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HOUSE BILL 22-1392

BY REPRESENTATIVE(S) Bird and Lindsay, Bernett, Hooton, Jodeh, Kipp, Lontine, McCluskie, McCormick, Mullica, Ricks, Roberts, Snyder, Titone, Valdez D.;

also SENATOR(S) Moreno, Buckner, Fields, Hansen, Jaquez Lewis, Lee, Priola, Zenzinger.

CONCERNING THE EXTENSION OF STATE TAX INCENTIVES AFFECTING THE USE OF REAL PROPERTY TO PROMOTE COMMUNITY DEVELOPMENT, AND, IN CONNECTION THEREWITH, EXTENDING THE CONTAMINATED LAND STATE INCOME TAX CREDIT AND PROPERTY TAX EXEMPTION FOR AFFORDABLE HOUSING PROJECTS AND MAKING AN APPROPRIATION.

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

**SECTION 1.** In Colorado Revised Statutes, 39-3-112, **amend** (3)(c)(II)(A) and (3)(c)(IV)(A) as follows:

**39-3-112. Definitions - residential property - orphanage - low-income elderly or individuals with disabilities - homeless or abused - low-income households - charitable purposes - exemption - limitations.** (3) In order for property to be exempt from the levy and collection of property tax pursuant to subsection (2) of this section, the

*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

administrator must find, pursuant to section 39-2-117, that:

(c) The property is owned:

(II) (A) With respect to residential structures specified in ~~sub-subparagraphs (A), (C), and (D) of subparagraph (H) of paragraph (a) of this subsection (3)~~; SUBSECTIONS (3)(a)(II)(A), (3)(a)(II)(C), AND (3)(a)(II)(D) OF THIS SECTION during any compliance period, as defined by section 42 (i)(1) of the "Internal Revenue Code of 1986", as amended, INCLUDING ANY EXTENDED USE PERIOD PROVIDED UNDER SECTION 42 OF THE "INTERNAL REVENUE CODE OF 1986", AS AMENDED, by any domestic or foreign limited partnership of which any nonprofit corporation that satisfies the provisions of ~~subparagraph (I) of this paragraph (c)~~ SUBSECTION (3)(c)(I) OF THIS SECTION is a general partner and that was formed for the purpose of obtaining, and has been allocated, low-income housing credits pursuant to section 42 of the "Internal Revenue Code of 1986", as amended.

(IV) (A) With respect to elderly or disabled low-income residential facilities or low-income household residential facilities, during any compliance period, as defined by section 42 (i)(1) of the "Internal Revenue Code of 1986", as amended, INCLUDING ANY EXTENDED USE PERIOD PROVIDED UNDER SECTION 42 OF THE "INTERNAL REVENUE CODE OF 1986", AS AMENDED, by any domestic or foreign limited partnership so long as each of the general partners of such limited partnership is a for-profit corporation, seventy-five percent or more of the outstanding voting stock of which is owned by, and seventy-five percent or more of the members of the board of directors of which is elected by, one or more nonprofit corporations that satisfy the provisions of ~~subparagraph (I) of this paragraph (c)~~ SUBSECTION (3)(c)(I) OF THIS SECTION and so long as such limited partnership was formed for the purpose of obtaining, and the structure that is owned by such limited partnership has been allocated, low-income housing credits pursuant to section 42 of the "Internal Revenue Code of 1986", as amended.

**SECTION 2.** In Colorado Revised Statutes, 39-22-526, **amend** (1)(a) introductory portion, (1)(b), (1)(c), (1)(d) introductory portion, (1)(d)(III), (1)(d)(VII), (1)(d)(VIII), (2)(a) introductory portion, (2)(b), (2)(c) introductory portion, (2)(c)(II), (2)(c)(VI), (2)(c)(VII), (2)(d), (3), and (4); **repeal** (1)(d)(V), (1)(d)(IX), (1)(d)(X), (2)(c)(IV), and (2)(c)(VIII); and **add** (3.5) as follows:

**39-22-526. Credit for environmental remediation of contaminated land - legislative declaration - definitions - repeal.**

(1) (a) For income tax years commencing on or after January 1, 2014, but prior to ~~January 1, 2023~~ JANUARY 1, 2025, there is allowed a credit against the income taxes imposed by this ~~article~~ ARTICLE 22 for any approved environmental remediation of contaminated property to any taxpayer who meets the following requirements:

(b) (I) The tax credit allowed in this section must not exceed forty percent of the first seven hundred fifty thousand dollars expended for the approved remediation, and must not exceed thirty percent of the next seven hundred fifty thousand dollars expended for the approved remediation. FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, WITH RESPECT TO APPROVED REMEDIATION OF A SITE LOCATED IN A RURAL COMMUNITY, THE AMOUNT OF THE TAX CREDIT SHALL NOT EXCEED FIFTY PERCENT OF THE FIRST SEVEN HUNDRED FIFTY THOUSAND DOLLARS EXPENDED FOR THE APPROVED REMEDIATION, AND MUST NOT EXCEED FORTY PERCENT OF THE NEXT SEVEN HUNDRED FIFTY THOUSAND DOLLARS EXPENDED FOR THE APPROVED REMEDIATION. A tax credit is not allowed for expenditures exceeding one million five hundred thousand dollars on any individual project.

(II) AS USED IN THIS SUBSECTION (1)(b) AND SUBSECTION (2)(b) OF THIS SECTION, "RURAL COMMUNITY" MEANS:

(A) A MUNICIPALITY WITH A POPULATION OF LESS THAN FIFTY THOUSAND PEOPLE THAT IS NOT LOCATED WITHIN THE DENVER METROPOLITAN AREA; OR

(B) THE UNINCORPORATED AREA OF ANY COUNTY THAT IS NOT LOCATED IN THE DENVER METROPOLITAN AREA AND THAT HAS A TOTAL POPULATION OF LESS THAN FIFTY THOUSAND PEOPLE.

(III) AS USED IN THIS SUBSECTION (1)(b) AND SUBSECTION (2)(b) OF THIS SECTION, "DENVER METROPOLITAN AREA" MEANS ADAMS, ARAPAHOE, BOULDER, AND JEFFERSON COUNTIES, THE CITY AND COUNTY OF BROOMFIELD, THE CITY AND COUNTY OF DENVER, AND ALL OF DOUGLAS COUNTY OTHER THAN THE TOWN OF CASTLE ROCK AND THE TOWN OF LARKSPUR.

~~(c) A credit must be first applied to taxes due or transferred to another taxpayer pursuant to paragraph (d) of this subsection (1) no later than the tax year following the tax year in which the certification is provided to the department pursuant to section 25-16-306 (5)(a), C.R.S. If the credit allowed by this section exceeds the tax otherwise due, the excess credit may be carried forward and claimed on the earliest possible subsequent tax return for a period not to exceed five years.~~

(d) A taxpayer may transfer all or a portion of a tax credit granted pursuant to this subsection (1) to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this ~~article~~ ARTICLE 22 subject to the following limitations:

~~(III) For any tax year in which a tax credit is transferred pursuant to this paragraph (d), both the taxpayer and the transferee shall file written statements with their income tax returns specifying the amount of the tax credit transferred. A transferee may only claim a credit transferred pursuant to this paragraph (d) if the taxpayer's written statement verifies the amount of the tax credit claimed by the transferee.~~ ANY TRANSFEREE OF A TAX CREDIT ISSUED UNDER THIS SECTION MAY USE THE AMOUNT OF THE TAX CREDITS TRANSFERRED TO OFFSET AGAINST ANY OTHER TAX DUE UNDER THIS ARTICLE 22. THE TRANSFEROR AND THE TRANSFEREE OF THE TAX CREDITS SHALL JOINTLY FILE A COPY OF THE WRITTEN TRANSFER AGREEMENT WITH THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, REFERRED TO IN THIS SECTION AS "CDPHE", WITHIN THIRTY DAYS AFTER THE TRANSFER. ANY FILING OF THE WRITTEN TRANSFER AGREEMENT WITH CDPHE PERFECTS THE TRANSFER, AND CDPHE SHALL DEVELOP A SYSTEM TO TRACK THE TRANSFERS OF TAX CREDITS AND TO CERTIFY THE OWNERSHIP OF TAX CREDITS. A CERTIFICATION BY CDPHE OF THE OWNERSHIP AND THE AMOUNT OF TAX CREDITS MAY BE RELIED ON BY THE DEPARTMENT OF REVENUE AND THE TRANSFEREE AS BEING ACCURATE, AND NEITHER CDPHE NOR THE DEPARTMENT OF REVENUE SHALL ADJUST THE AMOUNT OF TAX CREDITS AS TO THE TRANSFEREE; EXCEPT THAT CDPHE AND THE DEPARTMENT OF REVENUE RETAIN ANY REMEDIES THEY MAY HAVE AGAINST THE OWNER.

