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## Supplemental Instructions for Colorado Income Tax Filing

### Colorado Treatment of Foreign Earnings Subject to Federal Transition Tax Under IRC § 965

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Federal tax reform legislation enacted in 2017 made amendments to Internal Revenue Code § 965. As the result of these amendments, certain taxpayers are required to include in their income an amount based on the accumulated post-1986 deferred foreign income of certain foreign corporations that they own either directly or indirectly through other entities. Other taxpayers may have to include in their income an amount based upon their ownership of deferred foreign income corporations (DFICs) through U.S. shareholder pass-through entities. The federal legislation also allows deductions in determining the amounts that taxpayers must include in their income. The includible income and deduction are hereafter in these instructions referred to as “IRC § 965 income.”

Colorado income tax is based upon federal taxable income. Consequently, the amendments made to IRC § 965 directly affect the calculation of Colorado income tax.

#### **Inclusion of IRC § 965 income on Colorado return**

Any amount a Colorado taxpayer must include in income as the result of IRC § 965 must also be included in the federal taxable income reported on the taxpayer’s Colorado return.<sup>1</sup> The steps necessary to report IRC § 965 income on the Colorado return vary depending upon how the IRC § 965 income is reported federally.

- Per [IRS guidance](#), some individual income taxpayers will report IRC § 965 income as “Other income” on line 21 of their Form 1040. These taxpayers will not need to make any adjustment in reporting their federal taxable income, from their federal income tax return, on line 1 of their Colorado income tax returns.
- [IRS guidance](#) directs other taxpayers not to report their IRC § 965 income on their primary federal form (e.g. Form 1041 or 1120), but to instead report their IRC § 965 income only on the IRC 965 Transition Tax Statement attached to their federal return. These taxpayers must report on line 1 of their Colorado returns the sum total of the federal taxable income reported on their federal returns and the includible amount reported on line 1 of their IRC 965 Transition Tax Statement, less the deductions reported on line 3 of the statement.

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<sup>1</sup> Colorado imposes tax upon a taxpayer’s federal taxable income, as defined and determined pursuant to the Internal Revenue Code (IRC), subject to any modification required or allowed pursuant to Colorado law. §§ 39-22-104(1.7) and 304(1), C.R.S. IRC § 63 defines “taxable income” as “gross income minus the deductions” allowed under federal law. The gross income of a taxpayer who is a shareholder in a controlled foreign corporation includes the taxpayer’s pro rata share of corporation’s subpart F income. IRC § 951(a)(1). Subpart F income includes accumulated post-1986 deferred foreign income deemed repatriated pursuant to federal tax reform legislation. IRC § 965(a).

## **Foreign source income exclusion**

Colorado law<sup>2</sup> prescribes, for the purpose of corporate income tax apportionment and allocation,<sup>3</sup> the exclusion of some part of a taxpayer's foreign source income. The excludible portion is based on the federal deduction<sup>4</sup> or federal credit<sup>5</sup> the taxpayer claims for foreign taxes paid. If a taxpayer subject to Colorado corporate income tax apportionment and allocation properly claims a federal deduction or federal credit for foreign taxes paid on IRC § 965 income, a corresponding portion of the IRC § 965 income will be eligible for the foreign source income exclusion on the taxpayer's Colorado return.

## **Documentation required with Colorado returns**

The IRS has issued guidance regarding IRC § 965 income and released an IRC 965 Transition Tax Statement that taxpayers reporting IRC § 965 income must submit with their federal returns. See [IRS Publication 5292](#) and <https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns>. Any taxpayer that has IRC § 965 income must submit a copy of their IRC 965 Transition Tax Statement with their Colorado income tax return. Taxpayers that file their Colorado return electronically must submit the IRC 965 Transition Tax Statement as an attachment to their return, in Portable Document Format (.pdf) with a filename of "965 Tax." Multiple IRC 965 Transition Tax Statements can be combined into a single .pdf file.

## **Penalties**

Colorado law imposes penalties on any taxpayer that does not remit full payment of any income tax due by the applicable due date. Income tax penalties include a late payment penalty for any income tax not paid by the applicable due date<sup>6</sup> and an estimated tax penalty for the underpayment or late payment of required estimated taxes.<sup>7</sup> Taxpayers that owe Colorado tax as the result of IRC § 965 income may request a waiver for penalties resulting from tax underpayments attributable to such income.

## **Installment payments**

While IRC § 965 permits certain taxpayers to elect to remit federal tax on IRC § 965 income in installments over several years, this election does not extend to Colorado tax and there is no similar provision in Colorado law.<sup>8</sup> Consequently, any Colorado tax attributable to IRC § 965 income is due at the same time as the Colorado return upon which it is reported. Individuals who owe Colorado income tax may request a monthly installment agreement, but penalties and interest continue to accrue on any tax under such an agreement until the tax has been paid in full.

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<sup>2</sup> § 39-22-303(10), C.R.S.

<sup>3</sup> §§ 39-22-303.5 and 303.7, C.R.S.

<sup>4</sup> § 39-22-303(10)(a), C.R.S.

<sup>5</sup> § 39-22-303(10)(b)(III), C.R.S.

<sup>6</sup> § 39-22-621(2)(b), C.R.S.

<sup>7</sup> §§ 39-22-605 and 606, C.R.S.

<sup>8</sup> §§ 39-22-608(2) and 609, C.R.S. Colorado income tax is due on the fifteenth day of the fourth month following the close of the taxable year, without reference to federal income tax due dates.