

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 25B-1002

BY REPRESENTATIVE(S) Zokaie and Marshall, Bacon, Boesenecker, Brown, Froelich, Garcia, Lindsay, Lindstedt, McCormick, Rutinel, Sirota, Smith, Story, Willford, McCluskie;
also SENATOR(S) Ball, Amabile, Bridges, Cutter, Daugherty, Exum, Gonzales J., Hinrichsen, Jodeh, Kipp, Michaelson Jenet, Rodriguez, Sullivan, Wallace, Weissman, Winter F., Coleman.

CONCERNING CORPORATE INCOME TAXATION RELATED TO FOREIGN JURISDICTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) (I) The purpose of defining listed jurisdictions for purposes of corporate income tax is to decrease corporate income tax avoidance in Colorado. This is a continuation of existing tax policy.

(II) Additional foreign jurisdictions must be included in the current list to accurately reflect the foreign jurisdictions that are used by C corporations for the purpose of tax avoidance.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(III) The clarification of listed jurisdictions will decrease tax avoidance by creating a more accurate list of foreign jurisdictions used by C corporations for the purpose of tax avoidance.

(b) (I) In 2017, as part of the federal "Tax Cuts and Jobs Act", Pub.L. 115-97, Congress created the Foreign-Derived Intangible Income ("FDII") tax deduction. Federal Public Law 119-21 lowered the rate for the FDII deduction and renamed it the foreign-derived deduction eligible income ("FDDEI") tax deduction for taxable years beginning after December 31, 2025.

(II) The FDDEI deduction provides a tax benefit to corporations that do business outside of the United States. Such corporations also receive other substantial tax reductions from other Colorado tax laws. In addition, most FDDEI deductions claimed for state income tax purposes are claimed by corporations that maintain the majority of their property and investments outside of Colorado.

(III) The primary purpose of adding the FDDEI deduction back to taxable income for state income tax purposes is to encourage tax compliance by promoting tax simplicity, equalization, and fairness. The revenue gain from this add-back is incidental to the primary purpose of encouraging tax compliance and promoting tax simplicity, equalization, and fairness for Colorado taxpayers.

(IV) Any revenue gain resulting from the FDDEI deduction add-back is de minimis.

(c) Therefore, consistent with the Colorado supreme court's holding in *TABOR Found. v. Reg'l Transp. Dist.*, 2018 CO 29, that legislation that causes only an incidental and de minimis tax revenue increase does not amount to a new tax or a tax policy change that requires advance voter approval under section 20 of article X of the Colorado constitution, the FDDEI deduction add-back is neither a new tax nor a tax policy change that requires voter approval.

SECTION 2. In Colorado Revised Statutes, 39-22-303, **amend** (8)(b)(II) and (12)(b) as follows:

39-22-303. Dividends in a combined report - foreign source income - affiliated groups - definitions - rules - repeal. (8) (b) (II) A C corporation is presumptively incorporated in a foreign jurisdiction for the purpose of tax avoidance if it is incorporated in a listed jurisdiction. A C corporation is not incorporated in a foreign jurisdiction for the purpose of tax avoidance if the taxpayer proves to the satisfaction of the executive director, OR IF THE EXECUTIVE DIRECTOR DETERMINES, that such corporation is incorporated in a listed jurisdiction for reasons that meet the economic substance doctrine described in section 7701 (o) of the internal revenue code.

(12) As used in this section, unless the context otherwise requires:

(b) "Listed jurisdiction" means:

(I) FOR INCOME TAX YEARS COMMENCING BEFORE JANUARY 1, 2026, Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Cook Islands, Curaçao, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Luxembourg, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Niue, Panama, Saba, Samoa, San Marino, Seychelles, Sint Eustatius, Sint Maarten, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Turks and Caicos Islands, U.S. Virgin Islands, and Vanuatu; AND

(II) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2026, THE JURISDICTIONS LISTED IN SUBSECTION (12)(b)(I) OF THIS SECTION AND HONG KONG, REPUBLIC OF IRELAND, LIECHTENSTEIN, NETHERLANDS, AND SINGAPORE.

SECTION 3. In Colorado Revised Statutes, 39-22-304, **amend** (3)(j) and (3)(q)(II); and **add** (2)(l) as follows:

39-22-304. Net income of corporation - legislative declaration - definitions - repeal. (2) There shall be added to federal taxable income:

(l) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2026, AN AMOUNT EQUAL TO A FEDERAL DEDUCTION CLAIMED FOR THE INCOME TAX YEAR FOR FOREIGN-DERIVED DEDUCTION ELIGIBLE INCOME PURSUANT TO SECTION 250 OF THE INTERNAL REVENUE CODE.

(3) There shall be subtracted from federal taxable income:

(j) Any amount treated as a section 78 dividend under section 78 of the internal revenue code; ~~excluding any amount treated under section 78 as a dividend received from a C corporation incorporated in a foreign jurisdiction for the purpose of tax avoidance pursuant to section 39-22-303 (8)(b)(II)~~

(q) (II) The amount of any ~~global intangible low-taxed~~ income included in federal taxable income pursuant to section 951A (a) of the internal revenue code with respect to a controlled foreign corporation that is a C corporation incorporated in a foreign jurisdiction for the purpose of tax avoidance pursuant to section 39-22-303 (8)(b)(II), less any amount deducted under section 250 (a)(1)(B) of the internal revenue code with respect to such ~~global intangible low-taxed~~ income.

SECTION 4. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Connor Randall
ACTING CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO