FYI – For Your Information

C Corporations

A C corporation means any organization taxed as a corporation for federal income tax purposes. [§39-22-103(2.5) C.R.S.] A C corporation must file a Colorado corporation income tax return, Form 112, if it does business in Colorado or derives income from Colorado sources.

DOING BUSINESS IN COLORADO

A corporation will be considered to be doing business in Colorado whenever the minimum standards of Public Law 86-272 are exceeded. Public Law 86-272 is a federal statute that provides a safe harbor from a state's income tax. According to P.L. 86-272, "No state . . . shall have power to impose… a net income tax on income derived within such state by any person from interstate commerce if the only business activities within such state…are the solicitation of orders… in such state for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from outside the State…." In other words, if a corporation's only activity in Colorado is soliciting sales of tangible personal property, and the sales orders are sent out of Colorado for acceptance and fulfillment, the corporation does not have a filing obligation with Colorado. Any activity exceeding Public Law 86-272 will trigger a filing obligation.

Corporations that do not have employees nor stocks of goods in Colorado and do not engage in activities in the state, other than the shipping of goods to customers in Colorado pursuant to orders received by mail, telephone or the Internet, are not doing business in Colorado and are not subject to Colorado income tax.[1] Such corporations are likewise not subject to income tax if sales are made to customers in Colorado pursuant to orders taken by independent brokers or dealers, if such corporations have neither employees nor stocks of goods in Colorado, and engage in no other activities in the state.

TAXABLE INCOME

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

Additions to income:

- *Federal net operating loss deduction.* The amount of any net operating loss deduction claimed for federal income tax purposes [§ 39-22-304(2)(c) C.R.S.].
- *Colorado income tax deduction.* The amount of any Colorado income tax deduction. Income taxes paid to states, other than Colorado, are allowable deductions for Colorado income tax purposes and are not to be added back to federal taxable income in determining Colorado taxable income. [§39-22-304(2)(d)C.R.S.].
- *Non-Colorado state and municipal bond interest.* All interest income (less bond premium amortization) from state or municipal obligations that is not included in federal taxable income. Do not include interest income from any bond or other obligation of the State of Colorado or a political subdivision thereof issued on or after May 1, 1980. See FYI Income 52 for additional information. [§39-22-304(2)(b)C.R.S.].

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- *Income, war profits, or excess profits taxes paid or accrued to any foreign country*.
  Any income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States that were deducted on the federal income tax return. [§39-22-304(2)(a)C.R.S.].
- *Gross conservation easement charitable deduction*.
  Charitable contribution resulting from the donation of a gross conservation easement that qualified for the gross conservation easement credit. See FYI Income 39 for additional information. [§39-22-304(2)(f)C.R.S.].
- *High technology charitable deduction*.
  Charitable contribution resulting from a donation that qualified for the high technology scholarship contribution credit. See FYI Income 47 for additional information.
  [§39-22-304(2)(g) C.R.S.].
- *Expenses paid to a club that restricts membership in a discriminatory manner*.
  Expenses deducted on the federal return related to a private club that restricts membership on the basis of sex, race, religion, color, ancestry or national origin
  [§39-22-304(2)(e)C.R.S.].

Subtractions from income:

- *Federal interest income*.
  Any interest or dividend income from United States government obligations exempt from Colorado income tax. See FYI Income 20 for a list of tax exempt U.S. government obligations. [§39-22-304(3)(a)C.R.S.].
- *Excludable foreign source income*.
  If, for federal income tax purposes, the corporation has elected to claim foreign taxes paid or accrued as a deduction, an amount of foreign source income equal to such deduction shall be subtracted from federal taxable income. This subtraction will usually equal the foreign income, war profits, or excess profits taxes that were added to taxable income under [§39-22-304(2)(a) C.R.S.]

  If, for federal income tax purposes, the corporation has elected to claim foreign taxes paid or accrued as a credit, a subtraction for tax years beginning on or after January 1, 2002 is allowed as follows:

1. Effective federal corporation income tax rate - federal corporate income tax divided by the federal corporate taxable income ________%

2. Total foreign source income (including §78 dividends) $__________

3. Section 78 Dividends $__________

4. Net foreign source income (excluding §78 dividends) – line 2 minus line 3 $__________

5. Federal foreign tax credit allowed $__________

6. Federal taxes paid on the foreign income - tax rate from step 1 times the total foreign source income from step 2 $__________

7. Percentage of federal credit – Divide the federal foreign tax credit from step 5 by the federal taxes paid on the foreign income from step 6 (Do not enter more than 100%) ________%

8. Excludable foreign source income subtraction - multiply the foreign source income from step 4 times the percentage from step 7 $__________

Foreign source income is taxable income from sources outside of the United States as defined in §862 of the Internal Revenue Code. It includes interest, dividends (including IRC §78 dividends), compensation for personal services, rents and royalties, and net income from the sale of property. Foreign source income is gross income less 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. Foreign source income does not include income of a foreign corporation derived from the conduct of a business within the United States, or the foreign source portion of IRC §863(b) "mixed" income. [§39-22-303(10)]

- *Colorado source capital gains*.

