $14,000 between January 1 and June 30. Taxpayer had wage income of $20,000 earned after June 30 and earned $4,000 in rental income between July 1 and December 31 from property located in Kansas. Taxpayer paid $600 in income tax to Kansas. Taxpayer has a Colorado modified federal adjusted gross income of $38,000 and Colorado taxable income of $30,756 ($38,000 minus standard deductions and exemption of $7,244). Taxpayer's tentative (i.e., pre-apportioned) Colorado income tax is $1,424, which is then apportioned to reflect that portion of the income which is subject to tax by Colorado for the part of the year the taxpayer was a Colorado resident [$1,424 X (24,000/$38,000)], resulting in a Colorado tax liability of $899. The maximum credit for tax paid to Kansas is $150 [$899 X $4,000/($20,000 + $4,000)]. The actual tax paid to Kansas for which a credit may be claimed is only that portion of the Kansas tax that is attributable to that part of the year during which the taxpayer was a resident of Colorado, which is $133 ($600 X ($4,000/($14,000 + $4,000). Therefore, the Colorado credit for tax paid to Kansas is $133, which is smaller than the Colorado tax attributable to Colorado income sourced to Kansas while taxpayer was a resident of Colorado ($150).

(6) **Pass-through Entities**.

(a) Because Colorado law treats a Subchapter S corporation, which has elected on its federal income tax return to be taxed as a partnership, as a pass-through entity, Colorado allows a Colorado resident individual to claim a credit for taxes paid to another State on the Subchapter S corporation's income, regardless of whether the other State imposed tax on the Subchapter S corporation or the Subchapter S corporation filed a composite return and paid income tax on behalf of the Subchapter S corporation shareholder. If the other State taxes a Subchapter S corporation as a corporation, then the taxpayer shall file a copy of the Subchapter S corporation's return. If the Subchapter S corporation files a composite return, the composite rules as set forth in §39-22-601(2.5), C.R.S. shall apply.

(b) If the other State treats a pass-through entity as corporation and the pass-through entity files on a fiscal year basis rather than a calendar year basis, the tax paid to the other State by the pass-through entity shall be treated as having been paid for Colorado purposes on the last day of the fiscal year. Therefore, the taxpayer receiving a K-1 or other tax statement from the pass-through entity shall claim the credit in the calendar year in which the last day of the pass-through entity's fiscal year ends.

(7) **Amended Returns**. If a taxpayer amends another State's tax return and the amendment results in a change in the amount of tax paid to such other State, taxpayer shall give the Department written notice of such change within thirty days of filing the amended tax return with the other State. The notice shall state the amount of other State's tax paid on the original return and the amount of tax refunded or additional tax paid pursuant to the amended return, and include a copy of the other State's amended return (or so much of such amended return as is relevant).

Cross References

1. See §39-22-109, C.R.S. to determine Colorado-source income.

Regulation 39-22-108.5 Dual Resident Trust Credit

(1) Limitations.

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

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

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

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

(2) Documentation.

(a) A taxpayer claiming a dual resident trust credit shall file a copy of the income tax return from the other state(s) with the Department of Revenue at the time of filing the Colorado tax return in which the credit is claimed.

(b) A taxpayer who electronically files the Colorado income tax return must include such information from the other state's tax return as may be required by the Department and submit a written copy of the same to the Department of Revenue upon request.

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

Regulation 39-22-109 COLORADO-SOURCE INCOME.

(1) **General Rule.** A Nonresident who derives income from sources in Colorado and who has Nexus must file a Colorado income tax return and pay Colorado income tax on Colorado net taxable income. A Nonresident's Colorado income tax liability is calculated by first calculating the Nonresident's Colorado income tax as if the Nonresident was a full year Colorado resident and multiplying such tentative tax by the ratio of the Nonresident's Colorado modified federal adjusted gross income to the Nonresident's total modified federal adjusted gross income. See Department Regulation 39-22-110 for rules governing modifications to income.

(2) **Definitions.** The following terms have the meanings set forth below unless the context of the regulation indicates otherwise:

(a) 'Nonresident' means an individual who is neither a domiciliary of Colorado nor a statutory resident of Colorado as set forth in § 39-22-103(8), C.R.S. and Department Regulation 39-22-103(8)(a).

(b) 'Business' means a business, trade, profession or occupation, including the activities of a nonprofit Pass-through entity that has unrelated business taxable income for federal income tax purposes. Business does not include activities of a Nonresident whose only activity in Colorado is buying and selling intangible property on his or her own account (See § 39-22-109(2)(a)(V), C.R.S.).

(c) 'Entertainer' means an individual who receives compensation to act, entertain, or inform (e.g., speaker or lecturer) at one or more discrete events in Colorado. This includes, but is not limited to, actors, bands, singers, orchestras, dancers, comedians, speakers, lecturers and similar performers.

(d) Member' means a partner, member, or shareholder of a Pass-through entity as defined in subparagraph (2)(e), below.

(e) 'Pass-through entity' means a partnership, limited partnership, limited liability partnership, a limited liability company that is treated as a partnership for Colorado tax purposes or a trust that is not taxed at the entity level (e.g., a grantor-type trust).

(f) Nexus' means the Nonresident's presence in Colorado, whether by being personally present in Colorado or being present in Colorado through agents or representatives, including through membership in a Pass-through entity or in a series of Pass-through entities described in paragraph (3)(c), below, for the purpose of direct or indirect financial profit, gain, benefit or advantage.

(3) **Common Types of Income Derived from Sources Within Colorado.** A Nonresident's income derived from a source within Colorado is subject to Colorado income tax. The source of income refers to the location where income is earned and not to the location of the payor or to the residency of the taxpayer. § 39-22-109, C.R.S. lists several types of income that are conclusively presumed to be Colorado-source income, but it is not an exclusive list of Colorado-source income. Colorado-source income includes any income derived from sources within Colorado including, but not limited to:

(a) *Ownership of Real or Tangible Personal Property.* Income derived from any ownership interest in real or tangible personal property located in Colorado (e.g., leases and licenses) is Colorado-source income, regardless of whether the Nonresident carries on a Business within Colorado and regardless of the place where the sale of such property is consummated. The following are examples of Colorado-source income.

(i) Rent and royalty income earned from real or tangible personal property located in Colorado is Colorado-source income.

(ii) Any gain or loss realized from the sale of real property located in Colorado is Colorado-source income. Deferred recognition of a gain (or loss) from the sale or exchange of real property located in Colorado remains Colorado-source income when such gain (or loss) is finally recognized. These types of transactions include installment sales, exchanges or transfers.

(A) Example: A Nonresident owns real property in Colorado and makes an I.R.C § 1031 exchange of the Colorado property for real property located in Texas. At the time of the exchange, the property had appreciated in value. In the following year, the Nonresident sells the Texas property. That portion of the gain attributable to the appreciation in value of the Colorado property is Colorado-source income even though the income was not recognized until the Texas property was sold. The Nonresident continues to have Colorado Nexus as long as the gain is deferred.

(iii) With respect to tangible personal property that appreciates in value while located in Colorado but is removed from Colorado for purposes of selling such property, the gain from the sale of such property is Colorado-source income.

(A) Example: A Nonresident owns a valuable painting that is displayed in her vacation home in Colorado. The painting significantly appreciates in value while located in Colorado. The Nonresident moves the painting to Nevada and immediately sells the painting for significant gain. The gain is Colorado-source income.

(iv) Interest income paid on a tax lien certificate for property located in Colorado is Colorado-source income. Any other interest income derived from the ownership of real or tangible personal property located in Colorado is also Colorado-source income. However, interest income from a loan secured by real or tangible property located in Colorado is not Colorado-source income.

(v) Interest income from an installment sale of real or tangible personal property located in Colorado is Colorado-source income.

(b) *Business Income.* Income earned by, credited to, derived from, accumulated for, or otherwise effectively attributable to (referred to herein as “derived from”) a Business carried on in Colorado is Colorado-source income. A Nonresident carries on a Business in Colorado if the Nonresident (a) is present in Colorado for Business or (b) directly or indirectly (e.g., through employees, representatives, or as a member of a pass-through entity) maintains, operates or shares in the maintaining or operating of any place in Colorado where Business affairs are conducted. When a Business is carried on within and outside Colorado, only such income that is fairly and equitably attributable to the Business carried on in Colorado is Colorado-source income. The following is a non-exhaustive list of common types of Business income and rules for sourcing such income.

(i) *Wage Income*. Income earned as an employee for work performed in Colorado is Colorado-source income, unless a more specific rule below applies. “Performed in Colorado” means the employee is physically in Colorado when the employee performs the work.

(A) *Telecommuting*. A Nonresident employee who telecommutes from a location outside of Colorado is not working in Colorado and the employee's income from such work is not Colorado-source income.

(B) *Work Days*. An employee's income is apportioned to Colorado based on the number of days the employee works ("Work Day") in Colorado. A Work Day in Colorado means a day in which the majority of the employee's work time for that day is performed in Colorado. Travel time to Colorado is included in calculating the Colorado Work Day hours, but travel time departing from Colorado is not included calculating the Colorado Work Day hours. The denominator of this ratio is the total number of Work Days the employee works in the year. A day is not a Work Day if the work done on such day is *de minimis.* See example (II) below.

(I) Example. Nonresident flies from California to Colorado on Tuesday but does not perform any other Business-related work in either California or Colorado on Tuesday. Nonresident attends a 2 hour Business meeting on Wednesday, returns to California Wednesday afternoon, and works 1 hour in the California office. Travel time to Colorado on Tuesday is considered a Work Day in Colorado because no other work was performed on Tuesday. Wednesday is not a Colorado Work Day because the majority of the work hours are allocated to California (flight to California and office work in California).

(II) *Example.* Nonresident prolongs his work trip to Colorado through the weekend. While in Colorado on the weekend vacation, the Nonresident checks his or her email and responds to a few non-substantive emails. Such a day is neither a Colorado Work Day nor a Work Day anywhere.

(ii) *Independent Contractor.* Business income of an independent contractor is sourced depending on whether the income is from a purely personal service or is from other than purely personal service. Purely personal services consist of services performed by an individual independent contractor with only incidental contributions from either other individuals or property. Such services include, but are not limited to, legal, accounting, architecture, or other professional services.

(A) *Purely personal service income.* If an independent contractor's Business income is earned by performing purely personal services and the purely personal services are performed both within and outside Colorado, the Nonresident shall apportion such income in the ratio of the number of hours the individual performed such services in Colorado to the total number of hours the individual performed such services in the year. But see paragraph (4)(b)(iii) and (iv) if the Nonresident is paid on commission or contingency for purely personal services. Each discrete Business activity shall be separately apportioned. See paragraph (4)(b)(ii)(3) for a discussion of discrete Business activities.

(I) Hours worked includes non-billable hours.

(II) Nonresidents independent contractors who work on a single job for entire days may utilize the Work Day rule described in paragraph (3)(b)(i)(B) of this regulation.

(III) Example. An expert witness testifies in trials conducted in Colorado during the year. The total hours the expert witness spent working in Colorado was 26. Therefore, the expert witness must apportion his or her income in the ratio of 26 hours in Colorado over the total number of work hours performed in that year.

(B) *Other than purely personal services income*. If an independent contractor's Business income is earned from activities other than the performance of purely personal services, then the Business income is apportioned under the apportionment rules for corporations set forth in § 39-22-303.5, C.R.S. and the regulations thereunder.

(I) Example. A Nonresident independent contractor provides oil and gas consulting services and travels to Colorado to provide consultation services to an oil and gas exploration company. Consultant hires Company B to perform laboratory analysis, the results of which are used by consultant to provide consulting services to the exploration company. Consultant is not performing purely personal services because the personal services of Company B are not incidental in value to consultant's services. Consultant uses the apportionment rules set forth in § 39-22-303.5(4)(c), C.R.S and the regulations thereunder.

(II) Example. Nonresident independent contractor provides interior design consulting services to homeowners. Designer also sells a substantial amount of tangible personal property to Colorado homeowners. Designer is not performing purely personal services in Colorado because he or she makes sales of tangible personal property that are not incidental in value. The designer will apportion Business income using § 39-22-303.5(4)(b), C.R.S and the regulations thereunder.

(C) *Discrete Business activities*. If the Nonresident independent contractor carries on two or more discrete Business activities in Colorado during the year, then the Nonresident independent contractor shall separately apportion the income derived from each activity, unless the income from each cannot be separately determined. The apportionment for each discrete Business activity, if both are purely personal services, is calculated based on the ratio of the number hours the individual performed such services in Colorado to the total number of hours the individual performed such purely personal services everywhere in the tax year. If the Nonresident independent contractor carries on more than one discrete Business activity, and at least one is a purely personal service while at least another is not a purely personal service, the Nonresident independent contractor may choose to either apportion his or her income under § 39-22-303.5, C.R.S and the regulations thereunder or may separately calculate and apportion his or her income on the basis of work hours.

(I) Example. An independent contractor provides purely personal services in the form of consulting services for two separate companies in the same year. Contractor is paid on an hourly basis and performs these services in and outside Colorado for the first company and performs all consulting services outside Colorado for the second company. Each consulting job is a discrete income producing activity and, in the absence of records demonstrating a more accurate apportionment methodology, the Department will presume that the income for work performed for the first company should be apportioned based on the ratio of the number of work hours the consultant worked in Colorado to the total number of work hours in the tax year for the first company. Income from the second company is a discrete Business activity, the income from such work is entirely allocated to a source outside Colorado, and neither the income nor the work hours for such work is included in the apportionment for the first company.

(iii) *Commissions*. The amount of Colorado-source income of a Nonresident employee or independent contractor whose compensation is based on commissions is determined by multiplying the gross income earned from all commissions by a fraction, the numerator of which is the amount of sales made within Colorado and the denominator of which is the amount of sales made everywhere. The determination of whether sales are made within Colorado or elsewhere is based upon where the salesperson performs the activities in obtaining the order, not the location of the formal acceptance of the contract. If the Nonresident also earns income other than as commissions (e.g., wages as base pay), then the Nonresident must apportion such non-commission income based on the applicable rule (e.g., wage income apportioned as set forth in paragraph (4)(b)(i), above).

(iv) *Contingency Fees.* Each contingency fee arrangements is usually viewed as discrete Business activity and the fee is apportioned based on the ratio of the number of hours the Nonresident worked in Colorado on the discrete Business activity to the total number of hours worked everywhere on the discrete Business activity in the year.

(v) *Board of Directors.* Compensation paid by a corporation for services performed in Colorado by a Nonresident member of the board of directors for director services, including attendance at a board of directors' meeting, is Colorado-source income. If all services are performed in Colorado, the total income for such services is Colorado-source income. If the director’s services are performed both within and outside Colorado, then the total income paid for performing such service is multiplied by a fraction, the numerator of which is the number of hours the director is in Colorado performing director services and the denominator of which is the total hours the director provides services in the year. If the Nonresident is a paid member of more than one board of directors in the year, then the ratio is determined separately for each board.

(vi) *Construction Contractors*. Income of a construction contractor or subcontractor for construction services is sourced to the state where construction service is performed.

(vii) *Professional Athletes Employed by a Professional Team*. Income earned in Colorado by a Nonresident professional athlete employed by a professional team is Colorado-source income. The compensation received for services rendered as a member of a professional athletic team reported for federal income tax purposes shall be apportioned in the ratio of the number of duty days of professional services performed in Colorado over the total number of duty days during the tax year for which the athlete is required to make his or her services available to the franchise under the terms of his or her contract. The formula applies to active team members, team members on the disabled list, and other persons required to travel with the team and to perform services on behalf of the team, including coaches, managers and trainers. Teams include, but are not limited to, any professional baseball, basketball, football, hockey, soccer, and lacrosse teams.

(A) Duty days include all days of game, practice or travel that occur on or after the beginning of the team's official pre-season training through the last game in which the team competes. Duty days also include days the Nonresident is required by contract to perform services, but which fall outside this period, such as instructional leagues, “Pro Bowl”, or promotional events. In addition, duty days include days during the off-season when a team member undertakes training activities as part of a team-imposed program, but only if performed at the team facilities. Duty days for any member joining a team during the season shall begin on the day such person becomes a member, and for any member leaving a team during the season shall end on the day such person ceases to be a member. When a person switches teams during a taxable year, a separate duty day calculation shall be made for the period such person was with each team. Duty days do not include any try-out or pre-season cut days for which the Nonresident is not under contract with a team or any days for which a member is not compensated and is not rendering services for the team in any manner because such person has been suspended without pay and prohibited from performing any services for the team.

(B) Each duty day is assigned to the state in which the service is performed. Duty days during which a team member is on the disabled list performing no substantial services for the team will not be apportioned to any particular state but will be included in the total number of duty days for apportionment purposes.

(C) Travel days are considered duty days and are apportioned as follows: Travel days which include a game, required practice, meeting, or other service are duty days apportioned to the state in which the game, practice, or service is conducted. Travel days not involving a game, practice, or required service will not be apportioned to any particular state, but will be included in the total number of duty days.

(D) "Compensation received for services rendered as a member of a professional athletic team" means the total compensation received for the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year, plus any additional compensation received for rendering services for the team on a date that is not during the season (e.g., compensation for representing a team at an all-star game) during the taxable year. "Compensation received for services rendered as a member of a professional athletic team" includes, but is not limited to, salaries; wages; guaranteed payments; bonuses except as otherwise provided herein. Bonuses are includable in "compensation received for services rendered as a member of a professional athletic team" if they are earned as a result of play during the season or for playing in championship, playoff or "all-star" games. Bonuses are also includable if paid for signing a contract, unless all of the following conditions are met:

(I) The bonus is not conditional upon the athlete playing any games, or performing any subsequent services, for the team, or even making the team,

(II) The bonus is separate from the payment of salary or any other compensation, and

(III) The bonus is nonrefundable.

(E) Income not subject to apportionment would include strike benefits contract buy-out payments, severance pay, termination pay, relocation payments, and other payments not related to the performance of service.

(F) *Examples.*

(I) Player A, a Nonresident individual, is a member of a professional athletic team. His accounting period for federal income tax purposes (and, hence, for Colorado income tax purposes) is the calendar year. Player A's contract with the team requires Player A to report to his team's training camp and to participate in all exhibition, regular season and playoff games. This two-season contract covers an athletic season that begins during calendar year 2013 and ends during calendar year 2014 (for which Player A shall be paid $400,000) and an athletic season that begins during calendar year 2014 and ends during calendar year 2015 (for which Player A shall be paid $600,000). Assuming that Player A is paid $500,000 during 2014 (50% of his salary for the 2013-2014 season and 50% of his salary for the 2014-2015 season), the proportion of such compensation received by Player A for calendar year 2014 that is derived from Colorado sources is that proportion of the $500,000 Player A had duty days in Colorado during calendar year 2014 to the total duty days for Player A during calendar year 2014.

(II) Player C, a Nonresident individual, is a member of a professional athletic team. During the season, Player C travels to Colorado to participate in the annual all-star game as a representative of his team. The days that Player C spends in Colorado for travel, practice and the game are considered to be duty days spent in Colorado during the taxable year and are included in duty days for Player C during the taxable year.

(III) Assume that the facts are the same as in Example (c), except that Player C is not participating in the all-star game and is not rendering services for his team in any manner. Player C is travelling to and attending the game solely as a spectator. If Player C is not required to render services for the team during the all-star game, then the days that Player C spends in Colorado to attend the all-star game are not considered to be duty days spent in Colorado during the taxable year and are not included in duty days for Player C during the taxable year.

(viii) *Entertainers and Professional Athletes Not Employed by a Professional Team.* Income earned by a Nonresident professional athlete that is not a member of a professional team (e.g., golfers, boxers, wrestlers, racers, etc.) or a Nonresident Entertainer for performances, competitions, or events held within Colorado is Colorado-source income. If the Entertainer or professional athlete is paid an identifiable amount for each event performed in Colorado, that amount is the amount of Colorado-source income. If the Nonresident is not paid a specific amount for the performance or competition in Colorado, then the Department will presume that a fair apportionment of the Nonresident’s income for such activity is the Nonresident’s gross income derived from the performance(s) or competition(s) multiplied by the ratio of the number of performances or competitions performed in Colorado divided by the total number of performances and competitions performed anywhere in the year.

(ix) *Stock Options*. Income from the exercise of employee stock options is Colorado-source income if such income is treated as compensation for federal tax purposes and to the extent the employee worked in Colorado during the period the employee was required to work for the employer prior to the exercise of the option.

(x) *Severance, Paid-out Sick and Vacation Leave, Disability Pay and Unemployment Insurance.* Severance pay, paid-out sick and vacation leave pay, disability pay and unemployment insurance is Colorado-source income to the extent that the income is attributable to employment in Colorado regardless of whether the person is a resident when the benefit is paid.

(xi) *Deferred Compensation*. Deferred compensation is Colorado-source income to the extent it is income derived from a Business, including employment, carried on in Colorado. Deferred compensation includes all compensation paid or made available to the Nonresident in a tax year following the year in which the compensation was earned. Deferred compensation paid to a Nonresident is not subject to Colorado income tax if 4 U.S.C. § 114 applies to such income (including retirement plans under sections I.R.C § 401(a), 403(a) and (b), 408(k), 7701(a)(38), 457, railroad retirement benefits (45 U.S.C. § 231(m)), Social Security benefits, or other income that federal law precludes Colorado from subjecting to Colorado income tax, even if the retirement benefits were earned in tax years when the taxpayer was a resident or was a Nonresident earning income from Colorado sources). Deferred compensation is often treated as wage income and therefore paragraph 4(b)(i) above applies in determining whether or not the deferred compensation derived from a Business carried on in Colorado in the year it was earned is Colorado-source income. Similarly, to the extent that deferred income reflects other types of income (e.g., royalties from patents employed in Colorado), then the relevant subparagraph of this regulation applies.

