

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 18-0392.01 Esther van Mourik x4215

**HOUSE BILL 18-1185**

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**HOUSE SPONSORSHIP**

**Kraft-Tharp and Wist,**

**SENATE SPONSORSHIP**

**Neville T. and Moreno,**

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**House Committees**

Business Affairs and Labor  
Finance  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING CHANGES TO THE STATE INCOME TAX APPORTIONMENT**  
102 **STATUTE BASED ON THE MOST RECENT MULTISTATE TAX**  
103 **COMMISSION'S UNIFORM MODEL OF THE UNIFORM DIVISION OF**  
104 **INCOME FOR TAX PURPOSES ACT.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

For income tax years commencing on and after January 1, 2019, the bill generally replaces the method for sourcing of sales for purposes of apportioning the income of a taxpayer that has income from the sale of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

HOUSE  
Amended 2nd Reading  
April 26, 2018

services or from the sale, lease, license, or rental of intangible property in both Colorado and other states from the cost-of-performance test in the case of services and the commercial domicile test in the case of intangible property to a market-based sourcing system. Under this new system, receipts for the sale of services or from the sale, lease, license, or rental of intangible property are apportioned to Colorado based not on where the service is performed, but where the service is delivered.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds and declares that:

4 (a) Most states have historically used the cost-of-performance  
5 method to source service revenue to a particular state, which means that  
6 service revenue is sourced to the state where the income-producing  
7 activity is performed;

8 (b) As the nation is moving to a more service-based economy it  
9 is important to align the income tax laws to current realities;

10 (c) Market-based sourcing assigns the service revenue to the state  
11 in which the service is delivered and is most likely to subsequently be  
12 used, leading to greater efficiency for taxpayers; and

13 (d) As more states adopt market-based sourcing in response to the  
14 shift in the economy, this act will add to greater uniformity across the  
15 states and thus ease the tax administration for multi-state businesses,  
16 consequently making Colorado more attractive to such businesses when  
17 they consider locating in the state.

18 (2) The general assembly further finds and declares that the  
19 purpose of this act is to conform the state's income tax laws to the  
20 Multistate Tax Commission's model act, which simplifies the collection  
21 and administration of income taxes for the state and relieves taxpayers'  
22 compliance burden. The revenue increase, if any, is an incidental effect

1 of this act.

2           **SECTION 2.** In Colorado Revised Statutes, **add** 39-22-303.6 as  
3 follows:

4           **39-22-303.6. Market-based apportionment of the income of a**  
5 **taxpayer engaged in business - allocation of nonapportionable income**  
6 **- rules - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT  
7 OTHERWISE REQUIRES:

8           (a) "APPORTIONABLE INCOME" MEANS:

9           (I) ANY INCOME THAT WOULD BE ALLOCABLE TO THIS STATE  
10 UNDER THE UNITED STATES CONSTITUTION, BUT THAT IS APPORTIONED  
11 RATHER THAN ALLOCATED PURSUANT TO THE LAWS OF THIS STATE; AND

12           (II) ALL INCOME THAT IS APPORTIONABLE UNDER THE UNITED  
13 STATES CONSTITUTION AND IS NOT ALLOCATED UNDER THE LAWS OF THIS  
14 STATE, INCLUDING:

15           (A) INCOME ARISING FROM TRANSACTIONS AND ACTIVITY IN THE  
16 REGULAR COURSE OF A TAXPAYER'S TRADE OR BUSINESS; AND

17           (B) INCOME ARISING FROM TANGIBLE AND INTANGIBLE PROPERTY  
18 IF THE ACQUISITION, MANAGEMENT, EMPLOYMENT, DEVELOPMENT, OR  
19 DISPOSITION OF THE PROPERTY IS OR WAS RELATED TO THE OPERATION OF  
20 THE TAXPAYER'S TRADE OR BUSINESS.

21           (b) "COMMERCIAL DOMICILE" MEANS THE PRINCIPAL PLACE FROM  
22 WHICH THE TRADE OR BUSINESS OF THE TAXPAYER IS DIRECTED OR  
23 MANAGED.

24           (c) "NONAPPORTIONABLE INCOME" MEANS ALL INCOME OTHER  
25 THAN APPORTIONABLE INCOME.

26           (d) "RECEIPTS" MEANS ALL GROSS RECEIPTS OF THE TAXPAYER  
27 THAT ARE NOT ALLOCATED UNDER SUBSECTION (7) OR (9) OF THIS

1 SECTION, AND THAT ARE RECEIVED FROM TRANSACTIONS AND ACTIVITY IN  
2 THE REGULAR COURSE OF THE TAXPAYER'S TRADE OR BUSINESS; EXCEPT  
3 THAT RECEIPTS OF A TAXPAYER FROM HEDGING TRANSACTIONS AND FROM  
4 THE MATURITY, REDEMPTION, SALE, EXCHANGE, LOAN, OR OTHER  
5 DISPOSITION OF CASH OR SECURITIES ARE EXCLUDED.

6 (e) "STATE" MEANS ANY STATE OF THE UNITED STATES, THE  
7 DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, ANY  
8 TERRITORY OR POSSESSION OF THE UNITED STATES, AND ANY FOREIGN  
9 COUNTRY OR POLITICAL SUBDIVISION THEREOF.

10 (f) "TAXPAYER" MEANS ANY PERSON THAT IS PERMITTED OR  
11 REQUIRED PURSUANT TO ANOTHER PROVISION OF LAW TO APPORTION AND  
12 ALLOCATE INCOME PURSUANT TO THIS SECTION.

13 (2) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY  
14 1, 2019, A TAXPAYER SHALL APPORTION AND ALLOCATE THE TAXPAYER'S  
15 ENTIRE NET INCOME AS PROVIDED IN THIS SECTION.

16 (3) (a) A TAXPAYER THAT HAS NO INCOME FROM BUSINESS  
17 ACTIVITY OUTSIDE OF COLORADO SHALL ALLOCATE ALL NET INCOME TO  
18 COLORADO.

19 (b) A TAXPAYER THAT HAS INCOME FROM BUSINESS ACTIVITY  
20 THAT IS TAXABLE BOTH WITHIN AND WITHOUT COLORADO SHALL  
21 APPORTION AND ALLOCATE THE TAXPAYER'S NET INCOME AS PROVIDED IN  
22 THIS SECTION.

23 (c) FOR PURPOSES OF APPORTIONMENT AND ALLOCATION OF  
24 INCOME UNDER THIS SECTION, A TAXPAYER'S INCOME IS TAXABLE IN  
25 ANOTHER STATE IF:

26 (I) IN THAT STATE, THE TAXPAYER IS SUBJECT TO A NET INCOME  
27 TAX, A FRANCHISE TAX MEASURED BY NET INCOME, A FRANCHISE TAX FOR

1 THE PRIVILEGE OF DOING BUSINESS, A CORPORATE STOCK TAX, OR ANY  
2 SIMILAR TAX; OR

3 (II) THAT STATE HAS JURISDICTION TO SUBJECT THE TAXPAYER TO  
4 A NET INCOME TAX REGARDLESS OF WHETHER, IN FACT, THE STATE  
5 SUBJECTS THE TAXPAYER TO SUCH TAX.

6 (4) (a) A TAXPAYER'S APPORTIONABLE INCOME SHALL BE  
7 APPORTIONED TO COLORADO BY MULTIPLYING SUCH APPORTIONABLE  
8 INCOME BY A FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL  
9 RECEIPTS OF THE TAXPAYER IN COLORADO DURING THE TAX PERIOD AND  
10 THE DENOMINATOR OF WHICH IS THE TOTAL RECEIPTS OF THE TAXPAYER  
11 EVERYWHERE DURING THE TAX PERIOD.

12 (b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FOREIGN  
13 SOURCE INCOME THAT IS INCLUDED IN TAXABLE INCOME IS NOT INCLUDED  
14 AS RECEIPTS OF THE TAXPAYER IN COLORADO FOR PURPOSES OF  
15 APPORTIONING APPORTIONABLE INCOME PURSUANT TO THIS SECTION.

16 (5) RECEIPTS FROM THE SALES OF TANGIBLE PERSONAL PROPERTY  
17 ARE IN COLORADO IF:

18 (a) THE PROPERTY IS DELIVERED OR SHIPPED TO A PURCHASER IN  
19 COLORADO REGARDLESS OF THE F.O.B. POINT OR OTHER CONDITIONS OF  
20 THE SALE; OR

21 (b) THE PROPERTY IS SHIPPED FROM AN OFFICE, STORE,  
22 WAREHOUSE, FACTORY, OR OTHER PLACE OF STORAGE IN COLORADO AND  
23 THE TAXPAYER IS NOT TAXABLE IN THE STATE TO WHICH THE PROPERTY IS  
24 SHIPPED.