Certain capital gains from the sale of assets located in Colorado and the sale of stock in a Colorado company. See FYI Income 15 for additional details. [§39-22-518 C.R.S.].

- *Colorado net operating loss deduction*.

The Colorado net operating loss for any given tax year is the portion of the federal net operating loss allocated and/or apportioned to Colorado. Colorado net operating losses for tax years beginning on or after August 6, 1997 may be carried forward for up to 20 years. Operating losses may not be carried back to previous tax years. Federal limitations with respect to deduction of net operating loss carryovers from predecessor taxpayers apply for Colorado income tax purposes. A net operating loss may not be carried from a year in which income is apportioned under the Colorado Income Tax Act (two factor formula) to a year in which income was apportioned under the provisions of the Multi-state Tax Compact (three factor formula), or vice versa, without written permission from the executive director of the Department of Revenue. [§39-22-304(3)(g)C.R.S. and §39-22-504 C.R.S.].

- *Colorado income tax refunds*.

Any refund of Colorado income tax to the extent included in federal taxable income. Income tax refunds from other states may not be subtracted. [§39-22-304(3)(f)C.R.S.].

- *Income from the disposition of assets acquired prior to January 1, 1987 that have a higher Colorado basis than federal basis*.

To the extent included in federal taxable income, any income which would not have been included in federal taxable income had the federal basis in any asset sold or otherwise disposed of been equal to the higher Colorado basis in such asset. As there is no provision in the Colorado Income Tax Act of 1964, or the Colorado Income Tax Act of 1987, to establish a Colorado basis in any asset acquired in any tax period covered by those Acts, this subtraction will apply only to specific assets acquired by the taxpayer prior to its first taxable year beginning on or after January 1, 1965. [§39-22-304(3)(c) C.R.S.]

- *Gain from a qualified sale under threat of condemnation*.

To the extent included in federal taxable income, any gain received from a qualified sale. A qualified sale is a sale in good faith, not between persons defined in §267(b) of the Internal Revenue Code, where the buyer had, or could have obtained, the power to condemn the property, but where such gain did not qualify for the deferral of gain under §1033 of the Internal Revenue Code. This subtraction shall not apply unless the gain from the sale of the property is reinvested in other property similar or related in use to and intended as replacement property as required by §1033 of the Internal Revenue Code within the time specified by said §1033. [§39-22-304(3)(d) C.R.S.]

- *Any income or gain previously taxed by Colorado*.

To the extent included in federal taxable income, any income or gain previously taxed by Colorado prior to 1965 either to the corporation, or to a decedent, or an estate, or trust, from which the corporation acquired the income or gain. [§39-22-304(3)(e) C.R.S.].

- *Excess oil shale depletion*.

The difference between the depletion allowed on oil produced from oil shale and the depletion that would have been allowed were the allowable depletion rate 27 1/2%. [§39-22-304(3)(h) C.R.S.].

- *Wages not deductible on the federal return as a result of IRC §280C tax credits.*.

Subtract wages and salaries that cannot be deducted on the federal return because of the limitations of IRC §280C. Wages and salaries that qualify for this subtraction include those for which the following federal credit(s) was taken on the federal return:

- The Indian Employment Credit under §45A(a).
- The Work Opportunity Credit under §51(a).
- The Empowerment Zone Employment Credit under §1396(a).
- The Orphan Drug Credit under §45C(a).
- The Employer Social Security Credit (FICA Tip Credit) under §45B of the IRC is not referenced in §280C of the Internal Revenue Code and, therefore, cannot be subtracted from federal taxable income on the Colorado income tax return. [§39-22-304(3)(i) C.R.S.].

- *Section 78 dividend gross-up*.

Any amounts included in federal taxable income as dividend income due to the provisions of IRC §78. [§39-22-304(3)(j) C.R.S.].

• *Ridesharing or mass transit expenses*. To the extent not claimed as a deduction on the taxpayer's federal tax return, the amount of the corporation's contribution as an employer to:

a) Free or partially subsidized ridesharing arrangements for employees including, but not limited to, providing vehicles for such arrangements, cash incentives (not to exceed the value of such transportation) for participation in ridesharing arrangements, and the payment of all or part of the administrative cost incurred in organizing, establishing or administering a ridesharing program.

b) Free or partially subsidized mass transit tickets, tokens, passes, or fares for use by employees in going to and returning from their places of employment. [§39-22-509 C.R.S.].

• *Medical savings account contributions*. To the extent not claimed as a deduction on the taxpayer's federal tax return, the amount contributed to a medical savings account (MSA) pursuant to §39-22-504.7(2)(e) C.R.S. This subtraction only applies to Colorado MSAs as contributions to the more common federal MSAs are deductible at the federal level.

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

CORPORATIONS EXEMPT FROM COLORADO INCOME TAX

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

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

GROSS RECEIPTS TAX

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

A qualified corporation for purposes of the gross receipts tax:

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

COMBINED AND CONSOLIDATED RETURNS

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

Footnotes

[1] See *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

FURTHER INFORMATION

FYIs and commonly used forms are available on the Web at *www.taxcolorado.com*

For additional income tax information, visit the "Tax Information Index" at *www.taxcolorado.com*

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supercede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved these FYIs.