

**First Extraordinary Session
Seventy-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 25B-0008.01 Caroline Martin x5902

HOUSE BILL 25B-1002

HOUSE SPONSORSHIP

Zokaie and Marshall,

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Ball,

House Committees
Appropriations

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A BILL FOR AN ACT

101 **CONCERNING CORPORATE INCOME TAXATION RELATED TO FOREIGN**
102 **JURISDICTIONS.**

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>.)

Current law lists certain foreign jurisdictions in which a C corporation is presumptively incorporated for the purpose of avoiding state corporate income tax and allows a C corporation to rebut that presumption by proving to the satisfaction of the executive director of the department of revenue (executive director) that the C corporation is incorporated in the listed foreign jurisdiction for reasons that meet the

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

economic substance doctrine described in the federal internal revenue code. The bill permits the executive director to, without proof from the C corporation, use discretion to determine that a C corporation is not incorporated in a foreign jurisdiction for the purpose of tax avoidance. The bill adds Hong Kong, Ireland, Liechtenstein, Netherlands, and Singapore to the list of foreign jurisdictions in which a C corporation is presumptively incorporated for the purpose of avoiding state corporate income tax.

For income tax years commencing on or after January 1, 2026, for the purposes of determining the amount of corporate income tax that a C corporation owes to the state, the bill adds to a C corporation's federal taxable income an amount equal to a federal deduction claimed for the income tax year for foreign-derived deduction eligible income that was allowed under the federal internal revenue code.

Current law provides that dividends from foreign subsidiaries that must be added to a C corporation's federal taxable income under the federal internal revenue code may be subtracted from the C corporation's federal taxable income for the purposes of determining the amount of corporate income tax that a C corporation owes to the state; except that such dividends received from a C corporation incorporated in a foreign jurisdiction for the purpose of tax avoidance cannot be subtracted. The bill changes this subtraction so that all dividends from foreign subsidiaries that must be added to a C corporation's federal taxable income under the federal internal revenue code may be subtracted from the C corporation's federal taxable income for the purposes of determining the amount of corporate income tax that a C corporation owes to the state.

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

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

4 (a) (I) The purpose of defining listed jurisdictions for purposes of
5 corporate income tax is to decrease corporate income tax avoidance in
6 Colorado. This is a continuation of existing tax policy.

7 (II) Additional foreign jurisdictions must be included in the
8 current list to accurately reflect the foreign jurisdictions that are used by
9 C corporations for the purpose of tax avoidance.

10 (III) The clarification of listed jurisdictions will decrease tax

1 avoidance by creating a more accurate list of foreign jurisdictions used by
2 C corporations for the purpose of tax avoidance.

3 (b) (I) In 2017, as part of the federal "Tax Cuts and Jobs Act",
4 Pub.L. 115-97, Congress created the Foreign-Derived Intangible Income
5 ("FDII") tax deduction. Federal Public Law 119-21 lowered the rate for
6 the FDII deduction and renamed it the foreign-derived deduction eligible
7 income ("FDDEI") tax deduction for taxable years beginning after
8 December 31, 2025.

9 (II) The FDDEI deduction provides a tax benefit to corporations
10 that do business outside of the United States. Such corporations also
11 receive other substantial tax reductions from other Colorado tax laws. In
12 addition, most FDDEI deductions claimed for state income tax purposes
13 are claimed by corporations that maintain the majority of their property
14 and investments outside of Colorado.

15 (III) The primary purpose of adding the FDDEI deduction back to
16 taxable income for state income tax purposes is to encourage tax
17 compliance by promoting tax simplicity, equalization, and fairness. The
18 revenue gain from this add-back is incidental to the primary purpose of
19 encouraging tax compliance and promoting tax simplicity, equalization,
20 and fairness for Colorado taxpayers.

21 (IV) Any revenue gain resulting from the FDDEI deduction
22 add-back is de minimis.

23 (c) Therefore, consistent with the Colorado supreme court's
24 holding in *TABOR Found. v. Reg'l Transp. Dist.*, 2018 CO 29, that
25 legislation that causes only an incidental and de minimis tax revenue
26 increase does not amount to a new tax or a tax policy change that requires
27 advance voter approval under section 20 of article X of the Colorado

1 constitution, the FDDEI deduction add-back is neither a new tax nor a tax
2 policy change that requires voter approval.

3 **SECTION 2.** In Colorado Revised Statutes, 39-22-303, **amend**
4 (8)(b)(II) and (12)(b) as follows:

5 **39-22-303. Dividends in a combined report - foreign source**
6 **income - affiliated groups - definitions - rules - repeal.** (8) (b) (II) A
7 C corporation is presumptively incorporated in a foreign jurisdiction for
8 the purpose of tax avoidance if it is incorporated in a listed jurisdiction.
9 A C corporation is not incorporated in a foreign jurisdiction for the
10 purpose of tax avoidance if the taxpayer proves to the satisfaction of the
11 executive director, OR IF THE EXECUTIVE DIRECTOR DETERMINES, that such
12 corporation is incorporated in a listed jurisdiction for reasons that meet
13 the economic substance doctrine described in section 7701 (o) of the
14 internal revenue code.

15 (12) As used in this section, unless the context otherwise requires:

16 (b) "Listed jurisdiction" means:

17 (I) FOR INCOME TAX YEARS COMMENCING BEFORE JANUARY 1,
18 2026, Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas,
19 Bahrain, Barbados, Belize, Bermuda, Bonaire, British Virgin Islands,
20 Cayman Islands, Cook Islands, Curaçao, Cyprus, Dominica, Gibraltar,
21 Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia,
22 Luxembourg, Malta, Marshall Islands, Mauritius, Monaco, Montserrat,
23 Nauru, Niue, Panama, Saba, Samoa, San Marino, Seychelles, Sint
24 Eustatius, Sint Maarten, St. Kitts and Nevis, St. Lucia, St. Vincent and the
25 Grenadines, Turks and Caicos Islands, U.S. Virgin Islands, and Vanuatu;
26 AND

27 (II) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY

1 1, 2026, THE JURISDICTIONS LISTED IN SUBSECTION (12)(b)(I) OF THIS
2 SECTION AND HONG KONG, IRELAND, LIECHTENSTEIN, NETHERLANDS,
3 AND SINGAPORE.

4 **SECTION 3.** In Colorado Revised Statutes, 39-22-304, **amend**
5 (3)(j) and (3)(q)(II); and **add** (2)(l) as follows:

6 **39-22-304. Net income of corporation - legislative declaration**
7 **- definitions - repeal.** (2) There shall be added to federal taxable income:

8 (l) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
9 1, 2026, AN AMOUNT EQUAL TO A FEDERAL DEDUCTION CLAIMED FOR THE
10 INCOME TAX YEAR FOR FOREIGN-DERIVED DEDUCTION ELIGIBLE INCOME
11 PURSUANT TO SECTION 250 OF THE INTERNAL REVENUE CODE.

12 (3) There shall be subtracted from federal taxable income:

13 (j) Any amount treated as a section 78 dividend under section 78
14 of the internal revenue code; ~~excluding any amount treated under section~~
15 ~~78 as a dividend received from a C corporation incorporated in a foreign~~
16 ~~jurisdiction for the purpose of tax avoidance pursuant to section~~
17 ~~39-22-303 (8)(b)(II)~~

18 (q) (II) The amount of any ~~global intangible low-taxed~~ income
19 included in federal taxable income pursuant to section 951A (a) of the
20 internal revenue code with respect to a controlled foreign corporation that
21 is a C corporation incorporated in a foreign jurisdiction for the purpose
22 of tax avoidance pursuant to section 39-22-303 (8)(b)(II), less any amount
23 deducted under section 250 (a)(1)(B) of the internal revenue code with
24 respect to such ~~global intangible low-taxed~~ income.

25 **SECTION 4. Safety clause.** The general assembly finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, or safety or for appropriations for

- 1 the support and maintenance of the departments of the state and state
- 2 institutions.