

CHAPTER 244

TAXATION

HOUSE BILL 23-1081

BY REPRESENTATIVE(S) Lindstedt and Taggart, Bird, Snyder, Vigil, Weissman;
also SENATOR(S) Hinrichsen, Bridges, Buckner, Coleman, Cutter, Exum, Fields, Hansen, Jaquez Lewis, Kolker, Marchman,
Moreno, Mullica, Priola, Roberts, Rodriguez, Winter F., Fenberg.

AN ACT**CONCERNING THE EXPANSION OF THE TAX CREDIT FOR CONVERSION COSTS FOR EMPLOYEE BUSINESS OWNERSHIP.**

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

SECTION 1. In Colorado Revised Statutes, 39-22-542, **amend** (2), (3)(a), (3)(b), (4), (5)(a)(III), (6)(a), (7), (8), (10), and (11) introductory portion; and **add** (3)(a.5), (3)(d), (5)(a)(V), and (5)(a)(VI) as follows:

39-22-542. Tax credit for conversion costs for employee business ownership - definitions - declaration - repeal. (2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) (I) "ALTERNATE EQUITY STRUCTURE" MEANS A MECHANISM UNDER WHICH AN EMPLOYER GRANTS TO EMPLOYEES A FORM OF EMPLOYEE OWNERSHIP, INCLUDING BUT NOT LIMITED TO AN EMPLOYEE STOCK PURCHASE PLAN, LLC MEMBERSHIP, PHANTOM STOCK, PROFIT INTEREST, RESTRICTED STOCK, STOCK APPRECIATION RIGHT, STOCK OPTION, OR SYNTHETIC EQUITY. AN ALTERNATE EQUITY STRUCTURE MUST AT A MINIMUM:

(A) GRANT RIGHTS TO OR BE OFFERED TO AT LEAST TWENTY PERCENT OF AN EMPLOYER'S ELIGIBLE WORKERS, OR GRANT RIGHTS TO OR BE OFFERED TO AT LEAST TWENTY PERCENT OF ELIGIBLE WORKERS OF AN EMPLOYER THAT IS OWNED BY OR OPERATED FOR THE BENEFIT OF ELIGIBLE WORKERS IN A BROAD-BASED EMPLOYEE OWNERSHIP TRANSITION. FOR PURPOSES OF THIS SUBSECTION (2)(a)(I), "ELIGIBLE WORKERS" MEANS ALL FULL-TIME EMPLOYEES, REGULAR EMPLOYEES, NON-SEASONAL EMPLOYEES, NON-MANAGERIAL EMPLOYEES, AND CONTRACT LABOR.

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.

(B) HAVE THE PARTICIPATION OF AT LEAST TWENTY PERCENT OF AN EMPLOYER'S ELIGIBLE WORKERS;

(C) ALLOCATE AT LEAST TWENTY PERCENT OF THE FULLY DILUTED SECURITIES OR RIGHTS TO A SYNTHETIC INTEREST IN SECURITIES TO PARTICIPATING ELIGIBLE WORKERS, OR ALLOCATE TWENTY PERCENT OF NET PROFIT FROM OPERATIONS TO PARTICIPATING ELIGIBLE WORKERS; AND

(D) GRANT TO PARTICIPATING ELIGIBLE WORKERS INFORMATIONAL RIGHTS, DECISION-MAKING RIGHTS, AND NON-FINANCIAL RIGHTS THAT ARE EQUAL TO OR GREATER THAN THE RIGHTS THAT ARE GRANTED TO HOLDERS OF THE EMPLOYER'S COMMON STOCK OR HOLDERS OF THE EMPLOYER'S RESIDUAL MEMBERSHIP INTEREST.

(II) THE OFFICE SHALL DEVELOP GUIDELINES THAT CLARIFY THE TYPES OF EMPLOYEE OWNERSHIP GRANTS THAT QUALIFY AS AN ALTERNATE EQUITY STRUCTURE. THE OFFICE MAY PERIODICALLY UPDATE ANY GUIDELINES ISSUED PURSUANT TO THIS SUBSECTION (2)(a)(II).

~~(a)~~ (b) "Colorado office of economic development" or "office" means the Colorado office of economic development created in section 24-48.5-101.

~~(b)~~ (c) "Conversion costs" means professional services, including accounting, legal, and business advisory services, as detailed in the guidelines issued by the office, for the transition of a business to employee ownership trust, an employee stock ownership plan, or a worker-owned cooperative. "Conversion costs" include costs to audit the cost certification as required in subsection (7)(b) of this section.

