# Colorado Corporate Income Tax Guide

COLORADO
Department of Revenue
Taxation Division

# Colorado Corporate Income Tax

Colorado imposes a tax on the income of any C corporation that is doing business in Colorado. The tax applies generally to every C corporation that is organized or commercially domiciled in Colorado and to every C corporation that has property, payroll, or sales in Colorado in excess of certain thresholds.

Any C corporation that is subject to Colorado income tax is required to file an annual Colorado income tax return. If certain criteria are met, affiliated C corporations may be required to file a combined return, may elect to file a consolidated return, or may file a combined/consolidated return.

Colorado income tax is based generally on federal taxable income, although various modifications and adjustments are made in the calculation of Colorado income tax. Colorado law requires certain additions, and permits certain subtractions, from federal taxable income.

C corporations that have income from business activity outside of Colorado must apportion and allocate their income to determine the share of their income attributable to Colorado. Apportionment is based generally on the location of the market for the C corporation's sales. Additionally, a C corporation that has foreign source income will exclude a portion of such income from the calculation of the apportioned Colorado income.

C corporations are generally required to make quarterly estimated payments. A C corporation that fails to make required quarterly estimated payments is subject to a penalty for such failure. However, the penalty generally will not apply if the C corporation's net tax liability for the tax year is less than $5,000.

This publication is designed to provide taxpayers with general guidance regarding the imposition of Colorado income tax on C corporations, the calculation of the tax, filing of returns, and other related requirements. Nothing in this publication modifies or is intended to modify the requirements of Colorado's statutes and regulations. Taxpayers are encouraged to consult their tax advisors for guidance regarding specific situations.

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# *Part 1: Corporations Subject to Tax*

The State of Colorado imposes tax upon the net income of each domestic C corporation and each foreign C corporation doing business in Colorado. A C corporation is doing business in Colorado if either it is organized or commercially domiciled in Colorado or its property, payroll, or sales in Colorado for the tax year exceed certain thresholds. This *Part 1* provides information about the conditions that subject C corporations to Colorado income tax.

## Corporations, foreign and domestic

C corporations that may be subject to Colorado corporate income tax include any organization taxed as a corporation for federal income tax purposes. Generally, a business entity is taxed as a corporation if it is organized under a state or federal law that describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic. Please see *IRS Publication 542, Corporations* for more information about businesses generally taxed as corporations.

Any corporation or other entity that has made a valid election to be an S corporation for the tax year by filing IRS Form 2553 is not subject to Colorado corporate income tax. Instead, the shareholders of any S corporation are liable in their individual capacities for any Colorado income tax incurred on income produced through the activities of the S corporation.

Limited liability companies (LLC) and certain other entities may make an election by filing IRS Form 8332 to be classified as a C corporation for federal income tax purposes. Any LLC or other entity that has made such an election will be similarly classified as a C corporation for Colorado income tax purposes.

### Domestic corporations

For Colorado income tax purposes, a domestic corporation is any corporation organized under Colorado law. Every domestic C corporation is subject to Colorado income tax.

### Foreign corporations

For Colorado income tax purposes, a foreign corporation is any corporation not organized under Colorado law. Any foreign C corporation that is doing business in Colorado, pursuant to *1 CCR 201-2*, Rule 39-22-301(1) and as described below, is subject to Colorado income tax.

## Doing business in Colorado

For Colorado corporate income tax purposes, a C corporation is doing business in Colorado whenever the minimum standards of Public Law 86-272 are exceeded and the C corporation has substantial nexus with the State of Colorado. Public Law 86-272, codified in sections 381 through 384 of title 15 of the U.S. Code, can be accessed online at: *govinfo.gov/content/pkg/USCODE-2021-title15/pdf/USCODE-2021-title15-chap10B-subchapI.pdf*

### Substantial nexus

C corporations that are organized or commercially domiciled in Colorado have substantial nexus with Colorado. Additionally, a corporation organized outside of Colorado 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; or
- $500,000 of sales.

Furthermore, a C corporation has substantial nexus with Colorado for any tax period in which 25% or more of the C corporation's total property, total payroll, or total sales are in Colorado. Guidance for determining a C corporation's property, payroll, and sales in Colorado is presented below.

### Payroll

Payroll counting toward the $50,000 threshold for establishing substantial nexus is the total amount paid by the taxpayer for compensation in Colorado during the tax year. Compensation includes wages, salaries, commissions, and any other form of remuneration paid to employees and defined as gross income under section 61 of the Internal Revenue Code. Compensation is paid in Colorado if:

- the individual's service is performed entirely within Colorado;
- the individual's service is performed both within and outside Colorado, but the service performed outside of Colorado is incidental to the individual's service within Colorado; or
- some of the service is performed in Colorado and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is either:
  - in Colorado, or
  - not in any state in which some part of the service is performed, but the individual's residence is in Colorado.

### Property

Property counting toward the $50,000 threshold for establishing substantial nexus is the average value of the taxpayer's real property and tangible personal property owned or rented and used in Colorado during the tax year. The average value of property is determined by averaging the values at the beginning and ending of the tax year. However, the Department may require the averaging of monthly values during the tax year if such method is reasonably required to properly reflect the average value of the taxpayer's property.

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.

### Sales

Sales counting toward the $500,000 threshold for establishing substantial nexus in Colorado include the total dollar value of the taxpayer’s gross receipts from:

- the sale, lease or license of real property located in Colorado;
- the lease or license of tangible personal property located in Colorado;
- the sale of tangible personal property other than software or digital products received in Colorado as indicated by receipt at a business location of the seller in Colorado or by instructions, known to the seller, for delivery or shipment to a purchaser (or to another at the direction of the purchaser) in Colorado;
- the sale of software or digital products for primary use by a purchaser known to the seller to be in Colorado; and
- the sale, lease or license of services and intangibles for primary use by a purchaser known to the seller to be in Colorado.

Please see *1 CCR 201-2*, Rule 39-22-301(1) for additional guidance if a service or intangible will be used in multiple states or if the seller does not know where a service or intangible will be used or where a tangible will be received.

## Tax-exempt organizations

Any organization that is exempt from federal income taxation under the provisions of the Internal Revenue Code for any tax year is also exempt from Colorado income tax for the same tax year. Organizations that are exempt from federal income tax generally include, but are not limited to, those organizations that meet the requirements of section 501(c)(3) of the Internal Revenue Code.

If any tax-exempt organization has unrelated business taxable income (UBTI) that is subject to federal taxation, the tax-exempt organization is subject to Colorado income taxation with respect to the UBTI in the same manner as a C corporation. Any tax-exempt organization that has UBTI and is doing business in Colorado is required to file a Colorado C Corporation Income Tax Return. Please see *IRS Publication 598, Tax on Unrelated Business Income of Exempt Organizations* for additional information regarding UBTI.

Insurance companies that are subject to the insurance premiums tax imposed pursuant to section 10-3-209, C.R.S., are exempt from Colorado income tax. The exemption from Colorado income tax does not apply to any disqualified insurance company. A disqualified insurance company is any company licensed as a captive insurance company under the laws of either this state or another jurisdiction with gross receipts for the taxable year that consist 50% or less of premiums from arrangements that constitute insurance for federal income tax purposes. Disqualified insurance companies may be subject to Colorado income tax in the same manner as any other C corporation.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to the imposition of income tax on C corporations in Colorado. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-22-103, C.R.S. Definitions – construction of terms.
- § 39-22-112, C.R.S. Persons and organizations exempt from tax under this article.
- § 39-22-301, C.R.S. Corporate tax imposed.
- § 39-22-302, C.R.S. S corporations.
- § 39-22-322, C.R.S. Taxation of an S corporation and its shareholders.
- Rule 39-22-301(1). Doing business in Colorado.
- 15 U.S.C. § 381. Imposition of net income tax.
- 26 U.S.C. § 7701. Definitions.
- 26 CFR § 301.7701-2. Business entities; definitions.
- 26 CFR § 301.7701-3. Classification of certain business entities.

### Forms and guidance

- *IRS Publication 542, Corporations*
- *IRS Publication 598, Tax on Unrelated Business Income of Exempt Organizations*

Under certain circumstances, the Colorado income tax for multiple affiliated C corporations may be determined collectively, with the filing of a combined, consolidated, or combined/consolidated return. C corporations are required to file a combined return if certain conditions are met. Additionally, C corporations that meet certain qualifying criteria may elect to file a consolidated return. A combined/consolidated return is filed if certain C corporations are required to file a combined return and elect to participate in a consolidated filing with other C corporations. This *Part 2* includes information regarding combined, consolidated, and combined/consolidated returns.

## Combined returns

A C corporation must be included in a combined return if all three of the following conditions apply:

1) the C corporation is a member of an affiliated group of C corporations, as described in *Affiliated groups for combined returns*, later in this publication;

2) less than 80% of the C corporation's property and payroll, as determined by averaging the property and payroll factors as determined in accordance with section 24-60-1301, C.R.S., is assigned to locations outside the United States; and

3) the C corporation satisfies at least three of the six tests of unity, described in the table on the following page, for the current and two preceding tax years.

Section 39-22-303(8)(b), C.R.S., requires certain business entities incorporated in a foreign jurisdiction to be included in a combined Colorado income tax return. For additional information, please see Department publication *Income Tax Topics: Section 303(8)(b) Entities*, available online at *Tax.Colorado.gov/corporate-income-tax-guidance-publications*.

### Affiliated groups for combined returns

For the purpose of combined returns, an affiliated group consists of one or more C corporations connected directly or indirectly through stock ownership with a common parent C corporation. The common parent C corporation must directly or indirectly own stock possessing more than 50% of the voting power of all classes of stock and more than 50% of each class of the nonvoting stock of at least one of the other C corporations included in the group. A C corporation, other than the parent C corporation, is included in the affiliated group if stock possessing more than 50% of the voting power of all classes of stock and more than 50% of each class of the nonvoting stock of such C corporations is owned directly or indirectly by one or more of the C corporations included in the group.

For the purpose of evaluating the minimum stock ownership requirements described above, the term "stock" does not include

- nonvoting stock that is limited and preferred as to dividends;
- employer securities, within the meaning of section 409(1) of the Internal Revenue Code, while such securities are held under a tax credit employee stock ownership plan; or
- qualifying employer securities, within the meaning of section 4975(e)(8) of the Internal Revenue Code, while such securities are held under an employee stock ownership plan which meets the requirements of section 4975(e)(7) of the Internal Revenue Code.

The criteria described above for defining an affiliated group apply only for the purpose of determining combined return requirements and not for the purpose of determining eligibility for a consolidated return.

## Six Tests of Unity for Combined Reporting

A combined return for an affiliated group must include any member that satisfies at least three of the six tests of unity for the current and two preceding tax years:

1) ***Gross receipts:*** 50% or more of the affiliated C corporation's gross operating receipts is from sales or leases to another affiliated C corporation; or 50% or more of the affiliated C corporation's cost of goods purchased and/or leased is paid to another affiliated C corporation.

2) ***Services:*** The affiliated C corporation receives 50% or more of five or more of the following services from one or more affiliated C corporations without an arm's length charge:

    - advertising and public relations services;
    - accounting and bookkeeping services;
    - legal services;
    - personnel services;
    - sales services;
    - purchasing services;
    - research and development services;
    - insurance procurement and servicing exclusive of employee benefit programs; and
    - employee benefit programs including pension, profit-sharing, and stock purchase plans.

3) ***Long-term debt:*** 20% of the affiliated C corporation's long-term debt (debt due more than one year after incurred) is owed to or guaranteed by another affiliated C corporation.

