Colorado Legislative Council Staff

HB17-1356

FINAL FISCAL NOTE

FISCAL IMPACT: ☒ State ☐ Local ☐ Statutory Public Entity ☐ Conditional ☐ No Fiscal Impact

Drafting Number:	LLS 17-1132	**Date:**	September 5, 2017
Prime Sponsor(s):	Rep. Duran; Esgar Sen. Tate; Garcia	**Bill Status:**	Signed into Law
		Fiscal Analyst:	Louis Pino (303-866-3556)

BILL TOPIC: TREAT ECON DEV INCOME TAX CREDITS DIFFERENTLY

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019	FY 2019-2020	FY 2020-2021
State Revenue		**($5.6 million)**	**($9.2 million)**	**($4.9 million)**
General Fund		($5.6 million)	($9.2 million)	($4.9million)
State Expenditures			**$42,053**	**$33,853**
General Fund			$39,276	$31,076
Centrally Appropriated			$2,777	$2,777
Appropriation Required: None.				
Future Year Impacts: Ongoing revenue and expenditure costs.				

Summary of Legislation

HB17-1356 authorizes the Colorado Economic Development Commission (EDC) to allow certain businesses to treat specific income tax credits as transferable income tax credits. The EDC is allowed to precertify $10 million in transferable credits in each fiscal year from FY 2017-18 to FY 2019-20 for a total of $30 million. Any portion of the $10 million not precertified by the EDC in any of the fiscal years may not be certified in a future year. The EDC may precertify transferable credits for the same business in all three fiscal years. To qualify, the business is required to make at least $100 million capital investment for each precertification that the EDC finds will be significant to the state and be productive over time.

The bill limits the transferability to four existing state income tax credits:

- enterprise zone investment tax credit (ITC);
- job growth incentive tax credit;
- enterprise zone new business facility credit; and
- research and experiential activities credit.

Precertified tax credits cannot be transferred until tax year 2019. Renewable energy projects that receive approval for transferable credits may not elect to receive a refund of the credit, as allowed under current law.

The qualified business is required to notify the EDC and provide verifiable evidence that the capital investment has been made before the tax credits can be treated as transferable credits. Once the income tax credits are approved to transfer, the business can apply the credit to any tax liability, carry forward the credit, or transfer the income tax credit. The business has five-years from when the EDC approved the credits to transfer them.

If the business chooses to transfer its tax credits, then the income tax credits are freely transferable subject to the preapproved amount. The transferee may use all or a portion of transferred income tax credits to offset any tax liability or they may transfer any unused portion to a secondary transferee. The unused portion of the tax credit can be transferred on multiple occasions for three subsequent tax years from when the income tax credit was first transferred. If the EDC waives the $750,000 annual limit for the ITC at the initial precertification stage, the waiver applies to all transferred credits.

The bill requires the Office of Economic Development and International Trade (OEDIT) to develop a tracking system for the income tax credits and provide a report to the Department of Revenue specifying the ownership and transfer of the income tax credits. The bill requires the OEDIT to post on its website information related to the precertification and approval of the income tax credits. Finally, the bill requires the OEDIT to include the names of the businesses and the amounts transferred in their annual report to the General Assembly.

Background

The bill limits the transferability to four existing income tax credits that are briefly described below:

Enterprise Zone Investment Tax Credit (ITC). The ITC is an income tax credit equal to 3 percent of qualified investments located in an enterprise zone. Taxpayers may claim up to half their tax liability plus $5,000 in any one year. The amount of credit a taxpayer can use for a given tax year is limited to $750,000, unless waived by EDC. If the tax credit is more than what a taxpayer may claim the credit can be carried forward for up to 14 years. Renewable energy investments may carry the credit forward for up to 22 years and have the option to receive a refund of the credit.

Job Growth Incentive Tax Credit. The job growth incentive tax credit provides an income tax credit to firms that create jobs in Colorado. The credit is equal to one-half of the amount the employer is required to pay in federal social security and Medicare taxes. For each job created, firms receive credit each year the job is retained for up to 96 months (eight years) after the credit is first received. Wages for jobs generating the credit must be at least 100 percent of the average wage in the county within which the jobs are created. Each year's credit may be carried forward for ten years. Employers must receive initial authorization for the credit no later than tax year 2019. The credit is repealed after tax year 2029. If the jobs are created within an enhanced rural enterprise zone, firms must create at least 5 jobs and retain them for one year. If the jobs are not being created within an enhanced rural enterprise zone, at least 20 jobs must be created and retained for one year.

Enterprise Zone New Business Facility Employee Credit. A business may receive an income tax credit for each new business facility employee working within the enterprise zone. The amount of the credit is $1,100 for each new qualified employee. Additional credit is given if the business is located in an enhanced rural enterprise zone.

