

## CHAPTER 237

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**TAXATION**


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**HOUSE BILL 17-1356**

BY REPRESENTATIVE(S) Duran and Esgar, Covarrubias, Garnett, Kraft-Tharp, Lawrence, Pabon, Van Winkle, Buckner, Danielson, Gray, Hamner, Hansen, Michaelson Jenet, Mitsch Bush, Navarro, Pettersen, Valdez, Winter, Young; also SENATOR(S) Tate and Garcia, Crowder, Fields, Guzman, Kefalas, Zenzinger, Grantham.

**AN ACT**

**CONCERNING THE TEMPORARY AUTHORITY OF THE COLORADO ECONOMIC DEVELOPMENT COMMISSION TO ALLOW CERTAIN BUSINESSES TO TREAT SPECIFIC EXISTING INCOME TAX CREDITS DIFFERENTLY.**

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

**SECTION 1.** In Colorado Revised Statutes, **add** 24-46-104.3 as follows:

**24-46-104.3. Transferable income tax credits for certain businesses located in the state - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BUSINESS" MEANS A PERSON DOING BUSINESS IN THE STATE.

(b) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF REVENUE.

(c) "INCOME TAX CREDIT" MEANS THE INCOME TAX CREDITS ALLOWED TO A BUSINESS NO SOONER THAN THE INCOME TAX YEAR COMMENCING JANUARY 1, 2019, IN SECTION 39-22-531, 39-30-104, 39-30-105.1, OR 39-30-105.5.

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

(e) "PERIOD" MEANS TEN CONSECUTIVE INCOME TAX YEARS STARTING WITH THE BUSINESS' INCOME TAX YEAR THAT COMMENCES IMMEDIATELY FOLLOWING THE DATE THE BUSINESS RECEIVES PRECERTIFICATION FROM THE COMMISSION AUTHORIZING THE INCOME TAX CREDITS TO BE TREATED DIFFERENTLY PURSUANT TO THIS SECTION.

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

(f) "PRECERTIFICATION" MEANS THE WRITTEN PRECERTIFICATION THE COMMISSION MAY ISSUE AS ALLOWED IN SUBSECTION (2)(a) OF THIS SECTION THAT MUST SET FORTH THE INCOME TAX CREDITS A BUSINESS MAY TREAT DIFFERENTLY AND THE TOTAL ESTIMATED VALUE OF THE INCOME TAX CREDITS THAT THE BUSINESS MAY TREAT DIFFERENTLY PURSUANT TO THIS SECTION.

(g) "STRATEGIC CAPITAL INVESTMENT" MEANS A CAPITAL INVESTMENT TOTALING NOT LESS THAN ONE HUNDRED MILLION DOLLARS THAT THE COMMISSION FINDS WILL BE SIGNIFICANT TO THE STATE AND IS EXPECTED TO BE PRODUCTIVE OVER MANY YEARS.

(h) "TWELVE-MONTH INTERVAL" MEANS EACH TWELVE-MONTH INTERVAL FROM JULY 1, 2017, THROUGH JUNE 30, 2020, DURING WHICH THE COMMISSION MAY ISSUE PRECERTIFICATIONS.

