

CHAPTER 224

TAXATION

HOUSE BILL 13-1142

BY REPRESENTATIVE(S) Hullinghorst, Court, Ferrandino, Kagan, Pabon, Buckner, Fields, Fischer, Ginal, Labuda, Levy, Melton, Moreno, Singer, Tyler, Young, Exum, Lee, Schafer, Williams;
also SENATOR(S) Heath, Aguilar, Carroll, Guzman, Jones, Kefalas, Steadman, Tochtrop.

AN ACT

CONCERNING REFORMS TO THE "URBAN AND RURAL ENTERPRISE ZONE ACT", 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) It is the duty of the general assembly to ensure that every taxpayer dollar is spent in the most effective and efficient way possible in order to obtain the best possible return on investment;

(b) Reviewing and improving existing state economic development programs, such as the "Urban and Rural Enterprise Zone Act", article 30 of title 39, Colorado Revised Statutes, in order to ensure that the programs remain relevant, efficient, and effective in expanding Colorado's economy is a priority for the general assembly and allows the general assembly to use any savings to promote other economic development programs that are highly targeted to those businesses that need the most assistance;

(c) Promoting sustainable economic growth remains a critical priority while Colorado's economy is recovering, and it is important to update and modernize existing economic development programs to meet the changing needs of Colorado's economy; and

(d) The money saved as a result of improvements will be used to fund effective economic development programs within state agencies and will provide a source to enhance economic development in the state.

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

SECTION 2. In Colorado Revised Statutes, 39-30-103, **repeal** (2) (b).

SECTION 3. In Colorado Revised Statutes, 39-30-103, **amend** (2) (a) and (2) (c) (I); and **add** (8) as follows:

39-30-103. Zones established - review - termination - repeal. (2) (a) Except as provided in ~~paragraphs (b) and (c)~~ PARAGRAPH (c) of this subsection (2), the director of the Colorado office of economic development shall determine whether an area meets the criteria specified in subsection (1) of this section based on the most recent statistics available. Except as provided in ~~paragraphs (b) and (c)~~ PARAGRAPH (c) of this subsection (2), all decisions concerning the designation or termination of an enterprise zone or any portion of an enterprise zone shall be made by the Colorado economic development commission created in section 24-46-102, C.R.S., upon the recommendations of the director of the Colorado office of economic development.

(c) (I) ~~Commencing January 1, 2016~~ JANUARY 1, 2014, the director of the Colorado office of economic development and the Colorado economic development commission shall review the enterprise zone designations no less frequently than once every ~~five~~ TEN years to ensure that the existing zones continue to meet the criteria specified in subsection (1) of this section. The director and the commission may modify existing enterprise zone designations based on the review specified in this paragraph (c). If it is determined that existing enterprise zone designations need to be modified, such modification shall not be undertaken in a high unemployment period, BUT THE DIRECTOR AND THE COMMISSION SHALL REVIEW THE NEED FOR SUCH MODIFICATIONS AGAIN AS SOON AS THE STATE IS NO LONGER IN A HIGH UNEMPLOYMENT PERIOD. Any modification shall be reported to the legislative audit committee in conjunction with the annual presentation described in paragraph (b.7) of subsection (4) of this section and shall also be reported to the finance committees of the house of representatives and the senate, or any successor committees.

(8) NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, FOR TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2014, ONLY A TAXPAYER THAT IS ENGAGED IN A BUSINESS THAT IS LEGAL UNDER BOTH STATE AND FEDERAL LAW IS ELIGIBLE TO CLAIM A CREDIT PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

SECTION 4. In Colorado Revised Statutes, 39-30-104, **amend** (2), (2.5) (a), and (4) (a); and **add** (2.7) as follows:

39-30-104. Credit against tax - investment in certain property - repeal. (2) (a) FOR INCOME TAX YEARS COMMENCING PRIOR TO JANUARY 1, 2014, the amount of the credit set forth in subsection (1) of this section shall be subject to the limitations of section 39-22-507.5; except that, in computing the limitations on credit pursuant to section 39-22-507.5 (3), a taxpayer's actual tax liability for the income tax year shall not be reduced by the amount of credits allowed by section 39-30-105 and the limit on that portion of a taxpayer's tax liability that exceeds five thousand dollars shall be fifty percent.

(b) In addition to the limitations set forth in paragraph (a) of this subsection (2), for income tax years commencing on or after January 1, 2011, but prior to January

1, 2014, any taxpayer that is eligible to claim a credit pursuant to subsection (1) of this section in excess of five hundred thousand dollars shall defer claiming any amount of the credit allowed pursuant to this section that exceeds five hundred thousand dollars until an income tax year commencing on or after January 1, 2014. The five hundred thousand dollar limitation specified in this paragraph (b) shall apply to any credit allowed in the ~~current year~~ INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014, including any amount carried forward from a prior year.

(c) (I) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2014, EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), THE AMOUNT THAT MAY BE CLAIMED BY A TAXPAYER FOR THE INCOME TAX YEAR IN WHICH THE TOTAL QUALIFIED INVESTMENT IS MADE IS LIMITED TO THE LESSER OF:

(A) THE SUM OF UP TO FIVE THOUSAND DOLLARS OF THE TAXPAYER'S ACTUAL TAX LIABILITY FOR THE INCOME TAX YEAR PLUS FIFTY PERCENT OF ANY PORTION OF THE TAX LIABILITY FOR THE INCOME TAX YEAR THAT EXCEEDS FIVE THOUSAND DOLLARS; OR

(B) SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS PLUS ANY INVESTMENT TAX CREDIT CARRYOVERS ALLOWED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) OR PREVIOUSLY ALLOWED IN SUBSECTION (2.5) OF THIS SECTION.

(II) (A) A TAXPAYER MAY SEEK A WAIVER OF THE LIMITATION SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) BY COMPLETING A WRITTEN APPLICATION TO THE COLORADO ECONOMIC DEVELOPMENT COMMISSION FOR PERMISSION TO CLAIM A CREDIT IN EXCESS OF SUCH LIMIT FOR THE INCOME TAX YEAR IN WHICH THE TOTAL QUALIFIED INVESTMENT IS MADE. THE APPLICATION MUST INCLUDE AN IDENTIFICATION OF THE SUBSTANTIAL POSITIVE IMPACT THE WAIVER OF THE LIMITATION WOULD HAVE ON INVESTMENTS AND ON WELL-PAYING JOBS IN THE ENTERPRISE ZONE, DOCUMENTATION THAT DEMONSTRATES THAT WITHOUT THE WAIVER OF THE LIMITATION THE SUBSTANTIAL POSITIVE IMPACT ON INVESTMENTS AND ON WELL-PAYING JOBS IN THE ENTERPRISE ZONE IS NOT LIKELY TO OCCUR, AND INFORMATION THAT THE WAIVER OF THE LIMITATION IS A SUBSTANTIAL FACTOR TO THE START-UP, EXPANSION, OR RELOCATION OF THE TAXPAYER'S BUSINESS, THAT RECEIPT OF THE WAIVER OF THE LIMITATION IS A MAJOR FACTOR IN THE TAXPAYER'S DECISION, AND THAT WITHOUT THE WAIVER OF THE LIMITATION THE TAXPAYER IS NOT LIKELY TO MAKE THE QUALIFIED INVESTMENT. IN DECIDING WHETHER TO GRANT THE WAIVER OF THE LIMITATION, THE COMMISSION MUST CONSIDER THE OVERALL ECONOMIC HEALTH OF THIS STATE AND THE ECONOMIC VIABILITY OF THE ARGUMENTS MADE BY THE TAXPAYER IN SUPPORT OF THE TAXPAYER'S APPLICATION. THE COLORADO ECONOMIC DEVELOPMENT COMMISSION MAY REQUIRE THE TAXPAYER TO PROVIDE AN INDEPENDENT ANALYSIS, AT THE TAXPAYER'S EXPENSE, SUBSTANTIATING THE TAXPAYER'S ARGUMENTS IN SUPPORT OF THE APPLICATION. THE TAXPAYER'S APPLICATION MUST BE CONSIDERED AT A REGULARLY SCHEDULED MEETING OF THE COLORADO ECONOMIC DEVELOPMENT COMMISSION WHERE THE PUBLIC IS ALLOWED TO COMMENT.

(B) THE COLORADO ECONOMIC DEVELOPMENT COMMISSION MAY ALLOW ALL, PART, OR NONE OF A TAXPAYER'S APPLICATION TO WAIVE THE LIMITATION SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c). THE COLORADO ECONOMIC

DEVELOPMENT COMMISSION SHALL ISSUE A CREDIT CERTIFICATE THAT SETS FORTH THE AMOUNT OF THE CREDIT THAT THE TAXPAYER MAY CLAIM FOR THE INCOME TAX YEAR IN WHICH THE TOTAL QUALIFIED INVESTMENT IS MADE. THE CREDIT CERTIFICATE SHALL BE SUBMITTED BY THE TAXPAYER TO THE DEPARTMENT OF REVENUE WITH THE TAXPAYER'S INCOME TAX RETURN FOR THE TAX YEAR FOR WHICH THE CREDIT CERTIFICATE IS ISSUED.

(C) IN THE EVENT THE COLORADO ECONOMIC DEVELOPMENT COMMISSION APPROVES A TAXPAYER'S APPLICATION TO WAIVE THE LIMITATION SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), THE COLORADO ECONOMIC DEVELOPMENT COMMISSION SHALL INCLUDE ITS DECISION IN THE ENTERPRISE ZONE ANNUAL REPORT TO THE GENERAL ASSEMBLY SPECIFIED IN SECTION 39-30-103 (4) (b.7), INCLUDING THE TAXPAYER'S NAME, THE AMOUNT OF THE CREDIT THAT THE COMMISSION ALLOWED THE TAXPAYER TO CLAIM, AND THE COLORADO ECONOMIC DEVELOPMENT COMMISSION'S JUSTIFICATION FOR APPROVING THE APPLICATION.

(III) ANY EXCESS CREDIT ALLOWED PURSUANT TO THIS PARAGRAPH (c) SHALL BE AN INVESTMENT TAX CREDIT CARRYOVER TO EACH OF THE FOURTEEN INCOME TAX YEARS FOLLOWING THE UNUSED CREDIT YEAR.

(IV) THE LIMITATION CONTAINED IN THIS PARAGRAPH (c) ON THE AMOUNT A TAXPAYER MAY CLAIM FOR THE INCOME TAX YEAR IN WHICH THE TOTAL QUALIFIED INVESTMENT IS MADE DOES NOT LIMIT THE TOTAL AMOUNT OF THE CREDIT ALLOWED UNDER SUBSECTION (1) OF THIS SECTION, NOR DOES IT LIMIT THE ABILITY OF A TAXPAYER TO CARRYOVER A CREDIT TO SUBSEQUENT TAX YEARS AS ALLOWED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) OR PREVIOUSLY ALLOWED IN SUBSECTION (2.5) OF THIS SECTION.

(V) IN COMPUTING THE AMOUNT THAT MAY BE CLAIMED BY A TAXPAYER PURSUANT TO THIS PARAGRAPH (c), A TAXPAYER'S ACTUAL TAX LIABILITY FOR THE INCOME TAX YEAR SHALL BE DERIVED FROM THE CALCULATED TAX BEFORE ANY REDUCTION OF CREDITS.

(2.5) (a) Notwithstanding the provisions of section 39-22-507.5 (7) (b), and except as otherwise provided in paragraph (b) of this subsection (2.5), any excess credit ~~claimed~~ ALLOWED pursuant to this section shall be an investment tax credit carryover to each of the twelve income tax years following the unused credit year.

(2.7) THE COLORADO ECONOMIC DEVELOPMENT COMMISSION SHALL ANNUALLY POST ON ITS WEB SITE OR ON THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT'S WEB SITE THE FOLLOWING INFORMATION REGARDING ANY ENTERPRISE ZONE INVESTMENT TAX CREDIT CERTIFIED UNDER THIS SECTION:

- (a) THE ENTERPRISE ZONE FOR THE CERTIFIED CREDIT;
- (b) THE NAME OF THE TAXPAYER OR BUSINESS;
- (c) THE TYPE OF BUSINESS;
- (d) THE TAX YEAR FOR WHICH THE CREDIT IS CERTIFIED;

(e) THE TOTAL QUALIFIED INVESTMENT REPORTED;

(f) THE AMOUNT OF THE QUALIFIED INVESTMENT THAT QUALIFIES FOR THE CREDIT;

(g) THE CALCULATED CREDIT; AND

(h) THE COUNTY WHERE THE QUALIFIED INVESTMENT IS MADE.

(4) (a) (I) In addition to any other credit allowed under this section, for income tax years commencing on or after January 1, 1997, BUT PRIOR TO JANUARY 1, 2014, there shall be allowed to any person as a credit against the tax imposed by article 22 of this title an amount equal to ten percent of the total investment made during the taxable year in a qualified job training program.

(II) IN ADDITION TO ANY OTHER CREDIT ALLOWED UNDER THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2014, THERE SHALL BE ALLOWED TO ANY PERSON AS A CREDIT AGAINST THE TAX IMPOSED BY ARTICLE 22 OF THIS TITLE AN AMOUNT EQUAL TO TWELVE PERCENT OF THE TOTAL INVESTMENT MADE DURING THE TAXABLE YEAR IN A QUALIFIED JOB TRAINING PROGRAM.

SECTION 5. In Colorado Revised Statutes, 39-30-105, **amend** (1) (a) (I) and (1) (b) as follows:

39-30-105. Credit for new business facility employees - definitions.

(1) (a) (I) (A) For any income tax year commencing on or after January 1, 1993, BUT PRIOR TO JANUARY 1, 2014, any taxpayer who establishes a new business facility in an enterprise zone shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars per income tax year for each new business facility employee, pursuant to subsection (6) of this section, who is working within the zone, prorated according to the number of months the employee was employed by the taxpayer during the income tax year. An employee whose primary duties consist of operating a commercial motor vehicle with a commercial driver's license shall be deemed to be working one hundred percent within the zone if the employee spends no more than five percent of his or her total time at any facility of the employer other than the facility within the zone.

(B) FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2014, ANY TAXPAYER WHO ESTABLISHES A NEW BUSINESS FACILITY IN AN ENTERPRISE ZONE SHALL BE ALLOWED A CREDIT AGAINST THE INCOME TAX IMPOSED BY ARTICLE 22 OF THIS TITLE IN AN AMOUNT EQUAL TO ONE THOUSAND ONE HUNDRED DOLLARS PER INCOME TAX YEAR FOR EACH NEW BUSINESS FACILITY EMPLOYEE, PURSUANT TO SUBSECTION (6) OF THIS SECTION, WHO IS WORKING WITHIN THE ZONE, PRORATED ACCORDING TO THE NUMBER OF MONTHS THE EMPLOYEE WAS EMPLOYED BY THE TAXPAYER DURING THE INCOME TAX YEAR. AN EMPLOYEE WHOSE PRIMARY DUTIES CONSIST OF OPERATING A COMMERCIAL MOTOR VEHICLE WITH A COMMERCIAL DRIVER'S LICENSE SHALL BE DEEMED TO BE WORKING ONE HUNDRED PERCENT WITHIN THE ZONE IF THE EMPLOYEE SPENDS NO MORE THAN FIVE PERCENT OF HIS OR HER TOTAL TIME AT ANY FACILITY OF THE EMPLOYER OTHER THAN THE FACILITY WITHIN THE ZONE.

(b) (I) In addition to the credit available under SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (1) AND SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1), a taxpayer qualified ~~under said paragraph (a)~~ FOR SUCH CREDITS shall be allowed for the first two full income tax years while located in an enterprise zone a credit in an amount equal to two hundred dollars for each new business facility employee who is insured under a health insurance plan or program provided through his or her employer. To be eligible for such credit, the employer must contribute fifty percent or more of the total cost of a health insurance plan or program, and such plan or program must be in accordance with the provisions of article 8 of title 10 or part 1, 2, 3, or 4 of article 16 of title 10, C.R.S., or be a self-insurance program and include partial or complete coverage for hospital and physician services.

(II) IN ADDITION TO THE CREDIT AVAILABLE UNDER SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (1) AND SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1), A TAXPAYER QUALIFIED FOR SUCH CREDITS SHALL BE ALLOWED FOR THE FIRST TWO FULL INCOME TAX YEARS WHILE LOCATED IN AN ENTERPRISE ZONE A CREDIT IN AN AMOUNT EQUAL TO ONE THOUSAND DOLLARS FOR EACH NEW BUSINESS FACILITY EMPLOYEE WHO IS INSURED UNDER A HEALTH INSURANCE PLAN OR PROGRAM PROVIDED THROUGH HIS OR HER EMPLOYER. TO BE ELIGIBLE FOR SUCH CREDIT, THE EMPLOYER MUST CONTRIBUTE FIFTY PERCENT OR MORE OF THE TOTAL COST OF A HEALTH INSURANCE PLAN OR PROGRAM, AND SUCH PLAN OR PROGRAM MUST BE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 8 OF TITLE 10 OR PART 1, 2, 3, OR 4 OF ARTICLE 16 OF TITLE 10, C.R.S., OR BE A SELF-INSURANCE PROGRAM AND INCLUDE PARTIAL OR COMPLETE COVERAGE FOR HOSPITAL AND PHYSICIAN SERVICES.

SECTION 6. In Colorado Revised Statutes, 2-3-1203, **repeal** (3) (aa) (VI) as follows:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(aa) July 1, 2014:

(VI) ~~The enterprise zone review task force, created in section 39-30-103, C.R.S.;~~

SECTION 7. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of revenue, for the fiscal year beginning July 1, 2013, the sum of \$1,600, or so much thereof as may be necessary, for allocation to the taxation business group for programming services related to the implementation of this act.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 15, 2013