

Income/Franchise:

Colorado: Proposed Rules Address Treatment of Foreign Source Income and Net Operating Losses

Revised Draft Proposed Amended Rule section 39-22-303(10), Colo. Dept. of Rev. (9/22); *Request for Public Input – Foreign Source Income Exclusion*, Colo. Dept. of Rev. (9/22); *Revised Draft Proposed Amended Rule section 39-22-504-2*, Colo. Dept. of Rev. (9/22); *Request for Public Input – Colorado Net Operating Losses*, Colo. Dept. of Rev. (9/22). Following its stakeholder meeting on May 18, 2022 addressing the state tax treatment of various forms of foreign source income and Internal Revenue Code section 78 dividends, some of which reflect Colorado legislative changes enacted in 2021 [see *State Tax Matters*, Issue 2022-16, for more details on this meeting], the Colorado Department of Revenue (Department) is proposing updated draft administrative rule amendments on the foreign source income exclusion and seeking input from stakeholders on the revised draft. The additional revisions include the following:

URL: <https://tax.colorado.gov/sites/tax/files/documents/Rule%2039-22-303%2810%29%20-%20DRAFT%20-%20revised%20after%20stakeholder%20workgroup.doc>

URL: <https://tax.colorado.gov/news-article/request-for-public-input-foreign-source-income-exclusion>

URL: <https://tax.colorado.gov/sites/tax/files/documents/Rule%2039-22-504-2%20-%20DRAFT%20-%20revised%20after%20stakeholder%20workgroup.doc>

URL: <https://tax.colorado.gov/news-article/request-for-public-input-colorado-net-operating-losses>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220422_1.html

- Clarification regarding the exclusion allowed on combined, consolidated, and combined-consolidated returns;
- Additional types of foreign source income not listed in the prior draft;
- Clarification regarding the separate calculation of the exclusion for income categories for which separate calculation of the foreign tax credit is required;
- The addition of a formula representing the calculation of the exclusion;
- Clarification regarding redeterminations under Internal Revenue Code section 905(c); and
- Additional minor clarifying revisions.

Following its stakeholder meeting on December 7, 2021 addressing the Colorado allocation and carryforward of net operating losses (NOLs) allowed to C corporations and applicable NOL limitations [see *State Tax Matters*, Issue 2021-45, for more details on this meeting], the Department also is proposing updated draft administrative rule amendments involving NOLs for C corporations and seeking input from stakeholders on the revised draft. The updated revisions include the following:

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211112_2.html

- Additional clarification regarding NOLs of affiliated groups of C corporations filing combined, consolidated, combined-consolidated, or separate returns;
- Clarifying revisions relating to non-apportionable income;
- A new provision regarding the application of the rule to NOLs arising prior to 2019;
- Additional clarification regarding NOL carryforwards and the tax year(s) to which they may be applied;

- Additional paragraphs stating that the NOL deduction is limited to Colorado taxable income before the deduction, in addition to other limitations;
- Several additional paragraphs regarding application of the “SRLY limitation” to Colorado NOLs;
- Clarification regarding application of the limitation in IRC section 860E to Colorado NOLs;
- Rearrangement of certain parts of the draft rule; and
- Additional clarifying revisions.

The Department notes that while it does *not* plan to convene additional workgroup meetings for these two updated draft proposed rules prior to formal rulemaking, written comments on them are welcome and will be accepted through November 4, 2022. Please contact us with any questions.

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