(2)(a)(I) SUBJECT TO THE LIMITATIONS SPECIFIED IN SUBSECTION (2)(b) OF THIS SECTION, COMMENCING JULY 1, 2017, THROUGH JUNE 30, 2020, IF A BUSINESS INTENDS TO MAKE A STRATEGIC CAPITAL INVESTMENT IN THE STATE, THE COMMISSION MAY ISSUE A WRITTEN PRECERTIFICATION TO THE BUSINESS TO GRANT THE BUSINESS THE AUTHORITY TO TREAT ITS ALLOWED INCOME TAX CREDITS DURING THE BUSINESS' PERIOD DIFFERENTLY AS SPECIFIED IN THIS SECTION. THE STRATEGIC CAPITAL INVESTMENT MUST BE INITIATED AFTER THE ISSUANCE OF THE PRECERTIFICATION AND COMPLETED BEFORE THE END OF THE BUSINESS' PERIOD; EXCEPT THAT, IF A BUSINESS MAKES A STRATEGIC CAPITAL INVESTMENT THAT COULD RESULT IN ALLOWED INCOME TAX CREDITS WITH A TOTAL VALUE GREATER THAN THE PRECERTIFICATION LIMITATIONS SET FORTH IN SUBSECTION (2)(b) OF THIS SECTION, THE COMMISSION MAY ISSUE A SECOND OR THIRD WRITTEN PRECERTIFICATION TO THE SAME BUSINESS IN THE FOLLOWING TWELVE-MONTH INTERVALS FOR THE SAME STRATEGIC CAPITAL INVESTMENT, EVEN IF THE STRATEGIC CAPITAL INVESTMENT HAS ALREADY BEEN INITIATED OR COMPLETED. IF, AFTER PRECERTIFICATION AND DURING THE BUSINESS' PERIOD, THE BUSINESS MEETS THE REQUIREMENTS OF ONE OR MORE OF THE INCOME TAX CREDITS AS SET FORTH IN THE STATUTORY SECTIONS PERTAINING TO EACH CREDIT, THEN ONCE THE INCOME TAX CREDITS ARE ALLOWED, THE BUSINESS MAY ELECT, BY FILING A WRITTEN ELECTION AS SPECIFIED IN SUBSECTION (2)(a)(III) OF THIS SECTION, TO:

(A) USE THE INCOME TAX CREDITS AS AN OFFSET AGAINST THE BUSINESS' INCOME TAXES IN THE INCOME TAX YEAR THAT THE INCOME TAX CREDIT IS ALLOWED;

(B) CARRY FORWARD THE INCOME TAX CREDITS TO BE USED AGAINST THE BUSINESS' INCOME TAX LIABILITY FOR NO MORE THAN FIVE YEARS, EXCEPT AS PROVIDED IN SUBSECTION (2)(a)(II) OF THIS SECTION, USING THE CARRIED FORWARD INCOME TAX CREDITS IN THE EARLIEST INCOME TAX YEARS POSSIBLE; OR

(C) TRANSFER THE INCOME TAX CREDITS DURING THE CARRY-FORWARD PERIOD DESCRIBED IN SUBSECTION (2)(a)(I)(B) OF THIS SECTION AND AS ALLOWED IN SUBSECTION (4) OF THIS SECTION.

(II) THE FIVE-YEAR CARRY-FORWARD PERIOD COMMENCES WHEN THE INCOME TAX CREDIT IS ALLOWED AND IS NOT LIMITED BY THE END OF THE BUSINESS' PERIOD

DESCRIBED IN THIS SECTION.

(III) IF A BUSINESS ELECTS TO TREAT ITS ALLOWED INCOME TAX CREDITS DIFFERENTLY AS SPECIFIED IN THIS SECTION AND AS ALLOWED IN THE PRECERTIFICATION, THE BUSINESS MUST FILE A WRITTEN ELECTION WITH THE OFFICE. IF THE BUSINESS FILES THE WRITTEN ELECTION, THEN, EXCEPT AS PROVIDED IN SUBSECTION (2)(b)(II) OF THIS SECTION, THE BUSINESS MAY NOT ELECT TO RECEIVE A REFUND AS ALLOWED IN SECTION 39-30-104 (2.6).

(b) (I) ALL PRECERTIFICATIONS ISSUED BY THE COMMISSION IN EACH TWELVE-MONTH INTERVAL MAY NOT EXCEED TEN MILLION DOLLARS OF ESTIMATED TOTAL VALUE OF ALL INCOME TAX CREDITS. ANY PORTION OF THE TEN MILLION DOLLARS NOT PRECERTIFIED IN A TWELVE-MONTH INTERVAL MAY NOT BE CARRIED FORWARD TO THE NEXT TWELVE-MONTH INTERVAL.

(II) IF THE ACTUAL VALUE OF THE INCOME TAX CREDITS THAT A BUSINESS IS ALLOWED EXCEEDS THE PRECERTIFICATION'S ESTIMATED VALUE OF THE INCOME TAX CREDITS, THEN THE BUSINESS MAY NOT TREAT THE DIFFERENCE BETWEEN THE ESTIMATED VALUE OF THE INCOME TAX CREDITS AND THE ACTUAL VALUE OF THE INCOME TAX CREDITS DIFFERENTLY AS SPECIFIED IN THIS SECTION. INSTEAD, THE DIFFERENCE MUST BE TREATED AS SPECIFIED IN THE STATUTORY SECTIONS FOR EACH INCOME TAX CREDIT.

(3) THE BUSINESS SHALL NOTIFY THE COMMISSION WHEN THE BUSINESS HAS MET THE REQUIREMENTS OF ONE OR MORE OF THE INCOME TAX CREDITS IN THE PERIOD, SHALL PROVIDE THE COMMISSION WITH VERIFIABLE EVIDENCE THAT THE STRATEGIC CAPITAL INVESTMENT WAS MADE, AND SHALL SUBMIT AN AUDIT OPINION FROM AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT ATTESTING THAT THE INCOME TAX CREDIT OR INCOME TAX CREDITS HAVE BEEN PROPERLY CALCULATED. IF THE COMMISSION AGREES THAT THE BUSINESS HAS SATISFIED THE TERMS OF THE PRECERTIFICATION, THEN THE OFFICE SHALL NOTIFY THE DEPARTMENT IN WRITING OF THE DIFFERENT TREATMENT OF THE BUSINESS' INCOME TAX CREDITS FOR THE BUSINESS' PERIOD.

(4) (a) IF THE BUSINESS CHOOSES TO TRANSFER ITS ALLOWED INCOME TAX CREDITS, THEN THE INCOME TAX CREDITS ARE FREELY TRANSFERABLE AND ASSIGNABLE, SUBJECT TO THE COMMISSION'S ISSUANCE OF THE PRECERTIFICATION PURSUANT TO THIS SECTION, AND SUBJECT TO ANY NOTICE AND VERIFICATION REQUIREMENTS TO BE DETERMINED BY THE OFFICE; EXCEPT THAT THE BUSINESS MAY ONLY TRANSFER THE PORTION OF THE INCOME TAX CREDITS THAT WERE NOT APPLIED AGAINST THE BUSINESS' INCOME TAX IMPOSED BY ARTICLE 22 OF TITLE 39.

(b) THE TRANSFEREE MAY USE ALL OR A PORTION OF THE TRANSFERRED INCOME TAX CREDIT AS AN OFFSET AGAINST THE TRANSFEREE'S INCOME TAX IMPOSED BY ARTICLE 22 OF TITLE 39. ANY UNUSED PORTION OF THE TRANSFERRED INCOME TAX CREDIT MAY BE CARRIED FORWARD AND USED AS AN INCOME TAX CREDIT AGAINST THE TRANSFEREE'S SUBSEQUENT YEARS' INCOME TAX LIABILITY FOR AN INTERVAL NOT TO EXCEED THREE ADDITIONAL INCOME TAX YEARS FROM THE DATE OF THE TRANSFEREE'S ACQUISITION AND SHALL BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE. THE TRANSFEREE MAY TRANSFER ANY UNUSED PORTION OF THE ACQUIRED INCOME TAX CREDIT TO A SECONDARY TRANSFEREE IN THAT THREE

INCOME TAX YEAR INTERVAL, BUT THE SECONDARY TRANSFEREE MAY ONLY OFFSET ITS ACQUIRED INCOME TAX CREDIT AGAINST ITS INCOME TAX IMPOSED BY ARTICLE 22 OF TITLE 39 FOR THE REMAINDER OF THE THREE INCOME TAX YEAR INTERVALS FROM THE DATE OF THE FIRST TRANSFEREE'S ACQUISITION.