~~(c)~~ (d) "Department" means the Colorado department of revenue.

~~(d)~~ (e) "Employee ownership trust" means an indirect form of employee ownership in which a trust holds a controlling stake in a qualified business and benefits all employees on an equal basis.

~~(e)~~ (f) "Employee stock ownership plan" has the same meaning as set forth in section 4975 (e)(7) of the internal revenue code, as amended.

(g) "EXPANSION COSTS" MEANS PROFESSIONAL SERVICES, INCLUDING ACCOUNTING, LEGAL, AND BUSINESS ADVISORY SERVICES, AS DETAILED IN THE GUIDELINES ISSUED BY THE OFFICE, FOR THE EXPANSION OF A QUALIFIED EMPLOYEE-OWNED BUSINESS'S EMPLOYEE OWNERSHIP TRUST, EMPLOYEE STOCK OWNERSHIP PLAN, WORKER-OWNED COOPERATIVE, OR ALTERNATE EQUITY STRUCTURE. EXPANSION COSTS INCLUDE COSTS TO AUDIT THE COST CERTIFICATION AS REQUIRED IN SUBSECTION (7)(b) OF THIS SECTION.

~~(f)~~ (h) "Owner" means the owner of a qualified business before a conversion occurs.

~~(g)~~ (i) "Qualified business" means a taxpayer subject to tax under this article 22, including but not limited to a C corporation, S corporation, limited liability company, partnership, limited liability partnership, a sole proprietorship, or other similar pass-through entity, that is not owned in whole or in part by an employee

ownership trust, that does not have an employee stock ownership plan, ~~or that is not, in whole or in part, a worker-owned cooperative, or DOES NOT HAVE AN ALTERNATE EQUITY STRUCTURE, and that is approved by the office for the tax incentives in this section.~~

(j) "QUALIFIED EMPLOYEE-OWNED BUSINESS" MEANS A TAXPAYER THAT IS SUBJECT TO TAX UNDER THIS ARTICLE 22, INCLUDING BUT NOT LIMITED TO A C CORPORATION, S CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, SOLE PROPRIETORSHIP, OR OTHER SIMILAR PASS-THROUGH ENTITY, THAT:

(I) IS OWNED IN WHOLE OR IN PART BY AN EMPLOYEE OWNERSHIP TRUST;

(II) HAS ITS CORPORATE HEADQUARTERS LOCATED IN THIS STATE. FOR PURPOSES OF THIS SUBSECTION (2)(j), "CORPORATE HEADQUARTERS" MEANS THE SOLE LOCATION WITHIN A REGIONAL OR NATIONAL AREA WHERE THE TAXPAYER'S STAFF MEMBERS OR EMPLOYEES ARE DOMICILED AND EMPLOYED, AND WHERE THE MAJORITY OF THE TAXPAYER'S FINANCIAL, PERSONNEL, LEGAL, PLANNING, OR OTHER BUSINESS FUNCTIONS ARE CONDUCTED ON A REGIONAL OR NATIONAL BASIS.

(III) HAS AN EMPLOYEE STOCK OWNERSHIP PLAN, IS IN WHOLE OR IN PART A WORKER-OWNED COOPERATIVE, OR HAS AN ALTERNATE EQUITY STRUCTURE; AND

(IV) IS APPROVED BY THE OFFICE FOR THE TAX INCENTIVES IN THIS SECTION.

(k) "SECURITIES" HAS THE SAME MEANING AS THE TERM "SECURITY" SET FORTH IN 15 U.S.C. SEC. 77b (a)(1).

~~(h)~~ (l) "Worker-owned cooperative" has the same meaning as set forth in section 1042 (c)(2) of the internal revenue code, as amended.

(3) (a) Subject to certification by the office pursuant to this section, for income tax years commencing on or after January 1, 2022, but prior to January 1, 2027, ~~there shall be~~ A QUALIFIED BUSINESS IS ALLOWED A CREDIT WITH RESPECT TO THE INCOME TAXES IMPOSED PURSUANT TO THIS ARTICLE 22 AS FOLLOWS:

(I) Up to fifty percent of the conversion costs, not to exceed ~~twenty-five~~ FORTY thousand dollars, incurred by a qualified business for converting the qualified business to a worker-owned cooperative or an employee ownership trust; ~~or~~

(II) Up to fifty percent of the conversion costs, not to exceed ~~one hundred~~ ONE HUNDRED FIFTY thousand dollars, incurred by a qualified business for converting the qualified business to an employee stock ownership plan; OR

(III) UP TO FIFTY PERCENT OF THE CONVERSION COSTS, NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS, INCURRED BY A QUALIFIED BUSINESS FOR CONVERTING THE QUALIFIED BUSINESS TO AN ALTERNATE EQUITY STRUCTURE.

