

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 25-1157

BY REPRESENTATIVE(S) Titone and Lindstedt, Bacon, Bird, Boesenecker, Clifford, English, Ricks, Soper, Taggart, Valdez, McCluskie; also SENATOR(S) Snyder and Baisley, Amabile, Bridges, Catlin, Marchman, Roberts, Simpson.

CONCERNING THE EXTENSION OF THE ADVANCED INDUSTRY INVESTMENT TAX CREDIT.

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

SECTION 1. In Colorado Revised Statutes, 24-48.5-112, **amend** (1)(e) introductory portion, (1)(e)(I), (1)(f), (1)(g)(I), (1.5)(b), (2)(a), (2)(b), (2)(c), (2)(d), and (3)(b); and **repeal** (1)(c), (1)(e)(III), and (1)(e)(IV) as follows:

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

(c) ~~"Affiliate" means any person or entity that controls, is controlled by, or is under common control with another person or entity. For purposes of this paragraph (c), "control" means the power to determine the policies~~

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.

~~of an entity whether through ownership of voting securities, by contract, or otherwise.~~

(e) "Qualified investment" means ~~an~~ A MONETARY investment made at any time on or after July 1, 2014, but before ~~January 1, 2027~~ JANUARY 1, 2032, in an equity security that meets all of the following requirements:

(I) The equity security is common stock, preferred stock, an interest in a partnership or limited liability company, a security that is convertible into an equity security, a convertible debt investment, or other equity security as determined by the office; AND

~~(III) The qualified investor and its affiliates do not hold, of record or beneficially, immediately before making an investment, equity securities possessing more than thirty percent of the total voting power of all equity securities of the qualified small business; and~~

~~(IV) The qualified investor and its affiliates hold, of record or beneficially, immediately after making the investment, equity securities possessing less than fifty percent of the total voting power of all equity securities of the qualified small business.~~

(f) "Qualified investor" means ~~an individual, limited liability company, partnership, S corporation, as defined in section 39-22-103 (10.5), C.R.S., or other business entity that makes a qualified investment in a qualified small business. "Qualified investor" does not include a C corporation, as defined in section 39-22-103 (2.5), C.R.S.~~ A PERSON SUBJECT TO TAX UNDER ARTICLE 22 OF TITLE 39 THAT MAKES A QUALIFIED INVESTMENT IN A QUALIFIED SMALL BUSINESS, EXCEPT THAT A C CORPORATION, AS DEFINED IN SECTION 39-22-103 (2.5), INCLUDING ANY LIMITED LIABILITY COMPANY OR OTHER LEGAL ENTITY TREATED AS A C CORPORATION FOR STATE AND FEDERAL INCOME TAX PURPOSES, IS NOT A QUALIFIED INVESTOR. A QUALIFIED INVESTOR MAY INCLUDE A PARTNER, SHAREHOLDER, OR BENEFICIARY THAT IS ALLOCATED A CREDIT PURSUANT TO SECTION 39-22-532 (7). A QUALIFIED INVESTOR MAY BE A PARTNERSHIP, WHICH INCLUDES ANY LIMITED LIABILITY COMPANY OR OTHER LEGAL ENTITY TREATED AS A PARTNERSHIP FOR STATE AND FEDERAL INCOME TAX PURPOSES, OR AN S CORPORATION, WHICH INCLUDES ANY LIMITED LIABILITY COMPANY OR OTHER LEGAL ENTITY TREATED AS AN S CORPORATION FOR STATE AND FEDERAL INCOME TAX PURPOSES. A QUALIFIED INVESTOR DOES

NOT INCLUDE A PERSON THAT HAS CONTROL OF A QUALIFIED SMALL BUSINESS FOR SIX MONTHS PRECEDING OR FOLLOWING THE DATE OF THE INVESTMENT IN THE QUALIFIED SMALL BUSINESS. FOR PURPOSES OF THIS SUBSECTION (1)(f), "CONTROL" MEANS THE POWER TO DETERMINE THE POLICIES OF THE QUALIFIED SMALL BUSINESS, WHETHER THROUGH OWNERSHIP OF VOTING SECURITIES, BY CONTRACT, OR OTHERWISE, INCLUDING INVOLVEMENT IN THE QUALIFIED SMALL BUSINESS'S OPERATIONS. A FOUNDER, EMPLOYEE, OR CONTRACTOR OR THE SPOUSE OF A FOUNDER, EMPLOYEE, OR CONTRACTOR OF A QUALIFIED SMALL BUSINESS IS NOT A QUALIFIED INVESTOR. A PERSON THAT HAS INVESTED MORE THAN FIFTY THOUSAND DOLLARS IN THE QUALIFIED SMALL BUSINESS OR OWNS MORE THAN TEN PERCENT OF THE QUALIFIED SMALL BUSINESS ON A FULLY DILUTED BASIS IS NOT A QUALIFIED INVESTOR.

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

(1) Is in an advanced industry, AS DEFINED IN SECTION 24-48.5-117 (2)(a).

(1.5) In accordance with section 39-21-304 (1), which requires each bill that 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:

(b) The specific legislative purpose of the tax credit allowed by this section is to encourage investment in small businesses located in Colorado in advanced industries, including in quantum fields, and in particular in small businesses in advanced industries, including in quantum fields, located in a rural area or economically distressed area of the state; and

(2) (a) The office shall receive and evaluate applications that are submitted by qualified investors to receive an advanced industry investment tax credit for qualified investments made in a qualified small business THAT HAS BEEN EVALUATED AND CERTIFIED AS ELIGIBLE TO RECEIVE QUALIFIED INVESTMENTS FOR THE PURPOSES OF THIS SECTION.

(b) To be eligible for an advanced industry investment tax credit, a qualified investor must file a completed application with the office within ninety days after making a qualified investment IN A CERTIFIED AND

QUALIFIED SMALL BUSINESS. The office shall prescribe the manner and form of the application. The office shall note the time and date of each application received. In addition to any other requirements established by the office, the application must include the name, address, and federal income tax identification number of the applicant, ~~the number of new employees hired by the qualified small business as a result of the qualified investment~~, and any additional information that the office requires. THE OFFICE MAY REQUIRE THE QUALIFIED INVESTOR TO PROVIDE INFORMATION TO CONFIRM THAT A QUALIFIED INVESTMENT HAS BEEN MADE IN A QUALIFIED SMALL BUSINESS, THE INTENDED USE OF THE QUALIFIED INVESTMENT, AND THE EXPECTED NUMBER OF NEW EMPLOYEES THAT WILL BE HIRED BY THE QUALIFIED SMALL BUSINESS AS A RESULT OF THE QUALIFIED INVESTMENT.

(c) A business ~~may request~~ SHALL SUBMIT AN APPLICATION TO the office to determine whether it is a qualified small business. Upon ~~receiving 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. A CERTIFIED SMALL BUSINESS MUST REPORT TO THE OFFICE AS REQUESTED BY THE OFFICE TO CONFIRM THE CERTIFIED SMALL BUSINESS'S STATUS AS A QUALIFIED SMALL BUSINESS. THE OFFICE MAY CERTIFY A SMALL BUSINESS THROUGH OCTOBER 1, 2031. The certification for a qualified small business ~~that is certified after July 1, 2014, is valid until January 1, 2027, 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. A QUALIFIED SMALL BUSINESS THAT RECEIVES A QUALIFIED INVESTMENT SHALL REPORT DATA RELEVANT TO THE IMPACT OF THE TAX CREDIT AND DEVELOPMENT OF THE QUALIFIED SMALL BUSINESS ANNUALLY TO THE OFFICE FOR A FIVE-YEAR PERIOD FOLLOWING AN INITIAL QUALIFIED INVESTMENT. If the certification is revoked OR A BUSINESS FAILS TO MEET ITS REPORTING REQUIREMENTS, 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 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.

(d) As part of the application for an advanced industry investment tax credit, the applicant and the qualified small business that receives the investment must each provide written authorization to permit the department of revenue to provide tax information to the office for the purpose of determining if there are any misrepresentations on the application. The authorization is limited to disclosure of income tax information for the latest two years for which returns were filed with the department of revenue preceding the date the application is filed and for all tax years through the year in which the investment was made for which a return was not filed as of the date of the application. The applicant must also provide in the written authorization income tax information for all tax years in which the applicant actually claims a tax credit or carries forward a tax credit on a return filed with the department of revenue. An applicant that is a partnership, ~~limited liability company~~, S corporation, ~~or similar pass-through entity~~ and OR TRUST that may allocate the credit among ~~the~~ ITS partners, shareholders, ~~members~~, or ~~other constituent qualified investors~~ BENEFICIARIES pursuant to section 39-22-532 (7) must provide a written authorization with content similar to the authorization, and in the same manner, as any other applicant is required to provide. If an applicant or qualified small business fails to comply with this subsection (2)(d), an applicant is ineligible for a tax credit.

(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; seven hundred fifty thousand dollars for each calendar year from 2015 through 2022; ~~and~~ four million dollars for each calendar year from 2023 through 2026; AND TWO MILLION FIVE HUNDRED THOUSAND DOLLARS FOR EACH CALENDAR YEAR FROM 2027 THROUGH 2031; except that, if the total amount of the credits for 2018 or a later calendar year through 2022 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 COMPLETE 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.

(II) The total amount of the tax credit for each qualified investment

IN A QUALIFIED SMALL BUSINESS shall not exceed one hundred thousand dollars. THE AGGREGATE AMOUNT OF THE CREDIT ALLOWED TO THE PARTNERS OR SHAREHOLDERS OF A PARTNERSHIP OR S CORPORATION THAT MAKES A QUALIFIED INVESTMENT MUST NOT EXCEED ONE HUNDRED THOUSAND DOLLARS. A qualified investor may not claim more than one tax credit per qualified small business, ~~but~~ REGARDLESS OF WHETHER THE QUALIFIED INVESTMENT IS MADE DIRECTLY BY THE QUALIFIED INVESTOR OR INDIRECTLY THROUGH ANOTHER ENTITY. A QUALIFIED INVESTOR may be eligible for a tax credit for qualified investments in different qualified small businesses in the same or a different year.

SECTION 2. In Colorado Revised Statutes, 39-22-532, **amend** (7) as follows:

39-22-532. Advanced industry investment tax credit - definitions. (7) If a qualified investor receiving a credit allowed in this section is a partnership ~~limited liability company~~, OR S corporation, ~~or similar pass-through entity~~, the qualified investor may allocate the credit among its partners OR shareholders ~~members, or other constituent qualified investors~~ in any manner agreed to by such partners OR shareholders. ~~members, or other constituent qualified investors~~. IF THE QUALIFIED INVESTOR RECEIVING THE CREDIT ALLOWED BY THIS SECTION IS A TRUST, THE QUALIFIED INVESTOR MAY ALLOCATE THE CREDIT BETWEEN THE TRUST AND ITS BENEFICIARIES IN ANY MANNER DETERMINED BY THE TRUST. The qualified investor shall certify to the Colorado office of economic development the amount of the credit allocated to each partner, shareholder, ~~member, or other constituent qualified investor~~, OR BENEFICIARY and the office shall issue credit certificates in the appropriate amounts to each partner, shareholder, ~~member, or other constituent qualified investor~~, OR BENEFICIARY. Each partner, shareholder, ~~member, or other constituent qualified investor~~ OR BENEFICIARY shall be allowed to claim such amount subject to any restrictions set forth in this section and section 24-48.5-112.

SECTION 3. 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; 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 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO