

## CHAPTER 284

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**TAXATION**

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**HOUSE BILL 02-1161**

BY REPRESENTATIVE(S) Young, Borodkin, Groff, Hodge, Hoppe, Jahn, Jameson, Kester, Lawrence, Mace, Miller, Mitchell, Plant, Romanoff, Scott, Stafford, Tapia, and Williams S.;  
also SENATOR(S) Hillman, Chlouber, Entz, Epps, Evans, Hanna, Hernandez, Isgar, Lamborn, Linkhart, Matsunaka, Nichol, Owen, Phillips, Taylor, Teck, Thiebaut, and Tupa.

**AN ACT**

**CONCERNING THE CREATION OF ENHANCED RURAL ENTERPRISE ZONES, AND, IN CONNECTION THEREWITH, ESTABLISHING STATE INCOME TAX CREDITS FOR TAXPAYERS WHO ESTABLISH NEW BUSINESS FACILITIES IN ENHANCED RURAL ENTERPRISE ZONES.**

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

**SECTION 1.** 39-30-102 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**39-30-102. Legislative declaration.** (1) The general assembly hereby finds and declares:

(c) THAT SOME RURAL COUNTIES IN THIS STATE CONTINUE TO HAVE DIFFICULTY IN PROMOTING ECONOMIC GROWTH DESPITE THE EXISTENCE OF ENTERPRISE ZONES AND THEIR ASSOCIATED TAX CREDITS.

**SECTION 2.** The introductory portion to 39-30-103 (1) and 39-30-103 (4) (c) (II), (4) (c.5), and (6), Colorado Revised Statutes, are amended, and the said 39-30-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**39-30-103. Zones established - termination.** (1) Any municipality, county, or group of contiguous municipalities or counties may propose an area of such municipality, county, or group of municipalities or counties to be designated as an enterprise zone if the area has a population of no more than eighty thousand persons, OR ONE HUNDRED THOUSAND PERSONS IF THE AREA IS A RURAL AREA, and meets at least one of the following additional criteria:

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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.*

(1.5) AS USED IN THIS SECTION, "RURAL AREA" MEANS:

(a) A COUNTY WITH A POPULATION OF LESS THAN FIFTY THOUSAND PEOPLE, ACCORDING TO THE MOST RECENTLY AVAILABLE POPULATION STATISTICS OF THE UNITED STATES BUREAU OF THE CENSUS;

(b) A MUNICIPALITY WITH A POPULATION OF LESS THAN FIFTY THOUSAND PEOPLE, ACCORDING TO THE MOST RECENTLY AVAILABLE POPULATION STATISTICS OF THE UNITED STATES BUREAU OF THE CENSUS, THAT IS LOCATED TEN MILES OR MORE FROM A MUNICIPALITY WITH A POPULATION OF MORE THAN FIFTY THOUSAND PEOPLE; OR

(c) THE UNINCORPORATED PART OF A COUNTY LOCATED TEN MILES OR MORE FROM A MUNICIPALITY WITH A POPULATION OF MORE THAN FIFTY THOUSAND PEOPLE, ACCORDING TO THE MOST RECENTLY AVAILABLE POPULATION STATISTICS OF THE UNITED STATES BUREAU OF THE CENSUS.

(4) (c) (II) The state auditor shall submit a report to the governor and the general assembly at a frequency to be established by the state auditor and the legislative audit committee, but in no event less than once every five years, evaluating the implementation of the program and its effect on the employment, unemployment rate, investment, overall growth rate, economic diversity, and per capita income in each enterprise zone AND ENHANCED RURAL ENTERPRISE ZONE or county containing an enterprise zone OR ENHANCED RURAL ENTERPRISE ZONE, evaluating the effectiveness of each zone in achieving its measurable objectives, making recommendations for statutory changes, if any, and including any other information requested by the governor or the general assembly. The evaluation shall be based upon objective verifiable data submitted by the zone administrators and maintained by the department of local affairs, local governments, and zone administrators and shall include information concerning the amounts of tax credits claimed and allowed under the enterprise zone program. For purposes of preparing the report required by this paragraph (c), the state auditor shall have access to all records and documents applicable to the enterprise zone program, whether maintained by the department of local affairs, local governments, or enterprise zone administrators.

(c.5) Companies claiming enterprise zone credits shall provide information reasonably required by zone administrators and the executive director of the department of local affairs to evaluate the effectiveness of each zone in accomplishing the measurable economic development objectives to be achieved in the zone. SUCH INFORMATION SHALL BE CONSIDERED PUBLIC RECORDS AS DEFINED IN SECTION 24-72-202 (6), C.R.S., SHALL BE PRESERVED FOR AT LEAST FIVE YEARS BY THE ZONE ADMINISTRATOR WHO COLLECTED THE INFORMATION, WHO SHALL BE THE CUSTODIAN OF SUCH INFORMATION, AND SHALL BE MADE AVAILABLE BY THE ZONE ADMINISTRATOR FOR INSPECTION BY ANY PERSON AT REASONABLE TIMES. NOTHING IN THIS PARAGRAPH (c.5) SHALL BE CONSTRUED TO REQUIRE THE DISCLOSURE TO THE PUBLIC OF ANY INFORMATION THAT REVEALS THE AMOUNT OF COMPENSATION PAID TO ANY INDIVIDUAL EMPLOYEE OF A COMPANY, ANY COLORADO INCOME TAX RETURN, OR ANY INFORMATION REGARDING EXPENDITURES ON RESEARCH AND DEVELOPMENT.

(6) 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 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, or 39-30-105, the enterprise zone administrator and the taxpayer shall jointly certify ~~the circumstances and detailed plan information prior to the effective date of the termination~~ ABOUT SUCH PLANNED ACTIVITIES. A TAXPAYER WHO FILES such certification ~~may be filed~~ with the taxpayer's state income tax return ~~to extend the period within which the taxpayer may claim such 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 of the termination, and the amount of each benefit that the taxpayer may claim during the extension period, based on the plan information filed with the tax return~~ 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 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.

**SECTION 3.** Article 30 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**39-30-103.2. Enhanced rural enterprise zones - criteria - termination.**

(1) THE PORTION OF ANY COUNTY WITHIN AN ENTERPRISE ZONE DESIGNATED PURSUANT TO SECTION 39-30-103 SHALL BE DESIGNATED AS AN ENHANCED RURAL ENTERPRISE ZONE IF THE COUNTY THAT CONTAINS THE AREA TO BE SO DESIGNATED MEETS TWO OR MORE OF THE FOLLOWING CRITERIA:

(a) THE COUNTY HAS AN UNEMPLOYMENT RATE AT LEAST FIFTY PERCENT ABOVE THE STATE AVERAGE UNEMPLOYMENT RATE FOR THE MOST RECENT PERIOD OF TWELVE CONSECUTIVE MONTHS FOR WHICH DATA ARE AVAILABLE FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT;

(b) THE COUNTY HAS A POPULATION GROWTH RATE LESS THAN TWENTY-FIVE PERCENT OF THE STATE AVERAGE POPULATION GROWTH RATE FOR THE MOST RECENT FIVE-YEAR PERIOD FOR WHICH DATA ARE AVAILABLE FROM THE UNITED STATES CENSUS BUREAU OR THE DEPARTMENT OF LOCAL AFFAIRS, OR IF SUCH DATA ARE NOT AVAILABLE FOR ANY FIVE-YEAR PERIOD, FOR THE MOST RECENT PERIOD OF NOT LESS THAN FIVE NOR MORE THAN TEN YEARS FOR WHICH SUCH DATA ARE AVAILABLE;

(c) THE AVERAGE PER CAPITA INCOME IN THE COUNTY IS LESS THAN SEVENTY-FIVE PERCENT OF THE STATE AVERAGE PER CAPITA INCOME FOR THE MOST RECENT PERIOD FOR WHICH DATA ARE AVAILABLE FROM THE UNITED STATES CENSUS BUREAU OR THE DEPARTMENT OF LOCAL AFFAIRS;

(d) THE TOTAL ASSESSED VALUE OF ALL NONRESIDENTIAL PROPERTY WITHIN THE COUNTY RANKS IN THE LOWER ONE-HALF OF ALL COUNTIES BASED ON THE TOTAL VALUE OF NONRESIDENTIAL PROPERTY FOR THE MOST RECENT YEAR FOR WHICH SUCH DATA ARE AVAILABLE FROM THE DEPARTMENT OF LOCAL AFFAIRS;

(e) THE COUNTY HAS A POPULATION OF FIVE THOUSAND OR LESS AS ESTIMATED BY THE DEPARTMENT OF LOCAL AFFAIRS.