(xii) *Guaranteed Payments.* Guaranteed payments typically are in lieu of wage income and the source of such income is determined in accordance with the rules for sourcing wage income (see paragraph (4)(b)(i), above). If the guaranteed payment is not in lieu of wage income, then the guaranteed payment is allocated or apportioned based on the income-generating activity (e.g., a guaranteed payment based on partnership income from the sale of real property located in Colorado is allocated pro rata to the Nonresident partner).

(xiii) *State Income Tax Refunds.* A state income tax refund is apportioned to Colorado to the extent the underlying or related income is derived from any Business, including employment, carried on by the Nonresident in Colorado.

(xiv) *Military personnel and their spouses*. Compensation paid by the United States for service in the armed forces of the United States performed by a Nonresident in Colorado is not Colorado-source income. See §§ 39-22-109(2)(b) and 103(8)(b), C.R.S. and Department Regulation 39-22-103(8) governing income of military personnel and their spouses.

(xv) *Payments from a Covenant Not to Compete*. Income derived from a covenant not to compete is Colorado-source income to the extent that it is derived from any Business, including employment, carried on by the Nonresident in Colorado.

(xvi) *Disaster Relief Workers.* For tax years beginning on or after January 1, 2015, the income earned by a Nonresident disaster relief worker performing work in Colorado during a disaster period is exempt from Colorado income tax. See § 39-22-104(4)(t), C.R.S.

(c) *Distributive Share of a Member of a Pass-through Entity.* Income received as part of the Nonresident individual's distributive share of a Pass-through entity income, gain, loss, or deduction is Colorado-source income to the extent that the Pass-through entity determines that income is Colorado-source income pursuant to § 39-22-203(1)(a), C.R.S. and the regulations promulgated thereunder. These rules apply to all Members of a Pass-through entity regardless of the type of the entity (e.g., limited liability company, limited liability partnership, limited liability limited partnership) or the status of the Member (e.g., limited or general).

(i) A Nonresident has Nexus with Colorado if the Nonresident is a Member of a Pass-through entity doing business in Colorado.

(ii) *Character of income*. The activities of a Pass-through entity are attributable to its Members. Therefore, a Member is engaged in a Business in Colorado to the extent the Pass-through entity is engaged in Business in Colorado. The character of the item of income, loss, deduction or credit included in the Member's distributive share is determined as if the item was realized or incurred directly by the Member from the source from which the item was realized by the Pass-through entity or incurred in the same manner as the Pass-through entity. The principles of this paragraph apply in the case of an ownership chain that runs through multiple Pass-through entities.

(iii) A Nonresident Member of a Pass-through entity deriving income from within Colorado and elsewhere has Colorado-source income as determined by § 39-22-109, C.R.S. and this rule, or as determined by § 39-22-303.5, C.R.S. and the regulations thereunder if the Pass-through entity elects under § 39-22-203(1)(a), C.R.S. to apportion its income pursuant to § 39-22-303.5, C.R.S.

(iv) A Nonresident Member's share of Colorado-source Business income of a Pass-through entity that elects to apportion its income pursuant to § 39-22-303.5, C.R.S. (including special apportionment rules adopted thereunder) shall be based on the Member's pro rata share of such Pass-through entity's income multiplied by the Pass-through entity's apportionment percentage.

(v) In the case of a Nonresident who is a Member of a partnership ("first partnership") which partnership is a partner in another partnership ("second partnership"), the following rules apply:

(A) *Unitary Partnerships.* In the case of unitary partnerships, the election made by the second partnership is irrelevant to the treatment of income of the first partnership.

(I) If the first partnership makes the election to apportion its income pursuant to § 39-22-303.5, C.R.S. (including special apportionment rules adopted thereunder) and is unitary with the second partnership as determined by general unitary theory, then the Nonresident member of the first partnership's share of Colorado source income is the Member's pro rata share of the partnership's Colorado-source income as determined by 39-22-303.5, C.R.S. The first and second partnerships are treated as a single entity for purposes of calculating apportionment under 39-22-303.5, C.R.S.

(II) If the first partnership makes the election not to apportion its income pursuant to § 39-22-303.5, C.R.S. and is unitary with the second partnership, then the partnerships are treated as one partnership and the income is sourced in accordance with this regulation.

(B) *Non-unitary Partnerships.* In the case of non-unitary partnerships, the election made by the first partnership is irrelevant to the treatment of income of the second partnership.

(I) If the two partnerships are non-unitary, then regardless of the election made by the first partnership, the first partnership's pro-rata share of the second partnership's Colorado-source income is directly allocated by the first partnership to Colorado and is not apportioned. The pro-rata share of such income passes through to the Nonresident Member as Colorado-source income.

(vi) A Nonresident individual may include as a credit for taxes paid on their Nonresident individual income tax return any payment made on their behalf by a partnership or Subchapter S corporation on a composite return. See §§ 39-22-601(2.5) and (5), C.R.S.

(vii) *Investment partnerships*. A partnership whose sole activity is to buy and sell securities for its own account is not carrying on a Business in Colorado. Therefore, a Nonresident individual partner of such a partnership is not subject to Colorado income tax on their distributive share of such partnership income. § 39-22-109(2)(a)(V), C.R.S. A partnership that engages in other activities in Colorado that are neither the described activities here nor entirely ancillary to such activities is carrying on Business in Colorado.

(viii) *Foreign source income of an export partnership*. See, § 39-22-206, C.R.S. for the exclusion of foreign source income of an export partnership from Colorado taxable income.

(d) *Estates and Trusts.* The Colorado-source income of a Nonresident's distributive share of estate or trust income shall be determined as follows:

(i) A Nonresident individual's share of estate or trust income, gain, loss or deduction is Colorado-source income to the extent the estate or trust derives income from sources described in section (3), above. Estates or trusts that derive income from a Business carried on partly within and without Colorado allocate and apportion their income in accordance with the provisions of this regulation.

(ii) Income received by a Nonresident fiduciary of a resident trust is sourced to Colorado.

(iii) The character of the item of income, loss, deduction or credit included in the Nonresident beneficiary's distributive share is determined as if the item was realized or incurred directly by the beneficiary from the source from which the item was realized by the estate or trust, or incurred in the same manner as the estate or trust.

(e) *Intangible Personal Property.* Income, including gain, loss, interest, annuity benefits, and dividends earned by a Nonresident is Colorado-source income when the intangible property earning income is employed in a Business in Colorado. The following is a non-exhaustive list of examples of intangible property employed in a Business activity.

(i) Patent and copyright (including trademark and other similar intangible interests) royalties constitute Colorado-source income if, in the case of a patent, the patent is employed in production, fabrication, manufacturing, processing or other commercial activity in Colorado and, in the case of copyright, if the printing or publication of the copyrighted material occurs in Colorado.

(ii) *Sale of Interest in Pass-through entity*. Gain or loss from the sale of a Member's active interest in a Pass-through entity is Colorado-source income in the same proportion as the entity's average apportionment factor for the immediately prior three tax years. Gain or loss from the sale of a Member's passive interest in a Pass-through entity is not Colorado-source income. A Member's interest is passive if, in the tax year the interest is sold, the Member did not materially participate in the Business of the Pass-through entity as defined in §469(h), I.R.C.

(iii) Income from the sale of goodwill in a Business is allocated or apportioned in the same percentage as the sale of the Business's other assets.

(f) *Subchapter S Corporations.*

(i) A Subchapter S corporation's distribution of Colorado-source income to a Nonresident is subject to Colorado income tax. Subchapter S corporation distribution of income attributable to Colorado sources is allocated and apportioned pursuant to § 39-22-303.5, C.R.S. and the regulations thereunder.

(ii) The character of income of a shareholder of a Subchapter S corporation is not determined as if the item of income or expense is incurred by the shareholder but, rather, is determined as if the income is incurred directly by the Subchapter S corporation. See § 39-22-323(3), C.R.S

(iii) See § 39-22-326, C.R.S. for calculation for an individual who is a part-year Nonresident. A subchapter S corporation must file a tax return that applies apportionment as described in § 39-22-303.5, C.R.S. See § 39-22-601(2.5), C.R.S.

(g) Gambling and Games of Chance. Income from gambling and games of chance conducted in Colorado, including limited stakes gambling, bingo, raffle, Colorado Lottery, sweepstakes, door prizes and other games of chance, is Colorado-source income regardless of whether the Nonresident was present in Colorado when the gambling or game was conducted or the winnings or prize was awarded or paid.

(4) **Net Operating Loss Carryforwards.** A net operating loss carryforward is treated as Colorado or non-Colorado sourced based on the source in the year the loss was generated.

(a) *Example*: Taxpayer is a resident of California in tax year 1 and generates a federal net operating loss of $80,000 that is carried forward on the federal return. In tax year 2, taxpayer has $50,000 of California-source income and $60,000 in Colorado-source income. Pursuant to § 39-22-110, C.R.S., taxpayer calculates the tentative Colorado income tax based on the net income of $30,000. The numerator of the apportioning ratio that is applied to the tentative Colorado income tax does not include the net operating loss generated in California but the denominator includes the net operating loss. Assuming taxpayer has no "above-the-line" adjustments or adjustments described in §§ 39-22-104(3) and (4), C.R.S., the ratio is 50/(50+60-80)=5/3. In this case, the taxpayer multiplies Colorado tentative tax by a ratio greater than one. See Department Regulation 39-22-110 for a discussion of the tentative tax and adjustments to income of part-year residents and full-year nonresidents.

Cross Reference(s)

1. See Department Regulation 39-22-110 for guidance on how a part-year resident or nonresident reports Colorado-source income, and for the treatment of modifications to federal income on the Colorado return.

Regulation 39-22-109(2). COLORADO SOURCE INCOME OF A NONRESIDENT ATHLETE EMPLOYED BY A COLORADO SPORTS FRANCHISE. [Repealed eff. 12/15/2015]

Regulation 39-22-110. APPORTIONMENT OF TAX FOR PART-YEAR RESIDENT AND NONRESIDENT INDIVIDUALS.

(1) **Computation of Colorado Income Tax.** Colorado income tax of a part-year resident individual is the Colorado income tax calculated as if taxpayer was a full-year Colorado resident (referred to as the “tentative” Colorado income tax) multiplied by the ratio of the Colorado modified federal adjusted gross income divided by the modified federal adjusted gross income (“Ratio”). The Ratio can be greater than one-hundred percent and cannot be less than zero.

(a) *Modified Federal Adjusted Gross Income (Ratio’s denominator)*. The modified federal adjusted gross income is the taxpayer’s federal adjusted gross income modified by the following additions and subtractions:

(i) *Additions.*

(A) All additions set forth in § 39-22-104(3), C.R.S., except as noted, are added to federal adjusted gross income. The state income tax addback (§ 39-22-104(3)(d), C.R.S.), the gross conservation easement deduction addback (§ 39-22-104(3)(g), C.R.S.) (both of which are discussed in paragraph (1)(a)(iii), below), and the addition described in § 39-22-104(3)(c), C.R.S. are not added to federal adjusted gross income. (In 1996, Congress repealed both the income tax averaging for certain lump-sum distributions as set forth in I.R.C. §402(e)(1), and the deduction for certain lump-sum distributions in I.R.C. § 402(e)(3). See Public Law 102-318 (renumbering I.R.C. § 402(e) to 402(d)) and Public Law 104-188) (eliminating income tax averaging for lump-sum distributions and the deduction for lump-sum distributions)).

(B) Any net operating loss carryforward or carryback deducted in the calculation of the taxpayer’s federal adjusted gross income that is not allocated to Colorado pursuant to § 39-22-504(1), C.R.S. is added to federal adjusted gross income.

(C) Shareholder’s share of Subchapter S corporation’s additions described in § 39-22-323, C.R.S., including the modifications described in §§ 39-22-304 (e.g., foreign tax addition) and 39-22-104, C.R.S. See § 39-22-326, C.R.S. for determining the part-year resident shareholder’s income attributable to Colorado is added to federal adjusted gross income.

(ii) *Subtractions.*

(A) All subtractions set forth in § 39-22-104(4), C.R.S., except as noted are subtracted from federal adjusted gross income. The charitable contribution subtraction (§ 39-22-104(4)(m), C.R.S.), marriage penalty subtraction (§ 39-22-104(4)(j), C.R.S.) (both of which are discussed in paragraph (1)(a)(iii), below), and the subtraction for certain lump-sum distributions formerly subject to income tax averaging pursuant to I.R.C. § 402(e)(1) and described in § 39-22-104(4)(f)(III), C.R.S. (see subparagraph (1)(a)(i)(1), above) are not subtracted from federal adjusted gross income.

(B) Railroad retirement benefits are subtracted from federal adjusted gross income. See Department Regulation 39-22-104(4)(f) Pension and Annuity Subtraction for additional information.

(C) Colorado net capital gains (§ 39-22-518, C.R.S.) are subtracted from federal adjusted gross income.

(D) Income of a tribal member who lives on a tribal reservation and recognized income on a tribal reservation is subtracted from federal adjusted gross income. *McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973).*

(E) Foreign source income of an export taxpayer (§ 39-22-206, C.R.S.) is subtracted from federal adjusted gross income.

(F) Shareholder's share of Subchapter S corporation's subtractions described in § 39-22-323, C.R.S., including modifications pursuant to §§ 39-22-304 and 39-22-104, C.R.S. are subtracted from federal adjusted gross income. See § 39-22-326, C.R.S. for determining the part-year resident shareholder's income attributable to Colorado.

(iii) Certain additions and subtractions listed in § 39-22-104, C.R.S. and listed below are not included in the calculation of the Ratio. The Ratio is based on the taxpayer's federal adjusted gross income. Most modifications in subsection § 39-22-104, C.R.S. (listed in subparagraph (1)(a), above) relate to federal tax items that are used to calculate federal adjusted gross income. However, certain other state modifications in subsection 104 (listed below) relate to federal tax items that are "below-the-line" adjustments and are not used to compute federal adjusted income. Therefore, adding or subtracting the modifications listed below to compute the Ratio would be improper. State modifications not included in the calculation of the Ratio are:

(A) State income tax addback for state income tax claimed as an itemized deduction (§ 39-22-104(3)(d), C.R.S.).

(B) Gross conservation easement addback (§ 39-22-104(3)(g), C.R.S.).

(C) Charitable contribution subtraction (§ 39-22-104(4)(m), C.R.S.).

(D) Marriage penalty subtraction described in § 39-22-104(4)(j), C.R.S.

(b) *Colorado modified federal adjusted gross income (Ratio's Numerator)*. The Colorado modified federal adjusted gross income is that portion of taxpayer's federal gross income that is earned during the period of the year when a taxpayer was a resident plus Colorado-sourced income earned when taxpayer was not a resident (see Department Regulation 39-22-109 for rules regarding Colorado-source income of a nonresident), and (1) reduced by federal "above-the-line" adjustments to federal gross income that are allocated or apportioned as set forth in subparagraph (1)(b)(i), below, and (2) modified by those additions and subtractions enumerated in subparagraphs (1)(b)(ii) and (iii), below.

(i) *Adjustments to Colorado Federal Gross Income*. Federal "above-the-line" adjustments are allocated or apportioned when calculating the Colorado modified federal adjusted gross income in order to fairly reflect that portion of taxpayer's federal adjusted gross income which is subject to Colorado income tax.

(A) The following “above-the-line” adjustments are allowed in the ratio of taxpayer’s Colorado wages and Colorado self-employment income to taxpayer’s total wages and/or total self-employment income:

(I) Educator expenses.

(II) IRA deductions.

(III) Self-employed SEP, SIMPLE, or other qualified plan deductions.

(IV) Business expenses of members of the National Guard and reservists, performing artists and fee-based government officials.

(V) Health savings account and Archer medical savings account deductions.

(VI) Deductible self-employment taxes.

(VII) Self-employment health insurance deductions.

(VIII) Contributions to a 501(c)(18)(D) plan.

(IX) Contributions to a 403(b) plan by certain chaplains.

(B) The following “above-the-line” adjustments are allowed in the ratio of taxpayer’s Colorado federal gross income to total federal gross income:

(I) Student loan interest deduction.

(II) Alimony deduction.

(III) Tuition and fees deduction.

(IV) Reforestation amortization and expense deduction.

(V) Repayment of supplemental unemployment benefits under the Trade Act of 1974 if such benefits were included in taxpayer’s Colorado modified federal adjusted gross income in a prior tax year.

(VI) Attorney fees and court costs relating to claims for unlawful discrimination claims.

(VII) Attorney fees and court costs relating to an award from the IRS relating to detecting tax law violations.

(C) Domestic production activities deduction is allowed in the ratio of Colorado qualified production activities income to total federal qualified production activities income.

(D) Penalties for early withdrawals from a certificate of deposit or other deferred interest account if paid while a Colorado resident.

(E) Moving expenses for moving into Colorado unless the expenses are incurred when moving out of Colorado and taxpayer becomes a nonresident.

(F) Jury duty pay taxpayer paid his or her employer because the employer paid taxpayer's salary while on jury duty for jury service in Colorado.

(G) Expenses incurred for rental of personal property while a Colorado resident or for rental property located in Colorado.

(ii) *Additions to Colorado Adjusted Gross Income.* Additions to Colorado adjusted gross income required by § 39-22-104(3), C.R.S. and subparagraph (1)(a)(i), above, are allocated or apportioned when calculating the Colorado modified federal adjusted gross income in order to fairly reflect that portion of taxpayer's modified federal adjusted gross income which is subject to Colorado income tax.

(A) The following additions are always allocated to Colorado when calculating Colorado modified federal adjusted gross income:

(I) A withdrawal from a Colorado medical savings account described in § 39-22-504.7(3)(b)(II) or (III), C.R.S., when contributions to such account were excluded from taxpayer's Colorado taxable income in a prior tax year (§ 39-22-104(3)(f), C.R.S.).

(II) Recapture of prior tuition cost if the contribution or payment into the qualified tuition program was excluded from taxpayer's Colorado taxable income in a prior tax year (§ 39-22-104(4)(i)(III), C.R.S.).

(III) Expenses related to a discriminatory club (§ 39-22-104(3)(e)(I), C.R.S.).

(B) The following additions are allocated to Colorado when calculating Colorado modified federal adjusted gross income to the extent that the underlying or related income or loss was recognized or incurred while taxpayer was a Colorado resident:

(I) Interest income derived from obligations of a state or local government, other than of the State of Colorado or its political subdivisions, and computed as described in § 39-22-104(3)(b), C.R.S.

(II) The addition set forth in § 39-22-104(3)(c), C.R.S. (addition of deduction from federal income for certain lump-sum distributions) does not apply in tax years beginning on or after January 1, 1996. See subparagraph (1)(a)(i)(1), above.

(C) The following additions are allocated to Colorado when calculating Colorado modified federal adjusted gross income to the extent that the underlying or related expenses or losses were from business activity in Colorado or were incurred while the taxpayer was a Colorado resident:

(I) Unauthorized alien labor costs (§ 39-22-104(3)(i), C.R.S.) paid when taxpayer was a resident.

(II) Net operating loss carried over from a tax year beginning prior to January 1, 1987 (§ 39-22-104(3)(a), C.R.S.).

(III) Shareholder's share of Subchapter S corporation's additions pursuant to § 39-22-323, C.R.S. related to business expenses.

(D) The following addition is never allocated to Colorado when calculating Colorado modified federal adjusted gross income:

(I) Net operating loss that is not allocated to Colorado pursuant to § 39-22-504(1), C.R.S.

(iii) *Subtractions from Colorado Adjusted Gross Income.* Colorado subtractions allowed under § 39-22-104(4), C.R.S. and subparagraph (1)(a)(ii), above, are allocated or apportioned when calculating Colorado modified federal adjusted gross income in order to fairly reflect that portion of the taxpayer's modified federal adjusted gross income that is subject to Colorado income tax.

(A) The following subtractions are allocated to Colorado when calculating Colorado modified federal adjusted gross income to the extent the underlying or related income is included in Colorado gross income determined under subparagraph (1)(b), above:

(I) State income tax refund or credit for overpayment of income tax imposed by Colorado or any other taxing jurisdiction and received when taxpayer was a Colorado resident (§ 39-22-104(4)(e), C.R.S.).

(II) Interest income on obligations of the United States and its possessions (e.g., Guam, Puerto Rico) (§ 39-22-104(4)(a), C.R.S.).

(III) Gain or loss resulting from higher Colorado adjusted basis (§ 39-22-104(4)(b), C.R.S.).

(IV) Qualifying pension / annuity income (§39-22-104(4)(f), C.R.S.). See regulation 39-22-104(4)(f) for qualifications and limitations.

(V) Distributions from qualified tuition program (described in § 39-22-104(4)(i), C.R.S.).

(VI) Compensation for exonerated individual (defined in §39-22-104(4)(q), C.R.S.).

(VII) Income of a tribal member who lives on tribal reservation and recognized the income on a tribal reservation. *McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973).*

(VIII) Railroad retirement benefits. (See § 39-22-104(4)(f), C.R.S. and Department Regulation 39-22-104(4)(f) for qualifications and limitations.)

(IX) Qualified Colorado net capital gains (§ 39-22-518, C.R.S.).

(X) Contributions by employees to the Public Employee Retirement Association contributions made between and including calendar year 1984 to 1986 and contributions by employee to the Denver Public School retirement plan made in calendar 1986 that were previously subject to Colorado income tax.