4) ***Intangible property:*** The affiliated C corporation substantially uses the patents, trademarks, service marks, logo-types, trade secrets, copyrights, or other proprietary materials owned by another affiliated C corporation; or the affiliated C corporation owns patents, trademarks, service marks, logo-types, trade secrets, copyrights, or other proprietary materials substantially used by another affiliated C corporation.

5) ***Board of Directors:*** 50% or more of the members of the affiliated C corporation's board of directors are members of the board of directors or are corporate officers of another affiliated C corporation; or the affiliated C corporation's board members or corporate officers make up 50% of the members of the board of directors for another affiliated C corporation.

6) ***Officers:*** 25% or more of the 20 highest ranking officers of the affiliated C corporation are members of the board of directors or are corporate officers of an affiliated C corporation.

### Domestic holding companies

A domestic holding company that is a member of an affiliated group and has less than 80% of its property and payroll assigned to locations outside the United States is deemed to satisfy the tests of unity and must be included in a combined report. The 80% threshold is determined by averaging the property and payroll factors for the company, as determined in accordance with section 24-60-1301, C.R.S., and all rules thereunder.

A domestic holding company is any C corporation formed under the laws of any state or the United States that has less than $100,000 of property and payroll, combined, as determined by factoring pursuant to section 24-60-1301, C.R.S. For example. a C corporation has $70,000 of property and $0 of payroll. That C corporation has de minimis property and payroll and is therefore deemed to satisfy the tests of unity and must be included in a combined report.

## Consolidated returns

Members of an affiliated group of C corporations, as defined in section 1504 of the Internal Revenue Code, may elect to make a consolidated Colorado income tax return, instead of filing separate returns. A consolidated return can include only those C Corporations that are doing business in Colorado as defined in *1 CCR 201-2*, Rule 39-22-301(1). Please see *Part 1* of this publication for criteria used in determining whether a C corporation is doing business in Colorado.

A consolidated return can be filed only if all C corporations which at any time during the taxable year have been members of the affiliated group consent to be included in the return. Such consent is conveyed through the filing of the consolidated return (Form DR 0112) and checking the appropriate box on the form to designate it as a consolidated return. The return must be filed on or before the due date for filing the return, including extensions.

### Affiliated groups for consolidated returns

An affiliated group that is eligible to file a consolidated return consists of one or more chains of includible corporations (as defined in section 1504(a) of the Internal Revenue Code) connected through stock ownership with a common parent corporation. The common parent must own directly stock that represents at least 80% of the total voting power and at least 80% of the total value of the stock of at least one of the other includible corporations. A C corporation, other than the parent C corporation, is included in the affiliated group if stock in the C corporation that represents at least 80% of the total voting power and at least 80% of the total value of the stock is owned directly by one or more of the other includible corporations.

For the purpose of the minimum stock requirements described above, the term “stock” generally does not include any stock that:

- is nonvoting;
- is nonconvertible;
- is limited and preferred as to dividends and does not participate significantly in corporate growth; and
- has redemption and liquidation rights that do not exceed the issue price of the stock (except for a reasonable redemption or liquidation premium).

The criteria described above for defining an affiliated group apply only for the purpose of determining eligibility for consolidated filing and not for the purpose of determining any requirement to file a combined return.

## Effect of election to file consolidated return

The election to file a consolidated return is binding for four years, including the election year and the next three tax years, unless the Department of Revenue grants the taxpayer permission, in writing, to discontinue consolidated filing earlier. After the fourth year of consolidated filing, the taxpayer's election to file consolidated returns remains in effect unless the taxpayer revokes the election for any subsequent tax year. Revocation of the election is made by filing separate, non-consolidated returns for the members of the affiliated group, prior to the filing due date, including any extensions.

# Combined/consolidated returns

If an affiliated group is required to file a combined return, it may elect to file a combined/consolidated return to include other affiliated C corporations. In the case of a combined/consolidated return, the requirement to be included in the combined return is determined and eligibility to be included in the consolidated return are determined independently under the separate rules for combined returns and consolidated returns described in this *Part 2*.

# Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to combined, consolidated, and combined/consolidated returns. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

## Statutes and regulations

- § 39-22-303, C.R.S. Dividends in a combined report – foreign source income – affiliated groups – definitions.
- § 39-22-305, C.R.S. Consolidated returns.
- Rule 39-22-303(11)(a). Combined returns
- Rule 39-22-303(12)(a). An affiliated group.
- Rule 39-22-305. Consolidated returns.
- 26 U.S.C. § 1504. Definitions.

## Forms and guidance

- *Tax.Colorado.gov/business-income-tax-forms*
- *Tax.Colorado.gov/corporate-income-tax-guidance-publications*
- *Colorado C Corporation Income Tax Return* (DR 0112)
- *Schedule C – Colorado Affiliations Schedule*
- *Income Tax Topics: Section 303(8)(b) Entities*

In general, Colorado imposes an income tax on the net income of each C corporation that is subject to Colorado income tax as described in *Part 1* of this publication. This *Part 3* provides information regarding the calculation of net income, temporary adjustments to the tax rate, and the election to calculate tax alternately on the basis of gross receipts.

## Net income

A C corporation's net income is its federal taxable income modified by the additions and subtractions required or permitted under Colorado law and, if applicable, apportioned and allocated as prescribed by Colorado law. *Part 4* of this publication discusses required additions to taxable income. Allowable subtractions are described in *Part 5*. A brief explanation of apportionment and allocation requirements appears in *Part 6*.

### Combined and consolidated returns

The net income of the affiliated C corporations included in any combined, consolidated, or combined/consolidated return is determined pursuant to the rules and regulations promulgated pursuant to section 1502 of the Internal Revenue Code and modified by the additions and subtractions required or permitted by Colorado law, as discussed in *Part 4* and *Part 5* of this publication.

Dividends that a C corporation includible in a combined report receives from another C corporation also includible in the combined report are excluded from taxable income.

#### *Taxable income for certain foreign entities*

For income tax years commencing on or after January 1, 2022, section 39-22-304(1)(b), C.R.S., prescribes specific rules for determining the federal taxable income of a C corporation that is not incorporated in the United States or included in a consolidated federal corporate income tax return. For additional information, please see Department publication *Income Tax Topics: Section 303(8)(b) Entities*, available online at *Tax.Colorado.gov/corporate-income-tax-guidance-publications*.

## Colorado income tax rate

Colorado income tax is calculated as a percentage of Colorado taxable income. The Colorado income tax rate varies based on the date the tax year commences. In the case of a 52-53 week tax year that actually begins in December, but is deemed to have commenced January 1 of the following year for Colorado income tax purposes, the tax rate is determined based on the January 1 date on which the tax year is deemed to begin. The tax rates for recent tax years are shown below.

| *Tax Year* | *2018* | *2019* | *2020* | *2021* |
|---|---|---|---|---|
| Tax Rate | 4.63% | 4.5% | 4.55% | 4.5% |

For tax years 2022 and later, the Colorado income tax rate is set at 4.4%.

## Gross receipts tax

For income tax years commencing prior to January 1, 2023, in lieu of paying an income tax, calculated in the manner described above, any C corporation that meets all of the following conditions may elect to pay a tax of ½% of its annual gross receipts derived from sales in or into Colorado:

- the C corporation is required to file a Colorado return;
- the C corporation's only activities in Colorado consist of making sales;
- the C corporation does not own or rent real estate within the State of Colorado; and
- the C corporation's annual gross sales in or into Colorado are $100,000 or less.

In the case of affiliated C corporations filing a combined, consolidated, or combined/consolidated return, the $100,000 limit on annual gross sales in or into Colorado applies to the aggregate sales of all C corporations included in the return.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to the calculation of Colorado corporate income tax. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-22-103, C.R.S. Definitions – construction of terms.
- § 39-22-301, C.R.S. Corporate tax imposed.
- § 39-22-303, C.R.S. Dividends in a combined report - foreign source income – affiliated groups – definitions.
- § 39-22-304, C.R.S. Net income of corporation - legislative declaration – definitions – repeal.
- § 39-22-305, C.R.S. Consolidated returns.
- § 39-22-627, C.R.S. Temporary adjustment of rate of income tax – refund of excess state revenues – authority of executive director.
- Rule 39-22-104(5). Gross receipts tax.
- Rule 39-22-301(2).

### Forms and guidance

- *Tax.Colorado.gov/business-income-tax-forms*
- *Tax.Colorado.gov/corporate-income-tax-guidance-publications*
- *Colorado C Corporation Income Tax Return* (DR 0112)
- *Income Tax Topics: Section 303(8)(b) Entities*

# Part 4: Additions to Taxable Income

Colorado income tax is based on federal taxable income. However, Colorado law provides for a number of modifications to federal taxable income that apply in the calculation of Colorado tax. Additions are generally required to either (1) subject to Colorado taxation certain types of income that are exempt from federal taxation or (2) eliminate a deduction that is allowed under federal law, but not under state law (referred to as "addbacks" of the amount deducted). This *Part 4* provides information regarding the additions to federal taxable income that are required under Colorado law.

## Income exempt from federal tax

Interest on state and local bonds is generally exempt from federal income tax and therefore not included in federal taxable income. However, any state and local bond interest, other than interest from the State of Colorado or any political subdivision thereof, is subject to Colorado income tax and therefore must be added to federal taxable income.

The required addition does not include any amortization of the bond premium and is reduced by the amount of the deductions required by the Internal Revenue Code to be allocated to the interest income.

## Addbacks of federal deductions

Colorado generally conforms to federal law and permits in the calculation of Colorado tax the same deductions that are allowed in calculating federal tax. However, Colorado law provides that certain federal deductions are not allowed for Colorado purposes. C corporations that claim any the following deductions in the calculation of their federal taxable income must add back such deductions in the calculation of their Colorado tax.

### Deductions for taxes paid

C corporations must add back on their Colorado returns several types of taxes that they may have deducted in the calculation of their federal taxable income. A Colorado addition is required for any of the following taxes the C corporation deducted:

- Colorado income taxes; and
- income, war profits, or excess profits taxes paid or accrued to any foreign country.

An addition is not required for Colorado severance taxes or income taxes imposed by any other state.

### Federal net operating loss deduction

A C corporation must make an addition on its Colorado return for any net operating loss deduction claimed in the calculation of its federal taxable income. Under federal law, C corporations may be allowed to claim a net operating loss deduction carried forward or carried back from a prior or subsequent tax year. Colorado also allows a net operating loss deduction that is calculated in the same manner as a federal NOL deduction. The amount of the net operating loss that may be carried forward or carried back for Colorado income tax purposes is that portion of the federal net operating loss that is allocated Colorado in the taxable year that the net operating loss is sustained. Consequently, a C corporation that claims a federal net operating loss deduction must add back that federal deduction on its Colorado return and then claim a separate deduction for its Colorado NOL, if applicable.

Please see *IRS Publication 542, Corporations* for information about federal net operating loss deductions. Please see *Part 8* of this publication for information about Colorado net operating losses.

## Deductions for certain business expenses

Certain business expenses, discussed below, that are deductible in the calculation of federal taxable income pursuant to section 162 of the Internal Revenue Code must be added back in the calculation of Colorado income tax.

### *Unauthorized alien labor services*

C corporations must make an addition on their Colorado returns for any expenses deducted in the calculation of federal taxable income for wages or remuneration paid to an unauthorized alien for the physical performance of services in Colorado. A C corporation is not required to make any addition if:

- the C corporation did not know of the unauthorized status of the worker at the time of hiring; or
- the C corporation is domiciled in Colorado and is exempt from compliance with federal employment verification procedures under federal law that makes the employment of unauthorized aliens unlawful.