(c) WITH RESPECT TO THE INCOME TAX CREDIT SET FORTH IN SECTION 39-30-104, IF THE BUSINESS SEEKS A WAIVER OF THE LIMITATION SPECIFIED IN SECTION 39-30-104 (2)(c) AND AS ALLOWED IN SECTION 39-30-104 (2)(c)(II), AND THE COMMISSION APPROVES SUCH WAIVER, THEN THE APPROVED WAIVER OF THE LIMITATION MUST BE REFLECTED IN THE PRECERTIFICATION AND APPLIES TO ANY TRANSFEREE OF THE BUSINESS' INCOME TAX CREDIT ALLOWED UNDER SECTION 39-30-104.

(d) THE OFFICE SHALL ESTABLISH NOTICE AND VERIFICATION REQUIREMENTS FOR TRANSFERRED INCOME TAX CREDITS.

(e) THE TRANSFEROR AND THE TRANSFEREE OF THE INCOME TAX CREDITS SHALL JOINTLY FILE A COPY OF THE WRITTEN TRANSFER AGREEMENT WITH THE OFFICE WITHIN THIRTY DAYS AFTER THE TRANSFER. ANY FILING OF THE WRITTEN TRANSFER AGREEMENT WITH THE OFFICE PERFECTS THE TRANSFER.

(f) THE OFFICE SHALL DEVELOP A SYSTEM TO TRACK THE TRANSFERS OF INCOME TAX CREDITS AND TO CERTIFY THE OWNERSHIP OF THE INCOME TAX CREDITS. A CERTIFICATION BY THE OFFICE OF THE OWNERSHIP AND THE AMOUNT OF INCOME TAX CREDITS MAY BE RELIED ON BY THE DEPARTMENT AND THE TRANSFEREE AS BEING ACCURATE TO THE EXTENT THE DATA SUPPLIED BY THE BUSINESS IS ACCURATE, AND THE OFFICE SHALL NOT ADJUST THE AMOUNT OF INCOME TAX CREDITS AS TO THE TRANSFEREE. THE OFFICE, THE DEPARTMENT, AND ANY OTHER STATE AGENCY RETAIN ANY REMEDIES THEY MAY HAVE AGAINST THE BUSINESS AND ANY OTHER TAXPAYER THAT MISREPRESENTS THE VALUE OF THE TRANSFERABLE INCOME TAX CREDIT IN A TRANSFER. THE OFFICE SHALL ESTABLISH POLICIES TO PERMIT VERIFICATION OF THE OWNERSHIP AND AMOUNT OF THE INCOME TAX CREDITS AND SHALL POST THOSE POLICIES ON THE OFFICE'S WEBSITE; EXCEPT THAT THE POLICIES MAY NOT UNDULY RESTRICT OR HINDER THE TRANSFER OF THE TAX CREDITS AS ALLOWED IN THIS SECTION.

(g) THE OFFICE SHALL PROVIDE A REPORT TO THE DEPARTMENT SPECIFYING THE OWNERSHIP AND TRANSFERS OF INCOME TAX CREDITS AS ALLOWED IN THIS SECTION. THE REPORT MUST BE PROVIDED ON A SCHEDULE TO BE DETERMINED BY THE DEPARTMENT AND THE OFFICE.

(5) THE COMMISSION AND THE OFFICE SHALL POST ON THE OFFICE'S WEBSITE ALL NONCONFIDENTIAL INFORMATION RELATED TO THE PRECERTIFICATION AND APPROVAL OF THE TREATMENT OF THE INCOME TAX CREDITS AS SPECIFIED IN THIS SECTION. NOTHING IN THIS SECTION MAY BE CONSTRUED TO ABROGATE THE CONFIDENTIALITY PROVISIONS SET FORTH IN SECTION 39-21-113.

(6) THE COMMISSION SHALL INCLUDE INFORMATION REGARDING ANY TRANSFERABILITY AUTHORIZED PURSUANT TO THIS SECTION, INCLUDING THE NAMES OF THE BUSINESSES AND THE AMOUNTS TRANSFERRED, IN ITS ANNUAL REPORT REQUIRED TO BE PRESENTED TO THE GENERAL ASSEMBLY PURSUANT TO SECTION

24-46-104(2). THE COMMISSION SHALL ANNUALLY REPORT THE SAME INFORMATION TO THE FINANCE COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR SUCH SUCCESSOR COMMITTEES, NOTWITHSTANDING THE LIMITATIONS IN SECTION 24-1-136(11).

**SECTION 2.** In Colorado Revised Statutes, 39-22-531, **amend** (6) as follows:

**39-22-531. Colorado job growth incentive tax credit - rules - definitions - repeal.** (6) EXCEPT AS PROVIDED IN SECTION 24-46-104.3, if the amount of the credit allowed in this section exceeds the amount of income taxes otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in the current income tax year may be carried forward and used as a credit against subsequent years' income tax liability for a period not to exceed ten years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

**SECTION 3.** In Colorado Revised Statutes, 39-30-104, **amend** (2.5)(a)(I) and (2.6)(a) introductory portion as follows:

**39-30-104. Credit against tax - investment in certain property - definitions.** (2.5) (a) (I) Notwithstanding the provisions of section 39-22-507.5 (7)(b), and except as otherwise provided in subparagraph (II) of this paragraph (a) and paragraph (b) of this subsection (2.5) SECTION 24-46-104.3 AND SUBSECTIONS (2.5)(a)(II) AND (2.5)(b) OF THIS SECTION, any excess credit 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.

(2.6) (a) Except as provided in paragraph (b) of this subsection (2.6) SECTION 24-46-104.3 AND SUBSECTION (2.6)(b) OF THIS SECTION and notwithstanding any other provision in this section, in each income tax year commencing on or after January 1, 2015, but before January 1, 2021, a taxpayer who places a new renewable energy investment in service on or after January 1, 2015, but before January 1, 2021, that results in a credit pursuant to subsection (1) of this section may elect to receive a refund of eighty percent of the amount of such credit as specified in this paragraph (a) SUBSECTION (2.6)(a) and forego the remaining twenty percent as a cost of such election. If eighty percent of the amount of the credit in subsection (1) of this section is:

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

**39-30-105.1. Credit for new enterprise zone business employees - definitions.** (4) (a) (I) EXCEPT AS PROVIDED IN SECTION 24-46-104.3, for any income tax year commencing on or after January 1, 2014, if the total amount of the credits claimed by a taxpayer pursuant to the provisions of subparagraph (I) of paragraph (a) of subsection (1), paragraph (b) of subsection (1), and paragraph (a) of subsection (3) SUBSECTIONS (1)(a)(I), (1)(b), AND (3)(a) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of the credits not used as an offset against income taxes in said income tax year is not allowed as a refund but may be carried

forward as a credit against subsequent years' tax liability for a period not exceeding five years and is applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period is not refundable to the taxpayer.

(II) EXCEPT AS PROVIDED IN SECTION 24-46-104.3, for any income tax year commencing on or after January 1, 2014, if the total amount of credits claimed by a taxpayer pursuant to ~~subparagraph (III) of paragraph (a) of subsection (1) of this section and paragraph (b) of subsection (3)~~ SUBSECTIONS (1)(a)(III) AND (3)(b) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of credits not used as an offset against income taxes in said income tax year is not allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding seven years and is applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period is not refundable to the taxpayer.

**SECTION 5.** In Colorado Revised Statutes, 39-30-105.5, **amend** (2) introductory portion as follows:

**39-30-105.5. Credit against Colorado income taxes based on expenditures for research and experimental activities.** (2) EXCEPT AS PROVIDED IN SECTION 24-46-104.3, in any one tax year, the amount of such credit allowable for deduction from the taxpayer's tax liability shall be the total of:

**SECTION 6. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state money is necessary to carry out the purposes of this act.

**SECTION 7. 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 24, 2017