

A C corporation means any organization taxed as a corporation for federal income tax purposes. [§39-22-103(2.5), C.R.S.] A C corporation must file a Colorado C Corporation Income Tax Return if either (1) it is organized under Colorado law or (2) it is “doing business in Colorado.”

### DOING BUSINESS IN COLORADO

A corporation is “doing business in Colorado” whenever both the minimum standards of Public Law 86-272 are exceeded and the corporation has substantial nexus with Colorado, as described below. Public Law 86-272 (15 U.S.C. § 381) is a federal statute that provides a safe harbor from a state’s income tax and can be found online at: [gpo.gov/fdsys/granule/USCODE-2011-title15/USCODE-2011-title15-chap10B-subchapl-sec381](http://gpo.gov/fdsys/granule/USCODE-2011-title15/USCODE-2011-title15-chap10B-subchapl-sec381)

#### Substantial nexus

Any corporation commercially domiciled in Colorado has substantial nexus with Colorado. Additionally, a corporation has substantial nexus with Colorado for any tax period in which the corporation’s property, payroll, or sales within Colorado exceed any of the following thresholds:

- \$50,000 of property;
- \$50,000 of payroll;
- \$500,000 of sales; or
- 25% of total property, total payroll, or total sales

See 1 CCR 201-2, 39-22-301.1 for additional information regarding substantial nexus standards.

### TAXABLE INCOME

When determining the Colorado taxable income of a C corporation, the federal taxable income will be modified by the following additions and subtractions.

#### Additions to income:

- *Federal net operating loss deduction.* The amount of any net operating loss deduction claimed for federal income tax purposes [§ 39-22-304(2)(c), C.R.S.]
- *Colorado income tax deduction.* The amount of any Colorado income tax deduction. Income taxes paid to states, other than Colorado, are allowable deductions for Colorado income tax purposes and are not to be added back to federal taxable income in determining Colorado taxable income. [§39-22-304(2)(d), C.R.S.]
- *Non-Colorado state and municipal bond interest.* All interest income (less bond premium amortization) from state or municipal obligations that is not included in federal taxable income. Do not include interest income from any bond or other obligation of the State of Colorado or a political subdivision thereof issued on or after May 1, 1980. See FYI Income 52 for additional information. [§39-22-304(2)(b), C.R.S.]
- *Income, war profits, or excess profits taxes paid or accrued to any foreign country.* Any income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States that were deducted on the federal income tax return. [§39-22-304(2)(a), C.R.S.]
- *Gross conservation easement charitable deduction.* Charitable contribution resulting from the donation of a gross conservation easement that qualified for the gross conservation easement credit. See FYI Income 39 for additional information. [§39-22-304(2)(f), C.R.S.]
- *High technology charitable deduction.* Charitable contribution resulting from a donation that qualified for the high technology scholarship contribution credit. See FYI Income 47 for additional information. [§39-22-304(2)(g), C.R.S.]
- *Expenses paid to a club that restricts membership in a discriminatory manner.* Expenses deducted on the federal return related to a private club that restricts membership on the basis of sex, race, religion, color, ancestry or national origin. [§39-22-304(2)(e), C.R.S.]