(2) BY DECEMBER 1, 2002, AND EVERY TWO YEARS THEREAFTER, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS SHALL DETERMINE WHETHER EACH COUNTY MEETS TWO OR MORE OF THE CRITERIA SPECIFIED IN SUBSECTION (1) OF THIS SECTION. SUCH DETERMINATION SHALL BE BASED ON THE MOST RECENT STATISTICS AVAILABLE TO THE STATE DEMOGRAPHER APPOINTED BY THE EXECUTIVE DIRECTOR. THE EXECUTIVE DIRECTOR SHALL PROVIDE TO EACH ENTERPRISE ZONE ADMINISTRATOR AND TO THE BOARD OF COUNTY COMMISSIONERS OF EACH ELIGIBLE COUNTY A LIST OF THE COUNTIES THAT MEET TWO OR MORE OF THE CRITERIA SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

(3) IF A COUNTY CONTAINING A PREVIOUSLY DESIGNATED ENHANCED RURAL ENTERPRISE ZONE DOES NOT APPEAR ON THE BIENNIAL LIST OF ELIGIBLE COUNTIES PROVIDED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS, THE ENTERPRISE ZONE WITHIN SUCH COUNTY SHALL BE TERMINATED AS AN ENHANCED RURAL ENTERPRISE ZONE AS OF JANUARY 1 FOLLOWING THE ISSUANCE OF SUCH LIST. IF THE COUNTY APPEARS AGAIN ON A SUBSEQUENT LIST OF ELIGIBLE COUNTIES, THE PORTION OF THE COUNTY WITHIN AN ENTERPRISE ZONE SHALL BE DESIGNATED AS AN ENHANCED RURAL ENTERPRISE ZONE.

(4) THE TERMINATION OF AN ENHANCED RURAL ENTERPRISE ZONE SHALL NOT RESTRICT, CURTAIL, TERMINATE, OR OTHERWISE CUT OFF ANY TAX CREDITS THAT WERE EARNED BY ANY TAXPAYER BASED ON TRANSACTIONS COMPLETED WHILE A COUNTY WAS DESIGNATED AS AN ENHANCED RURAL ENTERPRISE ZONE. IN ADDITION, THE EXECUTIVE DIRECTOR SHALL ESTABLISH PROCEDURES FOR RECOGNIZING AND ALLOWING CREDITS TO TAXPAYERS WHO HAVE TAKEN ACTIONS IN RELIANCE ON AGREEMENTS REACHED WITH ENHANCED RURAL ENTERPRISE ZONE ADMINISTRATORS OR LOCAL GOVERNMENTS FOR LONG-TERM INVESTMENTS.

(5) IF THE TERMINATION OF AN ENHANCED RURAL ENTERPRISE ZONE WOULD PREVENT A TAXPAYER FROM QUALIFYING FOR TAX BENEFITS UNDER THIS ARTICLE AND THE TAXPAYER CAN IDENTIFY JOB CREATION OR CAPITAL EXPANSION ACTIVITIES THAT WERE PLANNED BEFORE THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS ISSUED THE LIST OF ELIGIBLE COUNTIES AND THAT WOULD HAVE OTHERWISE ENTITLED THE TAXPAYER TO CLAIM TAX BENEFITS UNDER SECTION 39-30-105, 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 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 4.** 39-30-103.5 (4), Colorado Revised Statutes, is amended, and the said 39-30-103.5 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**39-30-103.5. Credit against tax - contributions to enterprise zone administrators to implement economic development plans.** (3.5) FOR INCOME TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 2003, MONETARY OR IN-KIND CONTRIBUTIONS TO PROMOTE NONPROFIT OR GOVERNMENT-FUNDED COMMUNITY DEVELOPMENT PROJECTS IN ENTERPRISE ZONES SHALL BE DEEMED TO BE FOR THE PURPOSE OF IMPLEMENTING THE ECONOMIC DEVELOPMENT PLAN FOR THE ENTERPRISE ZONE.

(4) In no event shall credits be allowed pursuant to this section for contributions that directly benefit the contributor or that are not directly related to job creation, job preservation, or other purposes specified in subsections ~~(2) and (3)~~ (2), (3), AND (3.5) of this section.

**SECTION 5.** 39-30-105 (1), (2), (3), and (5), Colorado Revised Statutes, are amended to read:

**39-30-105. Credit for new business facility employees.** (1) (a) (I) For any income tax year commencing on or after January 1, 1993, any taxpayer who establishes a new business facility in an enterprise zone, as defined in section 39-22-508.2 (3) but excluding the requirements of paragraph (b) of that subsection, shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars per income tax year for each new business facility employee, as determined under section 39-22-508.2 BUT WITHOUT REGARD TO SECTION 39-22-508.2 (3) (b) AND WITHOUT REGARD TO WHETHER THE TAX CREDIT ALLOWED BY SECTION 39-22-508.3 IS CLAIMED, who is working within the zone, prorated according to the number of months the new business facility employee was employed by the taxpayer during the income tax year. A new business facility employee whose primary duties consist of operating a commercial motor vehicle with a commercial driver's license shall be deemed to be working one hundred percent within the zone if the employee spends no more than five percent of his or her total time at any facility of the employer other than the facility within the zone. ~~A new business facility qualifying for credit shall be allowed the credit for each subsequent tax year for each additional new business facility employee where the employee or employees exceed the maximum number employed in any prior tax year. Any credit shall be allowed for a maximum of twelve consecutive months for each new business facility employee employed by the taxpayer. Any special tax credit for new business facility employees allowed pursuant to this subsection (1) shall be in lieu of any credit that the taxpayer might otherwise obtain pursuant to section 39-22-508.3 for the same income tax year.~~

(II) ~~This paragraph (a) is effective for income tax years commencing on or after January 1, 1993.~~

(III) FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2003, ANY TAXPAYER WHO ESTABLISHES A NEW BUSINESS FACILITY IN AN ENHANCED RURAL ENTERPRISE ZONE SHALL BE ALLOWED AN ADDITIONAL CREDIT AGAINST THE INCOME TAX IMPOSED BY ARTICLE 22 OF THIS TITLE IN AN AMOUNT EQUAL TO TWO THOUSAND

DOLLARS PER INCOME TAX YEAR FOR EACH NEW BUSINESS FACILITY EMPLOYEE WHO IS WORKING WITHIN THE ENHANCED RURAL ENTERPRISE ZONE, PRORATED ACCORDING TO THE NUMBER OF MONTHS SUCH EMPLOYEE WAS EMPLOYED BY THE TAXPAYER DURING THE INCOME TAX YEAR.

(IV) A NEW BUSINESS FACILITY QUALIFYING FOR CREDIT SHALL BE ALLOWED THE CREDIT FOR EACH SUBSEQUENT TAX YEAR FOR EACH ADDITIONAL NEW BUSINESS FACILITY EMPLOYEE IN EXCESS OF THE MAXIMUM NUMBER EMPLOYED IN ANY PRIOR TAX YEAR. ANY CREDIT SHALL BE ALLOWED FOR A MAXIMUM OF TWELVE CONSECUTIVE MONTHS FOR EACH NEW BUSINESS FACILITY EMPLOYEE EMPLOYED BY THE TAXPAYER. ANY SPECIAL TAX CREDIT FOR NEW BUSINESS FACILITY EMPLOYEES ALLOWED PURSUANT TO THIS SUBSECTION (1) SHALL BE IN LIEU OF ANY CREDIT THAT THE TAXPAYER MIGHT OTHERWISE OBTAIN PURSUANT TO SECTION 39-22-508.3 FOR THE SAME INCOME TAX YEAR.

(b) In addition to the ~~five-hundred-dollar~~ credit available under paragraph (a) of this subsection (1), a taxpayer qualified under said paragraph (a) shall be allowed for the first two full income tax years while located in an enterprise zone a credit in an amount equal to two hundred dollars for each new business facility employee who is insured under a health insurance plan or program provided through his or her employer. To be eligible for such credit, the employer must contribute fifty percent or more of the total cost of a health insurance plan or program, and such plan or program must be in accordance with the provisions of article 8 OF THIS TITLE or part 1, 2, 3, or 4 of article 16 of title 10, C.R.S., or be a self-insurance program and include partial or complete coverage for hospital and physician services.

(2) For such new business facilities in enterprise zones OR ENHANCED RURAL ENTERPRISE ZONES, the number of new business facility employees engaged or maintained in employment at the new business facility for each taxable year for which the credit is claimed must equal or exceed one person, section 39-22-508.3 (1) notwithstanding.

(3) (a) Any taxpayer who operates a business within an enterprise zone ~~which~~ THAT adds value through manufacturing or processing to agricultural commodities shall be allowed in lieu of the credit under section 39-22-508.3 but in addition to the credit allowed under subsection (1) of this section, while located in such enterprise zone, a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars for each additional new business facility employee ~~where such employee or employees exceed~~ IN EXCESS OF the maximum number employed in any prior tax year.

