



This Week in State Tax (TWIST)

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COLORADO



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Colorado: Department Prevails in Dispute Over Property and Payroll Calculation for Includable Corporations

The Colorado Court of Appeals recently addressed whether a subsidiary was an includable corporation required to be included in the taxpayer's Colorado unitary combined group for the tax years at issue. Under Colorado law, the term "includable C corporation" means any C corporation which has more than twenty percent of its property and payroll as determined by the state's sourcing rules assigned to locations inside the United States. The subsidiary had property in the U.S., but no payroll. The taxpayer argued that the language in question meant it had to have more than 20 percent of its property and 20 percent of its payroll in the U.S. to be included. As support for this position, the taxpayer noted that the statute used the term "determined" as opposed to "averaged" or "added" and referred to the property, payroll, and sales factor sourcing provisions whereby each factor was calculated separately. The Department, on the other hand, argued that "more than 20 percent" meant a single aggregate number representing combined separate calculations of the property and payroll factors.

The court was not persuaded by the taxpayer's interpretation of the statute. It noted that the use of the term "determined" in the statute did not preclude averaging or adding. Further, the court noted that although the property and payroll factors were computed separately, they were later averaged into a single factor. Finally, the court looked at a reciprocal statute that excludes from the combined group corporations with 80 percent or more foreign property and payroll and determined it needed to be interpreted consistently with the statute including corporations with more than 20 percent U.S. property and payroll. In conclusion, the court agreed with the district court that the statute unambiguously applied its twenty percent figure to one number calculated by combining the results produced by property and payroll factoring. Please contact [Derek Weisbruch](#) with questions on *Avnet, Inc. and subsidiaries v. Department of Revenue*.



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