

CHAPTER 319

TAXATION

HOUSE BILL 05-1314

BY REPRESENTATIVE(S) Borodkin, Berens, Buescher, Coleman, Gallegos, Hall, Hoppe, Jahn, Kerr, Larson, Madden, Massey, May M., McFadyen, Riesberg, Stafford, Stengel, Sullivan, and White;
also SENATOR(S) Entz, Evans, Hanna, Isgar, Kester, May R., Owen, Taylor, Teck, Wiens, and Windels.

AN ACT

CONCERNING THE CREATION OF AVIATION DEVELOPMENT ZONES TO OFFER ECONOMIC DEVELOPMENT INCENTIVES FOR AIRCRAFT MANUFACTURERS THAT OPERATE IN SUCH ZONES.

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

SECTION 1. Title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 35
Aviation Development Zone Act

39-35-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "AVIATION DEVELOPMENT ZONE ACT".

39-35-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AIRCRAFT MANUFACTURER" MEANS A BUSINESS INVOLVED IN THE PRODUCTION OF AIRCRAFT PARTS SPECIFICALLY USED IN THE MANUFACTURE OF AIRCRAFT OR A BUSINESS INVOLVED IN THE DEVELOPMENT OF A PROOF OF CONCEPT OR PROTOTYPE AIRCRAFT, A TEST AND EVALUATION AIRCRAFT, A CERTIFICATION AIRCRAFT, OR A PRODUCTION AIRCRAFT. "AIRCRAFT MANUFACTURER" SHALL NOT INCLUDE A BUSINESS OR ANY PORTION OF A BUSINESS THAT IS INVOLVED IN THE MAINTENANCE OF AIRCRAFT.

(2) "AIRPORT" MEANS ANY PUBLIC-USE FACILITY SO DESIGNATED OR LICENSED BY THE FEDERAL AVIATION ADMINISTRATION AND LISTED IN THE NATIONAL PLAN OF INTEGRATED AIRPORT SYSTEMS IN ACCORDANCE WITH SECTION 47103 OF TITLE 49 OF

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

THE UNITED STATES CODE.

(3) "FACILITY" MEANS ANY FACTORY OR OTHER BUILDING IN WHICH AN AIRCRAFT MANUFACTURER CONDUCTS BUSINESS AND IN WHICH EMPLOYEES OF THE AIRCRAFT MANUFACTURER WORK ON A REGULAR BASIS.

(4) "NEW EMPLOYEE" MEANS A FULL-TIME EMPLOYEE HIRED BY AN AIRCRAFT MANUFACTURER TO WORK AT A FACILITY THAT IS LOCATED IN AN AVIATION DEVELOPMENT ZONE IN THE STATE. FOR PURPOSES OF THIS SUBSECTION (4), AN EMPLOYEE SHALL WORK FOR AT LEAST THIRTY-FIVE HOURS PER WEEK ON A REGULAR BASIS THROUGHOUT THE YEAR PERFORMING DUTIES AT A FACILITY IN AN AVIATION DEVELOPMENT ZONE IN ORDER TO BE CONSIDERED A FULL-TIME EMPLOYEE.

(5) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT CREATED IN SECTION 24-48.5-101, C.R.S.

39-35-103. Zones established. ANY AIRPORT IN THE STATE MAY REGISTER WITH THE OFFICE TO BECOME AN AVIATION DEVELOPMENT ZONE. ONLY THE AREA INCLUDED WITHIN THE BOUNDARIES OF THE AIRPORT SHALL BE INCLUDED IN THE AVIATION DEVELOPMENT ZONE. THE OFFICE MAY ESTABLISH PROCEDURES FOR THE REGISTRATION OF AIRPORTS AS AVIATION DEVELOPMENT ZONES PURSUANT TO THIS ARTICLE.

