



COLORADO
Department of Revenue

Taxation Division

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GIL 23-002

July 7, 2023

XXXXXXXXXX
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Via Electronic Mail: XXXXXXXXXXXX

Re: Foreign Source Income Exclusion

Dear XXXXXXXXXXXX:

You submitted a request for a general information letter regarding the foreign source income exclusion and whether it is allowed to individuals. The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues, but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department, and requires payment of a fee. For more information about general information letters and private letter rulings, please see 1 CCR 201-1, Rule 24-35-103.5.

Issue

Is the foreign source income exclusion authorized by section 39-22-303(10), C.R.S., allowed to individuals who claim a federal income tax credit for foreign income taxes paid or accrued?

Discussion

The foreign source income exclusion authorized by section 39-22-303(10), C.R.S., is not allowed to individuals. The foreign source income exclusion is allowed only to C corporations.

Section 39-22-303(10), C.R.S.,¹ prescribes rules for the inclusion or exclusion of foreign source income "in apportioning income pursuant to section 39-22-303.5, 39-22-303.6, or 39-22-303.7." Resident individuals do not apportion their income pursuant to section 39-22-303.5, 39-22-303.6, or 39-22-303.7, C.R.S. Nonresidents and part-year residents apportion their income pursuant to sections 39-22-109 and 39-22-110, C.R.S., respectively.

Section 39-22-303(10), C.R.S., prescribes separate methods for determining the includible and excludible portions of foreign source income, depending on whether the taxpayer has elected²

¹ Section 39-22-303, C.R.S., is located within Subpart 1 of Part 3 of Article 22 of Title 39, which applies specifically to C corporations and is titled the "Colorado C corporation Income Tax Act."

² See sections 164(a)(3), 275(a)(4), and 901 of the Internal Revenue Code. Taxpayers may claim a federal deduction under section 164(a)(3) for foreign income taxes, but if a taxpayer chooses to instead claim a federal credit under

to claim foreign taxes paid or accrued as a credit or has elected to claim foreign taxes paid or accrued as a deduction. If the taxpayer has elected to claim foreign taxes paid or accrued as a credit, the exclusion is determined with respect to "the total of taxes paid or accrued to foreign countries and United States possessions *by or on behalf of the C corporation* pursuant to section 901 or 902 of the internal revenue code, deemed paid pursuant to section 902 or 960 of the internal revenue code for the tax year, or carried over or carried back to such tax year pursuant to section 904 (c) of the internal revenue code" (emphasis added).³ As a result, the exclusion is allowed only with respect to foreign income taxes paid by or on behalf of a C corporation.

Miscellaneous

This letter represents the good-faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination on any of the issues raised and the Department is not bound by this general information letter.

Thank you for your request.

Sincerely,

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section 901 for foreign income taxes, section 275(a)(4) prohibits the taxpayer from claiming a deduction for foreign income taxes.

³ Section 39-22-303(10)(b)(III), C.R.S.