

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 15-0660.03 Esther van Mourik x4215

HOUSE BILL 15-1346

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A BILL FOR AN ACT

101 **CONCERNING THE TAXATION OF A CORPORATION'S INCOME THAT IS**
102 **SHELTERED IN A FOREIGN TAX HAVEN.**

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://www.leg.state.co.us/billsummaries>.)

A C corporation doing business only in Colorado will compute its tax on 100% of the Colorado taxable income. However, a corporation doing business in more than one state must apportion its taxable income among all states in which the corporation is doing business. This becomes more complicated if the C corporation is part of an affiliated group of corporations because if certain conditions are met, a corporation's income

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

is calculated as its percentage of the income of the entire affiliated group. There are 4 possible filing alternatives for an affiliated group of corporations in Colorado:

- ! Separate filing;
- ! Consolidated filing;
- ! Combined report filing; and
- ! Combined report and consolidated filing.

The bill pertains to an affiliated group of corporations filing a combined report. In a combined report filing, the tax is based on a percentage of the entire taxable income of all of the includable corporations, but the tax is assessed only against the corporation or corporations doing business in Colorado. Including more affiliated corporations in the combined report would result in an increase in income subject to tax.

Generally speaking, tax havens are jurisdictions located outside of the United States with no tax or very low rates of taxation, strict bank secrecy provisions, a lack of transparency in the operation of its tax system, and a lack of effective exchange of information with other countries. Tax havens can include small, tropical Caribbean islands or old, aristocratic European principalities. There are several common legal strategies for using tax havens to avoid taxation.

Notwithstanding a current requirement in state law that those corporations with 80% or more of their property and payroll assigned to locations outside of the United States be excluded from a combined report, for income tax years commencing on or after January 1, 2016, the bill makes a corporation incorporated in a tax haven an includable C corporation for purposes of the combined report.

The bill lists a number of jurisdictions already considered tax havens and requires the department of revenue to biennially report to the finance committees of the house of representatives and the senate with an update of countries that may be considered tax havens.

The bill makes C corporations part of an affiliated group if the parent C corporation indirectly owns the other. Current law only requires direct ownership. Changing that law to include indirect ownership avoids a loophole in affiliate ownership that can be used to circumvent these tax haven requirements and other requirements for combined report filers.

The bill also specifies that an includable C corporation incorporated in a tax haven may be required by the department of revenue to submit a domestic disclosure spreadsheet to provide full disclosure of the income reported to each tax haven for the year, the tax liability for each tax haven, the method used for allocating or apportioning income to the tax haven, and the identity of all members of the affiliated group.

For the most part, these statutory changes mirror the laws adopted in Montana and Oregon in 2003 and 2013, respectively.

The bill requires the state controller to credit a specified amount

per fiscal year to the state education fund to be used to help fund public school education.

The bill requires the secretary of state to submit a ballot question, to be treated as a proposition, at the statewide election to be held in November 2015 asking the voters:

- ! To increase taxes annually by the taxation of a corporation's income that is sheltered in a foreign tax haven;
- ! To use the resulting tax revenue to help fund elementary and secondary public school education; and
- ! To allow an estimate of the resulting tax revenue to be collected and spent notwithstanding any limitations in section 20 of article X of the state constitution (TABOR).

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) Every year, some corporations use complicated strategies to
5 shift money earned in the United States to subsidiaries in tax havens,
6 countries with minimal or no taxes, in order to reduce their state and
7 federal income tax liability. Tax haven abusers benefit from the markets,
8 public infrastructure, educated workforce, security, and rule of law in the
9 United States, and all of those benefits are supported in one way or
10 another by tax dollars, but these corporations then use tax havens to
11 escape supporting these public structures and benefits. Ultimately,
12 ordinary taxpayers end up picking up the tab, either in the form of higher
13 taxes or cuts to public spending priorities.

14 (b) While much attention is paid to the impact of tax haven abuse
15 on federal revenue, tax havens also reduce the state's revenue because the
16 tax law in Colorado is linked to federally defined taxable income. With
17 Congress not addressing this tax loophole, states should take action to
18 reduce the impact of tax havens on state budgets.

1 (c) Colorado's elementary and secondary public education systems
2 are significantly underfunded. School district administrators, parents of
3 students, teachers, business leaders, higher education officials, local
4 elected officials, and Coloradans from all parts of the state have made it
5 clear to the legislature of their desire to see such education better funded.

6 (d) One reflection of the underfunding of Colorado's elementary
7 and secondary public education systems is the existence of the "negative
8 factor." The negative factor is a mechanism by which the general
9 assembly has, in each fiscal year since the 2010-11 fiscal year, reduced
10 the amount of the annual appropriation to fund the state's share of total
11 program funding so as to stabilize the state budget.

12 (e) Colorado should continue to explore ways to reduce the
13 negative factor and otherwise improve its funding of its elementary and
14 secondary public education systems. The use of foreign tax havens
15 enables certain corporations to avoid paying Colorado taxes. This
16 behavior contributes to the underfunding of the state's elementary and
17 secondary public education systems. It is the general assembly's intent to
18 collect tax revenue already owed to Colorado from corporations avoiding
19 that tax liability and invest that newly collected revenue in the state's
20 elementary and secondary public education systems.

21 **SECTION 2.** In Colorado Revised Statutes, 39-22-303, **amend**
22 (12); and **add** (15) as follows:

23 **39-22-303. Combined report - foreign source income -**
24 **dividends - affiliated groups - definitions.** (12) ~~(a)~~ As used in
25 ~~subsections (10) and (11)~~ of this section, UNLESS THE CONTEXT
26 OTHERWISE REQUIRES:

27 (a) ~~The term~~ "Affiliated group" means one or more chains of

1 includable C corporations connected through stock ownership with a
2 common parent C corporation ~~which~~ THAT is an includable C corporation
3 if:

4 (I) (A) FOR INCOME TAX YEARS COMMENCING PRIOR TO JANUARY
5 1, 2016, stock possessing more than fifty percent of the voting power of
6 all classes of stock and more than fifty percent of each class of the
7 nonvoting stock of each of the includable C corporations, except the
8 common parent C corporation, is owned directly by one or more of the
9 other includable C corporations;

10 (B) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
11 1, 2016, STOCK POSSESSING MORE THAN FIFTY PERCENT OF THE VOTING
12 POWER OF ALL CLASSES OF STOCK AND MORE THAN FIFTY PERCENT OF
13 EACH CLASS OF THE NONVOTING STOCK OF EACH OF THE INCLUDABLE C
14 CORPORATIONS, EXCEPT THE COMMON PARENT C CORPORATION, IS OWNED
15 DIRECTLY OR INDIRECTLY BY ONE OR MORE OF THE OTHER INCLUDABLE C
16 CORPORATIONS; AND

17 (II) (A) FOR INCOME TAX YEARS COMMENCING PRIOR TO JANUARY
18 1, 2016, the common parent C corporation owns directly stock possessing
19 more than fifty percent of the voting power of all classes of stock and
20 more than fifty percent of each class of the nonvoting stock of at least one
21 of the other includable C corporations;

22 (B) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
23 1, 2016, THE COMMON PARENT C CORPORATION OWNS DIRECTLY OR
24 INDIRECTLY STOCK POSSESSING MORE THAN FIFTY PERCENT OF THE
25 VOTING POWER OF ALL CLASSES OF STOCK AND MORE THAN FIFTY PERCENT
26 OF EACH CLASS OF THE NONVOTING STOCK OF AT LEAST ONE OF THE OTHER
27 INCLUDABLE C CORPORATIONS.

1 (b) (I) ~~As used in this subsection (12), the term "Stock" does not~~
2 ~~include nonvoting stock which is limited and preferred as to dividends,~~
3 ~~employer securities, within the meaning of section 409(1) of the internal~~
4 ~~revenue code, while such securities are held under a tax credit employee~~
5 ~~stock ownership plan, or qualifying employer securities, within the~~
6 ~~meaning of section 4975(e)(8) of the internal revenue code, while such~~
7 ~~securities are held under an employee stock ownership plan which meets~~
8 ~~the requirements of section 4975(e)(7) of the internal revenue code~~
9 "INCLUDABLE C CORPORATION" MEANS ANY C CORPORATION THAT HAS
10 MORE THAN TWENTY PERCENT OF THE C CORPORATION'S PROPERTY AND
11 PAYROLL AS DETERMINED BY FACTORING PURSUANT TO SECTION
12 24-60-1301, C.R.S., ASSIGNED TO LOCATIONS INSIDE THE UNITED STATES.
13 FOR PURPOSES OF THIS SUBPARAGRAPH (I), "UNITED STATES" IS
14 RESTRICTED TO THE FIFTY STATES AND THE DISTRICT OF COLUMBIA.

15 (II) NOTWITHSTANDING SUBSECTION (8) OF THIS SECTION OR
16 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), FOR INCOME TAX YEARS
17 COMMENCING ON OR AFTER JANUARY 1, 2016, "INCLUDABLE C
18 CORPORATIONS" ALSO MEANS A CORPORATION THAT IS INCORPORATED IN
19 A TAX HAVEN AND THE INCOME OF ANY SUCH CORPORATION MAY BE
20 INCLUDED IN A COMBINED REPORT.

21 (c) ~~As used in this subsection (12), the term "Includable C~~
22 ~~corporations" means any C corporation which has more than twenty~~
23 ~~percent of the C corporation's property and payroll as determined by~~
24 ~~factoring pursuant to section 24-60-1301, C.R.S., assigned to locations~~
25 ~~inside the United States~~ "STOCK" DOES NOT INCLUDE NONVOTING STOCK
26 THAT IS LIMITED AND PREFERRED AS TO DIVIDENDS, EMPLOYER
27 SECURITIES, WITHIN THE MEANING OF SECTION 409(1), EMPLOYER

1 SECURITIES DEFINED, OF THE INTERNAL REVENUE CODE, WHILE SUCH
2 SECURITIES ARE HELD UNDER A TAX CREDIT EMPLOYEE STOCK OWNERSHIP
3 PLAN, OR QUALIFYING EMPLOYER SECURITIES, WITHIN THE MEANING OF
4 SECTION 4975(e)(8) OF THE INTERNAL REVENUE CODE, WHILE SUCH
5 SECURITIES ARE HELD UNDER AN EMPLOYEE STOCK OWNERSHIP PLAN THAT
6 MEETS THE REQUIREMENTS OF SECTION 4975(e)(7) OF THE INTERNAL
7 REVENUE CODE.

8 (d) (I) "TAX HAVEN" INCLUDES ANDORRA; ANGUILLA; ANTIGUA
9 AND BARBUDA; ARUBA; THE BAHAMAS; BAHRAIN; BARBADOS; BELIZE;
10 BERMUDA; BRITISH VIRGIN ISLANDS; CAYMAN ISLANDS; COOK ISLANDS;
11 CYPRUS; DOMINICA; GIBRALTAR; GRENADA; GUERNSEY, SARK, AND
12 ALDERNEY; ISLE OF MAN; JERSEY; LIBERIA; LIECHTENSTEIN;
13 LUXEMBOURG; MALTA; MARSHALL ISLANDS; MAURITIUS; MONACO;
14 MONTSERRAT; NAURU; NETHERLANDS ANTILLES; NIUE; PANAMA;
15 SAMOA; SAN MARINO; SEYCHELLES; SAINT KITTS AND NEVIS; SAINT
16 LUCIA; SAINT VINCENT AND THE GRENADINES; TURKS AND CAICOS
17 ISLANDS; UNITED STATES VIRGIN ISLANDS; AND VANUATU.

18 (II) (A) THE DEPARTMENT OF REVENUE SHALL REPORT BIENNIALY
19 TO THE FINANCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE
20 FINANCE COMMITTEE OF THE SENATE, OR ANY SUCCESSOR COMMITTEES,
21 WITH AN UPDATE OF COUNTRIES THAT MAY BE CONSIDERED TAX HAVENS
22 UNDER THIS PARAGRAPH (d).

23 (B) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136
24 (11), C.R.S., THE REQUIREMENT TO SUBMIT THE REPORT REQUIRED IN THIS
25 SUBPARAGRAPH (II) CONTINUES INDEFINITELY.

26 (15) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
27 1, 2016, THE EXECUTIVE DIRECTOR MAY REQUIRE AN INCLUDABLE C

1 CORPORATION INCORPORATED IN A TAX HAVEN TO SUBMIT WITHIN SIX
2 MONTHS AFTER THE FILING OF ITS FEDERAL INCOME TAX RETURN A
3 DOMESTIC DISCLOSURE SPREADSHEET TO PROVIDE FULL DISCLOSURE OF
4 THE INCOME REPORTED TO EACH TAX HAVEN FOR THE YEAR, THE TAX
5 LIABILITY FOR EACH TAX HAVEN, THE METHOD USED FOR ALLOCATING OR
6 APPORTIONING INCOME TO THE TAX HAVEN, AND THE IDENTITY OF ALL
7 MEMBERS OF THE AFFILIATED GROUP.

8 **SECTION 3.** In Colorado Revised Statutes, 39-22-303, **add** (16)
9 as follows:

10 **39-22-303. Dividends in a combined report - foreign source**
11 **income - affiliated groups - definitions - voter approved revenue**
12 **change - definition - repeal.** (16) (a) "BALLOT ISSUE" MEANS THE
13 QUESTION REFERRED TO VOTERS IN PARAGRAPH (b) OF THIS SUBSECTION
14 (16).

15 (b) AT THE ELECTION HELD ON NOVEMBER 3, 2015, THE
16 SECRETARY OF STATE SHALL SUBMIT TO THE REGISTERED ELECTORS OF
17 THE STATE FOR THEIR APPROVAL OR REJECTION THE FOLLOWING BALLOT
18 ISSUE: "SHALL STATE TAXES BE INCREASED BY \$150,000,000 ANNUALLY
19 IN THE FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED
20 ANNUALLY THEREAFTER BY THE TAXATION OF A CORPORATION'S INCOME
21 THAT IS SHELTERED IN A FOREIGN TAX HAVEN, AS DEFINED FROM TIME TO
22 TIME BY THE LEGISLATURE, WITH THE RESULTING TAX REVENUE BEING
23 USED TO HELP FUND ELEMENTARY AND SECONDARY PUBLIC SCHOOL
24 EDUCATION, AND WITH AN ESTIMATE OF THE RESULTING TAX REVENUE
25 BEING ALLOWED TO BE COLLECTED AND SPENT NOTWITHSTANDING ANY
26 LIMITATIONS PROVIDED BY LAW?"

27 (c) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE

1 VOTE "YES/FOR", THEN FOR ALL FISCAL YEARS BEGINNING ON OR AFTER
2 JULY 1, 2014, THE STATE MAY RETAIN AND SPEND ALL OF THE TAX
3 REVENUE ESTIMATED TO BE RECEIVED BY THE TAXATION OF A
4 CORPORATION'S INCOME THAT IS SHELTERED IN A FOREIGN TAX HAVEN AS
5 A VOTER-APPROVED REVENUE CHANGE TO THE LIMITATION ON STATE
6 FISCAL YEAR SPENDING.

7 (d) FOR PURPOSES OF SECTION 1-5-407 (5) (b), C.R.S., THE BALLOT
8 ISSUE IS A PROPOSITION. SECTION 1-40-106 (3) (d), C.R.S., DOES NOT
9 APPLY TO THE BALLOT ISSUE.