(b) FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2003, ANY TAXPAYER WHO OPERATES A BUSINESS WITHIN AN ENHANCED RURAL ENTERPRISE ZONE THAT ADDS VALUE THROUGH MANUFACTURING OR PROCESSING TO AGRICULTURAL COMMODITIES SHALL BE ALLOWED IN ADDITION TO THE CREDIT ALLOWED UNDER PARAGRAPH (a) OF THIS SUBSECTION (3) A CREDIT AGAINST THE INCOME TAX IMPOSED BY ARTICLE 22 OF THIS TITLE IN AN AMOUNT EQUAL TO FIVE HUNDRED DOLLARS FOR EACH ADDITIONAL NEW BUSINESS FACILITY EMPLOYEE IN EXCESS OF THE MAXIMUM NUMBER EMPLOYED IN ANY PRIOR TAX YEAR.

(5) (a) (I) For taxable years beginning on or after January 1, 1993, if the TOTAL

amount of the ~~credit provided for~~ CREDITS CLAIMED BY A TAXPAYER pursuant to the provisions of subparagraph (I) of paragraph (a) of subsection (1), SUBPARAGRAPH (I) OF paragraph (b) of subsection (1), ~~or~~ AND PARAGRAPH (a) OF subsection (3) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the ~~credit is~~ CREDITS ARE being claimed, the amount of the ~~credit~~ CREDITS not used as an offset against income taxes in said income tax year shall not be 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 shall be applied first to the earliest income tax years possible. Any amount of the credit ~~which~~ THAT is not used during said period shall not be refundable to the taxpayer.

(II) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2003, IF THE TOTAL AMOUNT OF CREDITS CLAIMED BY A TAXPAYER PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, SUBPARAGRAPH (II) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, AND PARAGRAPH (b) OF SUBSECTION (3) 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 SHALL NOT BE 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 SHALL BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE. ANY AMOUNT OF THE CREDIT WHICH IS NOT USED DURING SAID PERIOD SHALL NOT BE REFUNDABLE TO THE TAXPAYER.

(b) (I) SUBPARAGRAPH (I) OF PARAGRAPH (a) OF this subsection (5) is effective for income tax years commencing on or after January 1, 1993; except that application of SUBPARAGRAPH (I) OF PARAGRAPH (a) OF this subsection (5) to the credit described in SUBPARAGRAPH (I) OF paragraph (b) of subsection (1) of this section shall be effective for income tax years commencing on or after January 1, 1996.

(II) SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (5) IS EFFECTIVE FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2003.

(c) FOR PURPOSES OF THIS SECTION, A PARTNERSHIP, S CORPORATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY ELECTING NOT TO BE TAXED AS A CORPORATION MAY PASS THROUGH THE CREDITS EARNED UNDER THIS SECTION IN ANY TAX YEAR TO ITS PARTICIPATING PARTNERS, SHAREHOLDERS, OR MEMBERS, HEREINAFTER REFERRED TO AS THE "INVESTORS" OF THE ENTITY, IN ANY PERCENTAGE THE ENTITY CHOOSES, UP TO THE AMOUNT OF THE CREDIT EARNED IN THE TAX YEAR. CREDITS EARNED BUT UNCLAIMED IN A TAX YEAR FOR WHICH THE ENTITY ELECTS TO BE TAXED AS A CORPORATION MAY NOT BE DISTRIBUTED TO INVESTORS IN A LATER TAX YEAR FOR WHICH THE ENTITY ELECTS NOT TO BE TAXED AS A CORPORATION. IN ANY TAX YEAR FOR WHICH THE ENTITY ELECTS NOT TO BE TAXED AS A CORPORATION, ALL CREDITS PASSED THROUGH TO INVESTORS MAY BE CARRIED FORWARD AT THE INVESTOR LEVEL FOR THE CARRYOVER PERIODS SPECIFIED IN THIS SECTION. FOR PURPOSES OF THIS SECTION, A TAXPAYER MAY ONLY CLAIM THE NEW BUSINESS FACILITY EMPLOYEE CREDIT FOR EMPLOYEES FOR WHOM THE TAXPAYER WITHHOLDS SOCIAL SECURITY, MEDICARE, AND INCOME TAXES UNDER THE TAXPAYER'S OWN FEDERAL AND STATE TAXPAYER IDENTIFICATION NUMBERS. WHERE AN EMPLOYEE LEASING COMPANY EMPLOYS AND WITHHOLDS TAXES FOR AN INDIVIDUAL WHO QUALIFIES AS A NEW BUSINESS FACILITY EMPLOYEE, ONLY THE EMPLOYEE LEASING

COMPANY MAY CLAIM THE NEW BUSINESS FACILITY EMPLOYEE CREDIT FOR THAT EMPLOYEE.

**SECTION 6. Effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to income tax years commencing on or after the applicable effective date of this act.

Approved: June 3, 2002