Furthermore, the addition is not required if the worker:

- was lawfully admitted to the United States for permanent residence;
- was authorized to work in the United States by Chapter 12 of Title 8 of the U.S. Code or by the U.S. Attorney General;
- was paid less than $600 in wages or remuneration for the year;
- was hired by the C corporation prior to December 31, 2006;
- was not directly compensated or employed by the C corporation; or
- holds and presents to the C corporation a valid license or identification card issued by the Colorado Department of Revenue.

### *Clubs that restrict membership*

C corporations must make an addition on their Colorado returns for any expenses deducted in the calculation of federal taxable income that were incurred with respect to expenditures made at, or payments made to, any club that both:

- is licensed pursuant to section 44-3-418, C.R.S., to sell alcohol beverages by the drink only to members of the club and guests for consumption on the premises of the club; and
- has a policy to restrict membership on the basis of sex, sexual orientation, gender identity, gender expression, marital status, race, creed, religion, color, ancestry, or national origin.

## Gross conservation easement deduction

C corporations may be able to claim both a federal charitable contribution deduction and a Colorado income tax credit for the donation of a gross conservation easement on property located in Colorado. If a taxpayer claims both a federal deduction and a Colorado credit for the same donation, the taxpayer must make an addition on their Colorado return in the amount of the federal deduction, subject to applicable limitations described below. If the taxpayer carries part of the federal deduction forward to subsequent tax years, the addition is required for any year in which the taxpayer claims the deduction to reduce federal taxable income. The addition is required regardless of whether all or part of the credit is:

- waitlisted by the Division of Conservation;
- carried forward to a subsequent tax year; or
- transferred to another taxpayer.

With respect to any single gross conservation easement donation, the aggregate addition required for all tax years in which federal deductions are claimed is limited to the contribution amount upon which the gross conservation easement credit claim is based.

### Business interest deduction

For tax years beginning or ending between March 27, 2020 and December 31, 2020, taxpayers who claim a business interest deduction on their federal income tax return may be required to add back some portion of the deduction. For additional information, please see Department publication *CARES Act Tax Law Changes & Colorado Impact*, available online at *Tax.Colorado.gov/corporate-income-tax-guidance-publications*.

### Food and beverage expense deduction

For tax years commencing on or after January 1, 2022, but prior to January 1, 2023, a taxpayer who claims a business deduction on their federal income tax return for food and beverage expenses may be required to add back a portion of the deduction on their Colorado return. The required addback is equal to the amount of the deduction claimed in excess of 50% of the expenses. In general, the allowable federal deduction is limited to 50% of the total expenses. However, for tax years 2021 and 2022, section 274(n)(2)(D) of the Internal Revenue Code generally permits deduction of 100% of the expense for food and beverages provided by a restaurant.

### Business meals deduction

For tax years commencing on or after January 1, 2024, but prior to January 1, 2031, a taxpayer who claims a business deduction on their federal income tax return for business meals must add back the amount of the deduction on their Colorado return. The required addback is equal to the full amount of the deduction allowed to the taxpayer pursuant to section 274(k) of the Internal Revenue Code.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to required additions to taxable income. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-22-301, C.R.S. Corporate tax imposed.
- § 39-22-304, C.R.S. Net income of corporation – legislative declaration – definitions – repeal.
- § 39-22-529, C.R.S. Business expense deduction – labor services – unauthorized alien – definitions.
- Rule 39-22-304(2)(f). Gross conservation easement addition.
- Rule 39-22-504-2. C corporation net operating loss.

### Forms and guidance

- *Tax.Colorado.gov/business-income-tax-forms*
- *Tax.Colorado.gov/corporate-income-tax-guidance-publications*
- *Colorado C Corporation Income Tax Return* (DR 0112)
- *CARES Act Tax Law Changes & Colorado Impact*
- *IRS Publication 542, Corporations*

Colorado income tax is based on federal taxable income. However, Colorado law provides for a number of modifications to federal taxable income that apply in the calculation of Colorado tax. Subtractions are generally allowed to: (1) fully or partially exempt from state taxation an item of income that is subject to federal taxation or (2) provide a state-level tax deduction for an expense that is not allowed in the calculation of federal income tax. Additionally, a subtraction is allowed under *House Bill 21-1002* for certain taxpayers whose federal return for tax year 2020 was affected by the CARES Act. This *Part 5* provides information regarding the subtractions from federal taxable income that are allowed under Colorado law.

The foreign source income exclusion and the Colorado net operating loss deduction are discussed separately in *Part 7* and *Part 8* of this publication, respectively.

## Tax-exempt income

Various types of income are subject to federal income tax, and therefore included in federal taxable income, but exempt from Colorado taxation. A subtraction is allowed for the following types of income, if included in a taxpayer's federal taxable income, in order to exempt this income from Colorado taxation.

### Income from U.S. government obligations

A subtraction is allowed for certain types of income from U.S. government obligations to the extent such income is included in federal taxable income. The subtraction applies to interest income on obligations of the United States and its possessions, as well as interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States. No subtraction is allowed for any obligation or payment from the U.S. government for services rendered or for income from instruments issued by private financial institutions and guaranteed by the U.S. government.

### Colorado income tax refunds

A subtraction is allowed for the amount of any refund or credit for the overpayment of Colorado income taxes that is included in a C corporation's federal taxable income. The subtraction is not allowed for refunds of Colorado severance taxes or income taxes imposed by any other state.

### Section 78 gross-up

A subtraction is allowed for any amount treated as a section 78 dividend under section 78 of the Internal Revenue Code and included in a C corporation's federal taxable income. Section 78 requires any C corporation that claims a federal foreign tax credit for taxes deemed paid on its behalf pursuant to section 960 to include in its federal taxable income as a dividend an amount equal to such taxes deemed to be paid.

No subtraction is allowed for any amount treated as a dividend pursuant to section 78 of the Internal Revenue Code that is attributable to global intangible low-taxed income (GILTI) and deducted, pursuant to section 250(a)(1)(B)(ii) of the Internal Revenue Code, in the calculation of federal taxable income.

## Gain from a "qualified sale"

Prior to January 1, 2024, a subtraction is allowed for any gain from a qualified sale that is included in a C corporation's federal taxable income. A "qualified sale" is a sale of real or personal property that meets all of the following criteria:

- the sale is between a buyer and a seller who are not related in any manner described in section 267(b) of the Internal Revenue Code;
- the sale is made in good faith
- the buyer initiates the transaction to purchase the property;
- the buyer had or could have obtained the power to condemn such property; and
- the seller does not qualify under section 1033 of the Internal Revenue Code for deferral of the gain due to the absence of condemnation or the threat or imminence thereof and the buyer of the property purchased initiates the transaction.

## Income taxed prior to 1965

For income tax years commencing prior to January 1, 2023, a subtraction is allowed for the amount of any annuity, income, or gain included in a C corporation's federal taxable income if such income was properly included in taxable income in any tax year prior to 1965 and therefore previously taxed by Colorado. The subtraction is allowed if the tax imposed on the income in a year prior to 1965 was incurred by:

- the taxpayer claiming the subtraction;
- a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain; or
- a trust or estate from which the taxpayer received the income or gain.

## Gain from assets acquired prior to 1965

A subtraction is allowed with respect to any gain or loss included in a C corporation's federal taxable income that is attributable to property that meets all of the following requirements:

- the property was acquired prior to January 1, 1965;
- the property was sold or disposed of in a transaction in which gain or loss was recognized and included in federal taxable income for the tax year; and
- the property had a higher adjusted basis for Colorado income tax purposes than for federal income tax purposes on the date of the sale or disposition.

The subtraction is allowed for the difference in basis, but, if a gain is considered a long-term capital gain for federal income tax purposes, the subtraction is limited to the portion of the gain that is included in federal taxable income.

## Capital gain subtraction

Qualifying taxpayers can claim a subtraction for qualifying capital gains included in their federal taxable income. For additional information, please see Department publication *Income Tax Topics: Colorado Capital Gain Subtraction*, available online at *Tax.Colorado.gov/corporate-income-tax-guidance-publications*.

## Deductions for expenses

Colorado allows subtractions for various types of expenses that do not qualify for deduction in the calculation of federal taxable income. A subtraction is allowed for the following types of expenses.

### Wages not deductible due to IRC § 280C

A subtraction is allowed for any portion of wages or salaries paid or incurred by a C corporation for the tax year, but which are not deductible in the calculation of federal taxable income due to section 280C of the Internal Revenue Code. Section 280C disallows or reduces deduction for wages or salaries for which a C corporation claims certain federal credits, such as:

- the Indian employment credit;
- the credit for employer differential wages payments;
- the employer credit for paid family and medical leave;
- the work opportunity credit;
- the empowerment zone employment credit;
- the orphan drug credit;
- the mine rescue team training credit; and
- the credit for increasing research activities.

No subtraction is allowed for any federal deduction disallowed because a C corporation claimed a credit for employer social security and Medicare taxes paid on certain employee tips.

### MSA contributions

A subtraction is allowed for any contribution a C corporation makes to an employee's medical savings account (MSA) during the tax year, unless the C corporation has claimed a deduction for the contribution on its federal income tax return. If a C corporation claims a deduction for the contribution on its federal income tax return, no subtraction may be claimed on the Colorado return. The contribution must meet the requirements of sections 39-22-504.6 and 39-22-504.7, C.R.S., to qualify for the subtraction.

### Marijuana business expenses

A subtraction is allowed to any C corporation licensed under the Colorado Marijuana Code for an amount equal to any expenditure that would be eligible to be claimed as a federal income tax deduction, but for which deduction is disallowed by section 280E of the Internal Revenue Code because marijuana is a controlled substance under federal law.

### Oil shale depletion

Prior to January 1, 2024, a subtraction for oil depletion is allowed to any C corporation that is allowed a deduction for oil depletion pursuant to section 611 of the Internal Revenue Code in the calculation of its federal taxable income. The allowable subtraction is an amount equal to the difference between the depletion allowance permitted under the Internal Revenue Code for oil shale and an amount which would be permitted as the depletion allowance for oil shale if:

- the percentage depletion rate were 27.5%; and
- the crushing, retorting, condensing, and other processes by which oil, gas, or both oil and gas are removed from oil shale, were deemed to be treatment processes considered as mining.

## Subtraction related to CARES Act

For income tax years beginning on or after January 1, 2021, but before January 1, 2022, a subtraction from federal taxable income is allowed for taxpayers who added back on their Colorado return for a prior year all or part of the business interest deducted on their federal return. For additional information, please see Department publication *CARES Act Tax Law Changes & Colorado Impact*, available online at *Tax.Colorado.gov/corporate-income-tax-guidance-publications*.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to subtractions allowed in the calculation of Colorado income tax. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-22-301, C.R.S. Corporate tax imposed.
- § 39-22-304, C.R.S. Net income of corporation – legislative declaration – definitions – repeal.
- § 39-22-504.6, C.R.S. Definitions.
- § 39-22-504.7, C.R.S. Medical savings accounts – establishment – contributions – distributions – restrictions – taxation – portability.
- § 39-22-509, C.R.S. Mass transit and ridesharing arrangements – employer deductions.
- § 39-22-518, C.R.S. Tax modification for net capital gains.
- Rule 39-22-504(2). C corporation net operating loss.

### Forms and guidance

- *Tax.Colorado.gov/business-income-tax-forms*
- *Tax.Colorado.gov/corporate-income-tax-guidance-publications*
- *Colorado C Corporation Income Tax Return* (DR 0112)
- *Income Tax Topics: Colorado Capital Gain Subtraction*
- *CARES Act Tax Law Changes & Colorado Impact*
- *IRS Publication 542, Corporations*

Any C corporation that has income from business activity that is taxable both within and outside of Colorado must apportion and allocate its net income in accordance with Colorado statute and regulation. This *Part 6* provides general information about corporate income tax apportionment, but does not, and is not intended to, provide comprehensive guidance regarding corporate apportionment. Please consult section 39-22-303.6, C.R.S., and the rules listed below for more specific direction.

