

REGULATION 39-22-303.10

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

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

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

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

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

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

The foreign source income exclusion shall be the lesser of:

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

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

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

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

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

- (b) For tax years commencing prior to January 1, 2000, the denominator of the formula in subsection (b)(i) will use 46% in place of the effective federal corporation tax rate.
- (3) When determining foreign source income for a foreign corporation, such income shall not include any income of the foreign corporation that is derived from the conduct of a trade or business within the United States.

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