(a.5) (I) SUBJECT TO CERTIFICATION BY THE OFFICE PURSUANT TO THIS SECTION, FOR THE INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2024, BUT PRIOR TO JANUARY 1, 2027, A QUALIFIED EMPLOYEE-OWNED BUSINESS IS ALLOWED

A CREDIT WITH RESPECT TO THE INCOME TAXES IMPOSED PURSUANT TO THIS ARTICLE 22 OF UP TO FIFTY PERCENT OF THE EXPANSION COSTS, NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS, INCURRED TO EXPAND A QUALIFIED EMPLOYEE-OWNED BUSINESS'S EMPLOYEE OWNERSHIP TRUST, EMPLOYEE STOCK OWNERSHIP PLAN, WORKER-OWNED COOPERATIVE, OR ALTERNATE EQUITY STRUCTURE.

(II) TO BE ELIGIBLE FOR THE CREDIT ALLOWED PURSUANT TO THIS SUBSECTION (3), A QUALIFIED EMPLOYEE-OWNED BUSINESS MUST EXPAND ITS EMPLOYEE OWNERSHIP TRUST, EMPLOYEE STOCK OWNERSHIP PLAN, WORKER-OWNED COOPERATIVE, OR ALTERNATE EQUITY STRUCTURE BY AN INCREMENT OF AT LEAST TWENTY PERCENT OF THE TOTAL OWNERSHIP OF THE ENTIRE QUALIFIED EMPLOYEE-OWNED BUSINESS.

(b) (I) In the case of a qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS that is a C corporation, the credit is allowed to the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS.

(II) In the case of a qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS that is a partnership or an S corporation, the credit is allowed to the owner OF THE BUSINESS.

(d) A QUALIFIED BUSINESS OR QUALIFIED EMPLOYEE-OWNED BUSINESS MAY APPLY FOR AND CLAIM ONLY ONE TAX CREDIT FOR THE CONVERSION OR EXPANSION COSTS INCURRED PER TAX YEAR.

(4) A business shall submit an application to the office for the issuance of a credit certificate for the credit allowed in this section by the deadlines established in the office's guidelines. The application must include information, as set forth in the office's guidelines, regarding the type of conversion OR EXPANSION the business intends to undertake, a list of the expected conversion OR EXPANSION costs, and an estimated amount, as calculated by the business, of the expected conversion OR EXPANSION costs.

(5) (a) The office shall develop guidelines for the administration of this section, including, but not limited to:

(III) Detailed guidelines regarding conversion costs; ~~and~~

(V) DETAILED GUIDELINES REGARDING EXPANSION COSTS; AND

(VI) GUIDELINES AND STANDARDS FOR CERTIFYING A BUSINESS AS A QUALIFIED EMPLOYEE-OWNED BUSINESS.

(6) (a) (I) After the office provides the written report required in subsection (5)(b) of this section, a reservation of tax credits is permitted for the tax credit allowed in this section. If the office determines that the application filed under subsection (4) of this section is complete, the office shall determine whether the business is a qualified business OR A QUALIFIED EMPLOYEE-OWNED BUSINESS, review the list of the expected conversion OR EXPANSION costs, and review the estimated conversion OR EXPANSION costs as calculated by the business. If the office approves the business as a qualified business OR A QUALIFIED EMPLOYEE-OWNED BUSINESS, the

list of expected conversion OR EXPANSION costs, and the estimated conversion OR EXPANSION costs, the office may reserve for the benefit of the qualified business, THE QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS an allocation of a tax credit subject to the limitation specified in subsection (3)(b) of this section. The office shall notify the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS in writing of the amount of the reservation. The reservation of a tax credit does not entitle the qualified business, THE QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS to an issuance of a tax credit certificate until the qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS complies with all of the other requirements specified in this section for the issuance of the tax credit certificate.