(XI) Shareholder's share of Subchapter S corporation's subtractions pursuant to § 39-22-323, C.R.S. related to income.

(B) The following subtractions are always allocated to Colorado when calculating Colorado modified federal adjusted gross income:

(I) Medical savings account contribution (§ 39-22-104(4)(h), C.R.S.).

(II) Wildfire mitigation measures (§ 39-22-104(4)(n), C.R.S.).

(III) Employer matching contribution to adult learner individual trust account or savings account (§ 39-22-104(4)(o), C.R.S.).

(IV) Grant from military family relief fund (§ 39-22-104(4)(p), C.R.S.).

(V) Disallowed expenditure relating to medical and/or recreational marijuana (§ 39-22-104(4)(r) and (s), C.R.S.).

(VI) Payments and contributions to a qualified tuition program (described in § 39-22-104(4)(i)(II), C.R.S.).

(VII) The subtraction allowed under § 39-22-104(4)(c), C.R.S., in an amount necessary to prevent Colorado taxation of Colorado income or gain that was subject in a prior year to Colorado income tax paid by the taxpayer, by a descendant by whose death the taxpayer acquired the right to receive such income, or by a trust or estate from which the taxpayer receives such income.

(C) The following subtraction is allocated to Colorado when calculating Colorado modified federal adjusted gross income to the extent that the underlying or related expenses or losses are from business activity in Colorado or were incurred while the taxpayer was a Colorado resident:

(I) Shareholder's share of Subchapter S corporation's subtractions pursuant to § 39-22-323, C.R.S. related to business expenses. See § 39-22-326, C.R.S. for determining the part-year resident shareholder's income attributable to Colorado.

(2) **Part-year partners, trusts, and estates.** For application of the allocation and apportionment of the "above-the-line" adjustments described in subparagraph (1)(b)(i), above, and application of the modifications described in subparagraph (1)(b)(ii), above, to distributions from partnerships to a part-year resident individual partner, see §§ 39-22-202 to 206, C.R.S. For modifications relating to the taxable income of part-year resident trusts and estates, see §§ 39-22-108.5 and 401 to 404, C.R.S.

(3) **Computation of credit for taxes paid to another state.** A credit will be allowed for income taxes paid another state. See Department Regulation 39-22-108 (credit for taxes paid another state), § 39-22-108.5, C.R.S. (dual resident trust income tax), and Department Regulation 39-22-109 (Colorado-source income).

Cross Reference(s)

1. See Department Regulation 39-22-109 for guidance on what constitutes Colorado-source income.

Regulation 39-22-116.2. INCOME AND DEDUCTIONS RELATING TO RESIDENT PORTION OF TAX YEAR. [Repealed eff. 12/15/2015]

Regulation 39-22-116.3. PART-YEAR RESIDENT AND NONRESIDENT COMBINATION. [Repealed eff. 12/15/2015]

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

(1) **Child Care Tax Credit** Resident individuals who claim the federal tax 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 tax credit for taxpayers whose federal adjusted gross income is $25,000 or less.

(b) A credit equal to 30% of the federal tax 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.

(2) The 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. The ages of children eligible for the child care credit are determined in the same manner as determined for the federal child care credit.

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

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

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

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

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

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

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

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

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

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

b) The sales tax reduction on certain commercial trucks was available for the fiscal year beginning on July 1 of the year indicated if sufficient excess revenues existed in the July 1-June 30 fiscal year ending during that year.

c) The sales and use tax refunds were available for the fiscal year ending in the year indicated if sufficient excess revenues existed in the July 1-June 30 fiscal year ending during that year, and must be claimed in the following calendar year as required.

d) These credits and refunds were not available in years 1998 or earlier.

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

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

a) 1997

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

b) 1998

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

c) 1999

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

d) 2000

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

e) 2001

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

f) 2002 - 2004 No refund available.

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

h) 2006 - 2011 No refund available.

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

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

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

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

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

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

Regulation 39-22-121 CHILD CARE CONTRIBUTION CREDIT

1) **Computation of the credit.**

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

b) No credit may be claimed for in-kind contributions made in tax years commencing on or after January 1, 2000.

2) **Limitation on Amount of Credit that May be Generated.**

(a) The amount of credit generated for contributions made during any one tax year may not exceed $100,000 per taxpayer and is further subject to the limitations in this paragraph (2), and in paragraphs (3), and (8). For purposes of this rule, two taxpayers filing a joint return are considered one taxpayer.

(b) Credits for contributions made to facilities listed in paragraph 5(a)(viii) in tax years beginning on or after January 1, 2013 but before January 1, 2014 shall not be claimed until a tax year commencing on or after January 1, 2014.

(c) Qualifying contributions made in tax years 2011 and 2012 may only be used beginning in tax year 2013 and after. See paragraph (8) of this rule for information on the calculation of such credit. See § 39-22-121(6.7)(a), C.R.S.

(d) No claim for a credit, including credits carried forward from prior tax years, shall be allowed in any tax year after the statute has been repealed. (As of January 1, 2015, the statute is scheduled to be repealed January 1, 2020.)

(3) **Carryforwards.** 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. Notwithstanding the suspension of the credit in tax years 2011 and 2012, no extension of the five-year carryforward is allowed by the statute.

(4) **Qualifying Contributions.** In order for a contribution to be a qualifying contribution, it must be one of the following:

(a) Monetary contributions made to a qualifying child care facility, as defined in paragraph (5)(a) below, to the extent that the facility utilizes the contribution for child care provided to children who are twelve years of age or younger.

(b) Monetary contributions made to a qualifying grandfathered facility or program, as defined in paragraph (7) below, and utilizes the contribution for child care provided to children eighteen years of age or under.

(5) **Qualifying Child Care Facilities or Programs.**

(a) Qualifying contributions to the following child care facilities or programs are eligible for the child care contribution tax credit. Programs and facilities specified in paragraphs (i) through (viii) qualify only if the programs or facilities are licensed by the Department of Human Services. Programs and facilities specified in paragraphs (ix) through (xiii) qualify only 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) Any approved facility school as such term is defined in section § 22-2-402(1), C.R.S., that is also affiliated with a licensed or certified hospital in the state and is also a nonprofit organization (see the restriction on a credit for contributions made to such facilities in paragraph 2(b) of this rule),

(ix) 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 contributions to facilities or programs that 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.,

(x) A grant or loan program for a parent or parents in Colorado requiring financial assistance for child care,~~.~~

(xi) A training program for child care providers in Colorado,

(xii) An information dissemination program in Colorado to provide information and referral services to assist a parent or parents in obtaining child care,

(xiii) A grandfathered child care facility or program as defined in paragraph (7) below.

(6) **Registration of Unlicensed Facilities or Programs.**

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

(i) An explanation why they are a qualified facility or program,

(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 (6) or (7) below, whose application has been denied in whole or in part, may appeal the denial by filing a request for hearing before 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.

(7) **Grandfathered Facilities or Programs.**

(a) A grandfathered child care program is considered a qualifying facility or program on or after March 9, 2004 if the facility or program:

(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 contributions 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 contributions received in 2003 or prior, and

(iii) A list of taxpayers who claimed the credit in tax year 2003 or prior.

(8) **Limitation to the Credit for Tax Years 2013 and 2014.**

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

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

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

(9) **Exceptions.** Contributions will not qualify for this credit if any of the following apply:

(a) The contribution is made to a child care facility or 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 rule.

(d) The contribution is made after December 31, 2019.

(e) The donor receives consideration from the donee facility or program facility or program in exchange for the contribution. If this is the case, a sale occurs rather than a contribution. However, this will not restrict a company from contributing to a child care facility and claiming a credit based on that contribution if the employees of the company receive a benefit in the form of discounted child care, assuming that the employer has no financial interest in the child care facility.

(10) **Contributions That are Split Between Qualified and Nonqualified Purposes.**

(a) Donee facilities or programs may accept contributions that are used in part for qualified child care purposes but are also used, in part, for nonqualified purposes. Examples include:

(i) A child care facility 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 facility and part to fund other charitable functions,

(iii) Contributions to a community center construction project where a child care facility is only part of the overall project.

(b) The donee facility or program 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 facility 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 facility can compute the percentage of children in its care that qualify for the credit. This percentage can be used to allocate contributions that are made to the facility.

(B) The child care facility can document the expenses incurred in caring for children who are 12 and younger versus children who are 13 and older. The contribution 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 contributions can be directly allocated to the qualified programs.

(B) The contribution 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 facility so 30% of the costs are allocated to the child care facility).

(B) If construction costs vary greatly between the child care area of the building and other areas, a more equitable allocation of the contribution 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 facility.

(C) If construction costs are reasonably allocated using the method in paragraph (1), above, but the costs of equipping the child care facility varies significantly from other areas of the building, a hybrid method of allocating contributions 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 contributions.

(iv) If the methods above do not equitably allocate the contribution to the child care facility or program, a written request to 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 facility despite the existence of nonqualified programs, the full contribution will qualify for the 50% credit. The facility must have accounting procedures in place to verify that those contributions 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 contributions 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.

(11) **Documentation.** Any contribution must be supported by a signed statement from the donee child care facility or program and furnished to the donor.

(a) The statement must state the amount of the monetary contribution.

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

(c) The statement must include a detailed description of the eligible purpose(s) for which the contribution will be used and that the contribution 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 facility or program 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 expense or purpose. Example: A contribution of $1,000 is made to a qualifying child care facility. 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 all information specified by the Department provided.

(12) **Investment Funds.** Money donated to a qualified facility or program may be invested by that facility or program in an account that provides future payments to the facility or program. The interest and the principal, when removed from the account in any future year, must be utilized 100% for qualifying child care purposes in order for the original contribution to qualify for the credit.

(13) **Definitions.**

(a) A "person related to the taxpayer" means a person connected with another person 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.

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. [Repealed eff. 01/14/2016]

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). [Repealed eff. 01/14/2016]

39-22-301.1 DOING BUSINESS IN COLORADO

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

(2) Substantial Nexus Standard

(a)

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

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

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

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

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

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

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

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

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

(ii) Payroll counting toward the threshold is the total amount paid by the taxpayer for compensation in this State during the tax period. Compensation means wages, salaries, commissions and any other form of remuneration paid to employees and defined as gross income under Internal Revenue Code § 61. Compensation is paid in this State if (A) the individual's service is performed entirely within the State; (B) the individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or (C) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or (2) the base of operations or the place from which the service is directed or controlled is not in any State in which some part of the service is performed, but the individual's residence is in this State.

(iii) Sales counting toward the threshold include the total dollar value of the taxpayer’s gross receipts from

(A) the sale, lease or license of real property located in this State;

(B) the lease or license of tangible personal property located in this State;

(C) the sale of tangible personal property other than software or digital products received in this State as indicated by receipt at a business location of the seller in this State or by instructions, known to the seller, for delivery or shipment to a purchaser (or to another at the direction of the purchaser) in this State;

(D) the sale of software or digital products for primary use by a purchaser known to the seller to be in this state; and

(E) the sale, lease or license of services and intangibles for primary use by a purchaser known to the seller to be in this State. If the seller knows that a service or intangible will be used in multiple States because of separate charges levied for, or measured by, the use at different locations, because of other contractual provisions measuring use, or because of other information provided to the seller, the seller shall apportion the receipts according to usage in each State.

(F) If the seller does not know where a service or intangible will be used or where a tangible (including software or a digital product) will be received, the receipts shall count toward the threshold of the State indicated by an address for the purchaser that is available from the business records of the seller maintained in the ordinary course of business when such use does not constitute bad faith. If that is not known, then the receipts shall count toward the threshold of the State indicated by an address for the purchaser that is obtained during the consummation of the sale, including the address of the purchaser's payment instrument, if no other address is available, when the use of this address does not constitute bad faith.

(iv) Notwithstanding the other provisions of this Subsection (c), for a taxpayer subject to the special apportionment methods under Colorado Special Regulations for Allocation and Apportionment of Corporate Income, the property, payroll and sales for measuring against the nexus thresholds shall be defined as they were for tax periods prior to 1/1/09 for apportionment purposes under those regulations. Such regulations are maintained and are available at the Colorado Department of Revenue, 1375 Sherman Street, Denver, Colorado 80202. Financial institutions subject to an apportioned income or franchise tax shall determine property, payroll and sales for nexus threshold purposes the same as for apportionment purposes under the Financial Institutions special regulation.

(v) Pass-through entities, including, but not limited to, partnerships, limited liability companies, S corporations, and trusts, shall determine threshold amounts at the entity level. If property, payroll or sales of an entity in this State exceeds the nexus threshold, members, partners, owners, shareholders or beneficiaries of that pass-through entity are subject to tax on the portion of income earned in this State and passed through to them.

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

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

Regulation 22-301.2.

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

(a) The only activity of the corporation within this state consists of making sales,

(b) The corporation does not own or rent real estate within this state, and

(c) Gross annual sales in or into Colorado by the corporation do not exceed $100,000.00.

39-22-302. Subchapter S income [Repealed eff. 12/16/2014]

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

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

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

(1) The provisions of this regulation apply for income tax years beginning prior to January 1, 2009. Statutory sections referenced in the regulation refer to those sections as they existed prior to January 1, 2009.

(2) **Inclusion of intangible drilling costs in the property factor.** Intangible drilling costs should be included in both the numerator and the denominator of the property factor as computed under section 39-22-303(3), C.R.S. Since intangible drilling costs represent long range investments in the hope of producing oil or gas income, they are properly includable in the computation of the property factor.

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

REGULATION 39-22-303.4. “Safe Harbor” Lease Income. [Repealed eff. 08/14/2014]

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

(1) Section 39-22-303.5(1)(a) defines “business income” as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. All income that arises from the conduct of trade or business operations of a taxpayer is business income. The income of the taxpayer is business income unless clearly classifiable as nonbusiness income under the standards set forth in this regulation, under constitutional law or otherwise as explicitly provided by law.

(2) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, non-operating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activities that are the elements of a particular trade or business. In general all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of, a trade or business. (See paragraph (3) of regulation 39-22-303.11(c) concerning the calculation of income when a taxpayer engages in more than one line of business.)

(3) Business and Nonbusiness Income: Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

(a) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto.

(b) Gains or losses from sales of assets.

(i) Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized exclusively for the production of nonbusiness income the gain or loss will constitute nonbusiness income. If the property was used both for the production of business income and nonbusiness income then the gain from the sale is business income. If the property was held for sale after having been used for the production of business income, the gain or loss shall be business income.

(ii) Gain or loss from the sale, exchange or other disposition of property shall be included in business income if such property is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Gain or loss from the disposition of property held as reserves or standby facilities or property held as a reserve source of materials shall be included in business income. Gain or loss from the disposition of property or equipment under construction during the tax period shall be included in business income if such property was intended to be used in the regular course of the trade or business of the taxpayer.

(c) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of, is used, or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.

(d) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to such trade or business operations.

(e) Patent and copyright royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related to or incidental to such trade or business operations.

(4) Proration of Deductions.

(a) In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business incomes of more than one trade or business and/or to several items of nonbusiness income. In such cases the deduction shall be prorated among such trades or businesses and such items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(b) Consistency and uniformity in reporting.

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

(ii) State-to-State uniformity. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under this section, Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction then the taxpayer shall disclose in its return to this state the nature and extent of the variance or variances, except where such non-uniformity in reporting is a direct and necessary consequence of differences between the law of this state and the law of another state.

REGULATION 39-22-303.5.1(B) OTHER DEFINITIONS

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

(1) “Apportionment” refers to the division of business income among states by use of a formula containing apportionment factors.

(2) “Allocation” refers to the assignment of nonbusiness income to one or more particular states.

(3) “Business activity” refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.

(4) “Sales” – See regulation 39-22-303.5.4

REGULATION 39-22-303.5.3 APPORTIONMENT AND ALLOCATION.

(1) Apportionment. If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business that is derived from sources within this state shall be determined by apportionment in accordance with §39-22-303.5(4), C.R.S.

(2) Allocation. Unless electing to treat all income as business income (see regulation 39-22-303.5.6), any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with §39-22-303.5(5), C.R.S.

(3) Combined Report. If a particular trade or business is carried on by a taxpayer and one or more affiliated corporations, nothing in these regulations shall preclude the use of a "combined report" whereby the entire business income of such trade or business is apportioned in accordance with §39-22-303, §39-22-303.5, or §39-22-303.7. However, the income in the combined report may be required to be calculated pursuant to regulation 39-22-303.11(c), section (3) and pursuant to any applicable special regulations for allocation and apportionment of corporate income.

(4) Consistency and Uniformity in Reporting. Year-to-Year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income, except for nonbusiness income with respect to which an election has been made pursuant to §39-22-303.5(6), C.R.S. in the returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(5) Taxable in Another State.

(a) In general. Under §39-22-303.5(3)(b), C.R.S., the taxpayer is subject to the allocation and apportionment provisions of this section if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if such taxpayer, by reason of such business activity (i.e., the transactions and activity occurring in the regular course of a particular trade or business), is taxable in another state within the meaning of §39-22-303.5(3)(c), C.R.S.

(b) Applicable tests. A taxpayer is taxable within another state if it meets either one of two tests: (1) If by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in §39-22-303.5(3)(c)(I), C.R.S., namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, or other similar tax; or (2) If by reason of such business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.

(c) Producing nonbusiness income. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in such other state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

(d) A taxpayer is "subject to" one of the taxes specified in §39-22-303.5(3)(c)(I), C.R.S., if it carries on business activities in such state and such state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in §39 22 303.5(3)(c)(I), C.R.S., in another state shall furnish to the executive director upon his or her request evidence to support such assertion. The executive director may request that such evidence include proof that the taxpayer has filed the requisite tax return in such other state and has paid any taxes imposed under the law of such other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one of the taxes specified in §39-22-303.5(3)(c)(I), C.R.S., in such other state.

(e) Voluntary tax payment. If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but

i. does not actually engage in business activity in that state, or

ii. does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such state, the taxpayer is not “subject to” one of the taxes specified within the meaning of §39-22-303.5(3)(c)(I), C.R.S.

(f) Taxability. The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states that do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in §39-22-303.5(3)(c)(I), C.R.S. that may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is “subject to” one of the taxes specified in §39-22-303.5(3)(c)(I), C.R.S. in another state. By way of illustration and not of limitation, regulatory measures could include fees charged out-of-state cigarette and tobacco vendors for access to the state’s market or out-of-state alcoholic beverage vendors to ensure compliance with local liquor laws.

(g) The second test, that of §39-22-303.5(3)(c)(II), C.R.S., applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provision of Public Law 86-272, 15 U.S.C.A., paragraphs 381-385. In the case of any “state” as defined in §39-22-303.5(1)(e) C.R.S. other than a state of the United States or political subdivision of such state, the determination of whether such “state” has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applies in that “state”. If jurisdiction is otherwise present, such “state” is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

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

(1) In General. Section 39-22-303.5(1)(d), C.R.S. generally defines the term “sales” to mean all gross receipts of the taxpayer not allocated under subsection (5) of section 303.5, C.R.S. Thus, except as otherwise specifically provided, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term “sales” means all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business. The following are rules for determining “sales” in various situations:

(a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, “sales” includes all gross receipts from the sales of such goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(b) In the case of cost-plus-fixed fee contracts, such as the operation of a government-owned plant for a fee, “sales” includes the entire reimbursed cost, plus the fee.

(c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, the performance of equipment service contracts, or research and development contracts, “sales” includes the gross receipts from the performance of such services including fees, commissions, and similar items.

(d) In the case of a taxpayer engaged in renting real or tangible property, “sales” includes the gross receipts from the rental, lease, or licensing the use of the property.

(e) In the case of a taxpayer engaged in the assignment, or licensing of intangible personal property such as patents and copyrights, “sales” includes the gross receipts therefrom.

(f) In the case of a taxpayer engaged in the sale of intangible personal property, including patents and copyrights, “sales” means the gain therefrom.

(g) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute “sales”.

(h) “Safe Harbor” lease income. All income and deductions created by “safe harbor” lease transactions shall be included in the numerator of the Colorado sales factor only if the lessor's commercial domicile is located in Colorado. All income and deductions created by “safe harbor” lease transactions shall not be included in the numerator of the Colorado sales factor if the lessor's commercial domicile is not in Colorado.

(2) Exceptions. In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business.

(3) Colorado destination sales of a corporation not having nexus in Colorado when such corporation is an includable member of an affiliated group of corporations. In the case of a corporation that does not have nexus (is not doing business) in Colorado even though it is an “includable corporation” in an affiliated group of unitary corporations filing a combined Colorado return, the sales of such corporation of property delivered to purchasers in Colorado shall not constitute Colorado sales for purposes of determining the sales factor.

(4) Denominator. The denominator of the sales factor shall include the total sales derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under §39-22-303.5(7)(b), C.R.S.

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

(6) Consistency and Uniformity in Reporting.

(a) Numerator/denominator consistency. In filing returns with this state, the taxpayer must use the same methodology in calculating both the numerator and the denominator of the sales factor.

(b) Year-to-Year consistency. In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(c) State-to-State uniformity. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under this section, Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, then the taxpayer shall disclose in its return to this state the nature and extent of the variance or variances, except where such non-uniformity in reporting is a direct and necessary consequence of differences between the law of this state and the law of another state.

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

(1) Gross receipts from sales of tangible personal property are in this state:

(a) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other condition of sale; or

(b) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state to which the property is shipped.

(2) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(4) The term “purchaser within this state” shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(5) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(6) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(7) If a taxpayer whose salesperson operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(a) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in this state only if the third party ships the property from this state.

