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<tr><td>SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203</td><td rowspan="4">▲ COURT USE ONLY ▲</td></tr>
<tr><td>Colorado Court of Appeals Case No. 16CA849
Opinion by Judge Booras; Webb and Freyre, JJ., concur</td></tr>
<tr><td>Denver District Court Case No. 14CV393
Judge Catherine A. Lemon</td></tr>
<tr><td>Petitioners/Cross-Respondents:
DEPARTMENT OF REVENUE OF THE STATE OF COLORADO; and MICHAEL HARTMAN, in his official capacity as the Executive Director of the Department of Revenue of the State of Colorado

v.

Respondent/Cross-Petitioner:
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<tr><td colspan="2">BRIEF OF AMICUS CURIAE COUNCIL ON STATE TAXATION IN SUPPORT OF AGILENT TECHNOLOGIES, INC.</td></tr>
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the amicus brief complies with the applicable word limit set forth in C.A.R. 29(d).

It contains 4,499 words (does not exceed 4,750 words).

The amicus brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

s/Christina F. Gomez
Signature of attorney or party

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INTEREST OF THE AMICUS

The Council On State Taxation ("COST") is a nonprofit trade association based in Washington, D.C. Its membership is comprised of approximately 550 of the largest multistate corporations engaged in interstate and international business and represents industries doing business in every state across the country. Its objective is to preserve and promote the equitable, non-discriminatory state and local taxation of multijurisdictional business entities.

COST is interested in this case because of its potential impact on taxpayers' ability to rely on clear statutory authority and published tax regulations. This case could create substantial uncertainty for COST's members, many of whom conduct a substantial amount of business in Colorado and rely on the state's duly-adopted statutory and regulatory provisions.

COST has previously participated as amicus in several significant federal and state tax cases over the past 40 years, including in Colorado. In this case, COST seeks to highlight the distinct provisions of Colorado law precluding corporations without property or payroll from being included in a combined tax return, the appropriate application of state tax anti-abuse rules, and the need to preserve taxpayers' ability to rely on published regulatory guidance.

INTRODUCTION

The Court of Appeals' decision below, *Agilent Technologies, Inc. v. Dep't of Revenue*, 2017 COA 137, is correct on both of the issues raised in the petition.

First, the Court of Appeals correctly held that section 39-22-303(12)(c), C.R.S. (2018) and its corresponding regulation preclude corporations that have no property or payroll from being included in corporate combined reports. The plain language and history of these provisions demonstrate an intent to prevent taxpayers from including—and prevent the Department of Revenue from requiring the inclusion of—such entities in combined reports. Differing regulations adopted by the Multistate Tax Commission ("MTC") and other states are irrelevant on this issue, given the distinct language and unique history of Colorado's provisions. And exclusion of entities without property or payroll does not necessarily result in fewer tax revenues to the state. It is more likely tax neutral, as it results in more tax in some instances but less tax in others based primarily on whether the excluded entity experienced a net income or net loss.

Second, the Court of Appeals correctly held that the Department of Revenue cannot use the general anti-abuse provision in section 39-22-303(6) to circumvent the effect of section 39-22-303(12)(c) and its own implementing regulation.

Allowing the Department to override such express provisions of state law based on a limited grant of executive authority would erode public trust in the tax system, would prevent taxpayers from being able to ascertain and comply with the requirements of state law, and would implicate significant due process concerns. For these and other reasons, several other courts have rejected attempts by state taxing authorities to use similar general statutes to override specific provisions of state law. This Court should do the same.

Finally, on the cross-petition, the Court should reverse the Court of Appeals' rejection of the alternative argument by Agilent World Trade ("World Trade") that the Department had to consider its federal elections in determining its corporate status. Colorado law expressly relies on federal law in determining what is a "corporation," and that should extend to federal law's treatment of World Trade and some of its international subsidiaries as a single corporate entity. Considering them as a single entity, they do not satisfy the twenty percent rule in section 39-22-303(12)(c) and therefore cannot be included on Agilent's combined return.

Accordingly, the Court should affirm the Court of Appeals' decision on the first two issues, reverse its decision on the third, and determine that World Trade could not have been included in a combined return.