10 (e) (I) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT
11 ISSUE VOTE "NO/AGAINST", THEN THIS SUBSECTION (16) IS REPEALED,
12 EFFECTIVE FEBRUARY 1, 2016.

13 (II) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE
14 VOTE "YES/FOR", THEN THIS PARAGRAPH (e) IS REPEALED, EFFECTIVE
15 FEBRUARY 1, 2016.

16 **SECTION 4.** In Colorado Revised Statutes, 39-22-303.5, **amend**
17 (1) (a) as follows:

18 **39-22-303.5. Single-factor apportionment of business income**
19 **- allocation of nonbusiness income - rules - definitions.** (1) As used in
20 this section, unless the context otherwise requires:

21 (a) "Business income" means the net income of the taxpayer
22 arising from the transactions and activity in the regular course of a
23 taxpayer's trade or business and includes income from tangible and
24 intangible property if the acquisition, management, and disposition of the
25 property constitute integral parts of the taxpayer's regular trade or
26 business operations. For purposes of administration of this section, the
27 income of the taxpayer is business income unless clearly classifiable as

1 nonbusiness income. FOR INCOME TAX YEARS COMMENCING ON OR AFTER
2 JANUARY 1, 2016, INCOME SHIFTED TO A TAX HAVEN AS DEFINED IN
3 SECTION 39-22-303 (12) IS CONSIDERED BUSINESS INCOME SUBJECT TO
4 APPORTIONMENT UNDER THIS SECTION.

5 **SECTION 5.** In Colorado Revised Statutes, 22-55-103, **amend**
6 (5) introductory portion; and **add** (4.5) as follows:

7 **22-55-103. State education fund - creation - transfers to fund**
8 **- use of moneys in fund - permitted investments - exempt from**
9 **spending limitations.** (4.5) FOR THE 2016-17 FISCAL YEAR AND EACH
10 FISCAL YEAR THEREAFTER, THE STATE CONTROLLER SHALL CREDIT ONE
11 HUNDRED FIFTY MILLION DOLLARS PER FISCAL YEAR FROM THE GENERAL
12 FUND TO THE STATE EDUCATION FUND TO BE USED TO HELP FUND PUBLIC
13 SCHOOL EDUCATION. THE MONEY CREDITED TO THE FUND AS A RESULT OF
14 THIS SUBSECTION (4.5) IS IN ADDITION TO ANY MONEYS CREDITED TO THE
15 FUND PURSUANT TO SECTION 17 (4) OF ARTICLE IX OF THE STATE
16 CONSTITUTION.

17 (5) Pursuant to section 17 (3) of article IX of the state
18 constitution, all moneys credited to the STATE EDUCATION fund,
19 INCLUDING THE MONEYS CREDITED TO THE FUND PURSUANT TO
20 SUBSECTION (4.5) OF THIS SECTION, appropriated by the general assembly
21 out of the fund, or distributed from the fund and expended by any school
22 district shall be exempt from:

23 **SECTION 6. Effective date.** (1) Except as specified in
24 subsection (2) of this section, this act takes effect upon passage.

25 (2) (a) Sections 2, 4, and 5 of this act, amending sections
26 39-22-303 (12), 39-22-303.5 (1) (a), and 22-55-103 (5) and adding
27 sections 39-22-303 (15) and 22-55-103 (4.5), Colorado Revised Statutes,

1 take effect only if, at the November 2015 statewide election, a majority
2 of the voters approve the ballot issue submitted pursuant to section
3 39-22-303 (16), Colorado Revised Statutes, enacted in section 3 of this
4 act.

5 (b) If the voters at the November 2015 statewide election approve
6 a measure described in paragraph (a) of this subsection (2), then sections
7 2, 4, and 5 of this act take effect on the date of the official declaration of
8 the vote thereon by the governor.

9 **SECTION 7. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.