## Subtractions from income:

- *Federal interest income.* Any interest or dividend income from United States government obligations exempt from Colorado income tax. See FYI Income 20 for a list of tax exempt U.S. government obligations. [§39-22-304(3)(a), C.R.S.].
- *Excludable foreign source income.* For information about foreign source income subtracted in the calculation of Colorado income tax, see §39-22-303(10), C.R.S.
- *Colorado source capital gains.* Certain capital gains from the sale of assets located in Colorado and the sale of stock in a Colorado company. See FYI Income 15 for additional details. [§39-22-518, C.R.S.]
- *Colorado net operating loss deduction.* The Colorado net operating loss for any given tax year is the portion of the federal net operating loss allocated and/or apportioned to Colorado. Colorado net operating losses for tax years beginning on or after August 6, 1997 may be carried forward for up to 20 years. Operating losses may not be carried back to previous tax years. Federal limitations with respect to deduction of net operating loss carryovers from predecessor taxpayers apply for Colorado income tax purposes. A net operating loss may not be carried from a year in which income is apportioned under the Colorado Income Tax Act (two factor formula) to a year in which income was apportioned under the provisions of the Multi-state Tax Compact (three factor formula), or vice versa, without written permission from the executive director of the Department of Revenue. [§39-22-304(3)(g), C.R.S. and §39-22-504, C.R.S.].
- *Colorado income tax refunds.* Any refund of Colorado income tax to the extent included in federal taxable income. Income tax refunds from other states may not be subtracted. [§39-22-304(3)(f), C.R.S.].
- *Income from the disposition of assets acquired prior to January 1, 1987 that have a higher Colorado basis than federal basis.* To the extent included in federal taxable income, any income which would not have been included in federal taxable income had the federal basis in any asset sold or otherwise disposed of been equal to the higher Colorado basis in such asset. As there is no provision in the Colorado Income Tax Act of 1964, or the Colorado Income Tax Act of 1987, to establish a Colorado basis in any asset acquired in any tax period covered by those Acts, this subtraction will apply only to specific assets acquired by the taxpayer prior to its first taxable year beginning on or after January 1, 1965. [§39-22-304(3)(c), C.R.S.]
- *Gain from a qualified sale under threat of condemnation.* To the extent included in federal taxable income, any gain received from a qualified sale. A qualified sale is a sale in good faith, not between persons defined in §267(b) of the Internal Revenue Code, where the buyer had, or could have obtained, the power to condemn the property, but where such gain did not qualify for the deferral of gain under §1033 of the Internal Revenue Code. This subtraction shall not apply unless the gain from the sale of the property is reinvested in other property similar or related in use to and intended as replacement property as required by §1033 of the Internal Revenue Code within the time specified by said §1033. [§39-22-304(3)(d), C.R.S.]
- *Any income or gain previously taxed by Colorado.* To the extent included in federal taxable income, any income or gain previously taxed by Colorado prior to 1965 either to the corporation, or to a decedent, or an estate, or trust, from which the corporation acquired the income or gain. [§39-22-304(3)(e), C.R.S.].
- *Excess oil shale depletion.* The difference between the depletion allowed on oil produced from oil shale and the depletion that would have been allowed were the allowable depletion rate 27 1/2%. [§39-22-304(3)(h), C.R.S.].
- *Wages not deductible on the federal return as a result of IRC §280C tax credits.* Subtract wages and salaries that cannot be deducted on the federal return because of the limitations of IRC §280C. Wages and salaries that qualify for this subtraction include those for which the following federal credit(s) was taken on the federal return:
  - ◆ The Indian Employment Credit under §45A(a).
  - ◆ The Work Opportunity Credit under §51(a).
  - ◆ The Empowerment Zone Employment Credit under §1396(a).
  - ◆ The Orphan Drug Credit under §45C(a).
  - ◆ The Research Expense Credit under §41(a).
  - ◆ The Employee Retention Credit under §1400R.
  - ◆ The Welfare-To-Work Credit under §51A.
  - ◆ The Mine Rescue Team Training Credit under §45N.

The Employer Social Security Credit (FICA Tip Credit) under §45B of the IRC is not referenced in §280C of the Internal Revenue Code and, therefore, cannot be subtracted from federal taxable income on the Colorado income tax return. [§39-22-304(3)(i), C.R.S.]

### Subtractions from income (continued):

- *Section 78 dividend gross-up.* Any amounts included in federal taxable income as dividend income due to the provisions of IRC §78. [§39-22-304(3)(j), C.R.S.].
- *Ridesharing or mass transit expenses.* To the extent not claimed as a deduction on the taxpayer's federal tax return, the amount of the corporation's contribution as an employer to:
  - a) Free or partially subsidized ridesharing arrangements for employees including, but not limited to, providing vehicles for such arrangements, cash incentives (not to exceed the value of such transportation) for participation in ridesharing arrangements, and the payment of all or part of the administrative cost incurred in organizing, establishing or administering a ridesharing program.
  - b) Free or partially subsidized mass transit tickets, tokens, passes, or fares for use by employees in going to and returning from their places of employment. [§39-22-509, C.R.S.].
- *Medical savings account contributions.* To the extent not claimed as a deduction on the taxpayer's federal tax return, the amount contributed to a medical savings account (MSA) pursuant to §39-22-504.7(2)(e), C.R.S. This subtraction only applies to Colorado MSAs as contributions to the more common federal MSAs are deductible at the federal level.

If the corporation is doing business in more than one state, the Colorado taxable income resulting from the above modifications must be allocated and/or apportioned.

### CORPORATIONS EXEMPT FROM COLORADO INCOME TAX

Non-profit corporations that file federal form 990 that are exempt from filing a federal income tax return are also exempt from filing a Colorado income tax return. However, if the organization has income arising from nonexempt functions that is subject to federal income tax, this unrelated business taxable income is subject to Colorado income tax to the same extent it is subject to federal income tax and the Colorado tax must be computed using Colorado Form 112. [§39-22-112(2), C.R.S.]

Insurance companies are exempt from Colorado income tax if they are subject to a gross premiums levy by the State of Colorado, Division of Insurance. An insurance agency is not an insurance company. [§39-22-112(1), C.R.S.]

### TAXPAYER DISCLOSURE OF REPORTABLE OR LISTED TRANSACTIONS

A corporation shall disclose any reportable or listed transactions to the department for each taxable year in which the corporation participates in a reportable or listed transaction. [§39-22-653 (1) and (2), C.R.S.]

If a corporation participates in or has participated in any reportable or listed transaction for any in statute period as of the due date of the corporation's income tax return, then the corporation shall file a disclosure statement with the corporation's next filed return with a copy of the federal disclosure form and must check the box on page 1 of Form DR 112 or 112X requesting, "If you are attaching a statement disclosing a listed or reportable transaction, check this box". [§39-22-653 (3) and (5), C.R.S.]

For any statement that is required to be filed or disclosure required to be made with respect to any tax year for which the return has been filed by June 1, 2009, if the statement is filed or disclosure is made prior to or together with the corporation's next filed return it shall be considered timely filed or made. [§39-22-653 (4) (a), C.R.S.]

For any statement that is required to be filed or disclosure required to be made with respect to any tax year for which the return has not been filed by June 1, 2009, if the statement is filed or disclosure is made on or before July 1, 2010, it shall be considered timely filed or made. [§39-22-653 (4) (b), C.R.S.]

### Listed transaction

Listed transaction is defined as:

- A transaction that is the same as, or substantially similar to, a transaction or arrangement specifically identified as a listed transaction by the United States Secretary of the Treasury in written materials interpreting the requirements of Section 6011 of the Internal Revenue Code;
- A transaction between a captive real estate investment trust as defined in section §39-22-503 (2), C.R.S. and its more than 50% beneficial owner as described in section §39-22-503 (2) (a), C.R.S.;
- A transaction between a captive regulated investment company as defined in section §39-22-501 (2), C.R.S. and its more than fifty percent beneficial owner as described in section §39-22-501 (2) (a), C.R.S. [§39-22-652 (5) (a), C.R.S.]

## Reportable Transaction

Reportable transaction is defined as any transaction or arrangement that is the same as any transaction or arrangement described in 26 CFR 1.6011-4 (b) (2) to (b) (6) but shall not include any transaction specifically excluded by the Internal Revenue Service. [§39-22-652 (7), C.R.S.]

## GROSS RECEIPTS TAX

A qualified C corporation may elect to pay a tax of one-half of one percent of the annual gross receipts derived from sales in, or into Colorado, in lieu of paying the normal income tax. This tax is reported and paid on Colorado Form 112. The gross receipts tax applies to business being carried on in Colorado. It does not apply to such items as wages, salaries, and sales commissions. [§39-22-301(2), C.R.S.]

A qualified corporation for purposes of the gross receipts tax:

- is required to file a Colorado income tax return,
- performs no activities in Colorado other than making sales,
- does not own or rent real estate within Colorado, and
- generates annual gross sales in, or into, Colorado of \$100,000 or less. [Regulation (39-)22-301.2]

## COMBINED AND CONSOLIDATED RETURNS

C corporations that are members of an affiliated group of corporations, as defined in section 1504 of the federal Internal Revenue Code, must determine whether to file separate returns, a consolidated return, a combined return, or a combined/consolidated return.

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FYIs represent a good faith effort to provide general information concerning a variety of Colorado tax topics in simple and straightforward language. . By their nature, however, FYIs cannot and do not address all taxpayer situations nor do they provide a comprehensive overview of Colorado's tax laws. For this reason, FYIs are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations.

A taxpayer seeking additional guidance regarding the tax consequences of a particular transaction or factual scenario can request a Private Letter Ruling (PLR) or General Information Letter (GIL). Requests for PLRs and GILs must comply with certain requirements, which are currently set forth at 1 Code of Colorado Regulations 201-1, Regulation 24-35-103.5. PLRs are binding upon the Department only with respect to the specific taxpayer that requested the PLR. GILs are for informational purposes only and are not binding on the Department.