(b) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

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

(1) Gross receipts from services rendered are included in the Colorado sales factor numerator if the service that gave rise to the gross receipt is performed wholly within Colorado. If the service is performed within and without Colorado, and except as otherwise provided by §39-22-303.7, C.R.S. or applicable special regulations for allocation and apportionment of corporate income or other regulation, the portion of the gross receipt included in the Colorado numerator is found by multiplying the gross receipt by a fraction, the numerator of which is the direct costs incurred in the performance of that service in Colorado and the denominator of which is the direct costs incurred in the performance of that service everywhere.

(a) Direct costs include

i. wages of employees engaged in the performance of the service;

ii. taxpayer's payments to an agent or independent contractor for the performance of personal services on behalf of the taxpayer which give rise to the particular item of gross receipts;

iii. a reasonable measure of the real and tangible-personal property used in the performance of the service. Such reasonable measure could be a market lease rate, depreciation, or other reasonable method. However, the same method must be used consistently from year to year and from state to state.

iv. Services on Behalf of the Taxpayer. An activity giving rise to gross receipts performed on behalf of a taxpayer by an agent or independent contractor is attributed to this state if such activity giving rise to gross receipts is in this state. In order to be included as a sale of the taxpayer in either the numerator or denominator of the sales factor, the activities described in this subparagraph iv must themselves directly give rise to gross receipts of the taxpayer. By way of illustration and not of limitation, such costs could include, for an accounting firm, amounts paid to an independent contractor accountant whose time or activities directly relate to the accounting of the firm's client and which time or activities directly give rise to a billing item presented to the firm's client. Such costs would not include, for the same firm, amounts paid to an independent contractor accountant whose services consist of accounting services related to the firm's accounting, because these activities do not give rise to gross receipts of the taxpayer.

1. Such activity giving rise to gross receipts is in this state:

a. when the taxpayer can reasonably determine at the time of filing that the activity is actually performed in this state by the agent or independent contractor, but if the activity occurs in more than one state, the location where the activity is actually performed shall be deemed to be not reasonably determinable at the time of filing under this subparagraph (1)(a)(iv)(1)(a);

b. if the taxpayer cannot reasonably determine at the time of filing where the activity is actually performed, when the contract between the taxpayer and the agent or independent contractor indicates it is to be performed in this state and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract;

c. if it cannot be determined where the activity is actually performed and the agent or independent contractor's contract with the taxpayer does not indicate where it is to be performed, when the contract between the taxpayer and the taxpayer's customer indicates it is to be performed in this state and the portion of the taxpayer’s payment to the agent or contractor associated with such performance is determinable under the contract; or

d. if it cannot be determined where the activity is actually performed and neither contract indicates where it is to be performed or the portion of the payment associated with such performance, when the domicile of the taxpayer’s customer is in this state. If the taxpayer’s customer is not an individual, “domicile” means commercial domicile.

2. If the location of the activity giving rise to gross receipts by an agent or independent contractor, or the portion of the payment associated with such performance, cannot be determined under subparagraphs (1)(a)(iv)(1)(a) through (1)(a)(iv)(1)(c), or the taxpayer’s customer’s domicile cannot be determined under subparagraph (1)(a)(iv)(1)(d), or, although determinable, such activity is in a state in which the taxpayer is not taxable, such income producing activity shall be disregarded.

(b) Direct costs do not include

i. Overhead costs,

ii. Management costs, unless such management was directly involved in the performance of the service, and

iii. The costs of property not directly used in the performance of the service.

(2) Rents and royalties from real property located in Colorado are included in the Colorado sales factor numerator.

(3) Gross proceeds from the sale of real property located in Colorado are included in the Colorado sales factor numerator.

(4) Interest and dividend income is included in the Colorado sales factor numerator if the taxpayer’s commercial domicile for that trade or business is located in Colorado.

(5) Gain from the sale of intangible property is included in the Colorado sales factor numerator if the taxpayer’s commercial domicile for that trade or business is located in Colorado.

(6) Patent and copyright royalties are included in the Colorado sales factor numerator if:

(a) The patent or copyright is utilized by the payer in Colorado, or

(b) The patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer’s commercial domicile for that trade or business is located in Colorado.

(7) Revenue from the performance of purely personal services is included in the Colorado sales factor numerator if the income producing activity is performed in Colorado.

(a) Purely personal services consist of services that are performed by individuals with only incidental contributions either from individuals not directly engaged in the performance of the service or from property.

(b) Such services include, but are not limited to

i. legal, accounting, or other professional services,

ii. entertainment and sporting services.

(c) In general, the performance of each individual is a separate income producing activity. Where sales are generated by the performance of services of a number of individuals, such sales must be divided among the several individuals performing the services. Such division must be reasonably related to the generation of the revenue. The contributions of individuals whose services are not the direct object of the contract (such as para-professionals and support and administrative staff) are not considered income producing activities. Their contributions are not considered in performing the calculation described in subparagraph (d) of this paragraph (7). If the contributions of such personnel are more than incidental, then the activity is not a purely personal service and would be apportioned pursuant to 39-22-303.5(4)(c)(I), C.R.S.

(d) Each income producing activity is performed in Colorado to the extent that the individual is in Colorado when performing the service. Thus, an income producing activity for the performance of purely personal services is in Colorado in the ratio of the time spent in Colorado in performing the service to the total time spent in performing the service. Time spent in performing the service includes the amount of time expended in the performance of a contract or other obligation that gives rise to the revenue. Personal service not directly connected with the performance of the contract or other obligation, as for example time expended in negotiating the contract, is excluded from the computation.

REGULATION 39-22-303.5.5 NON-BUSINESS INCOME

(1) Reserved

(2) Reserved

(3) Reserved

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

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

(1) Every year, taxpayers have an election to treat all non-business income as business income.

(a) The election must be made with the original return on the appropriate departmental form filed prior to the extended due date of the return (the fifteenth day of the tenth month following the close of the tax year). If no departmental form is available, the taxpayer may make the election on its own form in a clear and unequivocal manner filed together with the original return. The taxpayer's form must be clearly marked "Election to treat non-business income as business income for the tax year ending MM, YYYY" (enter the appropriate month and year in which the tax year for which the election is being made ends).

(b) Once the election has been filed for the year, it may not be changed, even if the extended due date for the year has not passed.

(c) The filing of a return without the election constitutes the non-exercise of the election for that tax year, even if the return is calculated with all income as business income.

(d) The failure to file a return prior to the extended due date of the return constitutes the non-exercise of the election for that tax year.

(2) If the election described in this regulation is made for the income tax year, all sales of the taxpayer are included in the denominator and, if appropriate, the numerator of the taxpayer's sales factor.

REGULATION 39-22-303.5.7(A)

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

Special Regulation 1A – Airlines

Special Regulation 2A – Contractors

Special Regulation 3A– Publishing

Special Regulation 4A – Railroads

Special Regulation 5A – Television and Radio Broadcasting

Special Regulation 6A – Trucking

Special Regulation 7A – Financial institutions

Special Regulation 8A - Telecommunications

REGULATION 39-22-303.5.7(B)

(1) Section 39-22-303.5(7)(b), C.R.S. permits a departure from the allocation and apportionment provisions of §39-22-303.5, C.R.S. (hereinafter "303.5") only in limited and specific cases. Paragraph (7)(b) of 303.5 may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in section 303.5.

(2) In the case of certain industries, the general regulations under section 303.5 in respect to the apportionment formula do not set forth appropriate procedures for determining the apportionment factors. Nothing in §39-22-303.5(7)(b), C.R.S. or in this regulation 39-22-303.5.7(b) shall preclude the executive director from establishing appropriate procedures under 303.5 and paragraph (7)(a) of 303.5 for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.

(3) In the case of certain taxpayers, the general regulations under § 39-22-303, C.R.S. and 303.5 do not set forth appropriate procedures for determining income or the apportionment factors. Nothing in §39-22-303.5(7)(b), C.R.S. or in this regulation 39-22-303.5.7(b) shall preclude the executive director from distributing or allocating income and deductions under §39-22-303(6), C.R.S.

(4) Special rules

(a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor.

(b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state.

(c) Where business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, and such income cannot be assigned to the numerator of the sales factor for any state, such income shall be excluded from the denominator of the sales factor.

(d) Where the income-producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income-producing activity occurs in this state, in the numerator of the sales factor as well.

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

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

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

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

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

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

REGULATION 39-22-303.7.1 OTHER DEFINITIONS

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

1) "Affiliate of" or "affiliated with" another person means any person directly or indirectly controlling, controlled by, or under common control with such other person.

2) "Affiliated regulated investment company" or "affiliated RIC" means a regulated investment company that (1) is a shareholder in another regulated investment company and (2), in common with such other regulated investment company, obtains management or distribution services, as described in 4)a) and 4)b), from the same provider of such services or a related provider.

3) "Direct" and "indirect" services

 a) Direct services. Amounts are derived directly from the performance of management, distribution, or administration services when they are received as compensation for providing such services to a RIC or to a RIC's officers, directors or trustees acting on behalf of the RIC. For example, the fee received by a person hired by a RIC's trustees to manage the RIC's assets is derived directly from the performance of management services.

 b) Indirect services. Amounts are derived indirectly from the performance of management, distribution, or administration services when they are received as compensation for providing such services to a person who is directly responsible for providing management, distribution or administration services to a RIC pursuant to a contract between such person and the RIC or the RIC's officers, directors, or trustees acting on behalf of the RIC. For example, the fee received by a brokerage firm hired by a person that is under contract to provide management services to a RIC is derived indirectly from the performance of management services.

4) "Mutual Fund Sales": Mutual fund sales means gross receipts derived, directly or indirectly, from the performance of the following services:

 a) Management services. The term management services includes, but is not limited to, the rendering of investment advice or investment research to or on behalf of a RIC, making determinations as to when sales and purchases of securities are to be made on behalf of the RIC, or the selling or purchasing of securities constituting assets of a RIC. Such activities must be performed:

  i) pursuant to a contract with the RIC entered into pursuant to 15 U.S.C. section 80a-15(a);

  ii) for a person that has entered into a contract referred to in subsection i) with the RIC; or

  iii) for a person that is affiliated with a person that has entered into a contract referred to in i) with the RIC.

5) “Distribution services.” The term distribution services includes, but is not limited to, advertising, servicing, marketing or selling shares of a RIC, including the receipt of contingent deferred sales charges and fees received pursuant to 17 CFR § 270.12b-1 (Sept. 9, 2004), which is incorporated herein by reference, but such incorporation by reference does not include later amendments or editions of this referenced material. Certified copies of this material are available for review in the executive director’s office of the Department of Revenue at 1375 Sherman Street, Denver, Colorado 80261. Additionally, a copy of this material may be examined at any state publications depository library.

    a) In the case of an open end company, advertising, servicing or marketing shares must be performed by a person who is either engaged in or affiliated with a person that is engaged in the services of selling shares of a RIC. The service of selling shares of a RIC must be performed pursuant to a contract entered into pursuant to 15 U.S.C. section 80a-15(b).

    b) In the case of a closed end company, advertising, servicing or marketing shares must be performed by a person who was either engaged in or affiliated with a person that was engaged in the services of selling shares of a RIC.

6) “Administration services.” The term administration services includes, but is not limited to, clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for a RIC. The provider of administration services must also provide or be affiliated with a person that provides management or distribution services to any RIC.

7) “Average Number of Shares” means the average of the number of shares owned by a class of shareholders at the beginning of each year and by the same class of shareholders at the end of the year, where “the year” refers to the RIC’s taxable year that ends with or within the mutual fund service corporation’s taxable year.

8) “RIC” or “regulated investment company” or “fund” means a regulated investment company as defined in section 851 of the federal internal revenue code of 1986, as amended. For purposes of the apportionment of income pursuant to §39-22-303.7, §39-22-303.5(7), and these regulations, if the mutual fund service corporation principally provides management, distribution, or administration services to regulated investment companies as defined in section 851 of the federal internal revenue code, such terms also include pension and employee retirement plans and foreign entities similar to regulated investment companies as defined in section 851 of the federal internal revenue code.

9) “Shareholder factor” or “Colorado shareholder factor” means the Average Number of Shares owned by the RIC’s shareholders domiciled in Colorado divided by the Average Number of Shares owned by the RIC’s shareholders everywhere.

REGULATION 39-22-303.7.2 APPLICATION

1) The Colorado net income of mutual fund service corporations shall be calculated pursuant to § §39-22-303.5 and 304, C.R.S. with the modification to apportionment set out in §39-22-303.7, C.R.S. and related regulations.

2) Colorado receipts from mutual fund sales – To determine Colorado receipts from mutual fund sales, a mutual fund service corporation must calculate mutual fund sales by fund and apply the Colorado shareholder factor for each fund to such mutual fund sales by fund.

    a) Colorado receipts by fund are calculated by multiplying mutual fund sales by fund by each fund’s shareholder factor.

b) The total Colorado receipts from mutual fund sales are then calculated by adding together the Colorado receipts for each separate fund.

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

Regulation 39-22-303.8

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

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

REGULATION 39-22-303.10 "Foreign Source Income"

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

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

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

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

(2)

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

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

The foreign source income exclusion shall be the lesser of:

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

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

(FT X “FSI net §78”) / (Fed Rate X FSI)

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

Effective federal corporate tax rate = federal corporate income tax / federal corporate taxable income

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

(b) For tax years commencing prior to January 1, 2000, the denominator of the formula in subsection (b)(i) will use 46% in place of the effective federal corporation tax rate.

(3) When determining foreign source income for a foreign corporation, such income shall not include any income of the foreign corporation that is derived from the conduct of a trade or business within the United States.

(4) For income tax years beginning on or after January 1, 2009, the excess, if any, of a taxpayer’s foreign source income over the foreign source income exclusion shall not be included in the numerator of the Colorado sales factor (see 39-22-303.5(4)(e)).

Regulation 39-22-303.11(A) COMBINED RETURNS

1) In any case, when two or more C corporations which are members of an affiliated group as defined in subsection 39-22-303(12), C.R.S., qualify under the provisions of subsection 39-22-303(11) to file a combined report for Colorado income tax purposes, they must do so.

2) Section 39-22-303(11)(a), C.R.S., provides that only those members of an affiliated group of C corporations that satisfy three of the six tests of unity as provided therein for the current tax year and the two preceding tax years may join in the filing of a combined report. Thus, corporations that were not in existence for the two preceding tax years may not join in the filing of a combined report.

3) In order to be included in a combined report, an affiliated C corporation must meet at least three of six tests of unity with one or more other affiliated C corporations includable in the combined report. The six tests of unity are discussed in paragraphs a) through f) following:

a) The first test of unity is met if 50% or more of the gross operating receipts of one affiliated C corporation is from sales or leases to another affiliated C corporation; or if 50% or more of the cost of goods sold and/or leased by one affiliated C corporation is paid to another affiliated C corporation.

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

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

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

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

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

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

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

d) The fourth test of unity is met for two affiliated C corporations if one of them substantially uses the patents, trademark, service marks, logo-types, trade secrets, copyrights, or other proprietary materials owned by the other.

e) The fifth test of unity is met for both corporations if 50% or more of the board of directors of one affiliated C corporation are members of the board of directors or are corporate officers of another affiliated C corporation.

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

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

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

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

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

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

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

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

1) The provisions of this regulation apply for income tax years beginning on or after January 1, 2009. The provisions of Regulation 39-22-303-11(c), as it existed prior to January 1, 2009, apply to income tax years beginning prior to January 1, 2009.

2) Except as otherwise provided in regulation 39-22-303-11(e), when filing a combined report, the affiliated group of corporations shall file one return, apportioning income under the provisions of either 39-22-303.5 C.R.S. or 39-22-303.7 C.R.S., summing the numerators to derive a single apportionment factor for the combined group.

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

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

The combined sales factor would be as follows:

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

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

Combined Sales Factor = 7.6889%

* assuming no intercompany eliminations

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

3) A taxpayer may be engaged in activities that subject the taxpayer to more than one apportionment methodology; those activities may be engaged in by the same corporation or more than one corporation. In these cases, the factors of the lines of business may bear no logical relationship to each other and the calculation of Colorado net income shall be done according to the sales provisions of Special Regulations for Allocation and Apportionment of Corporate Income1-7.

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

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

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

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

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

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

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

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

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

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

b) The Work Opportunity Credit under section 51(a),

c) The Empowerment Zone Employment Credit under section 1396(a).

d) The Orphan Drug Credit under section 45C(a).

e) The Research Expense Credit under section 41(a).

f) The Employee Retention Credit under Section 1400R

g) The Welfare-To-Work Credit under Section 51A

h) The Mine Rescue Team Training Credit under Section 45N

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

REGULATION 39-22-305. CONSOLIDATED RETURNS

(1) Election to file a consolidated return.

(a) The election to file a consolidated C corporation return afforded under §39-22-305, C.R.S. may not be changed after the due date for filing the return including extensions of time for filing the return.

(b) When an affiliated group of “C” corporations elects to file a consolidated return, such election year is included in the four-year period required by the statute. Therefore, the election to file a consolidated return is binding for the election year and the next three tax years unless permission is granted in writing from the executive director for an earlier change.

(c) From the fifth year forward, there is an annual election to continue or discontinue the consolidated filing. When an eligible taxpayer elects and files a separate return in any year, a subsequent election to file a consolidated return will restore the taxpayer to filing on the consolidated basis for the following three years, unless permission is granted in writing from the executive director for an earlier change.

(d) For any year a consolidated return is filed, Schedule C-Colorado Affiliation Schedule shall be included with the return when filed.

(2) Members of the Consolidated Return.

(a) The Colorado income tax liability for an affiliated group of corporations making a consolidated return shall be based only on the net income of those members of the affiliated group having nexus in Colorado and for which a tax is imposed under §39-22-301, C.R.S. for that tax year. The consolidated net income of such corporations shall be apportioned in accordance with §39-22-303.5, C.R.S., or §39-22-303.7, C.R.S. The apportionment factors of such consolidated group shall be based solely on the consolidated sales, as applicable, of the consolidated group.

(b) If all or any part of the affiliated group is required to file a combined return (pursuant to §39-22-303(11)(a), C.R.S. and the regulations thereunder), then a combined report shall be filed that includes all the corporations required to file a combined return with such affiliated group. The affiliated group electing to file a consolidated return shall be treated as one taxpayer for purposes of filing the combined report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1) The Colorado net operating loss of a C corporation is computed the same as a federal net operating loss except that the Colorado loss is computed using the modified federal income allocated and apportioned to Colorado

2) Limitations on the amount of net operating loss that may be carried over where such loss was obtained by the acquisition of one C corporation by another as contained in Section 382 of the Internal Revenue Code shall also apply for Colorado income tax purposes.

3)

a) For the tax years beginning prior to January 1, 1984, the Colorado C corporation net operating loss could be carried back and forward to the same years to which a federal net operating loss could be carried.

b) For tax years beginning on or after January 1, 1984, but prior to August 6, 1997, Colorado C corporation net operating losses may be carried forward for fifteen years. They may not be carried back to an earlier year.

c) For tax years beginning on or after August 6, 1997, Colorado C corporation net operating losses may be carried forward for twenty years. They may not be carried back to an earlier year.

4)

a) For tax years beginning on or after January 1, 2011, but prior to January 1, 2014, the amount of Colorado C corporation net operating losses used cannot exceed $250,000 in any tax year.

b) If the $250,000 limitation prevents a corporation from using any part of a net operating loss carryforward in a tax year, then all net operating losses carried forward to such tax year may be carried forward one additional year for each tax year the restriction applies.

c) Any portion of a net operating loss carryforward that cannot be used solely due to the $250,000 limitation shall be increased by 3.25% for that tax year.

d) For any short tax year, the 3.25% rate will be prorated to by the number of months in the tax year divided by 12.

e) Example: A corporation carries a $600,000 net operating loss from 2009 and a $100,000 loss from 2010 to tax year 2011. In 2011, the corporation could have used $300,000 of the carryforward loss to offset income, but is limited to a $250,000 net operating loss. The 2009 and 2010 losses may be carried forward an additional year to 2030 and 2031 respectively. The 2009 net operating loss carryforward to 2012 will be $351,625 ($350,000 unused loss plus 3.25% of the $50,000 that otherwise would have been used in 2011). The 2010 net operating loss carryforward to 2012 will be $100,000 and is not increased because the limitation did not prevent any of this loss from being used in 2011.

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

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

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

Regulation 39-22-504.6.

(1) Employer as Account Administrator. In order to be a medical savings account administrator, an employer must establish or have established and must maintain a self-insured health plan meeting the requirements of the federal “employee retirement income security act”, as amended.

(a) Such plan must meet the definition of an “employee welfare benefit plan” as defined in Section 3(1) of the federal Employee Retirement Income Security Act of 1974. (29 U.S.C.,Section 1002).

(b) Such plan must meet the coverage requirements of Section 4 of the federal Employee Retirement Income Security Act of 1974. (29 U.S.C., Section 1003).

(c) With respect to such plan, the employer must be subject to the filing with the United States Secretary of Labor requirements and to the furnishing information to participants requirements of Section 101 of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1021).

(d) The administration of such plan must comply with the fiduciary responsibility requirements of Part 4 of the federal Employee Security Act of 1974 (29 U.S.C., Sections 1101-1114).

(4) Eligible Medical Expense.

(a) Eligible medical expense means expense for the medical care of the account holder, the spouse of the account holder and the dependent children of the account holder as such term is defined in section 213(d) of the Internal Revenue Code.