ARGUMENT

I. World Trade is Not an "Includible C Corporation" under Colorado Law.

The Court of Appeals correctly determined that World Trade is not an includible C corporation under section 39-22-303(12)(c) and its corresponding regulation, 39-22-303.12(c). *Agilent*, 2017 COA 137, ¶¶ 18–26.

A. Corporations Without Any Property or Payroll are Not "Includible" in a Combined Report Under the Plain Language of Section 39-22-303(12)(c) and its Corresponding Regulation.

Under section 39-22-303, instead of filing Colorado corporate income tax returns separately for each corporation, certain groups of related corporations are required to file a single, aggregate Colorado income tax return essentially as if they were a single entity. The Colorado income tax return filed by such a group is often referred to as a "combined return" or "combined report."

The detailed provisions of section 39-22-303 limit the corporations included in a Colorado combined report to those that satisfy certain prescribed requirements regarding the ownership structure of and activities occurring between the subject corporations. But as a threshold matter, pursuant to section 39-22-303(12)(c), a corporation can be considered for inclusion in a Colorado combined report only if more than twenty percent of its property and payroll (as defined by the statute) are

assigned to locations inside the U.S. If so, the corporation is an *includible* corporation. If not, it is not an includible corporation and cannot be a member of a Colorado combined report, even if it otherwise meets the ownership and activity requirements. In other words, a company that is an includible corporation *might* be included in a combined report, so long as it meets all the other requirements, but a company that is not an includible corporation *cannot* be included in a combined report, even if it meets the other requirements.

In *Agilent*, the Court of Appeals determined that a holding company that has no property or payroll of its own cannot be included in a Colorado combined report. 2017 COA 137, ¶¶ 18–26. In reaching this conclusion, the court relied on the language in section 39-22-303(12)(c) expressly limiting the definition of an "includible C corporation" to one "which has more than twenty percent of the corporation's property and payroll" inside the United States as determined based on the statutory criteria. The court expressed that "[i]f a company has no property or payroll, then on the basis of a mathematical calculation that twenty percent of zero is zero, it does not have twenty percent or more of its property or payroll assigned to locations within the United States." 2017 COA 137, ¶ 20. The court also relied on the Department's own implementing regulation, which provides that

"[s]ince corporations that have no property or payroll factors of their own cannot have twenty percent or more of their factors assigned to locations in the United States, such corporations, by definition, cannot be included in a combined report." *Id.* ¶¶ 20–21 (citing Department Reg. 39-22-303.12(c), 1 Code Colo. Regs. 201-2).

The court's decision on these issues is well-reasoned and consistent with the plain language of the statute and regulation.

B. The Statutory and Regulatory History Demonstrate an Intent to Narrow Colorado's Combination Provisions.

If section 39-22-303(12)(c) and its implementing regulation weren't clear enough, the statutory and regulatory history of these provisions provides additional support for the Court of Appeals' decision.

Prior to 1985, Colorado law provided little specificity on what entities could be included in a combined report. In the absence of any language limiting the entities to be included, this Court interpreted the statute to permit the Department to require combination to the fullest extent allowed by the U.S. Constitution. *Hewlett-Packard Co. v. Colo.*, 749 P.2d 400, 403–07 (Colo. 1988) (considering issues for tax years preceding the 1985 legislative amendments).

But in 1985, the General Assembly enacted House Bill 1010, which added several new provisions limiting inclusion of certain C corporations in a Colorado

combined report. Ch. 309, sec.1, § 39-22-303, 1985 Colo. Sess. Laws 1273–76. These new provisions included:

- the exclusion of corporations that do not have a certain threshold percentage of property and payroll inside or outside the United States (sections 39-22-303(8) and (12)(c));
- the requirement that corporations included in a combined report satisfy a specified ownership structure (essentially a parent-subsidiary configuration) (sections 39-22-303(11) and (12)); and
- the requirement that such corporations meet at least three of six specified tests related to activities between corporations included in a combined report for the tax year at issue and the two preceding tax years (section 39-22-303(11)).

This legislative shift to limiting membership in a combined report supports the Court of Appeals' interpretation of the statute as excluding certain entities that otherwise could be included in a Colorado combined report.