~~(V) The transferee shall submit to the department of revenue a form approved by the department establishing that the taxpayer has satisfied the requirements of this section. The transferee shall also file a copy of the form with the department of public health and environment.~~

(VII) A tax credit held by an individual either directly or as a result of a ~~donation~~ DISTRIBUTION by a pass-through entity, but not a tax credit held by a transferee unless used by the transferee's estate for taxes owed by the estate, survives the death of the individual and may be claimed or transferred by the decedent's estate.

(VIII) The transferor of a tax credit transferred pursuant to this ~~paragraph (d)~~ SUBSECTION (1)(d) is the tax matters representative in all matters with respect to the credit. ~~The tax matters representative is responsible for representing and binding the transferees with respect to all issues affecting the credit, including the amounts expended for the approved remediation, the certificate issued by the department of public health and environment, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations. The transferee is subject to the same statute of limitations with respect to the credit as the transferor of the credit.~~

(IX) ~~Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, is binding on transferees.~~

(X) ~~Any person who has claimed a credit or who may be eligible to claim a tax credit either as a taxpayer or a transferee may petition the department of revenue to change the tax matters representative's designation. The executive director shall promulgate rules specifying the procedures for a change to the tax matters representative's designation when the executive director determines that the tax matters representative is unavailable or unwilling to act as the tax matters representative. If the department grants the petition, the new tax matters representative shall serve in that capacity on and after the date the department grants the petition.~~

(2) (a) For income tax years commencing on or after January 1, 2014, but prior to ~~January 1, 2023~~ JANUARY 1, 2025, there is allowed to any qualified entity a transferable expense amount for expenses incurred by the qualified entity in performing approved environmental remediation. The transferable expense amount may only be transferred to a taxpayer to be claimed by the taxpayer as a credit pursuant to the provisions of this

subsection (2). The transferrable expense amount is allowed to any qualified entity that meets the following requirements:

(b) The transferable expense amount allowed in this section must not exceed forty percent of the first seven hundred fifty thousand dollars expended by the qualified entity for the approved remediation, and must not exceed thirty percent of the next seven hundred fifty thousand dollars expended by the qualified entity for the approved remediation; EXCEPT THAT, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2025, WITH RESPECT TO APPROVED REMEDIATION OF A SITE LOCATED IN A RURAL COMMUNITY, THE AMOUNT OF THE TRANSFERABLE EXPENSE SHALL NOT EXCEED FIFTY PERCENT OF THE FIRST SEVEN HUNDRED FIFTY THOUSAND DOLLARS EXPENDED FOR THE APPROVED REMEDIATION, AND MUST NOT EXCEED FORTY PERCENT OF THE NEXT SEVEN HUNDRED FIFTY THOUSAND DOLLARS EXPENDED FOR THE APPROVED REMEDIATION. A transferable expense amount is not allowed for expenditures exceeding one million five hundred thousand dollars on any individual project.

(c) A qualified entity may transfer all or a portion of a transferable expense amount allowed pursuant to this subsection (2) to a taxpayer for such taxpayer, as transferee, to apply as a credit against the taxes imposed by this ~~article~~ ARTICLE 22 subject to the following limitations:

~~(II) For any tax year in which a transferable expense amount is transferred pursuant to this subsection (2), the qualified entity shall file a written statement with the department of revenue on a form approved by the department of revenue and the transferee shall file a written statement with the transferee's income tax return specifying the amount transferred to the transferee to be claimed as a credit. A transferee may only claim a credit pursuant to this subsection (2) if the qualified entity's written statement verifies the amount of the tax credit claimed by the transferee. ANY TRANSFEREE OF A TRANSFERABLE EXPENSE AMOUNT ISSUED UNDER THIS SECTION MAY USE THE AMOUNT OF THE TRANSFERABLE EXPENSE AMOUNT TRANSFERRED TO OFFSET AGAINST ANY OTHER TAX DUE UNDER THIS ARTICLE 22. THE TRANSFEROR AND THE TRANSFEREE OF THE TRANSFERABLE EXPENSE AMOUNT SHALL JOINTLY FILE A COPY OF THE WRITTEN TRANSFER AGREEMENT WITH CDPHE WITHIN THIRTY DAYS AFTER THE TRANSFER. ANY FILING OF THE WRITTEN TRANSFER AGREEMENT WITH CDPHE PERFECTS THE TRANSFER, AND CDPHE SHALL DEVELOP A SYSTEM TO TRACK THE~~

TRANSFERS OF TRANSFERABLE EXPENSE AMOUNTS AND TO CERTIFY THE OWNERSHIP OF TRANSFERABLE EXPENSE AMOUNTS. A CERTIFICATION BY CDPHE OF THE OWNERSHIP AND THE AMOUNT OF TRANSFERABLE EXPENSE MAY BE RELIED ON BY THE DEPARTMENT OF REVENUE AND THE TRANSFEREE AS BEING ACCURATE, AND NEITHER CDPHE NOR THE DEPARTMENT OF REVENUE SHALL ADJUST THE AMOUNT OF TRANSFERABLE EXPENSE AS TO THE TRANSFEREE; EXCEPT THAT CDPHE AND THE DEPARTMENT OF REVENUE RETAIN ANY REMEDIES THEY MAY HAVE AGAINST THE OWNER.

(IV) ~~The transferee shall submit to the department of revenue a form approved by the department establishing that the transferee has satisfied the requirements of this section. The transferee shall also file a copy of the form with the department of public health and environment.~~

(VI) A ~~tax credit~~ TRANSFERABLE EXPENSE AMOUNT held by a transferee's estate for taxes owed by the estate, survives the death of the transferee and may be claimed or transferred by the decedent's estate.

(VII) The qualified entity that transfers a transferable expense amount to be claimed as a credit by a transferee pursuant to this subsection (2) is the tax matters representative in all matters with respect to the credit. ~~The tax matters representative is responsible for representing and binding the transferees with respect to all issues affecting the credit, including the amounts expended for the approved remediation, the certificate issued by the department of public health and environment, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations.~~

(VIII) ~~Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, is binding on transferees.~~

(d) ~~For purposes of AS USED IN~~ this subsection (2), "qualified entity" means a county, home rule county, city, town, home rule city, home rule city and county, SCHOOL DISTRICT, CHARTER SCHOOL, SPECIAL DISTRICT, DISTRICT AUTHORIZED BY ARTICLE 20 OF TITLE 30, ARTICLE 25 OF TITLE 31, AND ARTICLES 41 TO 50 OF TITLE 37, STATE INSTITUTION OF HIGHER EDUCATION, QUASI-GOVERNMENTAL ENTITY, OR MUNICIPAL,

QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO LAW, or a private nonprofit entity that is exempt from the income taxes imposed by this ~~article~~ ARTICLE 22.

(3) In addition to any other requirements of this section, a taxpayer shall submit a claim for a credit and a qualified entity shall submit a claim for a transferrable expense amount to the department of public health and environment. The department shall issue certificates for the claims received in the order submitted. After certificates have been issued for credits and transferrable expense amounts in the aggregate amount of three million dollars for all taxpayers and qualified entities combined for the 2014 TO 2021 calendar years and ~~three~~ FIVE million dollars ~~for each calendar year thereafter~~, FOR THE 2022, 2023, AND 2024 CALENDAR YEARS, any claims that exceed the amount allowed for the calendar year shall be placed on a wait list in the order submitted and a certificate shall be issued for use of the credit or transferrable expense amount in the next year for which the department has not issued credit certificates in excess of three OR FIVE million dollars ~~except that no more than one million dollars in claims shall be placed on the wait list for any given calendar year~~ RESPECTIVELY. The department shall not issue certificates for any calendar year, including certificates placed on a wait list for that year, in an aggregate amount that exceeds three OR FIVE million dollars RESPECTIVELY. TWO MILLION DOLLARS OF THE FIVE MILLION DOLLAR CAP IS RESERVED ONLY FOR PROJECTS IN A RURAL COMMUNITY. THE REMAINING THREE MILLION DOLLARS EACH YEAR MAY BE USED BY RURAL OR NONRURAL COMMUNITIES. No claim for a credit or a transferrable expense amount is allowed for any income tax year commencing on or after January 1, 2014, unless a certificate has been issued by the department pursuant to this subsection (3).

(3.5) IN ACCORDANCE WITH SECTION 39-21-304(1), WHICH REQUIRES EACH BILL THAT CREATES A NEW TAX EXPENDITURE OR EXTENDS AN EXPIRING TAX EXPENDITURE TO INCLUDE A TAX PREFERENCE PERFORMANCE STATEMENT AS PART OF A STATUTORY LEGISLATIVE DECLARATION, THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE GENERAL LEGISLATIVE PURPOSES OF THE INCOME TAX CREDIT ALLOWED BY THIS SECTION ARE:

(I) TO INDUCE CERTAIN DESIGNATED BEHAVIOR BY TAXPAYERS; AND



(II) TO PROVIDE TAX RELIEF FOR CERTAIN BUSINESSES OR INDIVIDUALS;

(b) THE SPECIFIC LEGISLATIVE PURPOSE OF THE INCOME TAX CREDIT ALLOWED BY THIS SECTION IS TO ENCOURAGE VOLUNTARY ENVIRONMENTAL REMEDIATION OF CONTAMINATED SITES BY PROVIDING A FINANCIAL INCENTIVE TO MOVE FORWARD WITH COSTLY REMEDIATION PROJECTS; AND

(c) IN ORDER TO ALLOW THE GENERAL ASSEMBLY AND THE STATE AUDITOR TO MEASURE THE EFFECTIVENESS OF ACHIEVING THE PURPOSES SPECIFIED IN SUBSECTIONS (3.5)(a) AND (3.5)(b) OF THIS SECTION, CDPHE IS REQUIRED TO PROVIDE DATA THAT INDICATES FOR EACH CALENDER YEAR HOW MANY PROJECTS QUALIFIED FOR THE CREDIT AND THE NUMBER OF CREDIT RECIPIENTS.

(4) This section is repealed, effective ~~December 31, 2029~~ DECEMBER 31, 2031.

**SECTION 3. Appropriation.** (1) For the 2022-23 state fiscal year, \$41,102 is appropriated to the department of revenue for use by the taxation business group. This appropriation is from the general fund. To implement this act, the group may use this appropriation for tax administration IT system (GenTax) support.

(2) For the 2022-23 state fiscal year, \$10,000 is appropriated to the department of public health and environment for use by the hazardous materials and waste management division. This appropriation is from the hazardous substance site response fund created in section 25-16-104.9 (2), C.R.S. To implement this act, the division may use this appropriation for program costs related to administration.

**SECTION 4. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

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Alec Garnett  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

\_\_\_\_\_  
Steve Fenberg  
PRESIDENT OF  
THE SENATE

\_\_\_\_\_  
Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

\_\_\_\_\_  
Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_  
(Date and Time)

\_\_\_\_\_  
Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO