

CHAPTER 103

TAXATION

HOUSE BILL 20-1166

BY REPRESENTATIVE(S) Arndt and McKean, Valdez D., Van Winkle, Buentello, Exum, Gray;
also SENATOR(S) Tate, Moreno, Woodward, Zenzinger, Crowder.

AN ACT

CONCERNING NECESSARY STATUTORY AMENDMENTS DUE TO THE AUTOMATIC REPEAL OF AN ENTERPRISE ZONE ACT INCOME TAX CREDIT FOR NEW BUSINESS FACILITY EMPLOYEES.

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

SECTION 1. In Colorado Revised Statutes, 24-46-105.7, **amend** (3) as follows:

24-46-105.7. Performance-based incentive for new job creation - new jobs incentives cash fund. (3) An employer that qualifies to receive a performance-based incentive for new jobs created pursuant to this section and that qualifies for an income tax credit pursuant to ~~section 39-30-105, C.R.S.~~ SECTION 39-30-105.1, shall be allowed to receive the incentive allowed pursuant to this section and claim the credit allowed pursuant to ~~section 39-30-105, C.R.S.~~ SECTION 39-30-105.1.

SECTION 2. In Colorado Revised Statutes, 30-11-123, **amend** (1)(b) and (2) as follows:

30-11-123. New business facilities - expansion of existing business facilities - incentives - limitations - authority to exceed revenue-raising limitations - legislative declaration - definitions. (1) (b) Notwithstanding any law to the contrary, any county may negotiate for an incentive payment or credit with any taxpayer who establishes a **new** business facility, as defined in ~~section 39-30-105 (7)(c), C.R.S.~~ SECTION 39-30-105.1 (6)(b), in the county. In no instance shall **MAY** any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the county upon the taxable personal property located at or within the **new** business facility and used in connection with the operation of the **new** business facility for the current property tax year. The term of any agreement made prior to August 6, 2014, pursuant to the provisions of this

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.

subsection (1) ~~shall~~ MAY not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (1) ~~shall~~ MAY not exceed thirty-five years, which does not include the term of any prior agreement.

(2) Notwithstanding any law to the contrary, any county may negotiate for an incentive payment or credit with any taxpayer who expands a facility, as defined in ~~section 39-30-105 (7)(e), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-30-105 (7)(e), C.R.S.,~~ SECTION 39-30-105.1 (6)(e), THE EXPANSION OF WHICH AUTHORIZES A TAXPAYER TO CLAIM A CREDIT DESCRIBED IN SECTION 39-30-105.1, and that is located in the county. In no instance ~~shall~~ MAY any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the county upon the taxable personal property directly attributable to the expansion, located at or within the expanded facility, and used in connection with the operation of the expanded facility for the current property tax year. The term of any agreement made prior to August 6, 2014, pursuant to the provisions of this subsection (2) ~~shall~~ MAY not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (2) ~~shall~~ MAY not exceed thirty-five years, which does not include the term of any prior agreement.

SECTION 3. In Colorado Revised Statutes, 31-15-903, **amend** (1)(b) and (2) as follows:

31-15-903. Legislative declaration - municipalities - new business facilities - expanded or existing business facilities - incentives - limitations - authority to exceed revenue-raising limitation. (1) (b) Notwithstanding any law to the contrary, any municipality may negotiate for an incentive payment or credit with any taxpayer who establishes a ~~new~~ business facility, as defined in ~~section 39-30-105 (7)(e), C.R.S.~~ SECTION 39-30-105.1 (6)(b), in the municipality. In no instance ~~shall~~ MAY any negotiation result in an annual incentive payment or credit that is greater than the amount of taxes levied by the municipality upon the taxable personal property located at or within the ~~new~~ business facility and used in connection with the operation of the ~~new~~ business facility for the current property tax year. The term of any agreement made prior to August 6, 2014, pursuant to the provisions of this subsection (1) ~~shall~~ MAY not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (1) ~~shall~~ MAY not exceed thirty-five years, which does not include the term of any prior agreement.

(2) Notwithstanding any law to the contrary, any municipality may negotiate for an incentive payment or credit with any taxpayer who expands a facility, as defined in ~~section 39-30-105 (7)(e), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-30-105 (7)(e), C.R.S.,~~ SECTION 39-30-105.1 (6)(e), THE EXPANSION OF WHICH AUTHORIZES A TAXPAYER TO CLAIM A CREDIT DESCRIBED IN SECTION 39-30-105.1, and that is located in the municipality. In no instance ~~shall~~ MAY any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the municipality upon the taxable personal property directly attributable to the expansion, located at or within the expanded facility, and used in connection with the operation of the

expanded facility for the current property tax year. The term of any agreement made prior to August 6, 2014, pursuant to the provisions of this subsection (2) ~~shall~~ MAY not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (2) ~~shall~~ MAY not exceed thirty-five years, which does not include the term of any prior agreement.

SECTION 4. In Colorado Revised Statutes, 32-1-1702, **amend** (1) and (2) as follows:

32-1-1702. New business facilities - expanded or existing business facilities - incentives - limitations - authority to exceed revenue-raising limitation.

(1) Notwithstanding any law to the contrary, a special district may negotiate for an incentive payment or credit with a taxpayer who establishes a ~~new~~ business facility, as defined in ~~section 39-30-105 (7)(c), C.R.S.~~ SECTION 39-30-105.1 (6)(b), in the special district. In no instance ~~shall~~ MAY any negotiation result in an annual incentive payment or credit that is greater than the amount of taxes levied by the special district upon the taxable business personal property located at or within the ~~new~~ business facility and used in connection with the operation of the ~~new~~ business facility for the current property tax year. The term of any agreement made prior to August 6, 2014, pursuant to the provisions of this subsection (1) ~~shall~~ MAY not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (1) ~~shall~~ MAY not exceed thirty-five years, which does not include the term of any prior agreement.

(2) Notwithstanding any law to the contrary, a special district may negotiate for an incentive payment or credit with a taxpayer who expands a facility, as defined in ~~section 39-30-105 (7)(c), C.R.S., the expansion of which constitutes a new business facility, as defined in section 39-30-105 (7)(c), C.R.S.,~~ SECTION 39-30-105.1 (6)(e), THE EXPANSION OF WHICH AUTHORIZES A TAXPAYER TO CLAIM A CREDIT DESCRIBED IN SECTION 39-30-105.1, and that is located in the special district. In no instance ~~shall~~ MAY any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the special district upon the taxable business personal property directly attributable to the expansion located at or within the expanded facility and used in connection with the operation of the expanded facility for the current property tax year. The term of any agreement made prior to August 6, 2014, pursuant to the provisions of this subsection (2) ~~shall~~ MAY not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (2) ~~shall~~ MAY not exceed thirty-five years, which does not include the term of any prior agreement.

SECTION 5. In Colorado Revised Statutes, 39-30-103, **amend** (4)(b) introductory portion, (4)(b)(IX), (4)(b)(X), (6)(a), and (7)(a) introductory portion as follows:

39-30-103. Zones established - review - termination - repeal. (4) (b) The Colorado economic development commission shall work with the zone administrators of each enterprise zone to ensure that each zone has specific economic development objectives with outcomes that can be measured with

specific, verifiable data. The director of the Colorado office of economic development shall require the zone administrators for each zone to submit annual documentation of efforts to improve conditions in areas designated as enterprise zones and the results of those efforts. Such annual documentation ~~shall~~ MUST include specific, verifiable data that can be used to measure whether the zone has achieved the specific economic development objectives for the zone that have measurable outcomes. In order for the commission to determine if the enterprise zones or portions thereof are achieving the specific economic development objectives submitted pursuant to this ~~paragraph (b) or to paragraph (d) of subsection (3) of this section~~ SUBSECTION (4)(b) OR TO SUBSECTION (3)(d) OF THIS SECTION, such annual documentation ~~shall~~ MUST include, but need not be limited to, the most recent statistics available for companies claiming enterprise zone tax credits on:

(IX) ~~The number of employees employed in new or expanded business facilities for which a credit is claimed pursuant to section 39-30-105 and the number of business facility employees for which a credit is claimed pursuant to section 39-30-105.1;~~

(X) ~~The amount of investment tax credits claimed pursuant to section 39-30-104, the amount of credits claimed for new business facility employees pursuant to section 39-30-105, SECTION 39-30-104 and the amount of credits claimed pursuant to section 39-30-105.1;~~

(6) (a) When the termination of an enterprise zone or portion of an enterprise zone would prevent a taxpayer from qualifying for tax benefits under this ~~article~~ ARTICLE 30 and the taxpayer can identify job creation or capital expansion activities that were planned prior to the termination announcement and that would have otherwise entitled the taxpayer to claim tax benefits under section 39-30-103.5, 39-30-104, ~~39-30-105~~, or 39-30-105.1, the enterprise zone administrator and the taxpayer shall jointly certify detailed information about such planned activities. A taxpayer who files such certification with the taxpayer's state income tax return may claim tax benefits otherwise actually earned up to the limits of such certified information for a period not to exceed the ten tax years following the year in which the enterprise zone or portion of an enterprise zone was terminated. It is the intent of this subsection (6) only to permit taxpayers to claim tax benefits on which they demonstrably relied in making business planning decisions, and, except as specifically provided in this subsection (6), nothing in this subsection (6) ~~shall~~ MAY be construed to authorize the commission or any enterprise zone administrator to grant tax benefits that have been repealed by the general assembly or to grant tax benefits in excess of the limits established by law.

(7) (a) Beginning on January 1, 2012, before a taxpayer engages in any activity for which the taxpayer intends to claim an income tax credit pursuant to section 39-30-104, ~~39-30-105~~, 39-30-105.1, 39-30-105.5, or 39-30-105.6, an authorized company official of the taxpayer's business or the taxpayer who is the owner of the business shall submit a pre-certification form to the enterprise zone administrator as specified in this subsection (7). A taxpayer that completes an activity prior to January 1, 2012, for which the taxpayer intends to claim an income tax credit pursuant to this ~~article~~ ARTICLE 30 shall submit to the zone administrator on or before December 31, 2012, any information related to such completed activity that is necessary to receive certification from the zone administrator that the taxpayer's

business is located in the enterprise zone. Nothing in this subsection (7) ~~shall~~ MAY be construed to require a taxpayer to submit a pre-certification form to the zone administrator for activities completed prior to January 1, 2012. In connection with the pre-certification, the taxpayer shall be required to:

SECTION 6. In Colorado Revised Statutes, 39-30-103.2, **amend** (5) as follows:

39-30-103.2. Enhanced rural enterprise zones - criteria - termination. (5) If the termination of an enhanced rural enterprise zone would prevent a taxpayer from qualifying for tax benefits under this ~~article~~ ARTICLE 30 and the taxpayer can identify job creation or capital expansion activities that were planned before the director of the Colorado office of economic development issued the list of eligible counties and that would have otherwise entitled the taxpayer to claim tax benefits under ~~section 39-30-105 or~~ SECTION 39-30-105.1, the enterprise zone administrator and the taxpayer shall jointly certify detailed information about such planned activities. A taxpayer who files such certification with the taxpayer's state income tax return may claim tax benefits otherwise actually earned up to the limits of such certified information for a period not to exceed the five tax years following the year in which the enhanced rural enterprise zone was terminated. It is the intent of this subsection (5) to permit taxpayers to claim only those tax benefits on which they demonstrably relied in making business planning decisions, and, except as specifically provided in this subsection (5), nothing in this subsection (5) ~~shall~~ MAY be construed to authorize any enterprise zone administrator to grant tax benefits that have been repealed by law or to grant tax benefits in excess of the limits established by law.

SECTION 7. In Colorado Revised Statutes, 39-30-104, **amend** (2)(a); and **repeal** (6) as follows:

39-30-104. Credit against tax - investment in certain property - definitions. (2) (a) For income tax years commencing prior to January 1, 2014, the amount of the credit set forth in subsection (1) of this section shall be subject to the limitations of section 39-22-507.5; except that, in computing the limitations on credit pursuant to section 39-22-507.5 (3), a taxpayer's actual tax liability for the income tax year shall not be reduced by the amount of credits allowed by ~~section 39-30-105~~ SECTION 39-30-105.1 and the limit on that portion of a taxpayer's tax liability that exceeds five thousand dollars shall be fifty percent.

(6) ~~For credits claimed for income tax years commencing on or after January 1, 1997, no credit shall be allowed pursuant to this section if the investment resulted from the relocation of a business operation from within the state to an enterprise zone, regardless of whether the original location of the operation was within an enterprise zone, except to the extent such relocation meets the criteria for an expansion pursuant to section 39-30-105 (7)(c)(II) and (7)(c)(III).~~

SECTION 8. In Colorado Revised Statutes, 39-30-107.5, **amend** (1)(a) and (2) as follows:

39-30-107.5. Taxable property valuations - sales taxes - incentives - definitions. (1) (a) Notwithstanding any law to the contrary, any special district, county, municipality, or city and county within an enterprise zone may negotiate

with any taxpayer who qualifies for a credit pursuant to ~~section 39-30-105~~ or SECTION 39-30-105.1 for an incentive payment or credit equal to not more than the amount of the taxes levied upon the taxable property of the taxpayer; but in no instance shall any such negotiation result in such an incentive payment or credit which is greater than the difference between the current property tax liability and the tax liability for the same property for the year preceding the year in which the enterprise zone was approved.

(2) Notwithstanding any law to the contrary, any county, municipality, or city and county within an enterprise zone may negotiate with any taxpayer who qualifies for a credit pursuant to ~~section 39-30-105~~ or SECTION 39-30-105.1 a refund of the sales taxes levied by such county, municipality, or city and county for the purchase of equipment, machinery, machine tools, or supplies used in the taxpayer's business in the enterprise zone.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: April 1, 2020