This *Part 6* includes introductory information regarding the requirement to apportion, criteria for distinguishing apportionable income from nonapportionable income, calculation of the apportionment fraction, and rules governing the allocation of nonapportionable income.

## Colorado Corporate Income Tax Apportionment Rules

- Rule 39-22-303.6-1. Apportionment and Allocation Definitions
- Rule 39-22-303.6-2. Apportionable and Nonapportionable Income
- Rule 39-22-303.6-3. Apportionment and Allocation of Income
- Rule 39-22-303.6-4. Taxable in Another State
- Rule 39-22-303.6-5. Calculating the Receipts Factor
- Rule 39-22-303.6-6. Sales of Tangible Personal Property in Colorado
- Rule 39-22-303.6-7. Sales Other Than Sales of Tangible Personal Property in Colorado
- Rule 39-22-303.6-8. Sale, Rental, Lease, or License of Real Property
- Rule 39-22-303.6-9. Rental, Lease, or License of Tangible Personal Property
- Rule 39-22-303.6-10. Sale of a Service
- Rule 39-22-303.6-11. License or Lease of Intangible Property
- Rule 39-22-303.6-12. Sale of Intangible Property
- Rule 39-22-303.6-13. Special Rules
- Rule 39-22-303.6-14. Nonapportionable Income
- Rule 39-22-303.6-15. Election to Treat All Income as Apportionable Income
- Rule 39-22-303.6-16. Alternative Apportionment
- Rule 39-22-303.6-17. Apportioning Gross Receipts of Taxpayers with De Minimis or No Receipts

## Requirement to apportion

Whether a C corporation must apportion its income depends generally on whether it engages in any business activity outside of Colorado. A C corporation that has no income from business activity outside of Colorado for the tax year may not apportion its income. A C corporation generally must apportion its income if it has income from business activity that is taxable by both Colorado and any of the following political entities:

- any state of the United States,
- the District of Columbia,
- the Commonwealth of Puerto Rico,
- any territory or possession of the United States, or
- any foreign country or political subdivision thereof.

In determining apportionment requirements, a C corporation's income is considered taxable by one of the political entities listed above if:

- the C corporation is subject to any of the following taxes imposed by the political entity: 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 any similar tax; or
- the political entity has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state subjects the taxpayer to such tax.

## Apportionable income

A C corporation may have both income that is subject to apportionment and income that is not apportioned, but is directly allocated instead. Income that is subject to apportionment ("apportionable income") includes:

- any income that would be allocable to Colorado under the United States constitution, but that is apportioned rather than allocated pursuant to Colorado law; and
- all income that is apportionable under the United States constitution and is not allocated under Colorado law, including (1) income arising from transactions and activity in the regular course of a taxpayer's trade or business and (2) income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.

Please see section 39-22-303.6(10), C.R.S., for special rules applicable to banks, savings and loans, credit unions, and, under certain conditions, other C corporations making or purchasing loans.

### Non-apportionable income

If a C corporation has any income that is not apportionable income, as described above, that income is not subject to apportionment and is instead directly allocated, unless the C corporation has made an election to apportion all of its income for the tax year. The election must be made by the extended due date of the tax return in accordance with *1 CCR 201-2*, Rule 39-22-303.6-15. Once made, the election is irrevocable for the tax year.

## Apportionment

In calculating its Colorado tax, a C corporation's apportionable income must be apportioned by multiplying it by a fraction representing the proportion of its total sales that were derived from Colorado sources. The numerator in the fraction is the total receipts of the taxpayer in Colorado during the tax year and the denominator is the total receipts of the taxpayer everywhere during the tax year.

The receipts that are considered in the calculation of the fraction for apportionment generally include all of the C corporation's gross receipts, as defined in *1 CCR 201-2*, Rule 39-22-303.6-1(1)(g), received during the tax year, but excluding:

- receipts from non-apportionable income;
- receipts from hedging transactions;
- receipts from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities;
- receipts from the sale of certain types of intangible property including, but not limited to, the sale of a partnership interest, the sale of business "goodwill," or the sale of an agreement not to compete; and
- intercompany transactions among affiliated C corporations included in a combined, consolidated, or combined/consolidated return.

### Numerator of the apportionment fraction

The following sections provide general information for determining whether various types of receipts are derived from Colorado sources and therefore included in the numerator in fraction used to in apportioning income. Notwithstanding any provision of law, a C corporation's foreign source income is not included in the numerator of the fraction used to apportion income.

For income tax years commencing before January 1, 2022, the numerator of the apportionment fraction is the sum of the sales of the affiliated C corporations included in the return that are doing business in Colorado as described in *Part 1* of this publication.

For income tax years commencing on or after January 1, 2022, the numerator of the apportionment fraction includes all amounts sourced to Colorado, regardless of the separate entity to which those amounts may be attributed.

#### *Receipts from tangible personal property*

Receipts from the sales of tangible personal property are derived from Colorado sources and included in the numerator if the property is delivered or shipped to a purchaser in Colorado, regardless of the f.o.b. point and any other conditions of the sale. Receipts from the sales of tangible personal property are also included in the numerator if the property is shipped from an office, store, warehouse, factory, or other place of storage in Colorado and the taxpayer is not taxable in the state to which the property is shipped.

Receipts from the rental, lease, or license of tangible personal property are derived from Colorado sources and included in the numerator to the extent the tangible personal property is located in Colorado.

#### *Receipts from sales of services*

Receipts from the sale of services are included in the numerator of the apportionment fraction if and to the extent that the service is delivered to a location in Colorado. In general, the location to which a service is delivered is the location of the C corporation's market for the service, which may not be the location of C corporation's employees or property.

#### *Receipts from real property*

Receipts from the sale, rental, lease, or license of real property are included in the numerator of the apportionment fraction if and to the extent that the real property is located in Colorado.

### *Receipts from intangible property*

The inclusion of receipts from intangible property in the calculation of the apportionment fraction depends on various criteria. Intangible property generally is property that is not physical or whose representation by physical means is merely incidental.

Receipts from the rental, lease, or license of intangible property are included in the numerator of the apportionment fraction if the intangible property is used in Colorado. Intangible property utilized in marketing a good or service to a consumer is deemed to be used in Colorado if that good or service is purchased by a consumer who is in Colorado. Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property are treated as receipts from the rental, lease, or licensing of the intangible property for the purpose of apportionment.

Sales of contract rights, government licenses, or similar intangible property that authorize the holder to conduct a business activity in a specific geographic area are included in the numerator of the apportionment fraction if and to the extent that they are used or are authorized to be used within Colorado. Receipts from other sales of intangible property that are not specifically described in section 39-22-303.6(6)(d)(II), C.R.S., and *1 CCR 201-2*, Rule 39-22-303.6-12 are excluded from both the numerator and denominator of the apportionment fraction.

### *Reasonable approximation*

If the state or states of assignment cannot be determined for any receipt other than receipts from sales of tangible personal property, the state or state of assignment must be reasonably approximated. If the state of assignment for any receipt cannot, under the applicable statute and rule, be either determined or reasonably approximated, such receipt is excluded from the denominator of the apportionment fraction.

## Alternative apportionment

The Department has established special rules for certain industries in which the allocation and apportionment provisions prescribed by law do not fairly represent the extent of business activity in Colorado of taxpayers. Such special rules are included in the Colorado Code of Regulations at *1 CCR 201-2*.

Additionally, if the apportionment and allocation provisions prescribed by law do not fairly represent the extent of the taxpayer's business activities in Colorado, the taxpayer may petition for, or the Executive Director of the Department may require, with respect to all or any part of the taxpayer's business activities, if reasonable:

- separate accounting;
- the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in Colorado;
- the inclusion of any receipts of a taxpayer otherwise excluded under section 39-22-303.6(1)(d), C.R.S., from the apportionment fraction; or
- the employment of any other method to effectuate an equitable apportionment or allocation of the taxpayer's income, fairly calculated to determine the net income derived from or attributable to sources in Colorado.

## Allocation of nonapportionable income

Unless a C corporation has made an election to treat all of its income as apportionable income, the C corporation must allocate all of its nonapportionable income or loss in accordance with Colorado statute and rules.

### Tangible personal property

Net rents and royalties from tangible personal property are allocated to Colorado if and to the extent that the property is utilized in Colorado. Additionally, net rents and royalties from tangible personal property are allocated to Colorado in their entirety if the C corporation's commercial domicile is in Colorado and the C corporation is not organized under the laws of, or the C corporation's income is not taxable in, the state in which the property is utilized. For the purpose of allocating net rents and royalties from tangible personal property, the location of utilization of the property is determined in accordance with section 39-22-303.6(7)(b)(II), C.R.S.

Capital gains and losses from sales of tangible personal property are allocated to Colorado if the property had a situs in Colorado at the time of the sale. 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.

Additionally, capital gains and losses from sales of tangible personal property are allocated to Colorado if the taxpayer's commercial domicile is in Colorado and the taxpayer's income is not taxable in the state in which the property had a situs.

### Real property

Net rents and royalties from real property located in Colorado are allocated to Colorado. Capital gains and losses from sales of real property located in Colorado are allocated to Colorado.

### Intangible property

Capital gains and losses from sales of intangible property, interest, and dividends are allocated to Colorado if the taxpayer's commercial domicile is in Colorado.

Patent and copyright royalties are allocated to Colorado if and to the extent that the patent or copyright is utilized by the payer in Colorado. Additionally, patent and copyright royalties are allocated to Colorado if and to the extent that 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 is in Colorado. For the purpose of allocating patent and copyright royalties, the location of utilization of the patent or copyright is determined in accordance with section 39-22-303.6(7)(g)(II) and (III), C.R.S.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to apportionment and allocation in the calculation of Colorado corporate income tax. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-22-303, C.R.S. Dividends in a combined report – foreign source income – affiliated groups – definitions.
- § 39-22-303.6, C.R.S. Market-based apportionment of the income of a taxpayer engaged in business – allocation of nonapportionable income – rules – definitions.
- See the beginning of this *Part 6* for a list of relevant rules.

### Forms and guidance

- *Tax.Colorado.gov/business-income-tax-forms*
- *Apportionment Schedule* (Schedule RF)

If a C corporation is required to apportion its income as discussed in *Part 6* and has income from sources outside of the United States, Colorado law limits the amount of foreign source income that is considered in the calculation of the C corporation's Colorado tax liability. The foreign source income exclusion is applied as a subtraction from the amount of foreign source income included in both federal taxable income and the denominator of the apportionment fraction. The amount subtraction depends, in part, on whether the C corporation claimed a federal deduction or a federal credit for foreign taxes paid. This *Part 7* discusses the foreign source income exclusion allowed in the calculation of Colorado corporate income tax.

## Combined, consolidated & separate returns

In some cases, a group of C corporations included in a federal consolidated return will be different than the group of C corporations included in a combined, consolidated, combined-consolidated, or separate Colorado return. The foreign source income exclusion is determined with respect to only those C corporations included in the Colorado return.

In the case of a combined, consolidated, or combined-consolidated Colorado return, the foreign source income exclusion is calculated with respect to only the C corporations that are included in that return. The exclusion is based on the foreign tax credit or foreign tax deduction determined with respect to only the group of C corporations included in that Colorado return. In general, the term C corporation is used in this *Part 7* to include all members of a group of C corporations filing a combined, consolidated, or combined-consolidated return.

In the case of a separate return filed by a single C corporation, the foreign source income exclusion is calculated with respect to only that C corporation and based on the foreign tax credit or foreign tax deduction determined with respect to only that C corporation.

## Foreign source income

For the purpose of determining the amount of the foreign source income exclusion, a C corporation's "foreign source income" is the C corporation's taxable income from sources without the United States, determined in accordance with section 862 of the Internal Revenue Code and including any taxable income from sources without the United States considered in the calculation of the limit on the federal foreign tax credit.

Foreign source income includes, but is not limited to, the following types of income:

- the types of income enumerated in IRC section 862(a);
- income allocated to sources without the United States pursuant to IRC section 863;
- Subpart F income;
- Global intangible low-taxed income (GILTI);
- Gross-up under IRC section 78 for foreign taxes deemed paid;
- any item of income treated as arising from sources outside of the United States under treaty obligation of the United States as described in IRC section 245(a)(10), 904(d)(6), or 904(h)(10).

In determining foreign source income, a C corporation must deduct from its gross income from sources without the United States any 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. Deductions apportioned and allocated to gross income from source without the United States include, but are not limited to, the deduction allowed pursuant to section 250 of the Internal Revenue Code. Generally, foreign source income is the "Total Income or (Loss) Before Adjustments" computed on IRS Form 1118.

The foreign source income from a foreign C corporation within an affiliated group of C corporations is determined without regard to section 882(a)(2) of the Internal Revenue Code.

## C corporations deducting foreign tax

If a C corporation claims a deduction on its federal income tax return for foreign income taxes paid or accrued, the foreign source income exclusion is generally equal to the amount of the federal deduction. The foreign source income excluded from the C corporation's net income on its Colorado return is the lesser of the following amounts:

1) the amount of the C corporation's federal deduction for foreign income taxes paid or accrued;

2) the amount of that federal deduction that was added back to the C corporation's federal taxable income pursuant to section 39-22-304(2)(e), C.R.S.; or

3) the amount of foreign source income otherwise included in the C corporation's federal taxable income.

The foreign source income excluded from the C corporation's net income is also excluded from the denominator of its apportionment fraction but only to the extent that it does not exceed the foreign source income otherwise included in the denominator.

## C corporations claiming a foreign tax credit

If a C corporation claims a federal credit for foreign taxes paid or accrued, the amount of the foreign source income exclusion is determined according to a formula prescribed by statute and rule. The amount of foreign source income excluded by the formula is proportional to the amount of the C corporation's federal income tax on that foreign source income that is offset by the C corporation's foreign tax credit. The exclusion is applied as a subtraction from both net income and total receipts in the denominator of the apportionment fraction, subject to certain limitations.

### Separate calculation for each income category

Taxpayers who claim the foreign tax credit must calculate the credit separately for certain categories of income. The taxpayer must complete a separate *IRS Form 1118* to calculate the credit allowed for income category. Please see the instructions for *IRS Form 1118* for additional information about the income categories.

The foreign source income exclusion must also be calculated separately for each income category. C corporations that claim a foreign tax credit and the foreign source income exclusion must calculate the exclusion amount separately for each income category for which they claim a federal credit. The total foreign source income exclusion is the sum of the exclusion amounts calculated separately for each income category.

### Exclusion limitation

The foreign source income excluded from a C corporation's net income is limited to the amount of foreign income otherwise included in the C corporation's net income. The foreign source income excluded from the total receipts in the denominator of the C corporation's fraction is limited to the amount of foreign income otherwise included in the C corporation's total receipts. Both limitations apply separately with respect to each income category for which separate calculation of the exclusion is required.

## Formula for calculating exclusion amount

For C corporations that claim a foreign tax credit, the foreign source income exclusion is calculated using the following formula, with the terms defined below and subject to the limitation described earlier in this publication. As discussed earlier in this publication, the formula is applied separately to compute the exclusion for each income category for which the foreign tax credit is determined separately. The total foreign source income exclusion is the sum of the exclusion amounts calculated separately for each income category.

$$Sep.Inc.Cat.Excl. = FSI\ net\ \S\ 78 \times \frac{FTC}{Fed.Rate \times FSI}$$

*"Sep. Inc. Cat. Excl."* means the amount of foreign source income in the separate income category to be excluded.

*"FSI net § 78"* means foreign source income in the separate income category, minus the amount treated as a dividend received by the C corporation with respect to that separate category income pursuant to section 78 of the Internal Revenue Code and subtracted from federal taxable income pursuant to section 39-22-304(3)(j), C.R.S.

*"FTC"* means the foreign tax credit allowed with respect to the separate income category determined subject to the limitations imposed by section 904(a) of the Internal Revenue Code and any other sections of the Internal Revenue Code imposing limitations on the amount of the of the foreign tax credit allowed. Only the following foreign income taxes are considered in this calculation:

- Income taxes paid or accrued to foreign countries and United States possessions during the tax year by the C corporation pursuant to section 901 of the Internal Revenue Code;
- Income taxes deemed paid pursuant to section 960 of the Internal Revenue Code for the tax year; and
- Income taxes carried over or carried back to the tax year pursuant to section 904(c) of the Internal Revenue Code.

*"Fed. Rate"* means the effective federal corporate income tax rate determined by dividing the C corporation's federal corporate income tax calculated in accordance with section 11(a) and (b) of the Internal Revenue Code, without regard to any credits against tax allowed or claimed by the C corporation, by the C corporation's federal taxable income as determined pursuant to section 63 of the Internal Revenue Code. For tax years beginning after December 31, 2017, the effective corporate income tax rate is 21%.

*"FSI"* means foreign source income in the separate income category without first deducting from such foreign source income any amount subtracted from federal taxable income pursuant to section 39-22-304(3)(j), C.R.S.

### *Section 303(8)(b) included entities*

In applying the preceding formula to determine the foreign source income exclusion on a combined or combined-consolidated Colorado return that includes a foreign entity pursuant to section 39-22-303(8)(b), C.R.S., (a “section 303(8)(b) included entity”), the following rules apply:

1) The federal taxable income of the section 303(8)(b) included entity is determined in accordance with sections 39-22-304(1)(b) and 39-22-303(10)(c), C.R.S. Please see Department publication *Income Tax Topics: Section 303(8)(b) Entities* for additional information.

2) The foreign taxes paid or accrued by the section 303(8)(b) included entity are determined under the applicable provision of the Internal Revenue Code as if the section 303(8)(b) included entity was a domestic corporation, as defined in section 7701(a)(3) and (4) of the Internal Revenue Code.

3) Any amount of Subpart F income or global intangible low-taxed income (GILTI) that is subtracted from federal taxable income on the combined or combined-consolidated return pursuant to section 39-22-304(3)(q), C.R.S., is disregarded in the determination of both foreign source income and federal taxable income.

4) Any foreign tax deemed paid pursuant to section 960 of the Internal Revenue Code by a U.S. shareholder of a section 303(8)(b) included entity, on any amount of Subpart F income or global intangible low-taxed income (GILTI) included in federal taxable income and subtracted pursuant to 39-22-304(3)(q), C.R.S., is disregarded.

For additional information about section 303(8)(b) included entities, please see Department publication *Income Tax Topics: Section 303(8)(b) Entities*, available online at *Tax.Colorado.gov/corporate-income-tax-guidance-publications*.

## Correcting exclusion calculations

If the amount of foreign source income excluded on the C corporation’s Colorado return was not properly calculated, as the result of an error in the original calculation, adjustments made in the accounting of the C corporation’s foreign source income, or for any other reason, the C corporation must file an *Amended Colorado C Corporation Income Tax Return* (DR 0112X) to correct the amount of the exclusion.

### *Redeterminations under IRC section 905(c)*

If a redetermination of a C corporation’s federal tax is made or required pursuant to section 905(c) of the Internal Revenue Code, the C corporation must file an *Amended Colorado C Corporation Income Tax Return* (DR 0112X) to report any change to the amount of the foreign source income exclusion resulting from any adjustment to the amount of the federal foreign tax credit.

Any additional Colorado income tax due as the direct result of a redetermination of federal tax pursuant to IRC section 905(c) and a corresponding adjustment to the C corporation’s foreign source income exclusion may be assessed and collected at any time.

In general, a C corporation may file an amended return up to 11 years after the original return due date to claim a credit or refund for any overpayment of Colorado income tax resulting directly from a redetermination of federal tax pursuant to section 905(c) of the Internal Revenue Code and a corresponding adjustment to the C corporation’s foreign source income exclusion. For additional information regarding the statute of limitations for claiming a refund, please see section 39-21-108(1), C.R.S.; *1 CCR 201-2*, Rule 39-22-303(10); and section 6511(d)(3) of the Internal Revenue Code.

The extended statute of limitations for refunds and assessments apply only to any increase or decrease in Colorado income tax that results directly from a redetermination of federal tax pursuant to section 905(c) of the Internal Revenue Code and a corresponding adjustment to the C corporation’s foreign source income exclusion.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to the foreign source income exclusion. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-22-303, C.R.S. Dividends in a combined report – foreign source income – affiliated groups – definitions.
- Rule 39-22-303(10). Foreign source income.
- 26 U.S.C. § 862. Income from sources without the United States.

### Forms and guidance

- *Tax.Colorado.gov/business-income-tax-forms*
- *Colorado C Corporation Income Tax Return* (DR 0112)
- *Apportionment Schedule* (Schedule RF)

A Colorado net operating loss deduction is allowed in the same manner as the federal net operating loss deduction, except as otherwise provided in Colorado law. The deduction is subject to several limitations. This *Part 8* discusses calculation, carryforward, and deduction of Colorado net operating losses.

Colorado net operating losses are determined with respect to only those C corporations included in the Colorado return. In general, the term C corporation is used in this *Part 8* to include all members of a group of C corporations filing a combined, consolidated, or combined-consolidated Colorado return.

## Calculating a Colorado net operating loss

A C corporation's Colorado net operating loss is the portion of its federal net operating loss that is allocated to Colorado in the tax year that the net operating loss is sustained. If a C corporation does not have a federal net operating loss for a tax year, then it does not have a Colorado net operating loss for that tax year.

The portion of the federal net operating loss that is allocated to Colorado is determined by modifying the federal net operating loss by any applicable Colorado additions and subtractions and then apportioning and allocating the resulting modified federal net operating loss, if any, as prescribed by state statute and rule. In general, for a C corporation that has a federal net operating loss, its Colorado net operating loss is any negative amount of "Colorado taxable income before net operating loss deduction" properly determined and reported on its *Colorado C Corporation Income Tax Return* (DR 0112).

### Combined, consolidated & separate returns

In some cases, a group of C corporations included in a federal consolidated return will be different than the group of C corporations included in a combined, consolidated, combined-consolidated, or separate Colorado return. A Colorado net operating loss is determined with respect to only those C corporations included in the Colorado return.

In the case of a combined, consolidated, or combined-consolidated Colorado return, the Colorado net operating loss is based upon the federal net operating loss determined with respect to only the group of C corporations included in the Colorado return. If a group of C corporations filing a combined, consolidated, or combined-consolidated Colorado return does not collectively have a federal net operating loss for a tax year, as determined with respect to only that group of C corporations, the group does not have a Colorado net operating loss for that tax year.

In the case of a separate Colorado return filed by a single C corporation, the Colorado net operating loss is based upon the federal net operating loss determined with respect to only that C corporation. If a C corporation filing a separate Colorado return does not have a federal net operating loss for a tax year, as determined with respect to only that C corporation, it does not have a Colorado net operating loss for that year.