(II) A business may apply for a staged conversion OR STAGED EXPANSION. If the office receives an application for a staged conversion OR STAGED EXPANSION, and the office determines the requirements set forth in subsection (6)(a)(I) of this section have been met, the office shall reserve tax credits for all stages of the qualified business's conversion OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS'S EXPANSION in the year the application is filed. The office may certify the staged conversion costs OR STAGED EXPANSION COSTS and issue tax credit certificates under subsection (7)(b)(II) of this section when the costs are incurred.

(7) (a) Any qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS with respect to which the office has made a reservation of tax credits under subsection (6) of this section shall incur not less than twenty percent of the estimated conversion OR EXPANSION costs not later than eighteen months after the date of the written notice from the office to the qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS granting the reservation of tax credits. The qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS shall submit evidence of compliance with the provisions of this subsection (7)(a). If the office determines that a qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS has failed to comply with the requirements of this subsection (7)(a), the office may rescind the written notice it previously gave the business or the owner approving the reservation of tax credits and, if so, the total amount of tax credits made available for the calendar year for which reservations may be granted must be increased by the amount of the tax credits rescinded. The office shall promptly notify any qualified business, ANY QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS whose reservation of tax credits has been rescinded and, upon receipt of the notice, the qualified business OR QUALIFIED EMPLOYEE-OWNED BUSINESS may submit a new application.

(b) (I) Following the completion of the conversion OR EXPANSION, the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS shall notify the office that the conversion OR EXPANSION has been completed and shall provide the office with a cost certification of the estimated conversion OR EXPANSION costs. The cost certification must be audited by a licensed certified public accountant that is not affiliated with the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS. The office shall review the cost certification, and within ninety days after receipt of the cost certification, the office shall certify the conversion OR EXPANSION costs and issue a tax credit certificate in the amounts allowed in subsection (3) of this section. The office shall promptly notify the qualified business OR THE

QUALIFIED EMPLOYEE-OWNED BUSINESS of any disallowed conversion OR EXPANSION COSTS.

(II) If a conversion OR EXPANSION is a staged conversion OR STAGED EXPANSION as set forth in subsection (6)(a)(II) of this section, and the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS meets the requirements in this subsection (7), the office shall issue pro rata tax credit certificates to a THE qualified business, QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS based on the percent of the conversion OR EXPANSION completed during each tax year.

(c) Notwithstanding subsection (7)(b) of this section, the total amount of the tax credit certificate issued to a qualified business, A QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS shall not exceed the amount of the tax credit reservation under subsection (6)(a) of this section.

(d) If the amount of certified costs incurred by the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS would result in a THE qualified business, QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS being issued an amount of tax credits that exceeds the amount of tax credits reserved for the business under subsection (6)(a) of this section, the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS may apply to the office for the issuance of an amount of tax credits that equals the excess. The qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS must submit its application for issuance of such excess tax credits on a form prescribed by the office. Unless the office is concerned THAT the application it received under this subsection (7)(d) is fraudulent, the office shall automatically approve the application, which it shall issue by means of a separate certificate, subject only to the availability of tax credits and the provisions concerning priority provided in subsection (6)(a) of this section.

(8) If the credit allowed under this section exceeds the income taxes due on the INCOME OF THE qualified business's BUSINESS, QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner's income OWNER OF THE BUSINESS, the amount of the credit not used to offset income taxes must be refunded to the qualified business, QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS.

(10) To claim the income tax credit allowed in this section, the qualified business, QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS shall attach a copy of the credit certificate to its state income tax return. No tax credit is allowed under this section unless the qualified business, QUALIFIED EMPLOYEE-OWNED BUSINESS, or the owner OF THE BUSINESS provides the copy of the credit certificate with its filed state income tax return. The amount of the credit that the qualified business OR THE QUALIFIED EMPLOYEE-OWNED BUSINESS may claim under this section is the amount stated on the tax credit certificate.

(11) The office shall, in a sufficiently timely manner to allow the department to process returns claiming the income tax credit allowed in this section, provide the department with an electronic report of each qualified business, or the QUALIFIED EMPLOYEE-OWNED BUSINESS, AND OWNER OF A BUSINESS that the office approved for the income tax credit allowed in this section for the preceding calendar year that includes the following information:

SECTION 2. Act subject to petition - effective date - applicability. (1) 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; 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to income tax years commencing on or after January 1, 2024.

Approved: May 23, 2023