(b) Premiums paid in a health insurance policy purchased by the account holder to cover the medical expenses not covered by a health insurance plan furnished to the account holder by his employer because of the deductible feature in such plan do not qualify as eligible medical expenses. 39-22-504.6(2.4) C.R.S. notwithstanding.

(5) Employee. Employee means an individual who is employed in Colorado by an employer other than the United States government and on whose, behalf a medical savings account is established.

(6) Employer. Employer means an employer doing business in Colorado other than the United States government.

(7) Medical Savings Account. Medical savings account means a savings account established under the provisions of section 39-22-504.7. C.R.S. to pay eligible medical expenses of the account holder, the spouse of the account holder and the dependent children of the account holder.

(8) Qualified Higher Deductible Health Plan. Qualified higher deductible health plan means health insurance with a deductible feature not in excess of $3,000 purchased by an employer for the benefit of an employee who makes deposits into a medical savings account.

Regulation 39-22-504.7. Medical Savings Accounts.

(1) Establishment of medical savings accounts.

(a) On or after January 1, 1995, an employer may offer to establish medical savings accounts for his employees. Such accounts are to be established by agreement between the employer and a qualified medical savings account administrator. A separate account is to be established for each employee who elects to have a medical savings account.

(b) If an employer does not establish a medical savings account for an employee, the employee may establish his own medical savings account by agreement with a qualified medical savings account administrator.

(2) Contributions to medical savings accounts.

(a) Each year a maximum of $3,000 may be contributed to an employee's medical savings account. The contribution may be made by the employer, by the employee, or by a combination of the two. If the employer established the account and the employee is making the contribution, the employer shall withhold the contribution from the employee's wages and shall immediately transmit the amount withheld to the account administrator. The timing of the withholding and the amount of the withholding shall be by agreement between the employee and the employer.

(b) Amounts contributed to a medical savings account by or on behalf of an employee and interest earned thereon shall be an allowable modification decreasing the employee's federal taxable income for the purpose of determining Colorado taxable income.

(c) The employee shall elect to make contributions to a medical savings account by signing an election form provided by or approved by the Department of Revenue.

(3) Distributions from a Medical Savings Account.

(a) Money may be distributed from a medical savings account for only one of three reasons:

(i) to reimburse the eligible medical expenses of the account holder, the spouse of the account holder, or the dependent child of the account holder;

(ii) cashing out the balance in the account of a deceased account holder, or

(iii) cashing out an account holder's prior years' balance.

(b) Money withdrawn from a medical savings account for any reason other than the payment of eligible medical expenses of the account holder, the spouse of the account holder or the child of the account holder shall be taxable income for Colorado income tax purposes and shall be a modification increasing federal taxable income in arriving at Colorado taxable income of the account holder, the account holder's estate, or the beneficiary receiving the money, as the case may be.

(4) Report of account administrator.

(a) The account administrator must submit an annual report to the account holder for each calendar year within 31 days after the close of the calendar year for inclusion with the account holder's income tax return.

(b) The annual report required by this paragraph (4) must show:

(i) the account holder's name and social security number;

(ii) the account administrator's name and Colorado income tax account number;

(iii) the balance in the medical savings account as of the beginning of the calendar year;

(iv) the contributions to the account during the calendar year;

(v) the distributions from the account during the calendar year to reimburse the account holder for eligible medical expenses;

(vi) the distributions from the account during the calendar year for other purposes;

(vii) the amount of interest earned by and credited to the account during the calendar year;

(viii) the fiduciary fees and other amounts charged to the account during the calendar year; and

(ix) the balance in the medical savings account as of the close of the calendar year.

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

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

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

Regulation 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.

39-22-507.5(3). Limitation on investment tax credit. [Repealed eff. 10/30/2014]

39-22-507.5(9). Investment tax credit recapture. [Repealed eff. 10/30/2014]

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.

39-22-507.6. THE NEW COLORADO INVESTMENT TAX CREDIT

(1) The investment tax credit allowed by section 39-22-507.6, C.R.S. is designated the “new” Colorado investment tax credit. The “new” investment tax credit is 1% of the qualifying investment in “Section 38 property” (disregarding the termination provisions of I.R.C. § 49 as such section existed prior to the enactment of the federal Revenue Reconciliation Act of 1990) to the extent such property would have qualified for the federal “regular percentage” investment tax credit and to the extent such property is used in Colorado. All references herein to sections of the internal revenue code are to these sections as they existed immediately prior to the enactment of the federal Revenue Reconciliation Act of 1990.

(2) **Limitations.**

(a) Only C corporations may claim the “new” investment credit. However, a C corporation cannot carry-forward unused credit to a tax year in which it elects under federal rules to be taxed as an S corporation.

(b) 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.

(c) Excess tax credits may be carried forward for up to three tax years, but may not be carried back to an earlier year.

(d) The “new” investment tax credit has no recapture provisions.

(3) **Property.**

(a) 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 the tax year unless the taxpayer can justify a more equitable apportionment method.

(b) Claiming the credit does not reduce the cost basis of the property.

(c) The enterprise zone investment tax credit and the new investment tax credit can be claimed for the same property.

(d) The purchase of equipment included in the purchase of business can qualify for the new investment tax credit, although the total investment in used equipment is limited to $150,000 per year.

(i) A controlled group of corporations must apportion the credit limitations of the property among its members. The election of the apportionment shall apply to the income tax year of the members with or including a common December 31. Should such members fail to agree on an allocation of the limitation amount, it shall be divided equally among all members of the controlled group.

(4) **Qualified Investment in Section 38 Property.**

(a) For new Section 38 property subject to I.R.C. § 168 (Accelerated Cost Recovery System), the amount of qualified investment is 100% of the basis of for all new property in recovery classes of more than three years, and 60% of the basis for new three-year recovery property. For used Section 38 property subject to I.R.C. § 168, the amount of qualified investment is 100% of the cost of all used recovery property in recovery classes of more than three years, and 60% of the cost for used three-year recovery property. For used property, cost is limited to a maximum of $150,000.

(b) For Section 38 property not subject to I.R.C. § 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. The limit is only 2/3 of the basis or cost qualifies if the useful life is five years or more but less than seven years. In addition, the limit is only 1/3 of the basis or cost qualifies when the useful life is three years or more but less than five years. No credit is allowed if the useful life is less than three years.

(c) No investment tax credit is allowed to a purchaser of used property if the property is currently or was previously used by the purchaser or a related party before the purchase. This includes a leaseback of used property or a purchase of leased property by the lessee.

(d) 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 I.R.C. § 465.

(5) **Section 38 property.**

(a) 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.

(b) Section 38 property is either property subject to I.R.C. § 168 (Accelerated Cost Recovery System) or other depreciable or amortizable property having a useful life of three years or more that is:

(i) 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);

(ii) Other tangible property (not including a building or its components) used as an integral part of:

(A) manufacturing,

(B) extraction,

(C) production, or

(D) furnishing of transportation, communications, electrical energy, gas, water, or sewage disposal services.

(iii) Elevators and escalators;

(iv) Research facilities and facilities for the bulk storage of fungible commodities (including liquids or gases) used in connection with the activities in (5)(b)(ii) Fungibles are commodities that are mutually interchangeable, such as oil or grain;

(v) Single purpose agricultural or horticultural structures. A single purpose agricultural structure is Section 38 property if it is designed, constructed and used for housing, raising and feeding a particular type of livestock, such as cattle, hogs or poultry, and their produce, in addition to housing equipment necessary for the particular activity. A horticultural structure is Section 38 property if it is specifically designed, constructed and used for the commercial production of plants and/or mushrooms. Work space in the structure is permitted if such space is used solely for stocking or caring for the plants, for collecting their product or for maintaining the structure and equipment or stock house in it;

(vi) In the case of qualified timber property (within the meaning of I.R.C. § 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) I.R.C. § 38 property) and taken into account under I.R.C. § 194 (after application of I.R.C. § 194(b)(1);

(vii) 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;

(viii) Property used predominantly to furnish lodging, or used 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 non-lodging 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.

(ix) 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.

(c) 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 I.R.C. § 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

(6) **Leased property.**

(a) The owner of the leased property 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 group of corporations 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.

(b) Where new Section 38 property with a January 1, 1986 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 is equal to the ratio of the lease period to the class life of the property.

(c) 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.

Cross Reference

1. The new investment tax 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.

Regulation 39-22-514 HISTORIC PROPERTY PRESERVATION CREDIT

1) Categories of taxpayers. For purposes of determining the allowable historic property preservation credit with respect to the rehabilitation of a building in Colorado commencing prior to June 3, 1999, there are three categories of taxpayers:

 a) Taxpayers who are allowed to claim the federal rehabilitation investment credit as provided in section 38 (and as computed in section 47) of the Internal Revenue Code;

 b) Taxpayers who are not allowed to claim the federal rehabilitation investment credit but who are allowed to claim the Colorado enterprise zone rehabilitation of vacant building credit as provided in section 39-30-105.6, C.R.S.; and

 c) Taxpayers who are not allowed to claim either the federal rehabilitation investment credit or the Colorado enterprise zone rehabilitation of vacant building credit.

1.1) Any taxpayer who is allowed to claim the enterprise zone rehabilitation of vacant building credit as allowed by section 39-30-105.6, C.R.S., may not claim the historic property preservation credit with respect to the same rehabilitation. [Taxpayers who are allowed to claim the federal income tax rehabilitation investment credit may not claim the enterprise zone rehabilitation of vacant building credit with respect to the same rehabilitation, per C.R.S. 39-30-105.6(2)].

1.5) Effective for projects commenced on or after June 3, 1999, the credit under this section will apply to income tax years beginning prior to January 1, 2020. Regulation 39-22-514(1) is not applicable to projects commenced on or after June 3, 1999. Effective for rehabilitation commenced on or after June 3, 1999, for purposes of determining the allowable historic property preservation credit with respect to the rehabilitation of a building in Colorado, there are two categories of eligible taxpayers:

 a) Taxpayers who are eligible to claim the Colorado enterprise zone rehabilitation of vacant building credit as provided in section 39-30-105.6, C.R.S.; and

 b) Taxpayers who are not eligible to claim the enterprise zone credit, but are allowed the credit where they meet specific terms of this section 514.

2) Amount of credit allowed - Effective for projects commenced before June 3, 1999.

 a) The historic property preservation credit for those taxpayers who are allowed to claim the federal rehabilitation investment credit is ten percent of the federal credit as computed for the same tax year disregarding any federal carryover or carryback credits and disregarding any federal current year credit limitations. The federal rehabilitation investment credit is the sum of ten percent of the (federal) qualified expenditures with respect to any qualified rehabilitated building other than a certified historic structure, plus twenty percent of the qualified rehabilitation expenditures with respect to any certified historic structures. (Under C.R.S. 39-22-514(2)(b), as it existed prior to amendment effective June 3, 1999.)

b) Any taxpayer who claims the enterprise zone rehabilitation of vacant building credit as allowed by section 39-30-105.6, C.R.S., may not claim the historic property preservation credit with respect to the same rehabilitation. (Taxpayers who claim the federal rehabilitation investment credit (paragraph a) above) may not claim the enterprise zone rehabilitation of vacant building credit with respect to the same rehabilitation.) [Under C.R.S. 39-22-514(1)(b), as it existed prior to amendment effective for rehabilitation commenced on or after June 3, 1999.]

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

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

a) The statute at 39-22-514(2)(b) and the regulation 39-22-514.2(a) are not applicable to projects commenced on or after June 3, 1999, but the limitation of 39-22-514(2)(b) applies for projects commenced prior to June 3, 1999,

b) Effective June 3, 1999, taxpayers whether or not they claim the federal rehabilitation investment credit who incur qualified costs in an amount equaling or exceeding five thousand dollars in the qualified rehabilitation of qualified property may claim an historic property preservation credit of the lesser of $50,000 per qualified property or an amount equal to 20% of the aggregate qualified costs incurred per qualified property. Effective June 3, 1999, the credit may be claimed up to the amount of Colorado income tax liability.

3) Year in which credit may be claimed.

a) The historic property preservation credit is allowed for taxable years beginning on or after January 1, 1991, but before January 1, 2020, subject to the limitations set forth in paragraph b) of this subsection 3).

b) For tax years beginning on or after January 1, 2011, but before January 1, 2020 the credit will not be allowed unless the December legislative council revenue forecast issued prior to the tax year indicates that the total state general fund appropriations grew by at least six percent over such appropriations for the previous fiscal year. In the event that the credit is not allowed for the tax year in which the qualifying costs are incurred because of the preceding limitation, the taxpayer incurring the qualifying costs will be allowed to claim the credit in the next tax year in which the forecast indicates that the total state general fund appropriations grew by at least six percent over such appropriations for the previous fiscal year.

c) If the amount of the credit allowed exceeds the amount of the tax due for the tax year in which the credit is allowed, the excess credit shall not be refunded, but may be carried forward to the next tax year. The restriction set forth in paragraph b) of this subsection 3) does not apply to any excess credits claimed and allowed in prior years and carried forward.

d) A claim for credit in a tax year beginning on or after January 1, 2020 will be allowed only if the claim of the credit has been postponed due to the restrictions set forth in paragraph b) of subsection 3).

e) If a taxpayer's historic property preservation credit is determined by reference to his federal rehabilitation investment credit, the historic property preservation credit shall be allowed in the same year the federal rehabilitation investment credit is allowed. (Effective for rehabilitation commenced prior to June 3, 1999.)

f) If the historic property preservation credit is determined under the provisions of C.R.S. 39-22-514(2)(a) and paragraph 2)c) of this regulation, the credit is to be claimed for the year in which the qualified rehabilitation is completed except as provided in paragraph 4) below.

4) Incomplete Rehabilitation. If the approved rehabilitation is not completed as of the close of the taxpayer's last taxable year beginning prior to January 1, 2000, the taxpayer may claim a credit for such last taxable year with respect to the qualified expenditures incurred prior to January 1, 2000. Effective for rehabilitation commenced prior to June 3, 1999.

5) Incomplete Rehabilitation. If the approved rehabilitation is not completed as of the close of the taxpayer's last taxable year beginning prior to January 1, 2020, the taxpayer may claim a credit for such last taxable year with respect to the qualified expenditures incurred prior to January 1, 2020.

6) For rehabilitation commenced prior to June 3, 1999, excess historic property preservation credit may be carried forward for a period of up to five years. For rehabilitation commenced prior to June 3, 1999, the amount of credit in any carry forward year, regardless of how the credit was computed, shall be limited to the first $2,000 of the taxpayer's tax liability for such carry forward year plus 50% of such liability in excess of $2,000. For rehabilitation commenced on or after June 3, 1999, the historic property preservation is not limited by a percentage of tax liability and may be carried forward for a period of up to ten years.

Regulation 39-22-515. Postconsumer Waste Equipment Credit. [Repealed eff. 03/17/2015]

Regulation 39-22-516. Credit allowed for purchase of vehicles using alternative fuel. [Repealed eff. 03/17/2015]

Regulation 39-22-516(2.5) Alternative Fuel Vehicle Credit [Repealed eff. 10/30/2014]

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”

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

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

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

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

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

Regulation 39-22-518 COLORADO CAPITAL GAIN SUBTRACTION

1) **General Rule**

a) For tax years beginning on or after January 1, 1999 but prior to January 1, 2010, qualified taxpayers can subtract from the federal taxable income reported on their Colorado income tax return qualifying net capital gains on certain real, tangible and intangible property (pursuant to §39-22-518(2)(b), C.R.S.) acquired on or after May 9, 1994 and held for at least five years.

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

2) **Expanded Subtractions.** There were two expanded versions of the general rule for tax years in which State revenues exceeded limitations on state fiscal spending. These two expanded versions are:

a) **Subparagraph C and D.** Pursuant to §39-22-518(2)(b)(I)(C) and (D), C.R.S., the general rule was modified to eliminate the acquisition date requirement for tax years beginning on or after January 1, 1999 but prior to January 1, 2002.

b) **Subparagraph E and F.** Pursuant to §39-22-518(2)(b)(I)(E) and (F), C.R.S., the general rule was modified to reduce the holding period requirement to at least one year and eliminate the acquisition date requirement for tax years beginning on or after January 1, 2001 but prior to January 1, 2002.

3) **Qualifying attributes**

a) **Installment sales**

i) The applicable holding period must be met as of the sale transaction date and cannot be met by referring to the date any deferred gain is recognized.

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

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

i) The pass-through entity holds the asset, and the taxpayer holds the ownership interest in the pass-through entity, for the required holding period (see paragraph g) below),

ii) The acquisition date is met by the pass-through entity (see paragraph g) below), and

iii) The asset that created the gain passed through to the taxpayer was either:

(1) 2010 and later - real or tangible property that qualifies for the subtraction;

(2) 2009 and earlier – (1) real or tangible personal property located in Colorado at the time of the transaction, or (2) a stock ownership interest in an entity that qualifies under §39-22-518(2)(b)(ii)(A), C.R.S. It is neither necessary nor sufficient for the pass-through entity itself to qualify under §39-22-518(2)(b)(ii)(A), C.R.S. in order to allow the subtraction for gains passed through to the taxpayer. However, gain from the sale of the partner's, S corporation stockholder's, or limited liability member's ownership interest in the pass-through entity will be allowed only if the pass-through entity qualifies under §39-22-518(2)(b)(ii)(A), C.R.S

c) The taxpayer must hold the same interest for the required holding period. For example, a taxpayer who purchased a 50% interest in property on May 10, 1994, then acquires an additional 25% interest in the property on May 15, 1998, and subsequently sells the 75% interest on May 16, 1999, can subtract only the gain attributable to the 50% interest because the 25% interest did not meet the five-year holding period.

d) In order to qualify under §39-22-518(2)(b)(ii)(A), C.R.S., the entity must have fifty percent or more of its property and fifty percent or more of its payroll assigned to locations within Colorado.

e) **Shell entities holding intangible property.** When an entity has either no property or no payroll, or either such factor is de minimis in relation to the business operations of the entity, and the majority of the entity's value is attributable to stock or other ownership interests of other entities, then the Department will apply section 18 of the Multistate Tax Compact (§24-60-1301, et seq., C.R.S.) to evaluate whether the entity qualifies under §39-22-518(2)(b)(ii)(A), C.R.S.

f) **Non-refundable/No carry forward.** This subtraction does not create a right to a refund or carry forward. Corporations must reduce any net operating losses created in tax years in which this subtraction is taken by the lesser of the subtraction allowed under this section or the amount of the net operating loss.

g) **Property transfers between a pass-through entity and its members.** When determining the "qualified taxpayer" in the case of a pass-through entity, the taxpayer is considered to be the pass-through entity and the individual member in aggregate.

i) The acquisition date for determining the members' holding period of property that is transferred by a pass-through entity to its members is the date the pass-through entity acquired the property. This assumes the members owned their share of the entity for the entire period that the property was owned by the pass-through entity. If any member acquired their share of the pass-through entity after the entity already owned the property, then the acquisition date of the property in the hands of the member would be the date they acquired their share of the entity.

ii) The acquisition date for determining the members' holding period of property that is transferred by one member to a pass-through entity is, for the transferor, the date that member acquired the property, and, for all other members, the date of the transfer to the pass-through entity. This assumes the members owned their share of the entity for the entire period that the property was owned by the pass-through entity. If any member acquired their share of the pass-through entity after the entity already owned the property, then the acquisition date of the property in the hands of the member would be the date they acquired their share of the entity.

iii) Example: Colorado property was acquired on May 1, 1994, by an individual, transferred to an S corporation on July 1, 1994, that is wholly owned by the individual, then sold by the S corporation on July 30, 1999. Therefore, the acquisition date of the asset is May 1, 1994. The holding period is May 1, 1994, through July 30, 1999. In this example the gain does not qualify as the property was acquired before May 9, 1994.

iv) Example: Colorado property was acquired on October 1, 1999 by an LLC and distributed to its members on November 15, 2002. The acquisition date to be used for determining if the capital gain subtraction applies when a member sells the property is October 1, 1999.

v) Example: Colorado property was acquired on June 1, 2002 by an individual. The property was transferred to a partnership in which the individual was a 40% partner on July 1, 2003. The property is sold on June 15, 2008 by the partnership. The individual's holding period for the property was from June 1, 2002 through June 15, 2008, which qualifies for the capital gain subtraction. However, the other partners' holding period for the property was from July 1, 2003 through June 15, 2008, which does not meet the five year holding period for the subtraction.

vi) Example: Colorado property was acquired on June 1, 1992 by an individual. The property was transferred to a partnership in which the individual was a 40% partner on July 1, 2000. The property is sold on June 15, 2008 by the partnership. The individual's acquisition date for the property was June 1, 1992, which does not qualify for the capital gain subtraction. However, the other partners' acquisition date for the property was July 1, 2000, which does qualify for the subtraction.

Regulation 39-22-522. CONSERVATION EASEMENT CREDIT

(1) **Qualified Taxpayers.**

(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 a pass-through entity donor who receive the credit from such entity, regardless of whether such individuals are Colorado residents.

(b) Joint tenancies, tenancies in common, pass-through entities such as partnerships or S corporations, or other similar entities or groups that donate a conservation easement must allocate the credit to such entities' owners, partners, shareholders or members in proportion to their distributive shares of income or ownership percentage.

(c) A limited liability company with only one member will generally be disregarded for federal tax purposes (I.R.S. Regulation 301.7701-3) as well as state income tax purposes. Therefore, the sole member does not qualify as a "member of a pass-through entity" and does not qualify for the credit unless the member is a Colorado resident.

