

CHAPTER 384

TAXATION

HOUSE BILL 17-1090

BY REPRESENTATIVE(S) Kraft-Tharp and Wilson, Catlin, Danielson, Esgar, Exum, Gray, Hansen, Hooton, Kennedy, Lee, Lontine, McLachlan, Melton, Pabon, Pettersen, Rosenthal, Salazar, Singer, Winter, Young, Mitsch Bush; also SENATOR(S) Gardner and Kefalas, Fenberg, Kerr, Martinez Humenik, Todd.

AN ACT

CONCERNING THE ADVANCED INDUSTRY INVESTMENT TAX CREDIT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Growing new high-potential companies in our advanced industries is one of the most promising ways to stimulate the state economy and create high-paying jobs;

(b) Access to capital is one of the key challenges facing early stage companies in the advanced industries, and it remains one of the biggest hurdles for those companies getting their products to market;

(c) Allowing a tax credit based on investment in an advanced industry business reduces some of the risk to investors and thereby draws additional investment dollars for those businesses;

(d) These successfully funded businesses may raise additional capital, produce more revenue, and create more high-paying, high-skill jobs in the state; and

(e) Increased investment in Colorado's innovative advanced industry sectors will promote economic growth within the state.

(2) Now, therefore, the general assembly hereby declares that its purpose in extending and expanding the expiring tax credit in this act is to help more Colorado

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

advanced industry companies receive more capital from Colorado investors.

SECTION 2. In Colorado Revised Statutes, 24-48.5-112, **amend** (1)(e) introductory portion, (1)(g)(III), (1)(g)(IV), (2)(c), (3)(b)(I), and (6); and **repeal** (1)(g)(V) and (5) as follows:

24-48.5-112. Advanced industry investment tax credit - administration - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(e) "Qualified investment" means an investment made at any time on or after July 1, 2014, but before ~~January 1, 2018~~ JANUARY 1, 2023, in an equity security that meets all of the following requirements:

(g) "Qualified small business" means a corporation, limited liability company, partnership, or other business entity that:

(III) Has received less than ten million dollars from third-party investors, not including grants, since the business was formed; AND

(IV) Has annual revenues of less than five million dollars ~~and~~ OR HAS BEEN ACTIVELY OPERATING AND GENERATING REVENUE FOR LESS THAN FIVE YEARS.

(V) ~~Has been actively operating and generating revenue for less than five years.~~

(2) (c) A business may request the office to determine whether it is a qualified small business. Upon receiving ~~such~~ THE request or upon receipt of an application for an advanced industry investment tax credit from a qualified investor, the office shall determine whether the business that is named in the application or written request is a qualified small business. After determining the qualifications, the office shall certify the qualified small business as being eligible to receive qualified investments for purposes of this section. The certification for a qualified small business that is certified after July 1, 2014, is valid until ~~January 1, 2018~~ JANUARY 1, 2023; except that the certification is revoked if the business no longer meets the qualifications. A business shall notify the office within thirty business days from the date that it no longer meets the qualifications. If the certification is revoked, the office may assess a penalty against the business that is equal to the amount of the advanced industry investment tax credits authorized after the date that the business no longer meets the qualifications. The state treasurer shall deposit the penalty into the state general fund. If the certification is revoked, subsequent investments in the business do not qualify for a tax credit. All tax credits issued before the revocation of the certification ~~shall~~ remain valid. The office shall not deny any application for a tax credit on the basis of the revocation of the certification if the investment was made before the date of the revocation.

(3) (b) (I) The total amount of the advanced industry investment tax credits shall not exceed three hundred seventy-five thousand dollars for the 2014 calendar year; and seven hundred fifty thousand dollars for each ~~of the 2015, 2016, and 2017~~ calendar years; ~~except that the amount of tax credits that were not authorized for 2014 may be allocated to 2015~~ CALENDAR YEAR FROM 2015 THROUGH 2022; EXCEPT THAT, IF THE TOTAL AMOUNT OF THE CREDITS FOR 2018 OR A LATER CALENDAR YEAR

IS LESS THAN THE MAXIMUM AMOUNT, THEN THE MAXIMUM AMOUNT FOR THE NEXT YEAR IS INCREASED BY AN AMOUNT EQUAL TO THE REMAINING, UNUSED TAX CREDITS FROM THE PRIOR YEAR. The office shall authorize the tax credits in the order that applications are received by the office and shall deny any application received after the limit has been met. The office may partially authorize the last tax credit that is awarded up to the limit.

~~(5) The state treasurer shall transfer the unexpended and unencumbered moneys that were in the innovation investment tax credit cash fund on May 29, 2014, to the advanced industry investment tax credit cash fund, which is created in the state treasury. The general assembly shall annually appropriate moneys in the fund to the office for the direct and indirect costs associated with the administration of this section. Any moneys in the fund not expended for such purpose may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.~~

(6) On November 1, 2017, the office of economic development shall submit a FIRST report to the finance and the business, labor, and economic and workforce development committees of the house of representatives; to the business, labor, and technology and the finance committees of the senate, or any successor committees; and to the joint budget committee summarizing all of the tax certificates issued since July 1, 2014. At a minimum, the report must include the amount of the capital invested by qualified investors and the tax credit that each qualified investor received, a description of the qualified businesses that received the qualified investment, A PROJECTION OF the number of new employees hired by the qualified small businesses as a result of the qualified investment, the geographic distribution of the jobs, and any other economic impacts that resulted from the ~~grant~~ QUALIFIED INVESTMENT. NOTWITHSTANDING SECTION 24-1-136(11), THE OFFICE SHALL SUBMIT A SECOND REPORT ON NOVEMBER 1, 2022, TO THE SAME LEGISLATIVE COMMITTEES SUMMARIZING ALL OF THE TAX CERTIFICATES ISSUED AFTER JANUARY 1, 2018. THE SECOND REPORT MUST INCLUDE THE SAME INFORMATION AS THE FIRST REPORT.

SECTION 3. Appropriation. For the 2017-18 state fiscal year, \$23,062 is appropriated to the office of the governor for use by the Colorado office of economic development. This appropriation is from the general fund and is based on an assumption that the office will require an additional 0.3 FTE. To implement this act, the office may use this appropriation for economic development commission - general economic incentives and marketing.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018

and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 6, 2017