39-35-104. Aircraft manufacturer - credit for new employees. (1) FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2006, BUT BEFORE JANUARY 1, 2017, ANY AIRCRAFT MANUFACTURER THAT IS LOCATED IN AN AVIATION DEVELOPMENT ZONE IN THE STATE, THAT EMPLOYS AT LEAST TEN FULL-TIME EMPLOYEES WITHIN THE ZONE, AND THAT HIRES ONE OR MORE NEW EMPLOYEES DURING THE INCOME TAX YEAR SHALL BE ALLOWED A CREDIT AGAINST THE INCOME TAX IMPOSED BY ARTICLE 22 OF THIS TITLE IN AN AMOUNT EQUAL TO ONE THOUSAND TWO HUNDRED DOLLARS FOR EACH NEW EMPLOYEE WHO IS WORKING WITHIN THE ZONE, PRORATED ACCORDING TO THE NUMBER OF MONTHS THE NEW EMPLOYEE WAS EMPLOYED BY THE AIRCRAFT MANUFACTURER DURING THE INCOME TAX YEAR.

(2) AN AIRCRAFT MANUFACTURER THAT QUALIFIES FOR THE CREDIT ALLOWED PURSUANT TO THIS SECTION SHALL BE ALLOWED THE CREDIT FOR EACH SUBSEQUENT TAX YEAR FOR EACH ADDITIONAL NEW EMPLOYEE. ANY CREDIT SHALL BE ALLOWED FOR A MAXIMUM OF TWELVE CONSECUTIVE MONTHS FOR EACH NEW EMPLOYEE EMPLOYED BY THE AIRCRAFT MANUFACTURER.

(3) (a) THE NUMBER OF NEW EMPLOYEES EMPLOYED DURING ANY INCOME TAX YEAR SHALL BE DETERMINED BY DIVIDING BY TWELVE THE SUM OF THE NUMBER OF NEW EMPLOYEES ON THE LAST BUSINESS DAY OF EACH MONTH OF THE INCOME TAX YEAR. IF THE AIRCRAFT MANUFACTURER IS IN OPERATION FOR LESS THAN THE ENTIRE INCOME TAX YEAR, THE NUMBER OF NEW EMPLOYEES SHALL BE DETERMINED BY DIVIDING THE SUM OF THE NUMBER OF NEW EMPLOYEES ON THE LAST BUSINESS DAY OF EACH FULL CALENDAR MONTH DURING THE PORTION OF SUCH INCOME TAX YEAR DURING WHICH THE AIRCRAFT MANUFACTURER WAS IN OPERATION BY THE NUMBER OF FULL CALENDAR MONTHS IN SUCH INCOME TAX YEAR.

(b) FOR THE PURPOSE OF DETERMINING THE AMOUNT OF THE CREDIT ALLOWED

PURSUANT TO THIS SECTION IN THE CASE OF AN AIRCRAFT MANUFACTURER THAT ALREADY OPERATES A FACILITY IN AN AVIATION DEVELOPMENT ZONE ON JANUARY 1, 2006, OR THAT OPENS A FACILITY IN AN AVIATION DEVELOPMENT ZONE TO REPLACE ANOTHER FACILITY IN OR OUTSIDE OF AN AVIATION DEVELOPMENT ZONE AT WHICH THE AIRCRAFT MANUFACTURER DISCONTINUED OPERATIONS BEFORE THE CLOSE OF THE FIRST INCOME TAX YEAR IN WHICH THE CREDIT IS ALLOWED PURSUANT TO THIS SECTION, THE NUMBER OF NEW EMPLOYEES FOR WHICH THE CREDIT IS CLAIMED SHALL NOT EXCEED THE DIFFERENCE BETWEEN THE AVERAGE NUMBER OF EMPLOYEES EMPLOYED DURING THE INCOME TAX YEAR LESS THE AVERAGE NUMBER OF EMPLOYEES EMPLOYED AT THE EXISTING FACILITY OR THE REPLACEMENT FACILITY, AS DETERMINED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3), DURING THE TWO INCOME TAX YEARS PRECEDING THE INCOME TAX YEAR IN WHICH THE CREDIT IS CLAIMED.

(4) IF THE TOTAL AMOUNT OF THE CREDITS CLAIMED BY AN AIRCRAFT MANUFACTURER PURSUANT TO THE PROVISIONS OF THIS SECTION EXCEEDS THE AMOUNT OF INCOME TAXES DUE ON THE INCOME OF THE AIRCRAFT MANUFACTURER 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 SHALL NOT BE ALLOWED AS A REFUND BUT MAY BE CARRIED FORWARD AS A CREDIT AGAINST SUBSEQUENT YEARS' TAX LIABILITY FOR A PERIOD NOT TO EXCEED FIVE YEARS AND SHALL BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE. ANY AMOUNT OF THE CREDIT THAT IS NOT USED DURING SAID PERIOD SHALL NOT BE REFUNDABLE TO THE AIRCRAFT MANUFACTURER.

(5) 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, REFERRED TO IN THIS SECTION AS THE "INVESTORS", 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.

(6) FOR PURPOSES OF THIS SECTION, AN AIRCRAFT MANUFACTURER MAY ONLY CLAIM THE NEW EMPLOYEE CREDIT FOR EMPLOYEES FOR WHOM THE AIRCRAFT MANUFACTURER WITHHOLDS SOCIAL SECURITY, MEDICARE, AND INCOME TAXES UNDER THE AIRCRAFT MANUFACTURER'S OWN FEDERAL AND STATE TAXPAYER IDENTIFICATION NUMBERS.

(7) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL PROMULGATE RULES NECESSARY FOR THE ADMINISTRATION OF THIS SECTION IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

39-35-105. Reporting requirements. (1) ANY AIRCRAFT MANUFACTURER THAT CLAIMS A NEW EMPLOYEE INCOME TAX CREDIT PURSUANT TO SECTION 39-35-104 SHALL FILE AN ANNUAL PROGRESS REPORT WITH THE OFFICE AND THE DEPARTMENT

OF REVENUE WITHIN NINETY DAYS OF THE END OF THE MANUFACTURER'S INCOME TAX YEAR.

(2) THE ANNUAL PROGRESS REPORT SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING:

(a) (I) IF THE AIRCRAFT MANUFACTURER IS A CORPORATION, THE CORPORATE NAME OF THE AIRCRAFT MANUFACTURER AND THE NAME OF THE CHIEF OFFICER OF THE AIRCRAFT MANUFACTURER; OR

(II) IF THE AIRCRAFT MANUFACTURER IS ONE OR MORE INDIVIDUALS DOING BUSINESS AS A PARTNERSHIP OR OTHER PASS-THROUGH ENTITY UNDER A DISTINCT BUSINESS NAME, THE BUSINESS NAME USED BY THE PARTNERSHIP OR OTHER PASS-THROUGH ENTITY.

(b) THE BUSINESS ADDRESS AND PHONE NUMBER OF THE AIRCRAFT MANUFACTURER;

(c) A STATEMENT OF THE NUMBER OF NEW EMPLOYEES FOR WHICH THE AIRCRAFT MANUFACTURER CLAIMED AN INCOME TAX CREDIT PURSUANT TO SECTION 39-35-104 AND THE TOTAL AMOUNT OF THE INCOME TAX CREDIT CLAIMED FOR THE INCOME TAX YEAR FOR WHICH THE REPORT IS PREPARED;

(d) PAYROLL OR OTHER DATA TO VERIFY THE NUMBER OF FULL-TIME EMPLOYEES EMPLOYED BY THE AIRCRAFT MANUFACTURER DURING THE INCOME TAX YEAR IN WHICH THE AIRCRAFT MANUFACTURER CLAIMED AN INCOME TAX CREDIT PURSUANT TO SECTION 39-35-104 AND DATA TO VERIFY THE NUMBER OF FULL-TIME EMPLOYEES EMPLOYED BY THE AIRCRAFT MANUFACTURER FOR THE TWO INCOME TAX YEARS IMMEDIATELY PRECEDING SUCH INCOME TAX YEAR;