## Colorado modifications

In determining a C corporation's Colorado net operating loss, its federal net operating loss, represented as a negative amount, is modified by any applicable Colorado additions and subtractions required in determining the C corporation's Colorado income tax for that tax year. Modifications are made on the *Colorado C Corporation Income Tax Return* (DR 0112) and include the following:

- any addition required by section 39-22-304(2), C.R.S.;
- any subtraction allowed by section 39-22-304(3), C.R.S.; and
- any exclusion of foreign source income pursuant to section 39-22-303(10), C.R.S.

Modifications are determined in accordance with the law in effect for the tax year in which the loss was sustained.

## Allocation and apportionment

In determining a C corporation's Colorado net operating loss, its modified federal net operating loss is allocated and apportioned to Colorado in three steps, all of which are performed on the C corporation's *Apportionment Schedule* (Schedule RF).

1) First, unless the C corporation has made an election to treat all income as apportionable income, any nonapportionable income included in a C corporation's federal taxable income is subtracted from its modified federal net operating loss.

2) Next, the C corporation's apportionable income is multiplied by the receipts factor calculated on its *Apportionment Schedule* (Schedule RF).

3) Finally, any nonapportionable income allocated to Colorado is added to the income apportioned to Colorado in the preceding step.

The preceding allocation and apportionment steps apply for tax years commencing on or after January 1, 2019. For prior tax years, a C corporation's modified federal net operating loss is allocated and apportioned in accordance with the law in effect for the tax year in which the loss was sustained.

### *Nonapportionable income*

Nonapportionable income subtracted in Step 1 and added in Step 3 is the net of the nonapportionable income and any federal expenses, losses, and other deductions and any Colorado modifications that are properly apportioned or allocated to such nonapportionable income.

***Example 1.*** A taxpayer has $110,000 of apportionable income, $90,000 of nonapportionable income, $250,000 of federal deductions, and no Colorado modifications. The result is a modified federal net operating loss of $50,000. To determine the modified federal net operating loss after deduction of nonapportionable income, the $90,000 of nonapportionable income is subtracted from negative $50,000. The result is negative $140,000.

***Example 2.*** A taxpayer has $95,000 of apportionable income, a $30,000 loss that is nonapportionable income, $150,000 of federal deductions, and no Colorado modifications. This results in a modified federal net operating loss of $85,000. To determine the modified federal net operating loss after deduction of nonapportionable income, the negative $30,000 of nonapportionable loss is subtracted from negative $85,000. The result is negative $55,000.

## Colorado net operating loss limitation

A C corporation's Colorado net operating loss is the portion of its federal net operating loss that is allocated to Colorado. Consequently, a C corporation's Colorado net operating loss is limited to the amount of its federal net operating loss.

If a group of C corporations filing a combined, consolidated, or combined-consolidated Colorado return does not collectively have a federal net operating loss for a tax year, as determined with respect to only that group of C corporations, the group does not have a Colorado net operating loss for that tax year. If a C corporation filing a separate Colorado return does not have a federal net operating loss for a tax year, as determined with respect to only that C corporation, it does not have a Colorado net operating loss for that year.

## Net operating loss carryforward

Colorado net operating losses may be carried forward to the next tax year. The entire amount of any Colorado net operating loss is first carried forward to the tax year immediately following the tax year in which the loss was sustained. Colorado net operating losses may not be carried back to any prior year.

If a C corporation has available for deduction Colorado net operating losses originating in multiple tax years, the C corporation must first deduct the loss arising from the earliest tax year. If all or any part of an available net operating loss may not be deducted because of any applicable limitations (discussed later in this publication), the part that may not be deducted may be carried forward to the next tax year. However, a net operating loss may not be carried forward beyond the following time periods prescribed law.

### Maximum Carryforward Period

| *Year of the loss* | *Carryforward period* |
|---|---|
| Tax years beginning before January 1, 2018 | 20 years |
| Tax years beginning after December 31, 2017, but before January 1, 2021 | Unlimited |
| Tax years beginning on or after January 1, 2021 | 20 years |

## Colorado net operating loss deductions

The deduction a C corporation may claim for a Colorado net operating loss carryforward is limited in multiple ways. First, the Colorado net operating loss deduction a C corporation may claim for any given tax year is limited to amount of the C corporation's Colorado taxable income for the tax year. A C corporation's Colorado taxable income is its federal taxable income modified, apportioned, and allocated pursuant to Colorado law.

Additionally, the Colorado net operating loss deduction a C corporation may claim is subject to the same limitations that apply with respect to federal net operating loss deductions. These limitations include, but are not limited to, the following limitations, each of which is discussed later in this publication:

- 80% limitation;
- section 382 limitation;
- section 860E limitation for REMICs; and
- separate return limitation year (SRLY) limitation.

## 80% limitation

Any deduction claimed for a Colorado net operating loss arising in a tax year beginning after December 31, 2017, is limited to 80% of the C corporation's Colorado taxable income after the deduction of any Colorado net operating losses arising in tax years beginning prior to January 1, 2018. A C corporation's Colorado taxable income is its federal taxable income modified, apportioned, and allocated pursuant to Colorado law. The *Colorado C Corporation Income Tax Return* (DR 0112) for tax years 2019 and later has dedicated lines specifically to impose the 80% limitation.

## Section 382 limitation

Section 382 of the Internal Revenue Code limits the use of net operating loss deductions by corporations after a change in ownership. Section 382 provides that, after an ownership change, the amount of a loss corporation's taxable income for any post-change year that may be offset by pre-change losses may not exceed the section 382 limitation for that year. The section 382 limitation generally equals the fair market value of the old loss corporation multiplied by the long-term tax-exempt rate. A loss corporation is any corporation that has a net operating loss, a net operating loss carryforward, or a net unrealized built-in loss for the taxable year in which the ownership change occurs. An ownership change is a greater than 50-percentage-point increase in ownership by 5-percent shareholders during the testing period, which is generally three years. Congress intended the section 382 limitation to apply when shareholders that did not bear the economic burden of the losses acquire a controlling interest in the loss corporation.

For its application to a Colorado net operating loss deduction, the section 382 limitation determined for a federal net operating loss must be apportioned to Colorado using the Colorado apportionment fraction for the old loss corporation for the last full tax year prior to the change in ownership. If the old loss corporation's Colorado apportionment fraction for the last full tax year prior to the change in ownership does not fairly represent the extent of the old loss corporation's business activity in Colorado, the new loss corporation may petition for, or the executive director may require, an alternative method for apportioning the limitation prescribed by section 382.

## Section 860E limitation for REMICs

Pursuant to section 860E of the Internal Revenue Code, the excess inclusion of any holder of a residual interest in a real estate mortgage investment conduit (REMIC) may not be offset by a Colorado net operating loss. In determining the portion, if any, of a C corporation's Colorado taxable income that may be offset by a Colorado net operating loss, a C corporation's federal taxable income must first be reduced, prior to modification, allocation, and apportionment, by any excess inclusion determined pursuant to section 860E of the Internal Revenue Code for the tax year.

### SRLY limitation

Treasury Regulation 26 CFR § 1.1502-21 prescribes limitations on net operating loss carryforwards from separate return limitation years ("SRLY"). The SRLY rules limit a consolidated group's ability to offset separate return year losses of one member against the income of other members. SRLY losses are usable by a group only to the extent of the positive income contribution of the SRLY member. The SRLY regulations replicate, to the extent possible, separate entity treatment of the SRLY member.

The applicability of the SRLY limitation is determined with respect to the filing of the corporation's federal income tax return, not its Colorado income tax return. If the SRLY limitation applies to a C corporation's federal net operating loss, it also applies to the C corporation's Colorado net operating loss from the same tax year.

Please see *1 CCR 201-2*, Rule 39-22-504-2(3)(v) for guidance regarding the application of the SRLY limitation to Colorado net operating losses.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to Colorado net operating losses for C corporations. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-22-504, C.R.S. Net operating losses.
- Rule 39-22-504-2. Colorado Net Operating Losses for C Corporations.
- 26 U.S.C. § 172. Net operating loss deduction.
- 26 CFR § 1.1502-1. Definitions.
- 26 CFR § 1.1502-11. Consolidated taxable income.
- 26 CFR § 1.1502-21. Net operating losses.

### Forms and guidance

- *Colorado C Corporation Income Tax Return* (DR 0112)
- *Apportionment Schedule* (Schedule RF)

In general, a C corporation must remit Colorado estimated tax payments if its net Colorado tax liability for the tax year exceeds $5,000. This *Part 9* discusses the calculation of required quarterly estimated payments, the remittance of estimated payments, and the estimated tax penalty imposed for failure to remit required estimated payments.

## Calculating required quarterly payments

The required quarterly estimated tax payments a C corporation must make depend on various factors. The general rules for calculating required quarterly estimated payment appear below. Special rules applicable to large corporations, the annualized income installment method, and short tax years are discussed in the sections that follow.

C corporations required to make estimated payments typically must make four quarterly estimated payments, each of which is 25% of the total required annual payment. The total required annual payment is the lesser of either 70% of the C corporation's net tax liability for the current year or, if the C corporation meets certain qualifications, 100% of the C corporation's net tax liability for the preceding year. A C corporation can base its estimated payments on its preceding year's liability only if all of the following conditions are met:

1) the C corporation's preceding tax year was 12-months;

2) the C corporation filed a Colorado return for the preceding tax year; and

3) the C corporation does not meet the IRS definition of a "large corporation" for estimated tax purposes.

### Net Colorado tax liability

For the purpose of calculating required estimated tax payments, a C corporation's net Colorado tax liability is the total tax determined on the C corporation's return or by any subsequent amendment or assessment, minus any credits allowed. For this calculation, total tax includes Colorado income tax and any recapture of prior year credits. The credits subtracted in calculating net Colorado tax liability consist of all refundable and nonrefundable credits allowed to the taxpayer, but not any payments remitted by the taxpayer.

### Large corporations

In general, a C corporation is a "large corporation" if it (or any predecessor corporation) had a federal taxable income of $1,000,000 of more for any of the three immediately preceding tax years.

A large corporation must base its estimated payments on its tax liability for the current year. A large corporation can initially base its first quarter estimated tax payment on 25% of the previous year's tax liability, but must subsequently recalculate the required amount based upon its current year liability and include with its second quarter payment any additional amount due for the first quarter. The large corporation must calculate the required estimated payments for the second, third, and fourth quarters based upon the current year net tax liability.

### Annualized income installment method

The annualized income installment method allows taxpayers who do not receive income evenly throughout the year to calculate the amount of each quarterly estimated payment separately, based upon the income actually received in the months preceding the payment due date. Taxpayers may use the annualized income installment method only if they also use the annualized income installment method to compute their federal estimated tax payments.

C corporations can use the Annualized Installment Method Schedule in Part 4 of Colorado Form 205 to calculate their required quarterly estimated payments using the annualized income installment method. In determining each required quarterly payment amount, the taxpayer must calculate their Colorado taxable income for the annualization period, which runs from the first day of the tax year through the end of the month preceding the due date of the payment. Generally, a taxpayer must first complete the federal annualized installment schedule (Part II of Schedule A of either Form 1120-W or Form 2220) in order to calculate their Colorado taxable income for each annualization period. Taxpayers with business activity both inside and outside Colorado must calculate apportionment fractions for each annualization period and may not use estimated apportionment fractions or apportionment fractions from a prior year. Taxpayers must retain records detailing the calculation of their quarterly estimated payments and provide those records to the Department upon request.

## Short tax years

In the case of a short tax year (a tax year of less than 12 months), estimated payments are due on the 15th day of the fourth, sixth, and ninth months of the year, if the year is of sufficient length to include such months, and the 15th day of the final month of the tax year. Consequently, taxpayer filing for a short tax year may not be required to remit a full four estimated payments, but rather only one, two, or three, depending on the length of the short tax year. The amount of each required payment is an equal share of the total required annual payment. For example, a taxpayer with an eight-month tax year must remit three estimated payments, each equal to 33% of the total required annual payment, by the 15th day of the fourth, sixth, and eighth months of the short tax year. See the following table for details regarding the amounts and due dates for estimated payments for short tax years.

### Payment amounts and due dates for short tax years

| | *Tax years consisting of 4 months or less* | *Tax years consisting of 5 or 6 months* | *Tax years consisting of 7, 8, or 9 months* | *Tax years consisting of 10 or 11 months* |
|---|---|---|---|---|
| No. of required estimated payments | 1 | 2 | 3 | 4 |
| Required amount of each payment | 100% of total required annual payment | 50% of total required annual payment | 33% of total required annual payment | 25% of total required annual payment |
| Due date of 1st estimated payment | 15th day of final month of tax year | 15th day of fourth month of tax year | 15th day of fourth month of tax year | 15th day of fourth month of tax year |
| Due date of 2nd estimated payment | N/A | 15th day of final month of tax year | 15th day of sixth month of tax year | 15th day of sixth month of tax year |
| Due date of 3rd estimated payment | N/A | N/A | 15th day of final month of tax year | 15th day of ninth month of tax year |
| Due date of 4th estimated payment | N/A | N/A | N/A | 15th day of final month of tax year |

## Remitting estimated payments

Taxpayers must remit any required quarterly estimated payments by the applicable due dates. Estimated tax payments are due on 15th day of the fourth, sixth, ninth, and twelfth months of the tax year. If the due date falls on a Saturday, Sunday, or legal holiday, the payment is due on the next business day. Please see the table below for due dates for both calendar year filers and fiscal year filers. If a required payment is not remitted or is underpaid, the Department will first credit any subsequent payments to resolve the underpayment, regardless of when the payment is received.

Taxpayers may remit estimated payments through Revenue Online or via EFT. Taxpayers remitting estimated payments by check must include a *Corporate Estimated Income Tax Payment Form* (DR 0112EP) with their payment to ensure proper crediting of their account. Forms and instructions are available online at *Tax.Colorado.gov/business-income-tax-forms.*

For estimated tax purposes, all C corporations included in a combined, consolidated, or combined-consolidated return are considered a single taxpayer. Estimated payments should be remitted using the same parent account number under which they will ultimately be claimed. If a taxpayer remits payments using a different account number, such as the account number for a subsidiary company, the taxpayer must notify the Department in writing prior to the filing of the tax return upon which the payment will be claimed.

### Due dates for quarterly estimated payments

| *Quarter* | *Calendar year filers* | *Fiscal year filers* |
|---|---|---|
| 1st | April 15th | 15th day of fourth month |
| 2nd | June 15th | 15th day of sixth month |
| 3rd | September 15th | 15th day of ninth month |
| 4th | December 15th | 15th day of twelfth month |

## Estimated tax penalty

If a C corporation fails to remit required estimated payments or underpays its required estimated tax, the C corporation will owe an estimated tax penalty. The penalty is actually an assessment of interest, calculated on the unpaid or underpaid amount, from the due date of the payment until the date of payment is made or the date the annual income tax return is due, whichever is later. Annual interest rates may vary from year to year and are listed in the table below. C corporations can calculate the estimated tax penalty they owe using Form 205.

### Annual Interest Rates

| *Calendar year* | *Interest rate* |
|---|---|
| 2019 | 8% |
| 2020 | 9% |
| 2021 | 6% |
| 2022 | 6% |
| 2023 | 8% |
| 2024 | 11% |

No estimated tax penalty is due if a C corporation's net tax liability for the tax year is less than $5,000.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to estimated payments for C corporations. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-22-606, C.R.S. Failure by corporation to pay estimate income tax.
- Rule 39-22-606. Estimated corporate income tax.
- 26 U.S.C. § 6655. Failure by corporation to pay estimate income tax.
- 26 CFR § 301.6655-1. Failure by corporation to pay estimate income tax.

### Forms and guidance

- *Tax.Colorado.gov/business-income-tax-estimated-payments*
- *Tax.Colorado.gov/business-income-tax-forms*
- *Colorado.gov/RevenueOnline*
- *Corporate Estimated Tax Payment Form* (DR 0112EP)
- *Computation of Penalty Due Based on Underpayment of Colorado Corporate Estimated Tax* (DR 0205)

Colorado law imposes both filing and recordkeeping requirements on C corporations. Every C corporation that is subject to Colorado income tax must file an annual income tax return and make timely payment of any tax due. Additionally, an amended return must be filed to correct any errors in, or report any changes to, the original return. Finally, C corporations are required to retain any and all records necessary in order to determine the correct amount of tax they owe.

This *Part 10* outlines filing and recordkeeping requirements applicable to C corporations.

## Filing

In general, C corporations are required to file original income tax returns annually, as well as amended returns to correct any errors in, or report any changes to, their original returns. Returns may be filed electronically either directly through the Department's *RevenueOnline* filing system or through the IRS's Modernized e-File (MeF) Program. C corporations may also elect to file a paper, rather than electronic return. Please visit *Tax.Colorado.gov* and *IRS.gov* for additional information about filing options.

### Filing periods

A C corporation's taxable year for Colorado income tax purposes is the same as the C corporation's taxable year for federal income tax purposes, regardless of whether such taxable year is a calendar year, fiscal year, or short year. If a C corporation's taxable year is changed for federal income tax purposes, its taxable year for Colorado income tax purposes will be similarly changed.

In the application of any provision of Colorado income tax law to a C corporation whose tax year is a 52-53 week tax year, the tax year is deemed to have commenced on the first day of the calendar month beginning nearest to the first day of the 52-53 week year.

See *IRS Publication 538, Accounting Periods and Methods* for additional information regarding filing periods.

### Original returns

Every C corporation that is subject to Colorado income taxation is required to file a *Colorado C Corporation Income Tax Return* (DR 0112). The return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or other officer duly authorized to act on the C corporation's behalf. In any case where a receiver, trustee in bankruptcy, or assignee is operating the property or business of a C corporation, such receiver, trustee, or assignee must file a return for the C corporation.

Colorado C Corporation Income Tax Returns are due on the 15th day of the fourth month following the close of the tax year. For calendar year filers, returns are due April 15th of the next year. All C corporations are allowed an automatic six-month extension for filing of their income tax returns.

If either the regular or extended due date falls on a Saturday, Sunday, or legal holiday, the due date will be extended to the next business day.

If a C corporation fails or refuses to file any required return, the executive director of the Department may file a return on the C corporation's behalf with such information as may be available. The assessment of tax based on the executive director's filing is as good and sufficient as an assessment based on a return filed by a C corporation.

## Amended returns

A C corporation is required to file a *Colorado Amended C corporation Income Tax Return* (DR 0112X) to report any change made to the federal taxable income originally reported by the C corporation. An amended Colorado return is required whether the change resulted from the filing of an amended federal income tax return or from any final determination made by the Internal Revenue Service (IRS).

A final determination of federal income tax necessitating the filing of an amended Colorado return is the first of the following to occur:

- the C corporation's execution of a *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment* (IRS Form 870) with acceptance by the IRS;
- the acceptance by the IRS of an *Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment* (IRS Form 870) executed by the C corporation;
- the payment of any additional tax by the C corporation; or
- any judgment becoming final, whether by stipulation or otherwise, in any judicial proceeding affecting such change in reported federal taxable income.

The C corporation must file the amended Colorado return within 30 days of the filing of the amended federal return or the final determination, whichever applies. If a C corporation fails to file an amended return within the prescribed 30-day period, the period provided for assessment will be extended. Please see *Part 11* for additional information regarding the period provided for assessment.

## Listed and reportable transactions

Any C corporation that files or is required to file a Colorado income tax return must disclose to the Department any listed or reportable transactions that may result in a Colorado tax benefit. 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. Listed transactions, reportable transactions, and Colorado tax benefits, are defined in section 39-22-652, C.R.S., and *1 CCR 201-2*, Rule 39-22-652.

The disclosure requirement applies regardless of whether the C corporation files or is required to file a Colorado income tax return separately or as a member of an affiliated group included in a combined, consolidated or combined consolidated return.

A C corporation that is required to disclose a listed or reportable transaction must submit such disclosure along with the C corporation's Colorado income tax return and check the appropriate box on the return to indicate the disclosure is being made. In the case of listed or reportable transaction the C corporation is required to report to the Internal Revenue Service, the C corporation must submit with its Colorado income tax return a complete copy of the entire federal Form 8886, along with any amendments thereto. In the case of listed or reportable transaction the C corporation is not required to report to the Internal Revenue Service, the C corporation must submit with its Colorado income tax return a complete copy of Form DR 1831, *Taxpayer Disclosure Statement for Colorado Listed Transaction*.

A C corporation that fails to disclose a reportable transaction is subject to a penalty of up to $15,000. A C corporation that fails to disclose a listed transaction is subject to a penalty of up to $50,000. These penalties are in addition to any other penalties the C corporation incurs.

## Penalties and interest

Full payment of Colorado income tax for C corporations is due on the 15th day of the fourth month following the close of the tax year. For calendar year filers, full payment of tax is due April 15th of the next year. Interest is due on any tax not paid by the applicable due date, along with penalty, unless certain conditions, described below, are met.

Interest accrues on any late payment of tax from the original due date of the tax, not including any extension, to the date the tax is paid. An extension of the time to file a return does not similarly extend the time to pay the tax. Interest accrues from the original due date until the any tax balance reported on the return is paid. Interest also accrues on any additional tax assessed as the result or an audit or the filing of an amended return.

The rate of interest accrual depends on the calendar year(s) over which the deficiency continues. Additionally, a discounted rate is allowed if:

- the C corporation pays the tax in full prior to the issuance of a notice of deficiency;
- the C corporation pays the tax in full within 30 days of the issuance of a notice of deficiency; or
- within 30 days of the issuance of a notice of deficiency, the C corporation enters into an agreement to pay the tax in monthly installments.

The discounted and non-discounted, regular interest rates for recent years are listed in the following table.

### Annual Interest Rates

| *Calendar year* | *Discounted rate* | *Regular rate* |
|---|---|---|
| 2019 | 5% | 8% |
| 2020 | 6% | 9% |
| 2021 | 3% | 6% |
| 2022 | 3% | 6% |
| 2023 | 5% | 8% |
| 2024 | 8% | 11% |

If a C corporation fails to pay any tax by the applicable due date, the C corporation will owe a late payment penalty. The late payment penalty is the greater of five dollars or 5% of the unpaid tax, plus an additional 0.5% for each month the tax remains unpaid, not to exceed a total of 12%. However, the penalty is waived if all of the following conditions are met:

- the C corporation has paid at least 90% of the tax due by the original due date, not including any extensions;
- the C corporation files a return by the extended due date; and
- the C corporation pays any tax balance reported on the return at the time of filing.

In addition to the late payment penalty, statute authorizes a number of other penalties for:

- failure to pay a notice and demand for payment (collection penalty);
- fraudulent or willful failure to file;
- filing a fraudulent, frivolous, or willfully false return;
- fraudulent failure to pay tax when due or willful attempt to evade tax;
- negligence or disregard for laws, rules, or regulations, without intent to defraud; and
- a tax preparer's penalty for willful or reckless disregard for applicable laws or rules.

## Recordkeeping requirements

Every C corporation that is subject to Colorado income tax or otherwise required to file a return must keep and preserve such books, accounts, and records as may be necessary to determine the correct amount of tax. Such books, accounts, and records must be kept and preserved for a period of four years following the due date of the return or the payment of the tax. All such books, accounts, and records shall be open for examination by the Department at any time.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to filing and recordkeeping requirements. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Forms and guidance

- *Tax.Colorado.gov*
- *Tax.Colorado.gov/business-income-tax-forms*
- *Colorado.gov/RevenueOnline*
- *Colorado C Corporation Income Tax Return* (DR 0112)
- *Amended Colorado C Corporation Income Tax Return* (DR 0112X)
- *Taxpayer Disclosure Statement for Colorado Listed Transaction* (DR 1831)
- *IRS Publication 538, Accounting Periods and Methods*

### Statutes and regulations

- § 39-21-109, C.R.S. Interest on underpayment, non-payment, or extensions of time for payment of tax.
- § 39-21-110.5, C.R.S. Rate of interest to be fixed.
- § 39-21-113, C.R.S. Reports and returns - rule.
- § 39-21-119, C.R.S. Filing with executive director – when deemed to have been made.
- § 39-22-111, C.R.S. Accounting periods and methods.
- § 39-22-306, C.R.S. Accounting periods and methods.
- § 39-22-601, C.R.S. Returns.
- § 39-22-608, C.R.S. Form, place, and date of filing return – extension – electronic filing.
- § 39-22-609, C.R.S. Payment of tax - applicable when.
- § 39-22-621, C.R.S. Interest and penalties.
- § 39-22-626, C.R.S. Applicability of amendments to this article to income tax years.
- § 39-22-652, C.R.S. Definitions.
- § 39-22-653, C.R.S. Taxpayer disclosure of reportable or listed transactions.
- § 39-22-655, C.R.S. Penalty for failure to disclose a reportable or listed transaction.
- Rule 39-22-608. Due date for filing income tax returns and payments.
- Rule 39-22-621(2)(j).
- Rule 39-22-652. Definitions.
- Rule 39-22-653. Taxpayer disclosure of reportable or listed transactions.

State law prescribes the period of time for a C corporation to claim a refund for an overpayment of tax or for the Department to issue an assessment for an underpayment of tax. However, statute also provides for the extension of the period for refund or assessment under various circumstances.

## Refund claims

A C corporation must file any claim for refund for any year not later than the period provided for filing a claim for refund of federal income tax plus one year. The period provided for filing a claim for refund of federal income tax is affected by various factors, including the date the original return is filed, the date any payment of tax was made, any agreement for extension between the taxpayer and the taxing authority, and a number of other factors not discussed in this publication. The period for filing a claim for refund of Colorado income tax is similarly affected by these factors.

In general, the period provided for claiming a refund of federal income tax is three years. Consequently, the period provided for claiming a refund of Colorado income tax is generally four years. The application of this time period in various circumstances, as well as other factors that may affect the period provided for claiming a refund of Colorado income tax, are discussed in the following sections.

A claim for refund of Colorado corporate income tax is made with the filing of either an original *Colorado C Corporation Income Tax Return* (DR 0112) or an *Amended Colorado C Corporation Income Tax Return* (DR 0112X).

Any request made by a C corporation to apply an overpayment toward the estimated tax due for the following tax year is a claim for refund subject to the limitations discussed in this *Part 11*. If the period for claiming a refund has expired and no refund may be claimed, the crediting of any overpayment toward the following year's estimated tax is similarly prohibited.

### Refunds claimed with original returns

A C corporation may file an original return to claim a refund any time within four years of the due date of the return, not including any extension of the time to file. The claim may include any estimated payments made prior to the due date of the return and any other allowable credits, to the extent either exceed the tax due. No refund is allowed to any taxpayer who fails to file an original income tax return within four years of the due date of the return, not including any extension of the time to file.

### Refunds claimed with amended returns

A C corporation generally must file an amended return to claim a refund within four years of the date the original return was filed. If the C corporation did not file its original return timely (by the original due date, including extensions), the refund claim allowable with the amended return is generally limited to payments made within the four years immediately preceding the filing of the amended return. In determining the timeliness of a refund claim, any estimated payments remitted for the tax year are deemed to have been paid on the due date of the original return, not including any extensions.

Any refund claim made with an amended return filed more than four years after the C corporation's original return is limited to payments made in the three years immediately preceding the filing of the amended return.

*Example #1*

A C corporation files an original return late, on June 20, 2018 for tax year 2015. The return reports $12,000 of tax, claims $10,000 in estimated payments, and is accompanied by a payment of $2,000 for the remaining tax balance. The C corporation files an amended return on August 15, 2020 reporting a $6,000 decrease in tax and claiming a refund for the $6,000 reduction in tax.

Since the amended return was filed within four years of the original return, but the original return was not filed timely, the refund that may be claimed with the amended return is limited to payments made in the four years preceding the filing of the amended return. The estimated payments were made more than four years prior to the filing of the amended return. Therefore, no refund is allowed for any part of the estimated payments and the refund allowed to the C corporation is limited to the $2,000 of tax paid with the original return within the four years preceding the filing of the amended return.

*Example #2*

A C corporation files an original return under extension, on October 15, 2016 for tax year 2015. The return reports $10,000 of tax and claims $6,000 in estimated payments. The C corporation does not remit payment of the remaining $4,000 tax balance until May 10, 2019. The C corporation files an amended return November 20, 2020 reporting a $5,000 decrease in tax and claiming a refund for the $5,000 reduction in tax.

Since the amended return was not filed within four years of the original return, the refund that may be claimed with the amended return is limited to payments made in the three years preceding the filing of the amended return. The estimated payments were made more than three years prior to the filing of the amended return. Therefore, no refund is allowed for any part of the estimated payments and the refund allowed to the C corporation is limited to the $4,000 of tax paid within the three years preceding the filing of the amended return.

## Extensions of the period for claiming refunds

If a C corporation and the Internal Revenue Service enter into an agreement to extend the period provided for claiming a refund of federal income tax, the period for claiming a refund of Colorado income tax is extended by the same amount of time. The C corporation may file a claim for refund of Colorado income tax at any time within one year following the expiration of the period agreed upon by the C corporation and the IRS for the claiming of a refund of federal income tax.

The period provided for claiming a refund for Colorado income tax may also be extended by agreement between the C corporation and the Colorado Department of Revenue. Any agreement to extend the period provided for assessment will extend the period provided for filing a claim for refund by the same amount of time. Unless the C corporation fails to file a return or files a false or fraudulent return with intent to evade tax, the time allowed for claiming a refund for any tax year will not expire prior to the expiration of the time allowed for the assessment of any deficiency for the same tax year.

## Refund rejections

In the event that Department has, upon review of any return, rejected either in whole or in part a claim for refund made therewith, the Department will mail to the taxpayer a notice of refund rejection. The taxpayer may submit a protest or request a hearing with respect to the rejected refund claim. Please see the section titled *Protests and appeals* for additional information.

## Assessments

An assessment may be made either by the filing of a return reporting tax due or by the mailing or issuance by the Department of a notice and demand for payment for any additional tax due.

In general, any assessment of tax, penalties, and interest must be made within one year after the expiration of the time provided for assessing a deficiency in federal income tax. The period provided for the assessment of federal income tax is generally three years from the time of filing of the taxpayer's original return. Consequently, the period provided for assessment of Colorado income tax is generally four years from the filing of the taxpayer's original return. If the original return was filed prior to the due date, not including any extensions, the original return is considered to be filed on the due date.

In the case of the filing of a false or fraudulent return with intent to evade tax, the tax due may be assessed and collected at any time.

### Assessments based on a return

The filing of a return by a C corporation constitutes an assessment with respect to the tax, penalty, and interest reported on the return. If a C corporation has not previously filed an original return for the tax period, the tax due may be assessed at any time the C corporation files a return. If a C corporation fails or refuses to file any required return, the Department may, at any time, file a return on the C corporation's behalf with such information as may be available, and assess the resulting tax. The assessment based on the executive director's filing is as good and sufficient as an assessment based on a return filed by a C corporation.

In general, an amended return that reports and assesses any additional tax due must be filed within four years of the filing of the original return.

### Assessments resulting from adjustments

At any time within four years of the filing of an original return, whether filed timely, under extension, or otherwise, the Department may examine the return, determine the correct amount of tax, and issue a notice of deficiency for any additional tax due. Following the resolution of any protest and request for hearing or, if the C corporation files no protest or request within the prescribed time, the Department will issue a notice of final determination for any additional tax due.

The period allowed for the Department to assess additional tax may be extended if there is any change made to the C corporation's federal taxable income. A C corporation is required, as described in *Part 11* of this publication, to file an amended return to report any change to the C corporation's federal taxable income. The Department may assess additional tax any time within one year after the C corporation files the required amended return or the Department discovers the change to federal taxable income, whichever occurs first.

### Extensions of the period for assessment

Under various circumstances, the period for assessment may be extended.

#### *Written agreements with the Department*

The period allowed for assessment may be extended by written agreement between a C corporation and the Department made prior to the expiration of the period otherwise prescribed by law for assessment. The period established in the written agreement may be further extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

#### *Extension of the period for assessment of federal tax*

Any extension of the period allowed for the assessment of federal income tax will similarly extend the period for the assessment of Colorado income tax. The period for the assessment of federal tax may be extended by:

- an agreement between the taxpayer and the Internal Revenue Service (IRS) for an extension, or renewals thereof;
- a taxpayer's filing of a federal income tax refund claim; or
- a taxpayer's initiation of an administrative or judicial proceeding which has the effect of extending the period allowed for assessment.

If the federal period for assessment is extended, the period within which the Department may issue a notice of deficiency for the same tax year is four years after the applicable Colorado return was filed or one year after the expiration of the extended period for the assessment of federal income tax, whichever is later.

#### *Bankruptcy and other court proceedings*

The period for assessment is extended during and for six months after any period during which either:

- the taxpayer's assets are in the control or custody of a court in any proceeding before any court of the United States or any state; or
- the Department is prohibited from collecting by reason of a bankruptcy case under title 11 of the United States Code.

## Protests and appeals

A C corporation that receives a notice of deficiency or notice of refund rejection may submit a written protest and request a hearing to dispute the notice. Any protest or request for hearing must be submitted within 30 days of the date of the notice. The protest or request for hearing must contain at least the following information:

- the taxpayer's name, address, and account number;
- the tax period(s) involved;
- the type and amount of tax in dispute; and
- a summary statement of the findings with which the taxpayer does not agree and the grounds upon which the taxpayer relies for the purpose of showing the tax is not due.

The protest or request for hearing must be signed by the taxpayer. A protest or request for hearing may be submitted online at *Colorado.gov/RevenueOnline* or by mail, fax, or email in accordance with instructions included in the notice.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to refunds and assessments. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Taxpayers with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-21-103, C.R.S. Hearings.
- § 39-21-104, C.R.S. Rejection of claims.
- § 39-21-107, C.R.S. Limitations.
- § 39-21-108, C.R.S. Refunds.
- § 39-22-103, C.R.S. Definitions – construction of terms.
- § 39-22-601, C.R.S. Returns.
- § 39-22-602, C.R.S. Failure to make return – director may make.
- Rule 39-21-103. Hearings.
- Rule 39-21-108. Refunds.
- Rule 39-22-103(1). Assessment.
- 26 U.S.C. § 6402. Authority to make credits or refunds.
- 26 U.S.C. § 6501. Limitations on assessment and collection.
- 26 U.S.C. § 6511. Limitations on credit or refund.
- 26 U.S.C. § 6513. Time return deemed filed and tax considered paid.

### Forms and guidance

- *Tax.Colorado.gov*
- *Tax.Colorado.gov/business-income-tax-forms*
- *Colorado.gov/RevenueOnline*
- *Colorado C Corporation Income Tax Return* (DR 0112)
- *Amended Colorado C Corporation Income Tax Return* (DR 0112X)