

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**REENGROSSED**

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

LLS NO. 19-1074.01 Gregg Fraser x4325

**SENATE BILL 19-233**

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**SENATE SPONSORSHIP**

**Lee,** Court, Moreno

**HOUSE SPONSORSHIP**

**Snyder,**

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**Senate Committees**  
Finance

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING COMBINED REPORTING BY A CORPORATION FOR**  
102 **COLORADO STATE INCOME TAX PURPOSES.**

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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>.)*

Two or more corporations controlled by the same interests are required to file a combined report in certain instances for apportioning income for Colorado income tax purposes. The Colorado court of appeals recently interpreted existing law to exclude all holding companies purportedly without property or payroll from combined reports. The bill clarifies that only corporations with property and payroll located outside

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.*

SENATE  
3rd Reading Unamended  
April 27, 2019

SENATE  
2nd Reading Unamended  
April 26, 2019

the United States are excluded from a combined report. The bill further clarifies when the treatment of the activities of a partnership is treated as the activity of a member of an affiliated group of corporations.

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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) In *Oracle Corp. v. Dep't of Revenue*, 2017 COA 152 (2017),  
5 and *Agilent Technologies, Inc. v. Dep't of Revenue*, 2017 COA 137  
6 (2017), the Colorado court of appeals held that holding companies  
7 purportedly without property or payroll are excluded from combined  
8 reports under section 39-22-303, Colorado Revised Statutes;

9 (b) The general assembly adopts this act to clarify that the  
10 adoption of section 39-22-303 (8), (11), and (12)(c), Colorado Revised  
11 Statutes, in 1985, was not intended to exclude holding companies from  
12 a combined return due to lack of property and payroll or failure to satisfy  
13 the tests described in section 39-22-303 (11)(a), Colorado Revised  
14 Statutes;

15 (c) Under section 39-22-303 (8) and (12)(c), Colorado Revised  
16 Statutes, the general assembly intended to exclude only corporations with  
17 property and payroll located outside the United States from a  
18 corporation's combined report; and

19 (d) This act also clarifies that, for purposes of section 39-22-303  
20 (11)(a)(I) to (11)(a)(IV), Colorado Revised Statutes, the general assembly  
21 intended that the activities of any partnership or other pass-through entity  
22 owned by a member of the affiliated group of C corporations are treated  
23 as activities performed by that member of the affiliated group of C  
24 corporations if the partnership is more than fifty percent owned by the

1 members of the affiliated group.

2 **SECTION 2.** In Colorado Revised Statutes, 39-22-303, **amend**  
3 (8); **repeal** (12)(c); and **add** (11)(f) and (11)(g) as follows:

4 **39-22-303. Dividends in a combined report - foreign source**  
5 **income - affiliated groups - definitions.** (8) NEITHER THE TAXPAYER  
6 NOR the executive director shall ~~not require the inclusion~~ INCLUDE in a  
7 combined report ~~of the income of~~ any C corporation which conducts  
8 business outside the United States if eighty percent or more of the C  
9 corporation's property and payroll, as determined by factoring pursuant  
10 to section 24-60-1301, ~~C.R.S.~~, is assigned to locations outside the United  
11 States. For the purpose of this subsection (8), "United States" ~~shall be~~ IS  
12 restricted to the fifty states and the District of Columbia.

13 (11) (f) FOR PURPOSES OF THIS SECTION, ANY C CORPORATION  
14 FORMED UNDER THE LAWS OF ANY STATE OR THE UNITED STATES WITH DE  
15 MINIMIS OR NO PROPERTY OR PAYROLL, AS DETERMINED BY FACTORING  
16 PURSUANT TO SECTION 24-60-1301, SHALL BE DEEMED TO SATISFY THE  
17 REQUIREMENTS OF SUBSECTION (11)(a) OF THIS SECTION.

18 (g) FOR THE PURPOSE OF SATISFYING THE REQUIREMENTS OF  
19 SUBSECTIONS (11)(a)(I) TO (11)(a)(IV) OF THIS SECTION, THE ACTIVITIES  
20 OF ANY ENTITY FORMED UNDER THE LAWS OF ANY STATE OR THE UNITED  
21 STATES THAT IS TREATED AS A PARTNERSHIP PURSUANT TO PART 2 OF THIS  
22 ARTICLE 22, SHALL BE TREATED AS ACTIVITIES PERFORMED BY THE  
23 MEMBER OF THE AFFILIATED GROUP OF C CORPORATIONS THAT OWNS A  
24 PORTION OF THE ENTITY IF MORE THAN FIFTY PERCENT OF THE ENTITY'S  
25 OWNERSHIP INTEREST IS HELD IN THE AGGREGATE BY ONE OR MORE  
26 MEMBERS OF THE AFFILIATED GROUP. IF THE ENTITY IS OWNED BY MORE  
27 THAN ONE MEMBER OF THE AFFILIATED GROUP, THE ACTIVITIES OF THE

1 ENTITY SHALL BE TREATED AS ACTIVITIES PERFORMED BY EACH MEMBER  
2 THAT OWNS A PORTION OF THE ENTITY.

3 (12) (c) ~~As used in this subsection (12), the term "includable C~~  
4 ~~corporations" means any C corporation which has more than twenty~~  
5 ~~percent of the C corporation's property and payroll as determined by~~  
6 ~~factoring pursuant to section 24-60-1301, C.R.S., assigned to locations~~  
7 ~~inside the United States.~~

8 **SECTION 3. Act subject to petition - effective date.** This act  
9 takes effect at 12:01 a.m. on the day following the expiration of the  
10 ninety-day period after final adjournment of the general assembly (August  
11 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a  
12 referendum petition is filed pursuant to section 1 (3) of article V of the  
13 state constitution against this act or an item, section, or part of this act  
14 within such period, then the act, item, section, or part will not take effect  
15 unless approved by the people at the general election to be held in  
16 November 2020 and, in such case, will take effect on the date of the  
17 official declaration of the vote thereon by the governor.