

## Income/Franchise:

### Colorado: Proposed Rules Address Treatment of Foreign Source Income and IRC §78 Dividends

*Proposed Amended Rule section 39-22-303(10); Proposed Amended Rule section 39-22-304(3)(j); Stakeholder Workgroup Meeting – Foreign Source Income and Corporate Subtraction for Section 78 Dividends*, Colo. Dept. of Rev. (4/22). The Colorado Department of Revenue (Department) is proposing administrative rule amendments that, among other listed reasons, attempt to:

**URL:**  
<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Ftax.colorado.gov%2Fsites%2Ftax%2Ffiles%2Fdocuments%2FDraft%2520Rule%252039-22-303%252810%2529.doc>

**URL:**  
<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Ftax.colorado.gov%2Fsites%2Ftax%2Ffiles%2Fdocuments%2FDraft%2520Rule%252039-22-304%25283%2529%2528j%2529.doc>

**URL:** <https://tax.colorado.gov/news-article/stakeholder-workgroup-meeting-foreign-source-income-and-corporate-subtraction-for>

- Provide guidance regarding the definition of foreign source income, the calculation of the amount of foreign source income considered in the apportionment and allocation of a C corporation's net income, and the requirement to report any changes to that amount for Colorado corporate income tax purposes;
- Clarify that the provisions in both statute and rule regarding the exclusion of foreign source income apply collectively to all C corporations included in the same combined, consolidated, or combined/consolidated Colorado return;
- Specify that foreign source income potentially eligible for exclusion include the types of income enumerated in Internal Revenue Code (IRC) section 862(a), income allocated to sources outside the United States pursuant to IRC section 863, Subpart F income, and global intangible low-tax income (GILTI);
- Explain the application of the foreign source income exclusion to C corporations that have elected to claim foreign taxes paid or accrued as a federal deduction;
- Coordinate the foreign source income exclusion with provisions in Colorado House Bill 21-1311 [see previously issue Multistate Tax Alert for more details on these 2021 state law changes] regarding C corporations that are incorporated in a foreign jurisdiction for the purpose of tax avoidance;  
**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-colorado-enacts-several-law-changes-impacting-income-and-indirect-taxes.pdf>
- Coordinate the foreign source income exclusion with the subtraction authorized under state law by Colo. Rev. Stat. section 39-22-304(3)(j) for "section 78 dividends"; and
- Advise taxpayers that the subtraction from federal taxable income for amounts treated as dividends pursuant to IRC section 78 is limited to amounts included in federal taxable income, as well as clarify that no such subtraction is allowed for amounts already deducted, pursuant to IRC section 250 or otherwise, in the calculation of federal taxable income.

The Department has scheduled a stakeholder workgroup meeting on May 18, 2022 to discuss these proposed changes, which may be attended in-person or remotely. Written comments on these proposals are due by May 18, 2022, too. Please contact us with any questions.

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