The history of Regulation 39-22-303.12(c) further supports this interpretation. Under a prior version of the regulation, corporations without property and payroll of their own *could be included* in a combined report if they

functioned with an includible company's property and/or payroll. In the early 1990s, however, Colorado's Office of Legislative Legal Services ("OLLS") determined that the regulation conflicted with the statutory definition of "includible corporations" in section 39-22-303(12)(c). Based on the OLLS's recommendation to the Committee on Legal Services, the General Assembly voted against extending the regulation and allowed the prior regulation to expire. *See Agilent*, 2017 COA 137, ¶ 20 n.3.

Then, in 1994, the Department promulgated a new version of the regulation, which provided precisely the opposite of the prior version. Under the 1994 Regulation 39-22-303.12(c), corporations with no property or payroll factors *cannot be included* in a combined report. This regulation has now been in place, unchanged, for the past 24 years.

On January 20, 2016, the district court in this case held that Regulation 39-22-303.12(c) precludes inclusion of World Trade in a combined report. Nine days later, the Department issued a *notice* stating that its 1994 regulation supposedly was intended to apply only to certain specific types of companies, including Foreign Sales Corporations (specialized foreign subsidiaries of U.S. corporations), but not to domestic holding companies. *See* Colo. Dep't of Rev., Taxation

Division, Revenue Regulation 39-22-303(12)(c) -- Notice, *available at* www.colorado.gov/pacific/tax/revenue-regulation-39-22-30312c-notice. However, the Department did not take steps to amend the regulation itself, which continues to read exactly as it has since 1994. And nothing in the 1994 regulatory language supports the Department's arguments in this case.

C. Colorado's Combination Provisions Are Distinct from the Provisions in Other States.

The Department and its amici argue that Colorado's statute should be interpreted to mirror "water's edge" combination rules in certain other states and thus should encompass companies within a broader constitutionally-permitted unitary standard. But Colorado's combined reporting provisions are distinct from those of other states. Because the General Assembly and the Department have made different regulatory choices than other states have in enacting their own frameworks, those differences must be respected and followed.

As explained above, the General Assembly chose to not require combination up to constitutional limits and to exclude from combined reports, among other things, corporations that did not have more than 20 percent U.S. property and payroll. Likewise, the Department long ago chose to promulgate a regulation expressly excluding corporations without any property or payroll from inclusion in

a combined report. The Department cannot now wish a different result in this case. Any changes to the statutory design or to the regulations (to the extent that modification would be consistent with the statutory language and thus capable of enforcement) can be accomplished only through the proper legislative and regulatory processes—not by administrative fiat.

In the companion case, *Dep't of Revenue v. Oracle Corp.*, No. 2018SC3, the MTC amicus brief filed in support of the Department asks this Court to adopt an approach similar to that applied in some other states. *See, e.g.*, MTC Br. at 4–6, 10–12. The MTC concedes, however, that the rules "var[y] widely" across the states, with at least ten states applying three different methods to determine when an entity is excluded from a combined filing. *Id.* at 10–11. Indeed, while COST and the MTC share a common goal of promoting "uniformity or compatibility in significant components of tax systems" (MTC Multistate Tax Compact Art. I, *available at* www.mtc.gov/The-Commission/Multistate-Tax-Compact), the MTC respects individual state sovereignty and does not require its member states to adopt any of its model statutes or regulations.[1]

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[1] The MTC's disinclination to require its member states to follow its models is highlighted in a series of recent cases where the MTC advocated that its Multistate Tax Compact was not binding on member states. *See, e.g.*, *Health Net, Inc. v.*

As a result, although Colorado is an MTC member state, it is free to adopt—and in fact has adopted—its own framework for addressing which entities are includible and which are not includible in a combined report.

Because of the wide variation in state approaches, and the unique differences in Colorado's own statute and regulation, this Court cannot apply the MTC's regulations to determine which entities are required to be included in a Colorado combined return. Nor, for the same reasons, are other state tax provisions or cases particularly useful to the Court's consideration of this issue.

D. The Exclusion of Corporate Entities With No Property or Payroll May Be Tax Neutral.

Finally, it is important to remember that the exclusion of a corporation from a combined report is a two-way street. As this Court remarked in *Hewlett-Packard*, "[i]t is important to note that application of the unitary apportionment method does not necessarily result in a greater tax liability for a corporation than would result from the separate accounting method." 749 P.2d at 401.

Dep't of Rev., 415 P.3d 1034, 1041 (Or. 2018); *Graphic Packaging Corp. v. Hegar*, 538 S.W.3d 89, 100–01 (Tex. 2017); *Gillette Co. v. Franchise Tax Bd.*, 363 P.3d 94, 99–100 (Cal. 2015); *Gillette Commer. Operations N. Am. v. Mich. Dep't of Treas.*, 878 N.W.2d 891, 903–06 (Mich. 2015), *cert. denied* (U.S. 2017); *Kimberly-Clark Corp. v. Comm'r of Rev.*, 880 N.W.2d 844, 850–51 (Minn. 2016).

Depending on the facts, exclusion could either increase or decrease the Colorado income tax resulting from a combined report. The impact depends on whether the excluded company contributes income or loss to the combined report. For instance, if the company in question has losses, then excluding it from a combined report will *increase* the income for the combined group. But if the company has income, then excluding it from a combined report will *decrease* the income for the combined group.

That is not the end of the story, however. The ultimate effect on Colorado income tax for a combined group further depends on the impact that including or excluding the apportionment factor of the company in question has on the combined apportionment factor for the combined report. Even if the company would contribute income to the combined report, it is possible that taxable income on the combined report would still *decrease* if the company contributed enough to the apportionment denominator of the combined group.

Accordingly, the Court cannot assume that the Court of Appeals' interpretation of the statute has an overall detrimental impact on tax revenues.

II. The Clear Statutory Limitations of Section 39-22-303(12)(c) Preclude Inclusion of World Trade Under a General Anti-Abuse Rule.

The Court of Appeals also was correct in determining that the Department could not apply either the general anti-abuse rule in section 39-22-303(6) or the economic substance doctrine to override section 39-22-303(12)(c) and its implementing regulation. *Agilent*, 2017 COA 137, ¶¶ 32–43.

A. Taxpayers Must Be Able to Rely on the Express Provisions of State Laws and Regulations.

The Department's attempt to apply section 39-22-303(6)—a general anti-abuse rule modeled after the federal transfer pricing statute in Internal Revenue Code ("IRC") section 482, 26 U.S.C. § 482—is impermissible and contrary to sound tax policy. Section 39-22-303(6) authorizes the Department to allocate gross income and deductions among commonly controlled corporate members to avoid abuse and clearly reflect income. As the Court of Appeals pointed out, neither party has asserted that the taxpayer's structure was adopted for "abusive" purposes. *Agilent*, 2017 COA 137, ¶¶ 38, 42. Thus, on its face, section 39-22-303(6) appears to be inapplicable.

Yet even assuming section 39-22-303(6) were relevant, the Department's failure to abide by state statute and its own regulation on the exclusion of

companies with no property or payroll is troubling. As explained above, World Trade was plainly within the purview of section 39-22-303(12)(c) and the accompanying regulation. Nevertheless, the Department wishes to disregard these controlling provisions by applying a general anti-abuse rule.

Allowing the Department to invoke a general anti-abuse rule in this circumstance, especially without any evidence of a tax avoidance motive, would open the door for the Department to circumvent any tax provision that produces an unfavorable outcome in a particular case. It also would authorize the Department to override the General Assembly on any specific statutory provisions with which it disagrees.[2] This cannot be the purpose of section 39-22-303(6).

Using a general anti-abuse rule to circumvent clear statutory and regulatory provisions is also contrary to the principles of sound tax policy: certainty, fairness, transparency, and ease of administration and compliance. Each of these principles reinforces a taxpayer's confidence in the voluntary compliance system, which is based on clear, transparent rules and the expectation that both the taxing agency and taxpayers will respect them. *See, e.g.*, *Mut. Sav. Life Ins. Co. v. United States*,

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[2] It further is inconsistent with "the well-established rule that where specific and general statutes conflict, the provisions of the specific statute prevail." *State, Motor Vehicle Div. v. Dayhoff*, 609 P.2d 119, 121 (Colo. 1980).

488 F.2d 1142, 1145-46 (5th Cir. 1974) ("A taxpayer has the right to rely upon the Government's Regulations and their published illustrations. Treasury Regulations having the force and effect of law are binding on tax officials, as well as taxpayers."). If a taxing agency no longer follows controlling statutes and its own regulations, that system falls apart.

Clear statutory and regulatory guidance is particularly important for multi-jurisdictional taxpayers that are required to know and follow the laws of dozens of states and, in many cases, local jurisdictions. These taxpayers generally prefer uniformity among the states, but appreciate that with state sovereignty and varying state economic and political conditions, that is not always possible. In lieu of uniformity, multijurisdictional taxpayers at the very least must be able to rely upon the clear written statutory and regulatory guidance adopted by states and local jurisdictions. Otherwise, compliance with tax laws becomes impossible. Taxpayers can take little comfort in complying with existing statutes and regulations if an agency can simply disregard them on a whim and with no advance notice.

Revenue agencies are instruments of law, not equity. The Department's powers are vested in section 24-35-101. When an administrative agency is given some discretionary authority, as the Department is with section 39-22-303(6), that

authority must be reviewed within the context of—and must be limited by—the statutory framework within which it exists. It is contrary to both law and sound tax policy for the Department to assert that it can recompute a taxpayer's liability where the taxpayer followed the state's and the Department's written guidance and where no tax avoidance was asserted. Accordingly, the Court of Appeals correctly rejected the Department's attempt to use section 39-22-303(6) to circumvent the limitations of section 39-22-303(12)(c) and its own regulation.

B. Courts Have Repeatedly Rejected Attempts to Use General Anti-Abuse Statutes to Override Specific Provisions of State Law.

Other state courts have confronted this same issue when taxing authorities tried to use their states' anti-abuse or other general provisions to alter outcomes mandated by state law. These courts have consistently rejected the position the Department takes in this case, holding that taxing authorities cannot use general provisions to override the specific mandates of state law.

For instance, the Supreme Court of Minnesota rejected its state revenue department's argument that it had the discretionary authority to ignore a taxpayer's business structure and include a foreign operating entity in a combined return based on its determination that the business structure lacked economic substance. *HMN Fin., Inc. v. Comm'r of Rev.*, 782 N.W.2d 558, 571 (Minn. 2010). In so

doing, the court commented that "[t]he Commissioner clearly dislikes the tax consequences that occur under the relevant statutes, but it is for the legislature, not the Commissioner, to change the law that creates such consequences." *Id*. at 570.

Notably, the MTC acknowledges that after this case the Minnesota legislature addressed the matter by changing the state's tax law. MTC Br. at 24–25. Similarly here, if any changes are to be made to state law, they must be made by the Colorado General Assembly. Thus far, it has not chosen to do so.

The Indiana Tax Court also has repeatedly rejected attempts by its state revenue department to override state statutory provisions. In one of those cases, the court rejected the department's argument that it could force the combination of a taxpayer's affiliated entities to more accurately determine income, holding that a transfer pricing study that complied with IRC section 482 demonstrated that the taxpayer's return "fairly reflected its Indiana source income." *Rent-A-Center East, Inc. v. Ind. Dep't of State Rev.*, 42 N.E.3d 1043, 1054–55 (Ind. T.C. 2015), *review denied*, 46 N.E.3d 446 (Ind. 2016). In another case, the court denied the department's assertion of authority to disregard "sham" transactions to adjust interparty transactions, determining that the department lacked the discretionary authority to adjust intercompany interest rates that were set in accordance with an

"arm's-length standard." *E.I. DuPont De Nemours & Co. v. Ind. Dep't of State Rev.*, 79 N.E.3d 1016, 1026 (Ind. T.C. 2017).

The Supreme Court of Tennessee similarly held that its state tax commissioner's statutory authority "is not properly invoked to rewrite what she perceives to be an unwise provision in the statutory scheme." *Kellogg Co. v. Olsen*, 675 S.W.2d 707, 709 (Tenn. 1984). The court accordingly held that the commissioner did not have the authority under the state's transfer pricing law to reduce the state's deduction for dividends received. *Id.*

Most recently, the Utah Supreme Court rejected its state tax commission's and amicus MTC's assertion that the state's IRC section 482-type statue gave the state tax commission broad, discretionary powers to change a taxpayer's income. *Utah Tax Comm'n v. See's Candies, Inc.*, 2018 UT 57, ¶ 20 (Utah 2018). The court expressed that it "[did] not read [an earlier case] to support the proposition that the Legislature intended the Commission to exercise its [anti-abuse] discretion untethered to any identifiable standard." *Id.* ¶ 52.