(d) Individuals who are not residents of Colorado cannot claim the credit for a donation they make, or utilize a credit they purchase. Part-year residents may claim the credit, but only if they make the donation while they are a Colorado resident. Only a credit apportioned to nonresident partners, shareholders or members of a pass-through entity can be claimed by nonresidents. Nonresident owners included in a joint tenancy, tenancy in common, and similar ownership arrangements cannot claim the credit.

(e) A nonprofit corporation, regardless of whether it has unrelated business taxable income, can claim a gross conservation easement credit for a conservation easement donation it makes to a qualified organization; except that a nonprofit corporation that has a state governmental entity as a shareholder cannot claim such a credit.

(2) **Donor Limitations.**

(a) A taxpayer can claim only one credit per tax year as a donor, including as a partner, shareholder or member of a pass-through entity donor. A taxpayer cannot claim 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.]

(b) For donations made prior to January 1, 2014, a taxpayer cannot claim a credit from a new donation if:

(i) In the year of the donation, the taxpayer has a carryforward credit from a prior tax year, or

(ii) In the year of the donation, another taxpayer has a carryforward credit from the taxpayer's prior donation.

(c) *Amount per Donation.*

(i) For donations made on or after January 1, 2000 but prior to January 1, 2003, the credit cannot exceed $100,000 (100% of the first $100,000).

(ii) For donations made on or after January 1, 2003 but prior to January 1, 2007, the credit cannot exceed $260,000 (100% of the first $100,000 plus 40% of the next $400,000).

(iii) For donations made on or after January 1, 2007 but prior to January 1, 2015, the credit cannot exceed $375,000 (50% of the first $750,000).

(iv) For donations made on or after January 1, 2015, including donations made by pass-through entities, the credit cannot exceed $1,500,000 (75% of the first $100,000 plus 50% of the next $2,850,000).

(v) The limits in this paragraph (c) apply in aggregate to a married couple, regardless of whether they file jointly or separately, all partners, shareholders or members of all pass-through entities, and all tenants in common, joint tenants, and similar ownership arrangements that make a donation.

(d) *Tax Credit Certificate.* Donors of conservation easements made on or after January 1, 2011 obtain a Tax Credit Certificate from the Division of Real Estate, which will designate the tax year in which the credit may be claimed on a Colorado income tax return. The credit may be waitlisted to a later year if the cap for that tax year has been exceeded.

(i) For donations made prior to January 1, 2014, the taxpayer must establish with the Department that their credit claim complies with all requirements of § 39-22-522, C.R.S., including the federal statutory and regulatory requirements incorporated therein, and with this regulation. The determination of whether a claimed conservation easement tax credit complies with the statutory and regulatory requirements rests with the Department and not with the Division of Real Estate. However, for donations made on or after January 1, 2014, see statutory changes made in Senate Bill 13-221.

(ii) When a credit is waitlisted, the taxpayer may claim that credit only on their return for the designated tax year. Any limitation to the number of credits that may be claimed by the taxpayer in the designated year will include the waitlisted credit. If the taxpayer makes another easement donation in the designated year, a credit will not be allowed for that donation even if the Division of Real Estate would have waitlisted the second credit to a later year. Because the first credit is still available for use, no additional credit can be claimed in the designated year, either on a tax return or on an application to the Division of Real Estate.

(iii) The charitable deduction addback for any waitlisted credit must still be reported beginning in the year of the donation.

(iv) The twenty year carryforward period will be based on the year of the certificate, not the year of the donation.

(v) Fiscal year filers cannot claim a credit for a donation that occurs in 2011 prior to the end of their fiscal year that begins in 2010 because the Division of Real Estate must certify all credits generated by donations made on or after January 1, 2011.

(vi) The amount of the credit allowed on the Tax Credit Certificate can be further reduced if other imitations exist including, but not limited to, a reduction in the appraised or donated value of the easement made prior to January 1, 2014, a reduction to the taxpayer's basis in the conservation easement, or a determination that a prior year credit is not fully utilized by the taxpayer.

(vii) Due to the annual cap, a single credit generated by one easement donation may be split between two tax years with a Tax Credit Certificate being issued for each year. In this situation, the taxpayer may claim the second part of the credit in the second designated tax year in addition to using any unused carryforward from the first part of the credit. Despite the limitation on when parts of the credit can be claimed and utilized, only one credit is generated by the donation. The twenty year carryforward period for each part of the credit will be based on the designated tax year for that part of the credit. The limitation referenced in paragraph (iii) above still prohibits the taxpayer from claiming another credit from a separate donation.

(e) In the event that the donated property is held by the taxpayer making the donation for less than one year prior to the date of donation, the value of the conservation easement will be reduced by the gain the taxpayer would have realized had the easement been sold on the date of donation for the fair market value of the easement as established in the qualified appraisal.

(3) **Transfer of Credit.**

(a) A taxpayer can transfer all or part of a credit to a transferee who meets the qualifications of a taxpayer who can claim the credit. The portion of the credit being transferred must not be utilized by the transferor to offset tax or to claim a refund on any income tax return.

(i) Credits may only be transferred to individuals or C-corporations. A pass-through entity may not purchase or otherwise be the transferee of a credit.

(ii) A pass-through entity can directly transfer a credit if:

(A) Each partner, shareholder or member consents to the transfer, and.

(B) 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.

(iii) 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 cannot transfer the credit.

(b) A credit can be transferred only once. A transferee cannot thereafter transfer the credit to another taxpayer. Thus, a transferee cannot transfer the credit back to the donor of the easement for the donor to utilize or transfer again to another taxpayer.

(c) For donations made during tax years beginning prior to January 1, 2003, a minimum of $20,000 in credit can be transferred to any one taxpayer. For donations made during tax years beginning on or after January 1, 2003, the donor can transfer all or any 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) For transfers completed on or after June 7, 2005, a transferee must purchase the credit by the due date of their income tax return, not including extension of time for filing, on which the credit will be utilized. However, the donation of the conservation easement must occur prior to the end of the transferee's tax year.

(e) If a taxpayer transfers a credit to another taxpayer and that credit is later disallowed in an audit, the transferee will be held liable for the disallowed credit that was utilized plus any applicable penalty and interest.

(f) *Transferred Credits.*

(i) A taxpayer cannot purchase a credit during a tax year beginning on or after January 1, 2000, but prior to January 1, 2014, if, in the year of the donation:

(A) The taxpayer claimed a new or carryforward credit as a donor of a conservation easement for the tax year, including as a member of a pass-through entity, regardless of whether the credit is utilized on that taxpayer's return or transferred to another taxpayer, or

(B) Another taxpayer has a carryforward credit from a prior donation the taxpayer made.

(ii) A taxpayer cannot purchase a credit during a tax year beginning on or after January 1, 2014 if the taxpayer claimed a new credit as a donor of conservation easement for the tax year, including as a member of a pass-through entity, regardless of whether the credit is utilized on that taxpayer's return or transferred to another taxpayer.

(iii) During tax years beginning on or after January 1, 2000, but prior to January 1, 2003, a taxpayer can purchase one credit each tax year.

(iv) During tax years beginning on or after January 1, 2003, a taxpayer can purchase an unlimited number of credits.

(g) *Tax Matters Representative.* The tax matters representative (TMR) is the person who donates the conservation easement and/or transfers the credit. A pass-through entity that donates the easement and passes the credit to, or sells the credit on behalf of, its partners, shareholders or members, is the TMR, unless the entity's status as the TMR is otherwise revoked or changed in accordance with paragraphs (iv), (v), and (vi) below.

(i) *Representation.* The value and validity of a gross conservation easement credit held by a transferee is derived from, and dependent on, the credit generated and/or transferred by the TMR. Therefore, an adjustment of a credit, to the extent such adjustment is based on the transfer of a gross conservation easement credit ("Transfer Item Adjustment"), made by the Department against the TMR shall also be binding on the credit held by a transferee. Final resolution of disputes between the Department and the TMR determines the Transfer Item Adjustments and such resolution is binding on transferees of the credit.

(ii) The TMR represents a transferee for Transfer Item Adjustments in matters including, but are not limited to:

(A) A donor's failure to file all required documents;

(B) A donor's improper claim of more than one credit per tax year;

(C) A donor's improper transfer of credit above the allowable or available amounts; and

(D) Any other such matters regarding the donation or credit that affect the value or validity of the credit, except those requirements for which the authority is granted to the Division of Real Estate, the Director of the Division of Real Estate, or the Conservation Easement Oversight Commission for donations made on or after January 1, 2014 pursuant to § 12-61-727, C.R.S.

(iii) The TMR does not represent a transferee in matter that are an inappropriate use of the credit by a donor or transferee, including, but not limited to:

(A) An out-of-state resident attempting to use a credit in violation of § 39-22-522(1), C.R.S.;

(B) A transferee using a transferred credit and generating his or her own credit as a donor in the same year in violation of § 39-22-522(6), C.R.S.; or,

(C) A transferee claiming a refund of a credit in violation of §§ 39-22-522(5) & (7)(c), C.R.S.

(iv) *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.

(v) *Changing the TMR Designation.* Any person who has claimed a credit or who may be eligible to claim a credit in relation to a TMR's conservation easement donation may petition the Department to change the TMR's designation if the TMR:

(A) Is incarcerated;

(B) Is residing outside the United States, its possessions, or territories;

(C) Is deceased or, if the representative is an entity, is liquidated or dissolved;

(D) 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;

(E) Does not request a hearing for the Transfer Item Adjustment pursuant to §§ 39-21-103 or 104, C.R.S., provided that the petition to change the TMR's designation is filed within 10 business days after the final date for requesting a hearing;

(F) Does not appear at hearing or fails to adequately participate in such hearing, including by failing to file a required pleading or to appear at a scheduled conference; or

(G) Does not file an appeal of a final determination pursuant to §§ 39-21-105 and 39-22-522.5(6), C.R.S., provided that the petition to change the TMR's designation is filed within 10 business days after the final date for filing an appeal.

(vi) *Petition to Change TMR's Designation*.

(A) The petition to change the TMR's designation must be in writing and filed with the Department.

(B) The petition must contain at least the following information:

(I) The petitioner's name, address, and tax account number;

(II) A statement that the petitioner is a person who has claimed a credit or who may be eligible to claim a credit in relation to the TMR's conservation easement donation, including the taxable period(s) and amount of tax in dispute;

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

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

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

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

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

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

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

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

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

(4) **Refundable Credit.**

(a) Taxpayers, but not transferees of such credits, can claim a refund of the conservation easement credit if state revenues are in excess of the limitation on state fiscal year spending imposed by Section 20(7)(a) of Article X of the Colorado Constitution. A transferred credit can never give rise to a refund, nor can a transferred credit be carried back to a tax year prior to the year of purchase. See (3)(d) of this regulation, which notes that a taxpayer must purchase a credit for a tax year prior to the due date of the return.

(b) For donations made during tax years beginning on or after January 1, 2000, but before January 1, 2003, a maximum of $20,000 of the credit can be utilized by all taxpayers, including transferees, if any portion is to be refunded to the donor. This limit increases to $50,000 for credits arising from donations made in tax years beginning on or after January 1, 2003.

(c) The limits in paragraph (b) apply in aggregate to a married couple, regardless of whether they file jointly or separately, and all partners, shareholders or members of a pass-through entity, tenants in common, joint tenancy, or similar ownership arrangements that makes a donation, if one or more such partners, shareholders, members or owners request a refund based on the credit.

(5) **Qualifying Donation.** For donations made prior to January 1, 2014, the Department has the authority to review whether a donation qualifies for the credit as:

(a) A perpetual conservation easement in gross on real property located in Colorado,

(b) A donation 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) A charitable contribution for federal income tax purposes under the Internal Revenue Code.

(d) For donations made on or after January 1, 2014, see statutory changes made in Senate Bill 13-221.

(6) **Credit Carry forward.**

(a) Any excess credit not utilized or transferred may be carried forward by the taxpayer for up to twenty years from the tax year of the return on which the credit is claimed. A credit must be utilized in the earliest tax year possible.

(b) A taxpayer who moves to another state after receiving a credit remains eligible to carry forward the credit.

(c) A taxpayer may elect to abandon and not carryforward a credit by stating the abandonment on their return, and thereby avoid the prohibitions in paragraph (2), above, against claiming a new credit.

(7) **Documentation.**

(a) Every taxpayer who claims, transfers, passes through, carries forward, or utilizes a credit must file a return with all appropriate Colorado Gross Conservation Easement Credit Schedules for each tax year with such activity. This includes claiming a credit that has been transferred to another taxpayer, reporting that a credit will be carried forward to the following year, and reporting that a carryforward credit has been transferred for that year.

(b) Every donor who claims a credit must attach the following documents to their return, or submit them to the Department at the same time the return is filed. This requirement applies without regard to whether the credit has been transferred to another taxpayer. This requirement also applies to returns filed by a pass-through entity that donated a conservation easement, and the partners, shareholders or members of such entities, unless the Department waives the requirement for any taxpayer(s) in writing.

(i) All Colorado Conservation Easement Schedules required for the relevant year, included all required attachments;

(ii) A federal form 8283 with a summary of the qualified appraisal that meets the requirements set forth in § 39-22-522(3.3), C.R.S.;

(iii) For donations made on or after January 1, 2011, a copy of the Tax Credit Certificate obtained from the Division of Real Estate.

(8) Appraisals for donations made prior to January 1, 2014 are subject to review by the Department.

(a) The appraiser must hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.

(b) The appraiser must meet all applicable education and experience requirements established by the Board of Real Estate Appraisers in accordance with § 12-61-704(k), C.R.S.

(c) A qualified appraisal for computing the gross conservation easement credit must meet requirements for claiming a federal charitable deduction for the donation of the easement.

(d) The Department can require a taxpayer to submit a copy of the complete appraisal upon request.

(e) The Department may require the taxpayer to provide a second appraisal at the taxpayer's expense if the executive director:

(i) Reasonably believes that the appraisal represents a gross valuation misstatement,

(ii) Receives notice of such a valuation misstatement from the Division of Real Estate, or

(iii) Receives notice from the Division of Real Estate that an enforcement action has been taken by the Board of Real Estate Appraisers against the appraiser.

(f) Any second appraisal required pursuant to the above provision and § 39-22-522(3.5), C.R.S. must be prepared by a certified general appraiser who is not affiliated with the appraiser who prepared the first appraisal, is in good standing and has met qualifications established by the Division of Real Estate.

(g) If, upon final determination, it is determined that an appraisal submitted in connection with a gross conservation easement credit claim is a substantial or gross valuation misstatement, the Department must submit a complaint to the Board of Real Estate Appraisers and may pursue any other penalties or remedies authorized by law.

(9) **Requests for Documents.**

(a) If a taxpayer has not provided a document related to the gross conservation easement credit that was required to be provided as part of the taxpayer's return, including the return itself, or, if requested by the Department for conservation easements donated prior to January 1, 2014, a copy of the complete appraisal obtained at the time of donation, the Department may send a written request to the taxpayer or TMR for such document. Such request may be sent by certified mail. Failure to provide the requested document to the Department within 60 days of the mailing of the Department's request shall constitute grounds for the Executive Director to issue a final determination denying the credit.

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

(10) **Disallowance of Conservation Easement Tax Credits.**

(a) *Notice to TMR and Transferee.* The Department shall initiate a Transfer Item Adjustment to a credit by issuing to the TMR a notice setting forth the proposed adjustment, regardless of whether the state tax liability of the TMR is affected by the proposed adjustment. The Department shall also send to the transferee a notice of the Department's proposed Transfer Item Adjustment of the transferee's credit.

(b) *Multiple Transferees.* If there is more than one transferee of a credit, the Department will generally allocate proportionally the Transfer Item Adjustment based on the percentage of the overall credit originally transferred to the transferees. However, the Department may allocate the adjustment among and between the transferees in any manner appropriate to the circumstances.

(c) *Request for Hearing.* A request pursuant to §-§ 39-21-103 or 104, C.R.S. for hearing on a Transfer Item Adjustment, including a Transfer Item Adjustment that results in the denial or modification of the transferee's credit, can be made only by the TMR. A transferee does not have a right to protest the Notice of Deficiency or refund change issued to the transferee (including the allocation of the adjustment between or among transferees) to the extent the adjustment is based on a Transfer Item Adjustment. If the TMR does not timely request a hearing pursuant to §-§ 39-21-103 or 104, C.R.S., a transferee may petition the Department to change the TMR's designation within 10 business days after the final date for requesting a hearing in accordance with paragraphs (3)(g)(v), (3)(g)(vi), and (3)(g)(vii) above. If the Department grants the petition, the new TMR may request a hearing pursuant to §-§ 39-21-103 or 104, C.R.S., within 30 days of the Department's order regarding the petition.

(d) *Notification and Request to be Admitted as Party.* The Department will issue a notice of the hearing to the TMR and transferee of the credit. Such notice shall advise the transferee of the right to be admitted as a party to the hearing upon the filing of a written request setting forth a brief and plain statement of the facts that entitle the person to be admitted and the matters to be decided. The Executive Director may admit parties for limited purposes.

(e) *Transfer of Jurisdiction.* If the Executive Director issues a final order pursuant to § 39-22-522.5(5)(b), C.R.S., finding that a case cannot reasonably be resolved through the administrative process and transferring jurisdiction of the case to the district court, the Department will not oppose waiver of surety bond or other deposit in connection with the case.

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

(a) The Executive Director may invite the participation in the hearing of any person who has claimed a credit or who may be eligible to claim a credit in relation to the TMR's conservation easement donation. Such participation shall include the right to be admitted as a party to the hearing upon the filing of a written request in accordance with paragraph (10)(c) above.

(b) The Executive Director may resolve the issues raised by the parties in phases:

(i) The first phase will address issues regarding the validity of the credit and any other claims or defenses touching the regulatory of the proceedings;

(ii) The second phase will address the value of the easement; and

(iii) The third phase will address determinations of the tax, interest, and penalties due and apportionment of such tax liability among persons who claimed a tax credit in relation to the TMR's conservation easement donation.

(c) Any request by a taxpayer to continue, stay, or otherwise postpone the hearing, including, but not limited to, a request for continuance to pursue mediation, shall be deemed consent by the taxpayer to enter into a written agreement with the Executive Director to extend the time for the Executive Director to issue a final determination by a period of days equal to the requested period of postponement.

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

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

(13) **Confidentiality.** Except as otherwise provided in § 39-21-113, C.R.S. and regulation thereunder, every tax return and all information contained therein is confidential. § 39-21-113(17.5), C.R.S., provides an exception to the Department's confidentiality rule for tax information relating to conservation easement tax credits. For the purposes of this exception, "cases", as used in statute, is not limited to cases in administrative hearing, in district court, or in further appellate courts, but also includes information pertinent to any disallowed conservation easement tax credit.

Cross Reference(s)

1. See Department Regulation 39-21-113 for additional information about the confidentiality of tax returns and all information therein.

Regulation 39-22-523. High Technology Scholarship Contribution Credit. [Repealed eff. 03/17/2015]

Regulation 39-22-524. Individual Development Account Contribution Credit. [Repealed eff. 03/17/2015]

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

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

1) The credit for approved investments in agricultural value-added cooperatives and other entities is available only in those tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-527(9), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.

2) The amount of the tax credit is the lesser of $15,000 or 50% of the investment for each approved project The maximum credit allowed per tax year is $50,000 for a taxpayer filing as married filing separately, or $100,000 for a single or married joint return or for an entire controlled group of corporations as defined in Internal Revenue Code Section 1563(a).

   a. The total amount of credits allowed to all members of a cooperative or other entity with respect to any one project shall not exceed $1.5 million.

   b. Where a credit would otherwise exceed $1.5 million, the $ 1.5 million credit must be prorated to each member on a percent of investment basis, not to exceed the maximum allowed per member.

   c. The total credits authorized by the Colorado Agricultural Value-Added Development Board each fiscal year shall not exceed $4,000,000.

3) In addition to agricultural cooperatives, the credit is available to other agricultural businesses. (35-75-204(1), C.R.S.)

4) Entities electing pass through status for federal income tax purposes are limited to $100,000 per year in total credit passed through to all investors subject to income tax, which must be shared on the same basis as profits and losses.

5) Qualified Subchapter "S" Subsidiaries (QSSS), parent corporations thereof and all limited liability companies related by at least eighty percent ownership are limited to a maximum credit of $100,000 for all such related corporations or limited liability companies in total.

6) Certification forms issued annually by the Colorado Agricultural Value-Added Development Board must be attached to the income tax return for each year the credit is claimed.

7) The tax credit is limited to the amount of the net tax liability in the tax year certified by the Colorado Agricultural Value-Added Development Board. There is no carry forward of this credit.

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

1) The credit for approved payments to the Colorado Agricultural Value-Added Cash Fund is available only in those tax years in which state revenues exceed limitations on state fiscal year spending by amounts established in 39-22-528(6), C.R.S. In October or November of each year, the State will certify whether there are sufficient excess revenues to make this credit available. See Regulation 39-22-120 for years in which the credit is available.

2) When allowed, the credit is up to 100% of the payment to the Board. The maximum credit allowed per tax year is $50,000 for a taxpayer filing as married filing separately, or $100,000 for a taxpayer filing single or married joint return or for an entire controlled group of corporations as defined in Internal Revenue Code Section 1563(a). The total credits authorized by the Colorado Agricultural Value-Added Development Board each fiscal year for this credit and the credit under 39-22-527 shall not exceed $4,000,000.

3) Entities electing pass through status for federal income tax purposes are limited to $100,000 per year in total credit passed through to all investors subject to income tax, which must be shared on the same basis as profits and losses.

4) Qualified Subchapter “S” Subsidiaries (QSSS), parent corporations thereof and all limited liability companies related by at least eighty percent ownership are limited to a maximum credit of $100,000 for all such related corporations or limited liability companies in total.

5) Certification forms issued annually by the Colorado Agricultural Value-Added Development Board must be attached to the income tax return for each year the credit is claimed.

6) If the amount of the tax credit certified by the Colorado Agricultural Value-Added Development Board exceeds the amount of income tax otherwise due on the taxpayer's income in the income tax year, the amount of the credit not used as and offset against income tax shall be refunded to the taxpayer and may not be carried forward.

Regulation 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 22-604.1. 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 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

(1) An employer shall be either a quarterly, monthly, or weekly filer based on an annual determination; in exceptional cases, an employer may be a seasonal filer. An employer must file withholding tax returns and remit taxes withheld under one of four rules: the quarterly, monthly, weekly, or seasonal rule in paragraph (3) of this regulation.

(2) **Determination of Status.** The determination of whether an employer is a quarterly, monthly, weekly or seasonal filer for a calendar year is based on an annual determination made by the Executive Director. With the exception of a seasonal filer, this determination is made based upon the aggregate amount of Colorado withholding tax reported by the employer for the lookback period as defined in paragraph (2)(e) of this regulation.

(a) *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.

(b) *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).

(c) *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.

(d) *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 for that part of the year during which the business is not operating.

(e) *Lookback period.* The lookback period for each calendar year is the most recent twelve-month period ending 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.

(3) **Due Dates.**

(a) *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.

(b) *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.

(c) *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.

(d) *Seasonal rule.* In order to file on a seasonal basis, the employer must obtain approval from the Department and supply the scheduled months for 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.

(e) Filing and payments are required only on 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.

(f) *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.

(4) 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.

(5) **Electronic Funds Transfer.** Any employer who has an annual estimated withheld tax liability of more than $50,000 must remit any 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 EFT shall be made using standard banking conventions as outlined in the application and agreement for EFT between the taxpayer and the Department.

(a) *Undue Hardship.* The Department may grant in cases of undue hardship a yearly waiver from the requirement to remit all withholding tax liability by EFT. The Department will, upon written request from the taxpayer, grant such request only if it determines, and the employer adequately proves, to the satisfaction of the executive director that good cause exists to allow a waiver for hardship. Taxpayers can submit such written request to the Department each year upon receiving notice of the requirement to make EFT by sending a written request to:

Colorado Department of Revenue
Denver, CO 80261-0009

(i) Undue hardship means excessive or extraordinary hardship. Undue hardship will be determined on a case-by-case basis, and any determination of undue hardship will be fact-specific, and will be limited to the information provided by the taxpayer. Undue hardship cannot be established by general and conclusory statements or on a general distrust of information technology such as the Internet, electronic communications, or the security of information provided by means of electronic transfer. Undue hardship may be demonstrated by the documented general unavailability of the technology and communications systems necessary for electronic filing and electronic payment. Undue hardship may also be demonstrated on the basis of the substantial financial cost to the taxpayer relative to the amount of the tax owed by the taxpayer for the current tax year.

Cross Reference

(1) 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’s website at:

https://www.colorado.gov/pacific/tax/forms-number-order

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

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

Effective January 1, 2000, all state tax withholding must be deducted in whole dollar amounts. Employers may utilize current withholding tables or may deduct whole dollars from employee paychecks by rounding all withholding deductions to the nearest dollar. Amounts less than fifty cents must be rounded down to zero cents and amounts from fifty to ninety-nine cents must be rounded to the nearest dollar. As a result of deducting whole dollar amounts from employees' paychecks, amounts shown on tax returns, employee statements (including W-2s and 1099s), annual reconciliation reports, and all books and records of the employer must be shown in whole dollars.

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

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

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

Regulation 39-22-604.6.

(a) Annual Reconciliation Reports. On or before the last day of February following the close of the calendar year or within 30 days of cessation of the employer's business, the employer must file an annual reconciliation report, which is a summary of the withholding payments made to the Colorado Department of Revenue, and the reconciliation of such payments to the tax withheld as shown by the individual wage and tax statements submitted. Exception — The employer need not file an annual reconciliation report if the employer files the state copies of wage and tax statements via magnetic media or modem-to-modem transfer.

(b) Wage and Tax Statements.

(i) Generally — The employer must complete a wage and tax statement for each employee. That statement must show: total wages paid and state and federal tax withheld during the calendar year or portion thereof; the name, address, and social security number of the employee; and the name, address, and federal employer identification number (“EIN” or “FEIN”) of the employer. Employers that are not required to file the federal copies of their W-2s on magnetic media may file the state copies of the wage and tax statements on the prescribed paper form. Any employer that is required to file the federal copies of their W-2s on magnetic media must file the state copies of the wage and tax statements on magnetic media or must submit such statements electronically via the Department's modem-to-modem program.

(ii) Due dates for employee copies — One copy of the wage and tax statement must be given to the employee for his or her records and another copy must be given to the employee to file with his or her state income tax return. These copies must be given to the employee within thirty-one days of the close of the calendar year or within thirty-one days of the date of termination of employment.

(iii) Due dates for state copy — The copy to be sent to the state must accompany the annual reconciliation report or, if no annual reconciliation report is required, must be filed by the last day of February. Exception — The state copies of the wage and tax statements, if filed by modem-to-modem transfer, must be filed by the last day of March.

(c) Rules for Substitute Wage and Tax Statements.

(i) Form — The State of Colorado has adopted the National Association of Tax Administrators' recommended form for use in printing of combined federal-state wage and tax statement forms. The state of Colorado no longer requires the calendar year to be pre-printed in the upper right hand corner of the form. The employer may pre-print or crash print the required year, the state identification number, the name of the state and the form number in a manner approved by the Department of Revenue, but the employer may not crash print any of the lines or headings of the form. The employer also may include the audit block shown on the federal six part Optional Wage and Tax Statement.

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

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

Every person making payment of winnings within Colorado which are subject to withholding for federal income tax purposes shall withhold four percent of such winnings and shall submit such withholdings to the Colorado Department of Revenue as though such amounts withheld were amounts withheld from wages under the provisions of 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 percentage
4/15	1/1	3/31	17.5%
6/15	1/1	5/31	35%
9/15	1/1	8/31	52.5%
1/15	1/1	12/31	70%

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

(5) Farmers and Fisherman

a) Farmer or fisherman means an individual whose gross income from farming or fishing is at least 2/3 of their total gross income for the tax year or the preceding tax year.

b) The required annual amount to be paid by a farmer or fisherman is the lesser of:

(i) 50% of actual net Colorado tax liability, or

(ii) 100% of preceding year's net Colorado tax liability. This subparagraph (5)(b) applies only if the preceding year was a 12-month tax year and the individual filed a Colorado return)

c) Estimated tax payments from a farmer or fisherman are due in a single payment by January 15 of following tax year.

(6) Estimated Tax Penalty

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

b) The estimated tax penalty will not be assessed if any of the following conditions are met:

(i) If the net Colorado tax liability minus any prepayments and credits, other than the estimated tax payments and credits, is less than $1,000.

(ii) If the taxpayer was a full-year resident for the preceding 12-month tax year and the net Colorado tax liability in that year was — 0-.

(iii) If the taxpayer is a farmer or fisherman and files a return with full payment of any tax due by March 1 of the following tax year.

c) If the tax return is filed and any tax due is paid by January 31 of the following tax year, no penalty will be computed based on any underpayment of the fourth quarter installment payment.

(7) Joint Returns

a) Taxpayers who file a joint federal declaration of estimated tax must file a joint Colorado payment. Payment must be submitted under the same primary social security number used when the income tax return is filed.

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

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

(1) Colorado tax liability

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

(2) Required Estimated Payments

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

a) 70% of actual Colorado tax liability, or

b) 100% of preceding year's Colorado tax liability, but only if:

(i) The preceding year was 12 month tax year, and

(ii) The corporation filed a Colorado return, and

(iii) The corporation is not defined under section 6655 of the federal IRS code as a large corporation. Large corporations can base their first quarter estimated tax payment on 25% of the previous year's tax liability. However, future payments must be based on the actual tax liability for the current tax year and any underpayment occurring in the first quarter as a result of this estimation must be repaid with the second quarterly payment

(3) Submitting payments

a) Estimated tax payments are due on the 15th day of the 4th, 6th, 9th and 12th month of the tax year. Payments is due for a short tax year on the 15th day of the 4th, 6th, 9th months, whichever applies, plus a final payment on the 15th day of the last month of tax year.

b) Each required installment payment must be 25% of the required annual payment. Payments will be first credited against the earliest quarterly installment due for the tax year regardless of when the payment is received.

c) In the case of a short tax year:

(i) If three payments are required, each required installment payment must be 33% of the required annual payment.

(ii) If two payments are required, each required installment payment must be 50% of the required annual payment.

(iii) If one payment is required, the payment must be 100% of the required annual payment.

(4) Annualized Income Installment Method

a) Taxpayers who do not receive income evenly during the year may elect to use the annualized income installment method to compute their estimated tax payments if they elected annualized installments or adjusted seasonal installments for payment of their federal income tax.

b) The required installment payment on each due date will be:

(i) the Colorado tax liability computed by annualizing the income received during the months of the tax year ending on the last day of the month before the due date for the installment payment, multiplied by

(ii) the applicable percentage listed below, minus

(iii) the total of any earlier installment payments made for the tax year.

Installment Due date	**Income annualized from**	**Income annualized through**	**Applicable percentage**
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 39-22-608 DUE DATE FOR FILING INCOME TAX RETURNS AND PAYMENTS

1) Weekends and legal holidays.

a) When an income tax filing due date falls on a Saturday, Sunday or a legal holiday, returns will be considered to have been filed on the due date if they are filed on the next Department of Revenue business day.

b) The due date of any Colorado income tax return, associated tax payment, or extension payment for a tax year ending December 31 that is due on April 15, or on April 16 or April 17 under subparagraph a) above, will be extended to coincide with the federal due date if the Internal Revenue Service has extended the federal income tax due date due to the observance of Emancipation Day in the District of Columbia.

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

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

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

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

Regulation 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 39-22-622 INCOME TAX REFUND INTEREST

(1) Refund interest paid on all income tax returns, including amended returns, is controlled by §39-22-622, C.R.S. A refund will include interest at the rate specified in §39-21-110.5, C.R.S. plus a 5% refund penalty if the refund is not issued within the following time frames, unless an exception to the refund interest applies.

(2) **Time Frames.**

(a) *Calendar Year Filer.* For any calendar year return filed on or before the original due date of the return (excluding any extension of time to file) that is filed in:

(i) January, the refund must be made within 14 days from the date the return is filed.

(ii) February, the refund must be made within 21 days from the date the return is filed.

(iii) March, the refund must be made within 28 days from the date the return is filed.

(iv) April, the refund must be made within 45 days of receipt. The date of receipt for any return filed in April is deemed to be May 1 for the purpose of computing interest.

(b) For income tax returns filed after May 1, including amended returns, in the calendar year the return is due, the refund must be made within 45 days from the date the return is filed.

(c) *Fiscal Year Filer.* For any fiscal year return, the months established in (2)(a) shall be the first, second, third and fourth months, respectively, following the close of the fiscal year.

(i) For fiscal years that do not end at the end of the month, the months described in (2)(a) shall be the first thirty, sixty, ninety, and one hundred twenty days, respectively, following the close of the fiscal year.

(3) **When a Return is Filed.**

(a) A return is “filed” on the date the Department physically or electronically receives the return. A refund is “paid” or “made” on the date the refund is printed by the Department, so long as the refund is mailed within a reasonable time, or on the date a financial institution holding state funds is directed to transfer funds to the taxpayer. If the “filed” or “paid” date is on a weekend or legal holiday, then such date is extended to the next day that is not a weekend or legal holiday.

(b) If the processing of a return is delayed for one or more reasons outlined in paragraph (4), below, then the “filed” date is the date the event is resolved. For example, a return which contains an erroneous ID number is not “filed” until the correct ID is obtained by the Department.

(4) **Exceptions.** Refund interest will not be paid if the delay is caused by any of the following:

(a) Mathematical or clerical errors on the return when filed, including, but not limited to, misspelled names, calculation errors, missing required documentation or certifications, unclaimed or overclaimed payments, and erroneous, illegible, or otherwise unprocessable tax account ID numbers, including “applied for” designations.

(b) Unforeseen delays caused by the failure of the processing equipment, including physical equipment and electronic processing systems.

(c) A review to verify the accuracy of the return. However, such review does not include any review initiated as a result of a Department data entry error. A review to verify the accuracy of the return is an audit of the return but is not an audit of the taxpayer for the tax year as referenced in §§39-21-107(2) or 39-22-301(6)(g), C.R.S.

(d) The return includes a Colorado job growth incentive tax credit and the Department is awaiting confirmation from the Colorado Office of Economic Development and International Trade that the taxpayer is eligible for such credit.

(e) Effective January 1, 2012, the return includes an enterprise zone credit and the Department is awaiting confirmation from the Colorado Office of Economic Development and International Trade that the taxpayer is eligible for such credit.

(5) Refunds initially exempt from refund interest under paragraph (4), above, may receive full or partial refund interest and penalty if, after the error correction or review is completed, the refund is delayed more than the time frames defined in paragraph (2), above.

(6) **Excessive Prepayments.**

(a) If the total prepayments (withholding, estimated payments, extension payments, TABOR refund, and other payments) are more than double the amount of the tax liability, then no refund interest will be paid on any refund, except as allowed in subparagraph 6(c), below.

(b) If an amended return or claim for refund reduces the net tax liability or increases the prepayments, no refund interest will be paid on any refund if the total prepayments and prior payments are more than double the amount of the amended tax liability, except as allowed in subparagraph 6(c), below.

(c) If the taxpayer establishes that the prepayment was made incident to a bona fide and orderly discharge of an actual liability, or a liability reasonably assumed to be imposed by law, then interest will be paid.

Regulation 39-22-652. DEFINITIONS

1) Federal Transactions.

a) A transaction described in either §39-22-652(5)(a) (federal listed transaction) or (7) (federal reportable transaction), C.R.S., is a “Federal Transaction” for purposes of these regulations if:

i) the taxpayer is required by federal law to file an IRS Form 8886, or a successor form, or amendment to such form with respect to the transaction, and

ii) files or is included in, or is required to file or be included in, a Colorado income tax return, including a consolidated and/or combined Colorado income tax return and such Colorado tax return reflects a Colorado Tax Benefit deriving from such transaction.

2) Colorado Listed Transactions.

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

i) A captive real estate investment trust (“REIT”) or captive regulated investment company (“RIC”) is referred to in these regulations as a “Captive Entity.”

ii) A more than fifty percent beneficial owner includes any entity that is controlled by the more than fifty percent beneficial owner of a Captive Entity, any of which, individually or collectively, is referred to in these regulations as the “Owner.”

iii) “Transaction” for purposes of a Colorado Listed Transaction includes, but is not limited to:

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

(2) transactions by, among, or between the Owner and Captive Entity, and includes dividend distributions by the Captive Entity to or from an Owner, management service fees charged by or to an Owner to or from a Captive Entity, rental payments paid to a captive REIT by an Owner, loans by or to the Owner to or by the Captive Entity and repayment of those loans, interest payments paid by or to a Captive Entity to or from the Owner, and capital contributions to the Captive Entity by the Owner.

iv) “Colorado Tax Benefit” is a tax consequence that may reduce a taxpayer’s Colorado income tax liability by affecting the amount, timing character, or source of any item of income, gain, expense, loss, or credit, including deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or absence of adjustments to the basis in property, or status as an entity exempt from federal or state income taxation. A Colorado Tax Benefit includes a tax benefit applied at the federal level or to another state’s income tax or other similar tax, but the consequence of which flows through to reduce Colorado income tax liability.

b) A transaction described in either §39-22-652(5)(b) or (c), C.R.S. is a “Colorado Listed Transaction” for purposes of these regulations if:

i) it is a transaction between the Owner and Captive Entity, and

ii) the Owner or Captive Entity files, or is included in, or is required to file or be included in, a Colorado income tax return, including a consolidated and/or combined Colorado income tax return and such Colorado tax return reflects a Colorado Tax Benefit. An Owner, Captive Entity, and a material advisor do not have a disclosure obligation under subsections 653 or 656 of these regulations with respect to a Colorado Listed Transaction if such income tax return does not reflect a Colorado Tax Benefit.

c) *Example*. Retail Store operates a retail business in a building owned by Captive REIT and is located in Colorado. The commercial domicile of Captive REIT is in Delaware. Retail Store pays rent to Captive REIT. Captive REIT distributes rental income received from Retail Store to Corporation A, which redistributes the income as a stock dividend to Holding Company. Holding Company has the controlling interest in both Retail Store and Corporation A and its commercial domicile is in Delaware. Corporation A has the controlling interest in Captive REIT and its commercial domicile is in Bermuda. Corporation A is not required to file a Colorado income tax return and is not includable in a Colorado combined income tax return because it does not have more than twenty percent of its property in the United States. See, §39-22-303(8), C.R.S. Retail Store's Colorado taxable income is reduced by the rental payments made to Captive REIT. Holding Company receives a Colorado Tax Benefit because the tax consequence of its ownership of controlling interests in Captive REIT, Corporation A, and Retail Store is the reduction of Colorado income tax otherwise due by Holding Company's group retail operation in Colorado. Retail Store also receives a Colorado Tax Benefit because its Colorado taxable income is reduced by its rental payments to Captive REIT.

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

1) Content of Disclosure of Federal Transactions.

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

2) Content of Disclosure of Colorado Listed Transactions.

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

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

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

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

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

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

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

(1) **Colorado Disclosure Statement for Federal Transactions and Colorado Listed Transactions.**

(a) *Federal Transactions.* A material advisor, who is required to file with the Internal Revenue Service pursuant to United States Department of the Treasury Regulation 26 C.F.R. § 301.6111-3, as effective on August 3, 2007 (hereinafter "Treasury Regulation § 301.6111-3") a disclosure statement with respect to a Federal Transaction described in Department regulation 39-22-652, shall file with the Department a complete copy of the IRS form 8918, or any successor form, and amendments thereto, that the material advisor filed, or should have filed, with the Internal Revenue Service.

(b) *Colorado Listed Transactions.*

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

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

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

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

(C) The gross income threshold set forth in subsection 3(b)(3) of Treasury Regulation § 301.6111-3 applies and without regard to the state in which the gross income is earned.

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

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

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

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

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

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

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

(G) Subsection 3(h) (regarding rulings), and

(H) Subsection 3(i).

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

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

(B) Names, including trade names, if any, mailing and physical location addresses of the Owner and of the Captive Entity.

(C) A description of the material aid, assistance, or advice provided.

(D) Signature of the material advisor and the following attestation: "I declare that I have examined this statement, and to the best of my knowledge and belief, it is true, correct, and complete."

(E) For a Colorado Listed Transaction that is also a Federal Transaction, the material advisor shall file a complete copy of IRS form 8918, or any successor form, and amendments thereto that the material advisor filed, or should have filed, with the Internal Revenue Service, and shall not file a Material Advisor's Colorado Listed Transaction Disclosure Statement.

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

(A) The role of any other entity(ies) or individual(s) known or reasonably believed to have provided material aid, assistance, or advice to the transaction and the name, address, identifying number (if known), and telephone of such entity(ies) or individual(s).

(B) Whether a related entity or individual, an entity or individual without Colorado income tax nexus, a tax-exempt entity, and/or an entity that is not includable in a Colorado combined return is needed in order to obtain the intended tax benefit created by the transaction, and, if so, the name of each such entity or individual, a description of the role of each individual or entity and the name of the individual's or entity's country of existence, state of incorporation and/or state of commercial domicile if a particular country or state (including a particular type of country or state, e.g., separate filing state or combined reporting state) is required to obtain the intended tax benefit.

(C) Whether, in order to obtain the intended tax benefit, the income, or gain from the transaction, is allocated directly or indirectly to an individual or entity that has a net operating loss and/or unused loss or credit and, if so, a description of the role of each individual or entity in the transaction.

(D) A description or copy of the financial instruments used in the transaction.

(E) A description or explanation of the intended tax benefit created by the transaction in each year.

(F) The state and federal tax code section(s) used to claim the tax benefit(s) generated by the transaction

(G) A description of the transaction(s) for which material aid, assistance, or advice, was provided, including the following:

(I) the nature of the expected tax treatment and expected tax benefits created by the transaction for all affected years,

(II) the years the tax benefits are expected to be claimed,

(III) the role of the entities or individuals identified in subsections 1, above,

(IV) the role of the financial instruments identified in subsection 4, above,

(V) a description of how the state and federal tax code section(s) identified in subsection 6, above, are applied and how they allow the taxpayer to obtain the desired tax treatment.

(c) *Time for Providing a Disclosure Statement.*

(i) The material advisor must, with respect to a Federal Transaction or Colorado Listed Transaction, file the applicable disclosure statement within six months of the date the transaction is entered into by the taxpayer. If the person is not a material advisor (see, Treasury Regulation § 301.6111-3(b)(4)) until after the six month period, then the disclosure statement is due the month following the month in which the person first becomes a material advisor.

(ii) The material advisor is not required to file in any subsequent year a disclosure statement for the same or substantially similar transaction, unless the material advisor becomes aware of facts that indicate the disclosure statement is materially incorrect or incomplete. The material advisor shall file an amended disclosure statement on the last day of the month following the quarter in which the material advisor knew or should have known the facts that necessitate the filing of an amended disclosure statement.

(iii) *Filing a Disclosure Statement.* Disclosure statements shall be filed with the:

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

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

(3) **Incorporation by Reference.** United States Department of the Treasury Regulation 26 C.F.R. §301.6111-3, as effective on August 3, 2007 ("Treasury Regulation § 301.6111-3") is hereby incorporated by reference. This regulation 39-22-656 does not incorporate later amendments to or editions of Treasury Regulation § 301.6111-3. A copy of Treasury Regulation § 301.6111-3 has been provided to the state publications depository and distribution center. Treasury Regulation § 301.6111-3 may be examined at any state publications depository library. Additionally, the Department shall maintain certified copies of the complete text of Treasury Regulation § 301.6111-3, which shall be available for public inspection during regular business hours. Certified copies of the material incorporated shall be provided at cost upon request. Any member of the public wishing to obtain or examine a copy of Treasury Regulation § 301.6111-3 may contact the:

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

Regulation 39-22-2102 COLORADO LOW-INCOME HOUSING TAX CREDIT

(1) **Allocating the Credit for Pass-Through Entities.**

(a) 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 must submit with the Colorado Partnership or S Corporation Return their Colorado State Low-Income Housing Tax Credit Allocation Certificate ("Allocation Certificate") along with a schedule detailing how the credit is allocated ("Allocation Schedule"). In addition, the owner shall send to the Department of Revenue the following information:

(i) The name(s) and federal taxpayer identification number(s) of the owner,

(ii) The address of the property for which the credit is received,

(iii) The name and federal taxpayer identification number of the constituent taxpayers who receive an allocation of the credit,

(iv) The total amount of credit allocated to all constituent taxpayers,

(v) The amount of credit each constituent taxpayer received,

(vi) 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

(vii) The amount of credit claimable in each year.

(b) Each partner, shareholder, member or other constituent taxpayer must attach a copy of the Allocation Certificate and the Allocation Schedule to their Colorado income tax return. Once the partners, shareholders, members or other constituent taxpayers claim the credits on their respective income tax returns, the allocation cannot be amended for that tax year.

(c) If the constituent taxpayer 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.

(2) **Carryforwards.** Any amount of credit not applied to a qualified taxpayer's tax liability may be carried forward up to eleven years from the tax year in which the allocation was made. An allocation is made when the Authority issues the Allocation Certificate to the owner of a qualified development after a qualified development is placed in service. The credit must be applied first to the earliest years possible. Any amount of credit not used during this carryforward period shall not be refunded to the taxpayer.

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

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

a) the name(s) and federal taxpayer identification number(s) of the owner.

b) the address of the property for which the credit is received,

c) the name and federal taxpayer identification number of the constituent taxpayers who receive an allocation of the credit,

d) the total amount of credit allocated to all constituent taxpayers,

e) the amount of credit each constituent taxpayer received,

f) the tax year in which the credit was allocated to each constituent taxpayer and the amount allocated to such constituent taxpayer for each such year, and

g) the amount of credit claimable in each year.

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

Regulation 39-22-2102(6). CREDITS NOT APPLIED AGAINST TAX IN ANY TAXABLE YEAR MAY BE CARRIED FORWARD. [Repealed eff. 12/15/2015]

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.

SPECIAL REGULATIONS - INCOME TAX

SPECIAL REGULATION 1A AIRLINES – SINGLE SALES FACTOR APPORTIONMENT

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

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

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

   b) **Definitions:**

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

      ii) *"Value"* of owned real and tangible personal property shall mean its original cost.

      iii) *"Cost of aircraft by type"* means the average original cost or value of aircraft by type that are ready for flight.

      iv) *"Original cost"* means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property.

      v) *"Average value"* of the property means the amount determined by averaging the values at the beginning and ending of the income year, but the department may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property.

      vi) The *"value"* of rented real and tangible personal property means the product of eight (8) times the net annual rental rate.

      vii) *"Net annual rental rate"* means the annual rental rate paid by the taxpayer.

      viii) *"Property used during the income year"* includes property which is available for use in the taxpayer's trade or business during the income year.

      ix) *"Aircraft ready for flight"* means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

x) *"Transportation revenue"* means revenue earned by transporting passengers, freight and mail as well as revenue earned from other charges associated with transportation such as baggage fees, sales of food and drink, pet crate rentals, etc.

xi) *"Arrivals" and "Departures"* means the number of times that an aircraft lands or takes off at an airport in revenue service.

xii) *"Arrivals and departures in this State"* means the number of times that an aircraft lands or takes off in revenue service at an airport located in this State.

xiii) *"Revenue"* means gross sales or gross receipts, unless otherwise required by context.

c) **Apportionment of Business Income.** The same method in the reporting of items for all factors must be consistent for both the numerator and denominator. For tax years beginning on or after January 1, 2009, the taxpayer shall apportion business income using only the sales factor.

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

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

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

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

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

SPECIAL REGULATION 2A CONTRACTORS – SINGLE SALES FACTOR APPORTIONMENT

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

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

a) **In General.** A contractor who has income from sources both within and without Colorado and elects to report income using the completed contract method shall determine income in accordance with this regulation. Net income shall first be categorized as to “business” or “non-business” and non-business income will be directly allocated to specific states in accordance with §39-22-303.5(5) C.R.S. and the regulations thereunder. Gross profits from completed contracts, business administrative income and business administrative expense will be apportioned to those states in which business is conducted based on the sales factor as set forth in this regulation. The amount of net income subject to tax by Colorado will be the sum of (1) the gross profit from completed contracts apportioned to Colorado less business administrative expense apportioned to Colorado plus (2) other business income apportioned to Colorado that is not directly attributable to completed contracts plus (3) the amount of non-business income allocated to Colorado.

b) **General Definitions.**

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

ii) *“Job Revenue”* means gross revenue recorded on the books in accordance with generally accepted accounting principles. Billings shall be adjusted for overbillings or underbillings whenever applicable.

iii) *“Job Costs”* means costs recorded on the books as being paid or accrued that are directly attributable to a specific job.

iv) *“Job Profit or Loss”* means the gross profit or loss attributable to a specific job, which is determined by subtracting “Job Costs” from “Job Revenue”.

v) *“Gross Profit Apportioned to Colorado”* means Colorado's share of the sum of “Job Profits and Losses” of all jobs completed during a specific tax period.

vi) *“Administrative Expense Apportioned to Colorado”* means Colorado's share of expense not directly attributable to a specific job.

vii) *“Revenue”*, unless otherwise required by context means gross sales or gross receipts.

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

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

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

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

<u>Plus</u>

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

<u>Less</u>

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

<u>Equals</u>

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

<u>Add</u>

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

<u>Equals</u>

Numerator of Sales Factor

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

e) **Apportionment of Income and Expense.** Once the sales factor has been determined, income and expense shall be apportioned to this state as set forth in this regulation.

i) *Gross Profit.* The gross profit of each and all jobs completed during the tax year shall be apportioned to Colorado by the sales factor.

ii) *Administrative Expense.* Administrative expense not directly attributable to jobs and not directly related to allocated income shall be apportioned to Colorado by the sales factor.

iii) *Other Business Income.* Other business income not directly attributable to jobs shall be apportioned to Colorado by the sales factor.

f) **Colorado Taxable Income.**

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

Less

Administrative expense apportioned to Colorado

Plus

Other business income apportioned to Colorado not directly related to jobs

Equal

Total taxable income apportioned to Colorado

Add

Non-business income allocated to Colorado

Equals

Colorado Taxable Income

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

SPECIAL REGULATION 3A PUBLISHING – SINGLE SALES FACTOR APPORTIONMENT

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

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

a) **In General:** Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to §39-22-303.5, C.R.S, and, where applicable, §39-22-303.5(4)(d), C.R.S. and regulations adopted thereunder.

b) **Allocation of non-business income.** Income shall first be categorized as to "business" or "nonbusiness" income pursuant to regulation 39-22-303.5.1A and nonbusiness income will be directly allocated to specific states in accordance with §39-22-303.5(5) and regulations thereunder. Business income will be apportioned to those states in which business is conducted based on the apportionment factor as set forth in this regulation. The amount of net income subject to tax by Colorado will be the sum of (1) the amount of nonbusiness income allocated to Colorado plus (2) the amount of business income attributable to Colorado.

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

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

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

d) **Apportionment of Business Income.**

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

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

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

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

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

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

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

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

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

SPECIAL REGULATION 4A RAILROADS – SINGLE SALES FACTOR APPORTIONMENT

The following special regulations are established in respect to railroads.

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

a) **In General.** Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under regulation 39-22-303.5.1A. Nonbusiness income is directly allocable to specific states pursuant to §39-22-303.5(5), C.R.S. and regulations thereunder. Business income is apportioned among the states in which the business is conducted pursuant to the apportionment factor set forth in this regulation. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state, constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

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

c) **Apportionment of Business Income.**

i) The Sales Factor.

(1) In General. The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer that produces business income, except per diem and mileage charges that are collected by the taxpayer, is included in the denominator of the sales factor.

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

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

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

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

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

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

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

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

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

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

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

a) **In General.** When a person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to §39-22-303.5, C.R.S. and the regulations issued thereunder by this state, except as modified by this regulation.

b) **Business and Nonbusiness Income.** For definitions, regulations, and examples for determining whether income shall be classified as "business" or "nonbusiness" income, see Reg. 39-22-303.5.1A.

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

i) *"Film" or "film programming"* means any and all performances, events or productions telecast on television, including but not limited to news, sporting events, plays ,stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium.

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

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

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

iii) *“Release” or “in release”*means the placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for which the program was created. Thus, for example, a film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose.

Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or, merely because it is previewed to prospective sponsors or purchasers.

iv) “Rent” shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

v) A “subscriber” to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

vi) “Telecast” or “broadcast” (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.

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

d) **Apportionment of Business Income.**

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

ii) **The Sales Factor.**

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

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

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

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

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

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

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

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

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

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

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

$800,000,000 x (audience factor) = in-state gross receipts

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

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

SPECIAL REGULATION 6A TRUCKING – SINGLE SALES FACTOR APPORTIONMENT

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

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

a) **In General.** As used in this regulation, the term “trucking company” means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the trucking company's income constitutes “business” income and what portion constitutes “nonbusiness” income under regulation 39-22-303.5.1A. Nonbusiness income is directly allocable to specific states pursuant to the provisions of §39-22-303.5(5), C.R.S. and regulations thereunder. Business income is apportioned among the states in which the business is conducted and pursuant to the apportionment factor set forth in this regulation. The sum of (i) the items of nonbusiness income directly allocated to this state and (ii) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax in this state.

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

c) **Apportionment of Business Income**

i) *In General.* For tax years beginning on or after January 1, 2009, the taxpayer shall apportion business income using only the sales factor.

ii) *The Sales Factor*

(1) *In General.* The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. All revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produces business income shall be included in the denominator of the revenue factor.

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

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

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

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

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

e) **Definitions.**

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

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

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

i) owns nor rents any real or personal property in this state, except mobile property; nor

ii) makes any pick-ups or deliveries within this state; nor

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

iv) makes more than twelve trips into this state.

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

SPECIAL REGULATION 7A FINANCIAL INSTITUTIONS – SINGLE SALES FACTOR APPORTIONMENT

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

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

a) **Apportionment and Allocation.**

i) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this regulation. All items of nonbusiness income (income which is not includable in the apportionable income tax base) shall be allocated pursuant to the provisions of §39-22-303.5(5), C.R.S. and regulations thereunder. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this regulation.

ii) All business income (income that is includable in the apportionable income tax base) shall be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is the taxpayer's sales factor (as described in subsection c of this regulation).

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

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

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

ii) "Borrower or credit card holder located in this state" means:

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

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

iii) "Commercial domicile" means:

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

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

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

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

vi) *"Financial institution" means:*

(1) Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq., as amended), or registered as a savings and loan holding company under the Federal National Housing Act (12 U.S.C. 1701, as amended);

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

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

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

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

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

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

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

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

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

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

(10) Any other person or business entity, other than an insurance company taxable under §10-3-209, C.R.S., that derives more than fifty percent (50%) of its gross income from activities that a person described in subsections (1) through (7) and (9) above is authorized to transact. For the purpose of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items.

(11) The executive director is authorized to exclude any person from the application of subsection (10) upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in subsections (1) through (7) and (9) above.

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

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

ix) *"Loan servicing fees"* include all fees not in the nature of interest charged for any service or recovery of any cost in connection with a loan.

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

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

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

xiii) *"Principal base of operations"* with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled.

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

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

xvi) "Sales" and "Revenue" mean gross sales or gross receipts, unless otherwise required by context.

xvii) *"State"* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and territory or possession of the United States or any foreign country, except where the context otherwise requires.

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

xix) *"Taxable"* means either:

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

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

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

c) **The Sales Factor.**

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

ii) *Revenue from the lease of real property.* The numerator of the sales factor includes revenue from the lease or rental of real property owned by the taxpayer if the property is located within this state or revenue from the sublease of real property if the property is located within this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

xi) *Loan servicing fees.*

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

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

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

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

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

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

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

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

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

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

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

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

(d) For purposes of this paragraph, average value shall be determined as follows:

(i) Value of property owned by the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   c) **Definitions.**

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

      ii) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

      iii) "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in Federal Communications Commission regulation 47 CFR 22.99 (December 30, 2005) (which is incorporated herein by reference, but such incorporation does not include later amendments to such regulation and copies of such regulation are available at the Office of the Executive Director, Colorado Department of Revenue),in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

      iv) "Ancillary service" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to the following subcategories: detailed telecommunications billing, directory assistance, vertical service, conference bridging service and voice mail services. The term "ancillary service" is defined as a broad range of services and is broader than the sum of the subcategories.

v) “Bundled transaction” means the retail sale of two or more products where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. For purposes of this special regulation, a “bundled transaction” does not include the sale of any products in which the “sales price” varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. A transaction that otherwise meets the definition of a “bundled transaction” is not a “bundled transaction” if it is: (1) the “retail sale” of two products where the first product is essential to the use of the second product, and the first product is provided exclusively in connection with the second, and the true object of the transaction is the second; (2) the “retail sale” of more than one product, but the products are sourced the same under this special rule; or (3) the “retail sale” of more than one product, but the sum of the “purchase price” or “sales price” of products which are sourced differently under this special rule is de minimis.

vi) “Call-by-call Basis” means any method of charging for telecommunications services where the price is measured by individual calls.

vii) “Coin-operated telephone service” means a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.

viii) “Communications Channel” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

ix) “Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

x) “Customer” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service. “Customer” does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

xi) “Customer Channel Termination Point” means the location where the customer either inputs or receives the communications.

xii) “Detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

xiii) “Directory assistance” means an ancillary service of providing telephone number information, and/or address information.

xiv) “End user” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

xv) “Fixed wireless service” means a telecommunications service that provides radio communication between fixed points.

xvi) “Home service provider” means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

xvii) “International” means a “telecommunications service” that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

xviii) “Interstate” means a “telecommunications service” that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

xix) “Intrastate” means a “telecommunications service” that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

xx) “Mobile telecommunications service” means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

xxi) “Mobile wireless service” means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

xxii) “Network access service” means the provision by a local exchange telecommunication service provider of the use of its local exchange network by an inter-exchange telecommunication service provider to originate or terminate the inter-exchange telecommunication service provider’s traffic carried to or from a distant exchange.

xxiii) “Paging service” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

xxiv) “Pay telephone service” means a telecommunications service provided through any pay telephone.

xxv) “Place of primary use” means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, “place of primary use” shall be within the licensed service area of the home service provider.

xxvi) “Post-paid calling service” means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

xxvii) “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

xxviii) “Prepaid wireless calling service” means the sale of a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

xxix) “Private communications service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

xxx) “Product” means tangible personal property (including a digital good and standardized software) or service.

xxxi) “Service address” means:

(1) The location of the customer’s telecommunications equipment, to which the customer's call is charged, and from which the call originates or terminates, regardless of where the call is billed or paid.

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

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

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

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

(2) The term “telecommunications service” does not include:

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

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

(c) Tangible personal property;

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

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

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in Federal Communications Commission regulation 47 CFR 20.3 (December 2005). This federal regulation is incorporated herein by reference, but such incorporation does not include later amendments to or editions of such regulations. A certified copy of this regulation is available for review at the Office of the Executive Director, Colorado Department of Revenue, 1375 Sherman Street, Denver, Colorado 80261. Additionally, a copy of this material may be examined at any state publications depository library.

(h) “Ancillary services”; or

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

(3) Examples of Included and Excluded Services.

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

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

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

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

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

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

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

i) Gross receipts from the sale of telecommunications services, other than those sourced in subsections iii) through vii), which are sold on a call-by-call basis are in this state when (1) the call originates and terminates in this state or (2) the call either originates or terminates and the service address is also located in this state.

ii) Gross receipts from the sale of telecommunications services, other than those sourced in subsections iii) through vii), which are sold on other than a call-by-call basis, are in this state when the customer's place of primary use is in this state.

iii) Gross receipts from the sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid calling service, are in this state when the customer's place of primary use is in this state pursuant to the Mobile Telecommunications Sourcing Act.

iv) Gross receipts from the sale of pre-paid calling service, prepaid wireless calling service and post-paid calling service are in this state when the origination point of the telecommunications signal is first identified in this state by either (1) the seller's telecommunications system, or (2) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

v) Gross receipts from the sale of a private communication service are in this state:

(1) if such service is for a separate charge related to a customer channel termination point, when the customer channel termination point is located in this state;

(2) if under such service all customer termination points are located entirely within one state, when the customer channel termination points are located in this state;

(3) if such service is for segments of a channel between two customer channel termination points located in different states and such segments of channel are separately charged, when one of the customer channel termination points is in this state, provided however that only fifty percent of such gross receipts shall be sourced to this state; and

(4) if such service is for segments of a channel located in more than one state and such segments are not separately billed, when the customer channel termination points are in this state, provided however that only a percentage of such gross receipts, determined by dividing the number of customer channel termination points in the state by the total number of customer channel termination points, are in this state.

vi) A portion of the total gross receipts from sales of telecommunication services to other telecommunication service providers for resale is in this state in an amount determined by multiplying such total gross receipts by a fraction, the numerator of which is "total carrier's carrier service revenues" for this state and the denominator of which is the sum of "total carrier's carrier service revenues" for all states in which the taxpayer is doing business, as reported by the Federal Communications Commission in its report titled Telecommunications Revenues by State, Table 15.6, or successor reports which include such information, for the most recent year available as of the due date of the return, determined without regard to extensions.

vii) Gross receipts attributable to the sale of an ancillary service are in this state when the customer's place of primary use is in this state.

viii) Gross receipts attributable to the sale of a telecommunication or ancillary service sold as part of a bundled transaction are in this state when such gross receipts would be this state in accordance with the provisions of sections d)i) through vii).

(1) The amount of gross receipts attributable to the sale of a telecommunication or ancillary service which is sold as part of a bundled transaction shall be equal to the price charged by the taxpayer for such service when sold separately, adjusted by an amount equal to the quotient of a) the difference between (1) the price charged by the taxpayer for the bundled transaction, and (2) the sum of the prices charged by the taxpayer for each of the included products when sold separately, and b) the number of products included in the bundled transaction;

(2) If the amount of such gross receipts is not determinable under subsection viii)(1), then it may be determined by reasonable and verifiable standards from taxpayer's books and records that are kept in the regular course of business for purposes including, but not limited to, non-tax purposes.

ix) Gross receipts from the sale of telecommunication services which are not taxable in the State to which they would be apportioned pursuant to sections d)i) through vii), shall be excluded from the denominator of the sales factor.

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

Editor's Notes

History

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulation 39-22-104.(1.7) emer. rule eff. 11/27/2013; expired 03/27/2014.

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

Regulation 39-22-104.(1.7) eff. 05/30/2014.

Regulations 39-22-104(4), 39-22-119 eff. 08/14/2014. Regulations 39-22-103.2, 39-22-103.6, 39-22-104(4)(L), 39-22-104(4)(M)(II), 39-22-303.4 repealed eff. 08/14/2014.

Regulation 39-22-622 eff. 10/15/2014

Regulations 39-22-103(8)(A), 39-22-103(8)(B), 39-22-104(5) eff. 10/30/2014. Regulations 39-26-507.5(3) 39-26-507.5(9), 39-22-516(2.5) repealed eff. 10/30/2014.

Regulations 39-22-104(3)(G), 39-22-104(4)(M), 39-22-108, 39-22-507.6 eff. 12/16/2014. Regulation 39-22-302 repealed eff. 12/16/2014.

Regulations 39-22-121, 39-22-622 eff. 03/17/2015. Regulations 39-22-515, 39-22-516, 39-22-523, 39-22-524 repealed eff. 03/17/2015.

Regulations 39-22-507.6(1), 39-22-507.6(6) eff. 04/30/2015. Regulation 39-22-104.4 repealed eff. 04/30/2015.

Regulation 39-22-604.4. emer. rule eff. 06/03/2015; expired 10/01/2015.

Regulations 39-22-104(4)(F), 39-22-104(4)(N.5) eff. 06/30/2015.

Regulation 39-22-522 emer. rule eff. 07/15/2015; expired 11/12/2015.

Regulations 39-22-109, 39-22-110, 39-22-522, 39-22-2102 eff. 12/15/2015. Regulations 39-22-109(2), 39-22-116.2, 39-22-116.3, 39-22-2102(6) repealed eff.12/15/2015.

Special Regulations 1A-8A recodified from 1 CCR 201-3 eff. 12/30/2015.

Regulations 39-22-604(4), 39-22-656 eff. 01/14/2016. Regulations 39-22-127, 39-22-128 repealed eff. 01/14/2016.

Annotations

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