25 (6) RECEIPTS, OTHER THAN RECEIPTS DESCRIBED IN SUBSECTION  
26 (5) OF THIS SECTION, ARE IN COLORADO IF THE TAXPAYER'S MARKET FOR  
27 THE SALES IS IN COLORADO. THE TAXPAYER'S MARKET FOR SALES IS IN

1 COLORADO IF:

2 (a) IN THE CASE OF THE SALE OF A SERVICE, TO THE EXTENT THE  
3 SERVICE IS DELIVERED TO A LOCATION IN COLORADO;

4 (b) IN THE CASE OF THE SALE, RENTAL, LEASE, OR LICENSE OF REAL  
5 PROPERTY, TO THE EXTENT THE REAL PROPERTY IS LOCATED IN  
6 COLORADO;

7 (c) IN THE CASE OF THE RENTAL, LEASE, OR LICENSE OF TANGIBLE  
8 PERSONAL PROPERTY, TO THE EXTENT THE TANGIBLE PERSONAL PROPERTY  
9 IS LOCATED IN COLORADO;

10 (d) IN THE CASE OF INTANGIBLE PROPERTY:

11 (I) THAT IS RENTED, LEASED, OR LICENSED, TO THE EXTENT THE  
12 INTANGIBLE PROPERTY IS USED IN COLORADO, PROVIDED THAT THE  
13 INTANGIBLE PROPERTY UTILIZED IN MARKETING A GOOD OR SERVICE TO A  
14 CONSUMER IS USED IN COLORADO IF THAT GOOD OR SERVICE IS  
15 PURCHASED BY A CONSUMER WHO IS IN COLORADO; OR

16 (II) THAT IS SOLD, TO THE EXTENT THE INTANGIBLE PROPERTY IS  
17 USED IN COLORADO, PROVIDED THAT:

18 (A) A CONTRACT RIGHT, GOVERNMENT LICENSE, OR SIMILAR  
19 INTANGIBLE PROPERTY THAT AUTHORIZES THE HOLDER TO CONDUCT A  
20 BUSINESS ACTIVITY IN A SPECIFIC GEOGRAPHIC AREA IS USED IN  
21 COLORADO IF THE GEOGRAPHIC AREA INCLUDES ALL OR PART OF  
22 COLORADO; AND

23 (B) RECEIPTS FROM INTANGIBLE PROPERTY SALES THAT ARE  
24 CONTINGENT ON THE PRODUCTIVITY, USE, OR DISPOSITION OF THE  
25 INTANGIBLE PROPERTY ARE TREATED AS RECEIPTS FROM THE RENTAL,  
26 LEASE, OR LICENSING OF THE INTANGIBLE PROPERTY UNDER SUBSECTION  
27 (6)(d)(I) OF THIS SECTION;

1 (III) ALL OTHER RECEIPTS FOR SALES OF INTANGIBLE PROPERTY  
2 THAT ARE NOT DESCRIBED IN SUBSECTION (6)(d)(II) OF THIS SECTION ARE  
3 EXCLUDED FROM THE NUMERATOR AND DENOMINATOR OF THE  
4 APPORTIONMENT FRACTION SET FORTH IN SUBSECTION (4)(a) OF THIS  
5 SECTION;

6 (e) IF THE STATE OR STATES OF ASSIGNMENT UNDER THIS  
7 SUBSECTION (6) CANNOT BE DETERMINED, THE STATE OR STATES OF  
8 ASSIGNMENT MUST BE REASONABLY APPROXIMATED; AND

9 (f) WITH RESPECT TO ANY RECEIPT, IF THE STATE OF ASSIGNMENT  
10 CANNOT BE DETERMINED UNDER THIS SUBSECTION (6) OR REASONABLY  
11 APPROXIMATED UNDER SUBSECTION (6)(e) OF THIS SECTION, SUCH  
12 RECEIPTS ARE EXCLUDED FROM THE DENOMINATOR OF THE  
13 APPORTIONMENT FRACTION SET FORTH IN SUBSECTION (4)(a) OF THIS  
14 SECTION.

15 (7) A TAXPAYER'S RENTS AND ROYALTIES FROM REAL OR TANGIBLE  
16 PERSONAL PROPERTY, CAPITAL GAINS, INTEREST, DIVIDENDS, PATENT OR  
17 COPYRIGHT ROYALTIES, OR OTHER INCOME, TO THE EXTENT THAT THEY  
18 CONSTITUTE NONAPPORTIONABLE INCOME, ARE ALLOCATED AS FOLLOWS:

19 (a) NET RENTS AND ROYALTIES FROM REAL PROPERTY LOCATED IN  
20 COLORADO ARE ALLOCATED TO COLORADO;

21 (b) (I) NET RENTS AND ROYALTIES FROM TANGIBLE PERSONAL  
22 PROPERTY ARE ALLOCATED TO COLORADO:

23 (A) IF AND TO THE EXTENT THAT THE PROPERTY IS UTILIZED IN  
24 COLORADO; OR

25 (B) IN THEIR ENTIRETY IF THE TAXPAYER'S COMMERCIAL DOMICILE  
26 IS IN COLORADO AND THE TAXPAYER IS NOT ORGANIZED UNDER THE LAWS  
27 OF, OR THE TAXPAYER'S INCOME IS NOT TAXABLE IN, THE STATE IN WHICH

1 THE PROPERTY IS UTILIZED.

2 (II) FOR PURPOSES OF THIS SUBSECTION (7)(b), THE EXTENT OF  
3 UTILIZATION OF TANGIBLE PERSONAL PROPERTY IN COLORADO IS  
4 DETERMINED BY MULTIPLYING THE RENTS AND ROYALTIES BY A FRACTION,  
5 THE NUMERATOR OF WHICH IS THE NUMBER OF DAYS OF PHYSICAL  
6 LOCATION OF THE PROPERTY IN COLORADO DURING THE RENTAL OR  
7 ROYALTY PERIOD IN THE TAXABLE YEAR AND THE DENOMINATOR OF  
8 WHICH IS THE NUMBER OF DAYS OF PHYSICAL LOCATION OF THE PROPERTY  
9 EVERYWHERE DURING ALL RENTAL OR ROYALTY PERIODS IN THE TAXABLE  
10 YEAR. IF THE PHYSICAL LOCATION OF THE PROPERTY DURING THE RENTAL  
11 OR ROYALTY PERIOD IS UNKNOWN OR UNASCERTAINABLE BY THE  
12 TAXPAYER, TANGIBLE PERSONAL PROPERTY IS UTILIZED IN THE STATE IN  
13 WHICH THE PROPERTY WAS LOCATED AT THE TIME THE RENTAL OR  
14 ROYALTY PAYER OBTAINED POSSESSION.

15 (c) CAPITAL GAINS AND LOSSES FROM SALES OF REAL PROPERTY  
16 LOCATED IN COLORADO ARE ALLOCATED TO COLORADO;

17 (d) CAPITAL GAINS AND LOSSES FROM SALES OF TANGIBLE  
18 PERSONAL PROPERTY ARE ALLOCATED TO COLORADO IF:

19 (I) THE PROPERTY HAD A SITUS IN COLORADO AT THE TIME OF THE  
20 SALE; OR

21 (II) THE TAXPAYER'S COMMERCIAL DOMICILE IS IN COLORADO AND  
22 THE TAXPAYER'S INCOME IS NOT TAXABLE IN THE STATE IN WHICH THE  
23 PROPERTY HAD A SITUS;

24 (e) CAPITAL GAINS AND LOSSES FROM SALES OF INTANGIBLE  
25 PROPERTY ARE ALLOCATED TO COLORADO IF THE TAXPAYER'S  
26 COMMERCIAL DOMICILE IS IN COLORADO;

27 (f) INTEREST AND DIVIDENDS ARE ALLOCATED TO COLORADO IF



1 THE TAXPAYER'S COMMERCIAL DOMICILE IS IN COLORADO;

2 (g) (I) PATENT AND COPYRIGHT ROYALTIES ARE ALLOCATED TO  
3 COLORADO IF AND TO THE EXTENT THAT:

4 (A) THE PATENT OR COPYRIGHT IS UTILIZED BY THE PAYER IN  
5 COLORADO; OR

6 (B) THE PATENT OR COPYRIGHT IS UTILIZED BY THE PAYER IN A  
7 STATE IN WHICH THE TAXPAYER IS NOT TAXABLE AND THE TAXPAYER'S  
8 COMMERCIAL DOMICILE IS IN COLORADO.

9 (II) FOR PURPOSES OF THIS SUBSECTION (7)(g), A PATENT IS  
10 UTILIZED IN A STATE TO THE EXTENT THAT IT IS EMPLOYED IN  
11 PRODUCTION, FABRICATION, MANUFACTURING, OR OTHER PROCESSING IN  
12 THE STATE OR TO THE EXTENT THAT A PATENTED PRODUCT IS PRODUCED  
13 IN THE STATE. IF THE BASIS OF THE RECEIPTS FROM THE PATENT ROYALTIES  
14 CANNOT BE REASONABLY ASSIGNED TO STATES OR IF THE ACCOUNTING  
15 PROCEDURES DO NOT REFLECT THE STATES OF UTILIZATION, THE PATENT  
16 IS UTILIZED IN THE STATE IN WHICH THE TAXPAYER'S COMMERCIAL  
17 DOMICILE IS LOCATED.

18 (III) FOR PURPOSES OF THIS SUBSECTION (7)(g), A COPYRIGHT IS  
19 UTILIZED IN A STATE TO THE EXTENT THAT PRINTING OR OTHER  
20 PUBLICATION ORIGINATES IN THE STATE. IF THE BASIS OF RECEIPTS FROM  
21 COPYRIGHT ROYALTIES CANNOT BE REASONABLY ASSIGNED TO STATES OR  
22 IF THE ACCOUNTING PROCEDURES DO NOT REFLECT THE STATES OF  
23 UTILIZATION, THE COPYRIGHT IS UTILIZED IN THE STATE IN WHICH THE  
24 TAXPAYER'S COMMERCIAL DOMICILE IS LOCATED.

25 (h) NONAPPORTIONABLE INCOME THAT IS NOT OTHERWISE  
26 ALLOCATED PURSUANT TO THIS SUBSECTION (7) IS ALLOCATED PURSUANT  
27 TO SUBSECTION (9) OF THIS SECTION.

1           (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,  
2           FOR EACH TAXABLE YEAR COMMENCING ON OR AFTER JANUARY 1, 2019,  
3           A TAXPAYER MAY ELECT TO TREAT ALL INCOME AS APPORTIONABLE  
4           INCOME. THIS ELECTION MUST BE MADE IN ACCORDANCE WITH RULES  
5           ADOPTED BY THE DEPARTMENT OF REVENUE AND MADE BY THE EXTENDED  
6           DUE DATE OF THE TAX RETURN. ONCE MADE, THE ELECTION IS  
7           IRREVOCABLE FOR THE TAX YEAR.

8           (9) (a) (I) IF THE ALLOCATION AND APPORTIONMENT PROVISIONS  
9           IN THIS SECTION DO NOT FAIRLY REPRESENT THE EXTENT OF BUSINESS  
10          ACTIVITY IN COLORADO OF TAXPAYERS ENGAGED IN A PARTICULAR  
11          INDUSTRY OR IN A PARTICULAR TRANSACTION OR ACTIVITY, THE  
12          EXECUTIVE DIRECTOR MAY, IN ADDITION TO THE AUTHORITY PROVIDED IN  
13          SUBSECTION (9)(b) OF THIS SECTION, AND NOTWITHSTANDING ANY OTHER  
14          PROVISION IN THIS SECTION, ESTABLISH APPROPRIATE RULES, INCLUDING  
15          THE APPLICATION OF A VARIANCE ALLOWED UNDER SUBSECTION (9)(b) OF  
16          THIS SECTION ON AN INDUSTRY-WIDE, TRANSACTION-WIDE, OR  
17          ACTIVITY-WIDE BASIS, FOR DETERMINING ALTERNATIVE ALLOCATION AND  
18          APPORTIONMENT METHODS FOR SUCH TAXPAYERS.

19          (II) A RULE ADOPTED PURSUANT TO THIS SUBSECTION (9)(a) MUST  
20          BE APPLIED UNIFORMLY; EXCEPT THAT, WITH RESPECT TO ANY TAXPAYER  
21          TO WHOM SUCH RULE APPLIES, THE TAXPAYER MAY PETITION FOR, OR THE  
22          EXECUTIVE DIRECTOR MAY REQUIRE, ADJUSTMENT PURSUANT TO  
23          SUBSECTION (9)(b) OF THIS SECTION.

24          (b) IF THE APPORTIONMENT AND ALLOCATION PROVISIONS OF THIS  
25          SECTION DO NOT FAIRLY REPRESENT THE EXTENT OF THE TAXPAYER'S  
26          BUSINESS ACTIVITIES IN COLORADO, THE TAXPAYER MAY PETITION FOR, OR  
27          THE EXECUTIVE DIRECTOR MAY REQUIRE, WITH RESPECT TO ALL OR ANY

1 PART OF THE TAXPAYER'S BUSINESS ACTIVITIES, IF REASONABLE:

2 (I) SEPARATE ACCOUNTING;

3 (II) THE INCLUSION OF ONE OR MORE ADDITIONAL FACTORS THAT  
4 WILL FAIRLY REPRESENT THE TAXPAYER'S BUSINESS ACTIVITY IN  
5 COLORADO;

6 (III) THE INCLUSION OF ANY RECEIPTS OF A TAXPAYER OTHERWISE  
7 EXCLUDED UNDER SUBSECTION (1)(d) OF THIS SECTION, INCLUDING THOSE  
8 FROM HEDGING TRANSACTIONS OR FROM THE MATURITY, REDEMPTION,  
9 SALE, EXCHANGE, LOAN, OR OTHER DISPOSITION OF CASH OR SECURITIES;  
10 OR

11 (IV) THE EMPLOYMENT OF ANY OTHER METHOD,  
12 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, TO  
13 EFFECTUATE AN EQUITABLE APPORTIONMENT OR ALLOCATION OF THE  
14 TAXPAYER'S INCOME, FAIRLY CALCULATED TO DETERMINE THE NET  
15 INCOME DERIVED FROM OR ATTRIBUTABLE TO SOURCES IN COLORADO.

16 (c) (I) THE TAXPAYER PETITIONING FOR, OR THE EXECUTIVE  
17 DIRECTOR REQUIRING, THE USE OF ANY METHOD TO EFFECTUATE AN  
18 EQUITABLE ALLOCATION AND APPORTIONMENT OF THE TAXPAYER'S  
19 INCOME PURSUANT TO SUBSECTION (9)(b) OF THIS SECTION SHALL PROVE,  
20 BY A PREPONDERANCE OF THE EVIDENCE, THAT:

21 (A) THE ALLOCATION AND APPORTIONMENT PROVISIONS IN THIS  
22 SECTION DO NOT FAIRLY REPRESENT THE EXTENT OF THE TAXPAYER'S  
23 BUSINESS ACTIVITY IN COLORADO; AND

24 (B) THE ALTERNATIVE TO SUCH PROVISIONS IS REASONABLE.

25 (II) THE SAME BURDEN OF PROOF APPLIES WHETHER THE  
26 TAXPAYER IS PETITIONING FOR, OR THE EXECUTIVE DIRECTOR IS  
27 REQUIRING, THE USE OF ANY REASONABLE METHOD TO EFFECTUATE AN

1     EQUITABLE ALLOCATION AND APPORTIONMENT OF THE TAXPAYER'S  
2     INCOME; EXCEPT THAT, IF THE EXECUTIVE DIRECTOR CAN SHOW THAT IN  
3     ANY TWO OF THE PRIOR FIVE TAX YEARS, THE TAXPAYER HAD USED AN  
4     ALLOCATION AND APPORTIONMENT METHOD AT VARIANCE WITH ITS  
5     ALLOCATION AND APPORTIONMENT METHOD OR METHODS IN OTHER TAX  
6     YEARS, THEN THE EXECUTIVE DIRECTOR DOES NOT BEAR THE BURDEN OF  
7     PROOF DESCRIBED IN SUBSECTION (9)(c)(I) OF THIS SECTION IN IMPOSING  
8     A DIFFERENT METHOD.

9           (d) IF THE EXECUTIVE DIRECTOR REQUIRES ANY DIFFERENT  
10     METHOD TO EFFECTUATE AN EQUITABLE ALLOCATION AND  
11     APPORTIONMENT OF THE TAXPAYER'S INCOME PURSUANT TO THIS  
12     SUBSECTION (9), THE EXECUTIVE DIRECTOR SHALL NOT IMPOSE ANY CIVIL  
13     OR CRIMINAL PENALTY WITH REFERENCE TO THE TAX DUE THAT IS  
14     ATTRIBUTABLE TO THE TAXPAYER'S REASONABLE RELIANCE SOLELY ON  
15     THE ALLOCATION AND APPORTIONMENT PROVISIONS OF THIS SECTION.

16           (e) A TAXPAYER THAT HAS RECEIVED WRITTEN PERMISSION FROM  
17     THE EXECUTIVE DIRECTOR TO USE A REASONABLE METHOD TO EFFECTUATE  
18     AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE TAXPAYER'S  
19     INCOME SHALL NOT HAVE THAT PERMISSION REVOKED WITH RESPECT TO  
20     TRANSACTIONS AND ACTIVITIES THAT HAVE ALREADY OCCURRED UNLESS  
21     THERE HAS BEEN A MATERIAL CHANGE IN, OR A MATERIAL  
22     MISREPRESENTATION OF, THE FACTS PROVIDED BY THE TAXPAYER UPON  
23     WHICH THE EXECUTIVE DIRECTOR REASONABLY RELIED.

24           (f) IF THE EXECUTIVE DIRECTOR REQUIRES THE TAXPAYER TO  
25     CHANGE ITS PRESENT METHOD OF REPORTING, THE EXECUTIVE DIRECTOR  
26     SHALL NOTIFY THE TAXPAYER IN WRITING OF THE REASON FOR THE  
27     REQUIRED CHANGE. THE NOTICE MUST BE MADE BY FIRST-CLASS MAIL AS

1 SET FORTH IN SECTION 39-21-105.5 AND MUST BE SUFFICIENTLY  
2 PARTICULAR TO GIVE THE TAXPAYER ADEQUATE INFORMATION AS TO THE  
3 REASONS FOR THE CHANGE SO THAT THE TAXPAYER MAY FRAME AN  
4 ANSWER FOR AND DEFEND ITS PRESENT METHOD OF REPORTING IF IT  
5 DECIDES TO APPEAL.

6 (g) THE DEPARTMENT OF REVENUE, FROM TIME TO TIME, SHALL  
7 PUBLISH ALL RULINGS OF GENERAL PUBLIC INTEREST WITH RESPECT TO  
8 ANY APPLICATION OF THIS SUBSECTION (9).

9 (h) IF REQUESTED BY THE DIRECTOR OF RESEARCH OF THE  
10 LEGISLATIVE COUNCIL, THE EXECUTIVE DIRECTOR SHALL REQUIRE  
11 TAXPAYERS TO PROVIDE ADDITIONAL INFORMATION RELATED TO  
12 APPORTIONMENT AND ALLOCATION OF INCOME TO SUPPORT AN INCOME  
13 TAX RETURN FOR THE PURPOSE OF PROVIDING SUCH INFORMATION TO  
14 LEGISLATIVE COUNCIL STAFF TO IMPROVE THE ACCURACY OF FISCAL NOTES  
15 AND REPORTS TO THE LEGISLATURE. THE EXECUTIVE DIRECTOR SHALL  
16 AGGREGATE SUCH ADDITIONAL INFORMATION SO AS TO PRESERVE THE  
17 CONFIDENTIALITY OF THE TAXPAYER'S INFORMATION AND COMPLY WITH  
18 SECTION 39-21-113.

19 (10) A BANK, SAVINGS AND LOAN, CREDIT UNION, OR OTHER  
20 TAXPAYER MAKING OR PURCHASING LOANS WHOSE ONLY BUSINESS  
21 ACTIVITY IN COLORADO IS THE OWNERSHIP OF PROPERTY ACQUIRED  
22 THROUGH THE PROCESS OF FORECLOSURE, OR WAS OBTAINED THROUGH A  
23 PROCEDURE EXERCISED IN LIEU OF THE ENTITY EXERCISING ITS RIGHT TO  
24 FORECLOSE, WHICH PROPERTY IS LATER DISPOSED OF WITHIN  
25 TWENTY-FOUR MONTHS AFTER OBTAINING OWNERSHIP, SHALL DIRECTLY  
26 ALLOCATE NET INCOME FOR SUCH PROPERTY DURING SUCH TIME AND ANY  
27 GAINS OR LOSSES REALIZED FROM THE SALE OF SUCH FORECLOSED

1 PROPERTY TO THE STATE WHERE THE PROPERTY IS LOCATED. SUCH  
2 LIMITED ACTIVITIES DO NOT RENDER A BANK, SAVINGS AND LOAN, CREDIT  
3 UNION, OR OTHER ENTITY SUBJECT TO THE OTHER ALLOCATION AND  
4 APPORTIONMENT PROVISIONS OF THIS SECTION.

