

DOING BUSINESS IN COLORADO

39-22-301.1

- 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. ~~Colorado is prohibited from imposing income tax on a corporation, or a combined or consolidated group of corporations, that is doing business in Colorado but that does not exceed the minimum standards of Public Law 86-272. See, also, para. 2)c)vi), below.~~
- 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
- (1) the sale, lease or license of real property located in this State;
 - (2) the lease or license of tangible personal property located in this State;
 - (3) 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;
 - (4) the sale of software or digital products for primary use by a purchaser known to the seller to be in this state; and
 - (5) 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.
 - (6) 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, 80261. 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) Minimum Standards of Public Law 86-272 for Consolidated and Combined Reporting Entities. Corporations included in a consolidated return and corporations filing, or required to be included in, a combined report are treated as a single taxpayer for purposes of Public Law 86-272. Therefore, a consolidated or combined group and all members of such group exceed the minimum standards set forth in Public Law 86-272 if the activities of one or more members of the group exceed the minimum standards. For example, public law 86-272 does not prohibit Colorado from imposing income tax on corporation C, whose only activity in Colorado is the solicitation of orders, if corporation C is part of a consolidated or combined group in which one or more members have manufacturing facilities located in Colorado or have other activities exceeding the minimum standards of P.L. 86-272.
 - vii) 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.