(e) THE AVERAGE ANNUAL COMPENSATION LEVEL, INCLUDING BENEFITS, OF THE FULL-TIME EMPLOYEES EMPLOYED BY THE AIRCRAFT MANUFACTURER;

(f) A STATEMENT OF THE TOTAL NUMBER OF NEW EMPLOYEES RETAINED DURING THE INCOME TAX YEAR FOR WHICH THE REPORT IS PREPARED IF THE AIRCRAFT MANUFACTURER CLAIMED AN INCOME TAX CREDIT PURSUANT TO SECTION 39-35-104 FOR THE PRIOR INCOME TAX YEAR;

(g) A STATEMENT AS TO WHETHER THE AIRCRAFT MANUFACTURER REDUCED EMPLOYMENT AT ANY OTHER SITE IN THE STATE THAT IS CONTROLLED BY THE AIRCRAFT MANUFACTURER AS A RESULT OF AUTOMATION, MERGER, ACQUISITION, CORPORATE RESTRUCTURING, OR OTHER BUSINESS ACTIVITY; AND

(h) ANY OTHER INFORMATION REASONABLY REQUIRED BY THE OFFICE OR THE DEPARTMENT OF REVENUE TO EVALUATE THE PROGRESS AND EFFECTIVENESS OF THE INCENTIVES ALLOWED TO AIRCRAFT MANUFACTURERS PURSUANT TO SECTION 39-35-104.

(3) AN ANNUAL PROGRESS REPORT SUBMITTED TO THE OFFICE AND THE DEPARTMENT OF REVENUE SHALL INCLUDE A SIGNED CERTIFICATION AS TO THE ACCURACY OF THE REPORT BY THE CHIEF OFFICER OF THE AIRCRAFT MANUFACTURER.

(4) THE OFFICE SHALL INCLUDE THE ANNUAL PROGRESS REPORTS SUBMITTED TO THE OFFICE PURSUANT TO THIS SECTION IN AN ANNUAL REPORT TO THE GENERAL ASSEMBLY.

(5) THE DEPARTMENT OF REVENUE MAY REVIEW THE ANNUAL PROGRESS REPORTS SUBMITTED PURSUANT TO THIS SECTION AND, ON THE BASIS OF ANY INFORMATION CONTAINED IN SUCH REPORTS, CONDUCT AN AUDIT OF THE TAXPAYER PURSUANT TO SECTION 24-35-108 (1) (c), C.R.S.

(6) THE INFORMATION SUBMITTED IN THE ANNUAL PROGRESS REPORT TO THE OFFICE AND THE DEPARTMENT OF REVENUE SHALL BE CONSIDERED PUBLIC RECORDS AS DEFINED IN SECTION 24-72-202 (6), C.R.S., AND SHALL BE PRESERVED FOR AT LEAST FIVE YEARS BY THE OFFICE. THE OFFICE SHALL BE THE CUSTODIAN OF THE REPORTS AND SHALL MAKE THE REPORTS AVAILABLE FOR INSPECTION BY ANY PERSON AT REASONABLE TIMES. NOTHING IN THIS SUBSECTION (6) SHALL BE CONSTRUED TO PERMIT THE DISCLOSURE TO THE PUBLIC OF ANY COLORADO INCOME TAX RETURN OR OF ANY INFORMATION THAT REVEALS THE AMOUNT OF COMPENSATION PAID TO ANY INDIVIDUAL EMPLOYEE.

39-35-106. Repeal of article. THIS ARTICLE IS REPEALED, EFFECTIVE JANUARY 1, 2018, UNLESS IT IS CONTINUED OR REESTABLISHED BY THE GENERAL ASSEMBLY ACTING BY BILL PRIOR TO SAID DATE.

SECTION 2. Effective date. 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 (August 10, 2005, if adjournment sine die is on May 11, 2005); 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.

Approved: June 8, 2005