Enterprise Zone Research and Development Tax Credit. Businesses conducting research and development may earn a 3 percent tax credit on the increase in such expenditures over a base period.

State Revenue

The fiscal note estimates that General Fund revenue will decrease by $5.6 million in FY 2018-19, $9.2 million in FY 2019-20, $4.9 million in FY 2020-21, and $2.2 million in FY 2021-22 because of the transferable tax credits authorized by the bill. The total amount of transferable income tax credits authorized by this bill is $30 million dollars. It is assumed that the remaining credits will be claimed in future fiscal years, although the amount and timing is uncertain. It is important to note that transferability of tax credits complicates the projection of revenues and creates uncertainty about when credits will be claimed because the purchasing entity may utilize a different fiscal year than the entity awarded the credit. For the purposes of this fiscal note, the following is assumed:

- The EDC will precertify the full $10 million in each of the three fiscal years it is allowed and waive the $750,000 annual limit for the ITC, for each company preauthorized for transferability.
- The fiscal note assumes 75 percent of the transferable credits will be investment tax credits. The remaining transferable credits will be a combination of the other three credits allowed in the bill.
- It is assumed that $20 million in transferable credits will be available in tax year 2019 and the remaining $10 million will be allowed beginning in tax year 2020. As of the date of this fiscal note, one project has been identified to qualify for the transferable credits allowed in the bill. The investment is approximated to be $500 million and is expected be in place by the end of 2019. It is also assumed that the EDC will precertify the full $10 million in FY 2019-2020. Since 2011, on average, four businesses have been precertified each year for the ITC credit that made an investment greater than $100 million dollars.
- Of the $15 million ITC transferable credits available in tax year 2019, 75 percent ($11.3 million) will be transferred and claimed in tax year 2019 and the remaining 25 percent ($3.7 million) claimed over the next three years. The $5 million in transferable credits from the other three credits will be claimed over the next ten years.
- Of the $7.5 million ITC transferable credits available in tax year 2020, 75 percent ($5.6 million) will be transferred and claimed in tax year 2020 and the remaining 25 percent ($1.9 million) claimed over the next three years. The $2.5 million in transferable credits for the other three credits will be claimed over the next ten years.

To the extent the EDC does not precertify the full $30 million, the decline in General Fund revenue will be less. If transferees claim their income tax credits sooner (later), revenue declines will be greater (smaller) in the short term than the amount estimated in the fiscal note.

State Expenditures

HB17-1356 will increase state expenditures by $42,053 in FY 2019-20 and $33,853 in FY 2020-21 and future years for which the transferable credit is available. Costs include audit functions, programming, testing, and form change costs, as summarized in Table 1.

Department of Revenue. In FY 2019-20, the department will require 0.7 FTE for audit functions. In addition, this bill requires changes to the DOR's GenTax software system, which are programmed by a contractor at a rate of $200 per hour and are expected to increase expenditures by $8,200, representing 41 hours of programming. All GenTax programming changes are tested by department staff. There will be $1,200 in Fairfax charges to program the optical charter recognition software.

Office of Economic Development and International Trade. Developing a tracking system for the income tax credits and providing a report to the Department of Revenue can be accommodated within existing appropriations, as the office administers the Historic Preservation income tax income tax credit program. The office anticipates using existing software architecture for tracking the credits under this bill.

Table 1. Expenditures Under HB17-1356

Cost Components	FY 2019-20	FY 2020-21
Personal Services	$30,411	$30,411
FTE	0.7	0.7
Operating Expenses and Capital Outlay Costs	$665	$665
Centrally Appropriated Costs*	$2,777	2,777
Form Change Costs	$1,200	
Computer Programming (DOR)	$8,200	
TOTAL	**$42,053**	**$33,853**

** Centrally appropriated costs are not included in the bill's appropriation.*

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under HB17-1356

Cost Components	FY 2019-20	FY 2020-21
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$52	$52
Supplemental Employee Retirement Payments	$2,725	$2,725
TOTAL	**$2,777**	**$2,777**

Effective Date

The bill was signed into law by the Governor and took effect on May 24, 2017.

Departmental Difference

The Department of Revenue assesses that they can absorb the bill's workload within existing appropriations and that the Colorado income tax forms do not require a new line for the transferable credit. The fiscal note assumes that the department will require 0.7 FTE for auditing tasks beginning in FY 2019-20 similar to other bills with transferable tax credits. In addition, since the transferable credits can be transferred on multiple occasions and allocated, the fiscal note assumes a separate line on the income tax form to claim the transferable credits .

State and Local Government Contacts

Office of Economic Development and International Trade Revenue