5 (11) THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES IN  
6 ACCORDANCE WITH ARTICLE 4 OF TITLE 24 TO APPLY AND ADMINISTER  
7 THIS SECTION. ANY RULES THAT THE EXECUTIVE DIRECTOR PROMULGATED  
8 IN ORDER TO APPLY AND ADMINISTER SECTIONS 39-22-303, 39-22-303.5,  
9 OR 24-60-1301 THAT MAY BE USED TO APPLY AND ADMINISTER THIS  
10 SECTION, INCLUDING PROVISIONS TO APPLY AND ADMINISTER THE SALES  
11 FACTOR FOR SPECIAL INDUSTRIES, WHICH ARE SET FORTH IN 1 CCR 201-2,  
12 CONTINUE TO BE IN EFFECT UNLESS INCONSISTENT WITH THIS SECTION OR  
13 SPECIFICALLY WITHDRAWN BY THE EXECUTIVE DIRECTOR.

14 (12) ON OR BEFORE JANUARY 1, 2024, THE DIRECTOR OF THE  
15 OFFICE OF ECONOMIC DEVELOPMENT SHALL PREPARE A REPORT  
16 DESCRIBING THE ECONOMIC IMPACTS RELATED TO APPORTIONMENT AND  
17 ALLOCATION OF TAXABLE INCOME PURSUANT TO THIS SECTION AND  
18 DELIVER THE REPORT TO THE FINANCE COMMITTEES OF THE SENATE AND  
19 HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES.

20 **SECTION 3.** In Colorado Revised Statutes, 39-22-303.5, **amend**  
21 (2)(b) and (6) as follows:

22 **39-22-303.5. Single-factor apportionment of business income**  
23 **- allocation of nonbusiness income - rules - definitions.** (2) (b) For  
24 income tax years commencing on or after January 1, 2009, BUT PRIOR TO  
25 JANUARY 1, 2019, a taxpayer shall apportion and allocate the taxpayer's  
26 entire net income as provided in this section.

27 (6) Notwithstanding any other provision of this section, for each

1 taxable year commencing on or after January 1, 2009, BUT PRIOR TO  
2 JANUARY 1, 2019, a taxpayer may elect to treat all income as business  
3 income. This election shall be made in accordance with rules adopted by  
4 the department of revenue and shall be made by the extended due date of  
5 the tax return. Once made, the election shall be irrevocable for such tax  
6 year.

7

8 **SECTION 4.** In Colorado Revised Statutes, 24-46-105, **add** (5)  
9 as follows:

10 **24-46-105. Colorado economic development fund - creation.**

11 (5) (a) THE DEPARTMENT OF REVENUE AND THE OFFICE OF ECONOMIC  
12 DEVELOPMENT MAY ANALYZE POTENTIAL AND EXPECTED DECREASES OF  
13 GENERAL FUND REVENUE IN THE 2018-19 STATE FISCAL YEAR AS A DIRECT  
14 RESULT OF THE TAX POLICY CHANGE SET FORTH IN HOUSE BILL 18-1185,  
15 AS ENACTED IN 2018. IF THE DEPARTMENT OF REVENUE AND THE OFFICE  
16 OF ECONOMIC DEVELOPMENT DETERMINE A REDUCTION HAS OCCURRED AS  
17 A DIRECT RESULT OF THE TAX POLICY CHANGE, THEN THE DEPARTMENT OF  
18 REVENUE AND THE OFFICE OF ECONOMIC DEVELOPMENT SHALL NOTIFY THE  
19 STATE TREASURER TO TRANSFER UP TO TWO MILLION NINE HUNDRED  
20 THOUSAND DOLLARS, AS DETERMINED BY SUCH ANALYSIS, FROM THE FUND  
21 TO THE GENERAL FUND FOR THE 2018-19 STATE FISCAL YEAR.

22 (b) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JULY 1, 2020.

23 **SECTION 5. Act subject to petition - effective date.** This act  
24 takes effect at 12:01 a.m. on the day following the expiration of the  
25 ninety-day period after final adjournment of the general assembly (August  
26 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a  
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act  
2 within such period, then the act, item, section, or part will not take effect  
3 unless approved by the people at the general election to be held in  
4 November 2018 and, in such case, will take effect on the date of the  
5 official declaration of the vote thereon by the governor.