



House Bill 21-1311 enacted section 39-22-303(8)(b), C.R.S., which applies to tax years beginning on or after January 1, 2022. Section 39-22-303(8)(b), C.R.S., requires certain business entities incorporated in a foreign jurisdiction to be included in a combined Colorado income tax return.

This publication is designed to provide general guidance regarding section 39-22-303(8)(b), C.R.S., and to supplement guidance provided in the *Colorado Corporate Income Tax Guide*. Nothing in this publication modifies or is intended to modify the requirements of Colorado's statutes and regulations. Taxpayers are encouraged to consult their tax advisors for guidance regarding specific situations.

## Inclusion under section 39-22-303(8)(b)

For tax years beginning on or after January 1, 2022, a taxpayer must include in the combined group any member of an affiliated group of C corporations that is incorporated in a foreign jurisdiction for the purpose of tax avoidance. A C corporation is presumptively incorporated in a foreign jurisdiction for the purpose of tax avoidance if it is incorporated in a listed jurisdiction. Please see *Entities treated as C corporations*, later in this publication, for additional information.

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 of the Department that its incorporation in a listed jurisdiction has economic substance pursuant to section 7701(o) of the Internal Revenue Code (which does not include state or federal tax purposes).

## Listed Jurisdictions

- Andorra
- Anguilla
- Antigua and Barbuda
- Aruba
- The Bahamas
- Bahrain
- Barbados
- Belize
- Bermuda
- Bonaire
- British Virgin Islands
- Cayman Islands
- Cook Islands
- Curacao
- 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
- Vanuatu



## Entities treated as C corporations

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For the purpose of the requirement under section 39-22-303(8)(b), C.R.S., any business entity defined as a "corporation" under the Internal Revenue Code (IRC) and the rules and regulations promulgated pursuant thereto, including, but not limited to, section 7701 of the IRC and 26 CFR § 301.7701-2, is considered a C corporation, regardless of whether such entity is subject to federal income tax.

## Taxable income and modifications

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Certain rules, discussed below, apply specifically for determining the net income of C corporations incorporated outside of the United States. Please see the *Colorado Corporate Income Tax Guide* for additional information regarding the calculation of net income, apportionment, and allocation.

### Taxable income for certain foreign entities

For income tax years commencing on or after January 1, 2022, section 39-22-304(1)(b), C.R.S., prescribes specific rules for determining the federal taxable income of a C corporation that is not incorporated in the United States or included in a consolidated federal corporate income tax return. For Colorado income tax purposes, the "federal taxable income" of such a C corporation is its income or loss as determined from a profit and loss statement prepared for that C corporation on a separate entity basis in the currency in which its books of account are regularly maintained.

The profit and loss statement used in calculating Colorado income tax must satisfy all of the following requirements:

- 1) The statement must be adjusted to conform to the accounting principles generally accepted in the United States for the preparation of such statements;
- 2) It must be further modified to take into account any book-tax adjustments necessary to reflect federal and state tax law; and
- 3) It must be subject to an independent audit.

The C corporation's income or loss must include all income wherever derived and is not limited to items of income from sources within the United States or effectively connected income within the meaning of the Internal Revenue Code.

Items of income, expense, gain or loss, and related apportionment factors that are denominated in a foreign currency must also be translated into United States dollars on a reasonable basis consistently applied year-to-year and entity-by-entity. Unrealized foreign currency gains and losses are not recognized in the calculation of the C corporation's "federal taxable income" for Colorado income tax purposes. Income apportioned to Colorado must be expressed in United States dollars.

### *Alternate procedures*

In lieu of the procedures prescribed by law and described above, or in any case where it is necessary to fairly and consistently reflect the income or loss and apportionment factors of foreign operations included in a combined report, the executive director of the Department may provide for other procedures to reasonably approximate the income or loss and apportionment factors of members with foreign operations.

## Subtractions from federal taxable income

Certain subtractions from federal taxable income apply specifically with respect to C corporations included in a combined return pursuant to section 39-22-303(8)(b), C.R.S.

### *Subpart F income*

A subtraction from federal taxable income is allowed for any amount included in federal taxable income pursuant to section 951(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), C.R.S.

### *Global intangible low-taxed income (GILTI)*

A subtraction from federal taxable income is allowed in 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), C.R.S. The amount of the subtraction is reduced by any amount deducted under section 250(a)(1)(B) of the Internal Revenue Code with respect to such global intangible low-taxed income.

## Foreign source income exclusion

Special rules apply in determining the foreign source income exclusion for a combined return that includes an entity under section 39-22-303(8)(b), C.R.S. Please see Part 7 of the *Colorado Corporate Income Tax Guide* and paragraph (4)(c) of *1 CCR 201-2*, Rule 39-22-303(10) for additional information.

## Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to C corporations included in a combined return pursuant to section 39-22-303(8)(b), C.R.S. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

### Statutes and regulations

- § 39-22-303, C.R.S. Dividends in a combined report.
- § 39-22-303.6, C.R.S. Market-based apportionment of income.
- § 39-22-304, C.R.S. Net income of corporation.
- Rule 39-22-303(11)(a). Combined returns.

### Forms and guidance

- [Tax.Colorado.gov/business-income-tax](https://tax.colorado.gov/business-income-tax)
- [Colorado Corporate Income Tax Guide](#)