A BILL FOR AN ACT

CONCERNING THE TAXATION OF A CORPORATION'S INCOME THAT IS 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...
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).

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

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

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

(b) While much attention is paid to the impact of tax haven abuse on federal revenue, tax havens also reduce the state's revenue because the tax law in Colorado is linked to federally defined taxable income. With Congress not addressing this tax loophole, states should take action to reduce the impact of tax havens on state budgets.
(c) Colorado's elementary and secondary public education systems are significantly underfunded. School district administrators, parents of students, teachers, business leaders, higher education officials, local elected officials, and Coloradans from all parts of the state have made it clear to the legislature of their desire to see such education better funded.

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

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

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

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

(a) The term "Affiliated group" means one or more chains of
includable C corporations connected through stock ownership with a
common parent C corporation which is an includable C corporation
if:

(I) (A) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS
SUBPARAGRAPH (I), stock possessing more than fifty percent of the voting
power of all classes of stock and more than fifty percent of each class of
the nonvoting stock of each of the includable C corporations, except the
common parent C corporation, is owned directly by one or more of the
other includable C corporations;

(B) A CORPORATION IS INCORPORATED IN A TAX HAVEN, AND IF
STOCK POSSESSING MORE THAN FIFTY PERCENT OF THE VOTING POWER OF
ALL CLASSES OF STOCK AND MORE THAN FIFTY PERCENT OF EACH CLASS OF
THE NONVOTING STOCK OF EACH OF THE INCLUDABLE C CORPORATIONS,
EXCEPT THE COMMON PARENT C CORPORATION, IS OWNED DIRECTLY OR
INDIRECTLY BY ONE OR MORE OF THE OTHER INCLUDABLE C
CORPORATIONS; AND

(II) (A) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS
SUBPARAGRAPH (II), the common parent C corporation owns directly
stock possessing more than fifty percent of the voting power of all classes
of stock and more than fifty percent of each class of the nonvoting stock
of at least one of the other includable C corporations;

(B) A CORPORATION IS INCORPORATED IN A TAX HAVEN, AND IF
THE COMMON PARENT C CORPORATION OWNS DIRECTLY OR INDIRECTLY
STOCK POSSESSING MORE THAN FIFTY PERCENT OF THE VOTING POWER OF
ALL CLASSES OF STOCK AND MORE THAN FIFTY PERCENT OF EACH CLASS OF
THE NONVOTING STOCK OF AT LEAST ONE OF THE OTHER INCLUDABLE C
CORPORATIONS.
(b) (I) As used in this subsection (12), the term "Stock" does not include nonvoting stock which is limited and preferred as to dividends; employer securities, within the meaning of section 409(1) of the internal revenue code, while such securities are held under a tax credit employee stock ownership plan, or qualifying employer securities, within the meaning of section 4975(e)(8) of the internal revenue code, while such securities are held under an employee stock ownership plan which meets the requirements of section 4975(e)(7) of the internal revenue code.

"INCLUDABLE C CORPORATION" MEANS ANY C CORPORATION THAT HAS MORE THAN TWENTY PERCENT OF THE C CORPORATION'S PROPERTY AND PAYROLL AS DETERMINED BY FACTORING PURSUANT TO SECTION 24-60-1301, C.R.S., ASSIGNED TO LOCATIONS INSIDE THE UNITED STATES. FOR PURPOSES OF THIS SUBPARAGRAPH (I), "UNITED STATES" IS RESTRICTED TO THE FIFTY STATES AND THE DISTRICT OF COLUMBIA.

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

(c) As used in this subsection (12), the term "Includable C corporations" means any C corporation which has more than twenty percent of the C corporation's property and payroll as determined by factoring pursuant to section 24-60-1301, C.R.S., assigned to locations inside the United States "STOCK" DOES NOT INCLUDE NONVOTING STOCK THAT IS LIMITED AND PREFERRED AS TO DIVIDENDS, EMPLOYER
SECURITIES, WITHIN THE MEANING OF SECTION 409(l), EMPLOYER
SECURITIES DEFINED, OF THE INTERNAL REVENUE CODE, WHILE SUCH
SECURITIES ARE HELD UNDER A TAX CREDIT EMPLOYEE STOCK OWNERSHIP
PLAN, OR QUALIFYING EMPLOYER SECURITIES, WITHIN THE MEANING OF
SECTION 4975(e)(8) OF THE INTERNAL REVENUE CODE, WHILE SUCH
SECURITIES ARE HELD UNDER AN EMPLOYEE STOCK OWNERSHIP PLAN THAT
MEETS THE REQUIREMENTS OF SECTION 4975(e)(7) OF THE INTERNAL
REVENUE CODE.

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

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

(B) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136
(11), C.R.S., THE REQUIREMENT TO SUBMIT THE REPORT REQUIRED IN THIS
SUBPARAGRAPH (II) CONTINUES INDEFINITELY.
SECTION 3. In Colorado Revised Statutes, 39-22-303, add (16)
as follows:

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

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

(c) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE
VOTE "YES/FOR", THEN THE STATE MAY RETAIN AND SPEND ALL OF THE
TAX REVENUE ESTIMATED TO BE RECEIVED BY THE TAXATION OF A
CORPORATION’S INCOME THAT IS SHELTERED IN A FOREIGN TAX HAVEN AS
A VOTER-APPROVED REVENUE CHANGE TO THE LIMITATION ON STATE
FISCAL YEAR SPENDING.

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

(e) (I) If a majority of the electors voting on the ballot issue vote "No/Against", then this subsection (16) is repealed, effective February 1, 2016.

(II) If a majority of the electors voting on the ballot issue vote "Yes/For", then this paragraph (e) is repealed, effective February 1, 2016.

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

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

(a) "Business income" means the net income of the taxpayer arising from the transactions and activity in the regular course of a taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. For purposes of administration of this section, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income. FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2016, INCOME SHIFTED TO A TAX HAVEN AS DEFINED IN SECTION 39-22-303 (12), TO THE EXTENT TAXABLE, IS CONSIDERED BUSINESS INCOME SUBJECT TO APPORTIONMENT UNDER THIS SECTION.

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

22-55-103. State education fund - creation - transfers to fund - use of moneys in fund - permitted investments - exempt from
spending limitations. (4.5)  For the 2016-17 fiscal year and each 
fiscal year thereafter, the state controller shall credit one 
hundred fifty million dollars per fiscal year from the general 
fund to the state education fund to be used to help fund public 
school education. The money credited to the fund as a result of 
this subsection (4.5) is in addition to any moneys credited to the 
fund pursuant to section 17 (4) of article IX of the state 
constitution.

(5)  Pursuant to section 17 (3) of article IX of the state 
constitution, all moneys credited to the state education fund, 
including the moneys credited to the fund pursuant to 
subsection (4.5) of this section, appropriated by the general assembly 
out of the fund, or distributed from the fund and expended by any school 
district shall be exempt from:

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

(2)  (a)  Sections 2, 4, and 5 of this act, amending sections 
39-22-303 (12), 39-22-303.5 (1) (a), and 22-55-103 (5) and adding 
sections 39-22-303 (15) and 22-55-103 (4.5), Colorado Revised Statutes, 
take effect only if, at the November 2015 statewide election, a majority 
of the voters approve the ballot issue submitted pursuant to section 
39-22-303 (16), Colorado Revised Statutes, enacted in section 3 of this 
act.

(b)  If the voters at the November 2015 statewide election approve 
a measure described in paragraph (a) of this subsection (2), then sections 
2, 4, and 5 of this act take effect on the date of the official declaration of 
the vote thereon by the governor.
SECTIONS 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.