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Seventy-third General Assembly
STATE OF COLORADO

REDRAFT
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Double underlining
denotes changes from
prior draft

DRAFT

LLS NO. 22-1003.02 Megan McCall x4215

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "Extension Of Certain Unused Tax Credits"

A BILL FOR AN ACT

101 **CONCERNING THE EXTENSION OF THE PERIOD FOR WHICH UNUSED AND**
102 **EXPIRING COLORADO JOB GROWTH INCENTIVE AND ENTERPRISE**
103 **ZONE INCOME TAX CREDITS MAY BE CARRIED FORWARD TO**
104 **SUBSEQUENT YEARS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Joint Budget Committee. The bill allows a taxpayer who operates in a strategic industry disproportionately impacted by the COVID-19 pandemic and who experienced significant financial hardship due to the

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

COVID-19 pandemic to apply to the economic development commission (commission) for a 5-year extension of the allowable carry-forward period for unused Colorado job growth incentive tax credits and unused enterprise zone tax credits that would otherwise expire between January 1, 2021, and December 31, 2025, except that the tax credit for contributions to enterprise zone administrators to implement economic development plans is not eligible for the 5-year carry-forward extension. The bill requires the commission, in consultation with the office of economic development, to establish a process for accepting, reviewing, and approving one-time applications by taxpayers for the extended carry-forward period subject to taxpayers meeting certain eligibility requirements. The bill caps the total amount of tax credits allowed to be carried forward in the extended period at \$15 million per year.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 24-46-106 as
3 follows:

4 **24-46-106. Repeal of part.** This part 1 is repealed, effective ~~July~~
5 ~~1, 2025~~ JULY 1, 2035.

6 **SECTION 2.** In Colorado Revised Statutes, **add** 24-46-107 as
7 follows:

8 **24-46-107. Temporary extension of carry-forward provisions**
9 **- Colorado job growth incentive tax credit - enterprise zone tax**
10 **credits - definitions - repeal.** (1) AS USED IN THIS SECTION, UNLESS THE
11 CONTEXT OTHERWISE REQUIRES:

12 (a) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC
13 DEVELOPMENT CREATED IN SECTION 24-48.5-101.

14 (b) (I) "TAXPAYER" MEANS ANY PERSON DOING BUSINESS IN THE
15 STATE, INCLUDING AN AFFILIATED GROUP, THAT OPERATES IN A STRATEGIC
16 INDUSTRY THAT WAS DISPROPORTIONALLY IMPACTED BY THE COVID-19
17 PANDEMIC AND EXPERIENCED SIGNIFICANT FINANCIAL HARDSHIP CAUSED
18 BY THE COVID-19 PANDEMIC.

1 (II) "STRATEGIC INDUSTRY" AND "SIGNIFICANT FINANCIAL
2 HARDSHIP" FOR PURPOSES OF THE DEFINITION OF "TAXPAYER" IN
3 SUBSECTION (1)(b)(I) OF THIS SECTION SHALL BE DETERMINED BY THE
4 COMMISSION AND THE OFFICE. WHEN DETERMINING SIGNIFICANT
5 FINANCIAL HARDSHIP, ANY FINANCIAL ASSISTANCE OR RELIEF THAT THE
6 TAXPAYER MAY HAVE RECEIVED FROM OTHER SOURCES INCLUDING
7 FEDERAL, STATE, OR LOCAL ASSISTANCE MAY BE CONSIDERED BUT SHALL
8 NOT BE DISPOSITIVE FOR PURPOSES OF ELIGIBILITY.

9 (2) THE COMMISSION MAY ALLOW A TAXPAYER TO CARRY
10 FORWARD FOR A PERIOD OF FIVE YEARS THE TAX CREDITS SET FORTH IN
11 SECTION 39-22-531 AND IN ARTICLE 30 OF TITLE 39 THAT WOULD
12 OTHERWISE EXPIRE BETWEEN JANUARY 1, 2021, AND DECEMBER 31, 2025;
13 EXCEPT THAT THE AGGREGATE AMOUNT OF ALL TAX CREDITS PERMITTED
14 TO BE CARRIED FORWARD PURSUANT TO THIS SUBSECTION (2) IS FIFTEEN
15 MILLION DOLLARS FOR EACH YEAR OF THE FIVE-YEAR PERIOD AND THE TAX
16 CREDIT SET FORTH IN SECTION 39-30-103.5 IS NOT ELIGIBLE FOR THE
17 FIVE-YEAR CARRY-FORWARD PERIOD SET FORTH IN THIS SECTION.
18 TAXPAYERS MUST APPLY TO THE COMMISSION AND THE OFFICE PURSUANT
19 TO SUBSECTION (3) OF THIS SECTION FOR APPROVAL TO CARRY FORWARD
20 THE TAX CREDITS AS SET FORTH IN THIS SUBSECTION (2).

21 (3) (a) A TAXPAYER MAY APPLY FOR APPROVAL BY THE
22 COMMISSION TO CARRY FORWARD A TAX CREDIT AS SET FORTH IN
23 SUBSECTION (2) OF THIS SECTION IN ACCORDANCE WITH TIMING,
24 DEADLINES, POLICIES, AND PROCEDURES ESTABLISHED BY THE
25 COMMISSION, IN CONSULTATION WITH THE OFFICE, AND AS FOLLOWS:

26 (I) A TAXPAYER SHALL APPLY ONE TIME TO THE COMMISSION FOR
27 THE EXTENDED CARRY-FORWARD PERIOD SET FORTH IN SUBSECTION (2) OF

1 THIS SECTION AND MUST IDENTIFY IN THE APPLICATION ALL OF THE
2 ANTICIPATED CREDITS THAT THE TAXPAYER REQUESTS TO EXTEND FOR
3 EACH TAX YEAR THAT THE EXTENDED PERIOD APPLIES TO;

4 (II) AT A MINIMUM, THE APPLICATION MUST INCLUDE
5 CERTIFICATION BY THE TAXPAYER'S PRESIDENT, CHIEF EXECUTIVE
6 OFFICER, OR CHIEF FINANCIAL OFFICER _____ THAT, BASED ON THE
7 TAXPAYER'S CURRENT AND EXPECTED FINANCIAL RESULTS, IT IS
8 ANTICIPATED THAT THE TAXPAYER WILL NOT BE ABLE TO USE THE TAX
9 CREDITS BEFORE THE CREDITS EXPIRE AS THE RESULT OF LOSSES
10 EXPERIENCED DURING TAX YEARS 2020 AND 2021 DUE TO THE COVID-19
11 PANDEMIC; _____

12 (III) THE APPLICATION MUST INCLUDE DOCUMENTATION FROM THE
13 TAXPAYER DEMONSTRATING SIGNIFICANT FINANCIAL HARDSHIP CAUSED
14 BY THE COVID-19 PANDEMIC; AND

15 (IV) IN CONSULTATION WITH POTENTIAL APPLICANTS, THE
16 COMMISSION AND THE OFFICE SHALL DETERMINE ADDITIONAL
17 APPROPRIATE POLICIES, PROCEDURES, REQUIREMENTS, AND DEADLINES TO
18 ADMINISTER THE APPLICATION PROCESS AND EXTENSION APPROVALS
19 PURSUANT TO THIS SECTION, WHICH MAY INCLUDE ADDITIONAL
20 VERIFICATION PROCEDURES TO DEMONSTRATE THAT APPLICANTS ARE
21 MAKING BONAFIDE REQUESTS FOR THE FIVE-YEAR EXTENSION.

22 (b) IN CONSULTATION WITH THE OFFICE, THE COMMISSION SHALL
23 RECEIVE, REVIEW, AND APPROVE APPLICATIONS BY TAXPAYERS ON A FIRST
24 COME, FIRST SERVED, ROLLING BASIS. IN ADDITION TO THE APPLICATION
25 REQUIREMENTS SET FORTH IN SUBSECTION (3)(a) OF THIS SECTION, THE
26 COMMISSION MAY CONSIDER ADDITIONAL ECONOMIC DEVELOPMENT
27 COMMITMENTS TO THE STATE BY THE TAXPAYER IN DETERMINING

1 APPROVAL OF APPLICATIONS INCLUDING:

2 (I) THE SIZE OF THE TAXPAYER'S CURRENT OPERATION IN THE
3 STATE RELATIVE TO BOTH THE STATE AS A WHOLE AND THE REGION THE
4 TAXPAYER IS BASED IN;

5 (II) ANY STRATEGIC ECONOMIC DEVELOPMENT BENEFITS THAT THE
6 TAXPAYER PROVIDES WITH EXISTING OPERATIONS TO THE STATE IN TERMS
7 OF SUPPLY CHAIN, BENEFITS TO OTHER INDUSTRIES, OR OTHER SPILLOVER
8 BENEFITS THAT THE APPLICANT'S OPERATIONS PROVIDE TO THE STATE OR
9 REGION; AND

10 (III) ANY ADDITIONAL FORTHCOMING ECONOMIC DEVELOPMENT
11 BENEFITS THAT THE TAXPAYER MAY PROVIDE TO THE STATE OR REGION
12 BASED ON COMMITMENTS THAT THE APPLICANT HAS RECENTLY MADE OR
13 PROPOSES THAT ARE OUTSIDE THE SCOPE OF THE ORIGINAL INCENTIVE
14 AWARD.

15 (c) WHEN AN APPLICATION IS APPROVED, THE COMMISSION SHALL
16 ISSUE LETTERS TO THE DEPARTMENT OF REVENUE AND APPROVED
17 TAXPAYERS THAT MUST SPECIFY THE TYPE AND AMOUNT OF CREDITS
18 ELIGIBLE FOR THE FIVE-YEAR EXTENSION AND FOR WHAT YEARS IN THE
19 PERIOD THE EXTENSION IS ELIGIBLE.

20 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2035.

21 **SECTION 3.** In Colorado Revised Statutes, 39-22-531, **amend**
22 (6) and (13) as follows:

23 **39-22-531. Colorado job growth incentive tax credit - rules -**
24 **definitions - repeal.** (6) Except as provided in ~~section 24-46-104.3~~
25 SECTIONS 24-46-104.3 AND 24-46-107, if the amount of the credit allowed
26 in this section exceeds the amount of income taxes otherwise due on the
27 taxpayer's income in the income tax year for which the credit is being

1 claimed, the amount of the credit not used as an offset against income
2 taxes in the current income tax year may be carried forward and used as
3 a credit against subsequent years' income tax liability for a period not to
4 exceed ten years and shall be applied first to the earliest income tax years
5 possible. Any credit remaining after said period shall not be refunded or
6 credited to the taxpayer.

7 (13) This section is repealed, effective ~~January 1, 2031~~ JULY 1,
8 2042.

9
10 **SECTION 4.** In Colorado Revised Statutes, 39-30-104, **amend**
11 (2)(c)(III) and (2.5) as follows:

12 **39-30-104. Credit against tax - investment in certain property**
13 **- definitions.** (2) (c) (III) (A) Except as otherwise provided in ~~section~~
14 ~~24-46-104.3~~ SECTIONS 24-46-104.3 AND 24-46-107 and subsection
15 (2)(c)(III)(B) of this section, any excess credit allowed pursuant to this
16 subsection (2)(c) shall be an investment tax credit carryover to each of the
17 fourteen income tax years following the unused credit year.

18 (B) Except as otherwise provided in ~~section 24-46-104.3~~
19 SECTIONS 24-46-104.3 AND 24-46-107, any excess credit allowed pursuant
20 to this subsection (2)(c) for a renewable energy investment made in an
21 income tax year commencing before January 1, 2018, shall be an
22 investment tax credit carryover for twenty-two income tax years
23 following the year the credit was originally allowed.

24 (2.5) (a) (I) Notwithstanding section 39-22-507.5 (7)(b), EXCEPT
25 AS PROVIDED IN SECTION 24-46-107, and except as otherwise provided in
26 subsections (2.5)(a)(II) and (2.5)(b) of this section, any excess credit
27 allowed pursuant to this section shall be an investment tax credit

1 carryover to each of the twelve income tax years following the unused
2 credit year.

3 (II) EXCEPT AS PROVIDED IN SECTION 24-46-107, any excess credit
4 claimed pursuant to this section for a renewable energy investment made
5 in an income tax year commencing before January 1, 2018, shall be an
6 investment tax credit carryover for twenty income tax years following the
7 year the credit was originally allowed.

8 (b) (I) Except as provided in ~~subparagraph (II) of this paragraph~~
9 ~~(b)~~ SECTION 24-46-107 AND SUBSECTION (2.5)(b)(II) OF THIS SECTION, a
10 taxpayer that deferred claiming any credit in excess of five hundred
11 thousand dollars during an income tax year commencing on or after
12 January 1, 2011, but prior to January 1, 2014, pursuant to ~~paragraph (b)~~
13 ~~of subsection (2)~~ SUBSECTION (2)(b) of this section shall be allowed to
14 claim the deferred credit as an investment tax credit carryover for twelve
15 income tax years following the year the credit was originally allowed plus
16 one additional income tax year for each income tax year that the credit
17 was deferred pursuant to ~~paragraph (b) of subsection (2)~~ SUBSECTION
18 (2)(b) of this section.

19 (II) EXCEPT AS PROVIDED IN SECTION 24-46-107, a taxpayer is
20 allowed to claim the deferred credit described in ~~subparagraph (I) of this~~
21 ~~paragraph (b)~~ SUBSECTION (2.5)(b)(I) OF THIS SECTION for a renewable
22 energy investment made in an income tax year commencing before
23 January 1, 2018, as an investment tax credit carryover for twenty income
24 tax years following the year the credit was originally allowed plus one
25 additional income tax year for each income tax year that the credit was
26 deferred pursuant to ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b)
27 of this section.

1 **SECTION 5.** In Colorado Revised Statutes, 39-30-105.1, **amend**
2 (4)(a) as follows:

3 **39-30-105.1. Credit for new enterprise zone business**
4 **employees - definitions.** (4) (a) (I) Except as provided in ~~section~~
5 ~~24-46-104.3~~ SECTIONS 24-46-104.3 AND 24-46-107, for any income tax
6 year commencing on or after January 1, 2014, if the total amount of the
7 credits claimed by a taxpayer pursuant to subsections (1)(a)(I), (1)(b), and
8 (3)(a) of this section exceeds the amount of income taxes due on the
9 income of the taxpayer in the income tax year for which the credits are
10 being claimed, the amount of the credits not used as an offset against
11 income taxes in said income tax year is not allowed as a refund but may
12 be carried forward as a credit against subsequent years' tax liability for a
13 period not exceeding five years and is applied first to the earliest income
14 tax years possible. Any amount of the credit that is not used during said
15 period is not refundable to the taxpayer.

16 (II) Except as provided in ~~section 24-46-104.3~~ SECTIONS
17 24-46-104.3 AND 24-46-107, for any income tax year commencing on or
18 after January 1, 2014, if the total amount of credits claimed by a taxpayer
19 pursuant to subsections (1)(a)(II) and (3)(b) of this section exceeds the
20 amount of income taxes due on the income of the taxpayer in the income
21 tax year for which the credits are being claimed, the amount of credits not
22 used as an offset against income taxes in said income tax year is not
23 allowed as a refund but may be carried forward as a credit against
24 subsequent years' tax liability for a period not exceeding seven years and
25 is applied first to the earliest income tax years possible. Any amount of
26 the credit that is not used during said period is not refundable to the
27 taxpayer.

1 **SECTION 6.** In Colorado Revised Statutes, 39-30-105.6, **amend**
2 (3) as follows:

3 **39-30-105.6. Credit against tax - rehabilitation of vacant**
4 **buildings.** (3) EXCEPT AS PROVIDED IN SECTION 24-46-107, if the amount
5 of the credit allowed pursuant to the provisions of this section exceeds the
6 amount of income taxes otherwise due on the income of the taxpayer in
7 the income tax year for which the credit is being claimed, the amount of
8 the credit not used as an offset against income taxes in said income tax
9 year may be carried forward as a credit against subsequent years' income
10 tax liability for a period not exceeding five years and shall be applied first
11 to the earliest income tax years possible. Any credit remaining after said
12 period shall not be refunded or credited to the taxpayer.

13 **SECTION 7. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly; except
16 that, if a referendum petition is filed pursuant to section 1 (3) of article V
17 of the state constitution against this act or an item, section, or part of this
18 act within such period, then the act, item, section, or part will not take
19 effect unless approved by the people at the general election to be held in
20 November 2022 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.