



## SALT INSIGHTS

Jurisdiction: Colorado  
Tax Type: Income Tax  
Issue: Market Based Sourcing  
Date: June 21, 2018

### SYNOPSIS:

Effective 08/08/2018, Colorado is moving to market-based sourcing of sales. Specifically, Colorado income tax laws will conform to the Multistate Tax Commission's ("MTC") model act related to market-based sales sourcing. The effect is to source receipts from the sale of services or from the sale, lease, license, or rental of intangible personal property using a market-based sourcing rule instead of a cost-of-performance rule. The law becomes effective for tax years beginning on or after January 1, 2019 for apportioning taxpayers.

The previous rules under the regulations followed the original MTC Compact approach of sourcing all receipts from sales other than sales of tangible person property under a "costs of performance" methodology that sourced the receipts to the state with a preponderance of income-producing activity. In contrast, market-based sourcing intends to assign gross receipts to Colorado based on where a service is delivered and where intangible property that is sold, rented, leased, or licensed is used.

Significant substantive subsections covered under the new rules include sale of a services; the leasing or licensing of intangible personal property; and the sale of intangible property. In addition, other subsections covered include rules for reasonable approximation, which apply if the state or states of assignment cannot be determined. One such reasonable approximation used is "population". However, Colorado limits the definition of "population" to the most recent population data maintained by the U.S. Census Bureau.

### INSIGHT:

Colorado's change in apportionment sourcing scheme may provide both opportunities and pitfalls to multistate tax filers. Multistate taxpayers domiciled in "cost of performance" states are particularly at risk in cases where the greater cost of performance occurs in the home state. However, a taxpayer can petition to use an alternative method of allocation and apportionment but must show that the statutes do not fairly represent the taxpayer's business in Colorado. Contact SimekScott to discuss.

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