In each of these cases, the courts refused to allow state taxing authorities to override legislative enactments through the use of anti-fraud or similar general provisions. This Court should do the same.

C. The Department's Attempt to Expand its Statutory Authority Implicates Due Process Concerns.

Rejecting the Department's broad view of its discretion under section 39-22-303(6) would also avert potential due process issues. "Due process requires people to have notice of what the law requires of them so that they may obey it and avoid its sanctions. . . . But if access to the law is limited, then the people will or may be unable to learn of its requirements and may be thereby deprived of the notice to which due process entitles them." *Bldg. Officials & Code Adm'rs v. Code Tech., Inc*., 628 F.2d 730, 734 (1st Cir. 1980). There is no due process if state officials can change the applicable taxing rules, retroactively and without notice.

In similar circumstances, an Arizona appellate court agreed that when a taxpayer was not given notice of how a city sought to tax it, it was entitled to follow the law as published by the taxing authority and could not be held liable for a tax the city failed to publish. *Ariz. Pub. Serv. Co. v. City of San Luis*, 2017 WL 3301768, at *3 (Ariz. App. Aug. 3, 2017). To hold otherwise, the court explained, "would require the public to exercise a level of caution well beyond due diligence, in violation of due process principles." *Id.*

Accordingly, this Court should not permit the Department to circumvent clearly applicable statutes and regulations with the anti-abuse provision. To do so

not only would undermine the predictability of the tax system, but would raise serious due process concerns for World Trade and other taxpayers who have relied on the statutes and regulations as currently published.

III. The State Should Recognize World Trade's Federal Elections in Considering its Status as a C Corporation Under State Law.

While the Court of Appeals correctly decided this case in favor of World Trade, it erroneously rejected one of World Trade's alternative arguments—that the state should honor the federal "check-the-box" elections made by World Trade's foreign subsidiaries. Those elections allowed World Trade, together with its subsidiaries that made the elections, to be taxed as a single C corporation under federal law. 26 C.F.R. § 301.7701-3(g)(1)(iii). Treated as a single corporation, *all* of World Trade's property and payroll is outside the United States, and so it must be excluded from the combined return under section 39-22-303(12)(c).

The federal treatment of World Trade as one corporation with foreign divisions accords with Colorado's definition of a corporation. Under Colorado law, a C corporation is "any organization taxed as a corporation for federal income tax purposes." Section 39-22-103(2.5), C.R.S. (2018). Treating a taxpayer and its election-making foreign subsidiaries as a single corporate entity gives the state's C corporation definition "the same meaning as when used in a comparable context in

the internal revenue code . . . in effect for the taxable period." Section 39-22-103(11); *see also See's Candies*, 2018 UT 57, ¶ 45 (a state tax statute's reference to the Internal Revenue Code is "a legislative intent to adopt not just the language of a federal statute, but also its accompanying 'cluster of ideas'").

Therefore, treating World Trade and its electing subsidiaries as a single C corporation is consistent with section 39-22-103(2.5) and (11). Such treatment neither "render[s] the rules set forth in section 39-22-303 meaningless," as the Court of Appeals suggested, 2017 COA 137, ¶ 31, nor "create[s] an opportunity for an entity to sidestep application of C.R.S. § 39-22-303(11)," as the district court stated. CF, p. 1083. Instead, it effectuates the legislative intent to adopt the "cluster of ideas" of what constitutes a C corporation for tax purposes. And, as Agilent's expert witness Richard Pomp expressed, "nearly all states respect the federal election." CF., p. 837.

Because Colorado law incorporates federal parameters of what constitutes a C corporation, and because the federal elections at issue were made for purposes of federal law rather than state tax planning, World Trade and its electing foreign subsidiaries should be treated as a single C corporation for purposes of state as well as federal law. As such, 100 percent of World Trade's property and payroll is

assigned to locations outside the U.S., resulting in exclusion from the Agilent combined report under section 39-22-303(12)(c).

CONCLUSION

For the foregoing reasons, this Court should affirm the Court of Appeals' decision on the issues concerning application of section 39-22-303(6) and (12)(c) to this case; reverse on the federal "check the box" issue; and determine that World Trade could not have been included on its parent company's combined report.

Dated: October 22, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 22, 2018, I served a copy of the foregoing via the Colorado Courts E-Filings system to the following:

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