

CHAPTER 220

TAXATION

HOUSE BILL 09-1001

BY REPRESENTATIVE(S) Rice, Balmer, Liston, McFadyen, Solano, Acree, Baumgardner, Bradford, Casso, Frangas, Gagliardi, Gardner B., Gerou, Kefalas, Kerr J., King S., Marostica, Massey, May, Middleton, Miklosi, Nikkel, Priola, Riesberg, Ryden, Scanlan, Schafer S., Stephens, Summers, Todd, Waller, Carroll T., Pace, Roberts;
also SENATOR(S) Heath, Mitchell, Scheffel, Schwartz, Veiga, Bacon, Foster, Gibbs, Groff, Isgar, Kester, King K., Kopp, Newell, Penry, Shaffer B., Tapia, White, Williams.

AN ACT

CONCERNING THE CREATION OF AN INCOME TAX CREDIT TO INCENTIVIZE COLORADO JOB GROWTH.

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

SECTION 1. Part 5 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-22-531. Colorado job growth incentive tax credit - rules - definitions - repeal. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) (I) "AFFILIATED GROUP" MEANS ONE OR MORE CHAINS OF PERSONS CONNECTED THROUGH STOCK OR OTHER OWNERSHIP INTERESTS WITH A PERSON IF:

(A) ONE OR MORE OF THE OTHER PERSONS IN THE CHAIN OWNS INTERESTS POSSESSING MORE THAN FIFTY PERCENT OF THE VOTING POWER OF ALL CLASSES OF OWNERSHIP INTERESTS EXCEPT OWNERSHIP INTERESTS OF THE COMMON PARENT AND MORE THAN FIFTY PERCENT OF EACH CLASS OF NONVOTING OWNERSHIP INTERESTS OF EACH OF THE PERSONS EXCEPT OWNERSHIP INTERESTS OF THE COMMON PARENT; AND

(B) THE COMMON PARENT OWNS INTERESTS POSSESSING MORE THAN FIFTY PERCENT OF THE VOTING POWER OF ALL CLASSES OF OWNERSHIP INTERESTS AND MORE THAN FIFTY PERCENT OF EACH CLASS OF THE NONVOTING OWNERSHIP INTERESTS OF AT LEAST ONE OF THE OTHER PERSONS IN THE CHAIN.

(II) AS USED IN THIS PARAGRAPH (a), THE TERM "OWNERSHIP INTEREST" DOES NOT

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

INCLUDE NONVOTING STOCK THAT IS LIMITED AND PREFERRED AS TO DIVIDENDS; EMPLOYER SECURITIES, WITHIN THE MEANING OF SECTION 409 (1) OF THE INTERNAL REVENUE CODE, WHILE SUCH SECURITIES ARE HELD UNDER A TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN; OR QUALIFYING EMPLOYER SECURITIES, WITHIN THE MEANING OF SECTION 4975 (e) (8) OF THE INTERNAL REVENUE CODE, WHILE SUCH SECURITIES ARE HELD UNDER AN EMPLOYEE STOCK OWNERSHIP PLAN THAT MEETS THE REQUIREMENTS OF SECTION 4975 (e) (7) OF THE INTERNAL REVENUE CODE.

(III) AS USED IN THIS PARAGRAPH (a), THE TERM "PERSON" DOES NOT INCLUDE NATURAL PERSONS.

(b) "COMMISSION" MEANS THE COLORADO ECONOMIC DEVELOPMENT COMMISSION CREATED IN SECTION 24-46-102, C.R.S.

(c) "CREDIT CERTIFICATE" MEANS A STATEMENT ISSUED BY THE COMMISSION CERTIFYING THAT THE PROJECT QUALIFIES FOR THE JOB GROWTH INCENTIVE TAX CREDIT ALLOWED IN THIS SECTION AND SPECIFYING THE AMOUNT OF THE CREDIT ALLOWED.

(d) "CREDIT PERIOD" MEANS A PERIOD OF UP TO SIXTY CONSECUTIVE MONTHS FOR WHICH A TAXPAYER MAY CLAIM A CREDIT ALLOWED IN THIS SECTION THAT IS CALCULATED ANNUALLY BY THE COMMISSION. THE CREDIT PERIOD SHALL NOT EXTEND PAST DECEMBER 31, 2018.

(e) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(f) "NET JOB GROWTH" MEANS THE DIFFERENCE BETWEEN THE TOTAL NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES EMPLOYED BY THE TAXPAYER IN THE STATE FOR THE PROJECT AT THE END OF EACH CALENDAR YEAR OF THE PROJECT AND THE TOTAL NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES EMPLOYED BY THE TAXPAYER IN THE STATE FOR THE PROJECT AT THE COMMENCEMENT OF THE PROJECT.

(g) "PERSON" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 39-21-101 (3).

(h) "PROJECT" MEANS A PROJECT THAT ENCOURAGES, PROMOTES, AND STIMULATES ECONOMIC DEVELOPMENT IN KEY ECONOMIC SECTORS, INCLUDING, BUT NOT LIMITED TO, AEROSPACE, BIOSCIENCE, LIFE SCIENCE, CLEAN ENERGY TECHNOLOGY, TOURISM, FILM AND TELEVISION PRODUCTION, AND INFORMATION TECHNOLOGY, AND THAT IS APPROVED BY THE COMMISSION AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION.

(i) "TAXPAYER" MEANS ANY PERSON DOING BUSINESS IN THE STATE. FOR PURPOSES OF THIS SECTION, TAXPAYER INCLUDES AN AFFILIATED GROUP.

(2) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2009, BUT PRIOR TO JANUARY 1, 2015, AT THE DISCRETION OF THE COMMISSION AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, THERE MAY BE ALLOWED TO ANY TAXPAYER AN ANNUAL JOB GROWTH INCENTIVE TAX CREDIT WITH RESPECT TO THE INCOME TAXES IMPOSED BY THIS ARTICLE THAT A TAXPAYER MAY CLAIM FOR A CREDIT PERIOD IN AN AMOUNT DETERMINED BY THE COMMISSION PURSUANT TO SUBSECTION (5) OF

THIS SECTION.

(3) THE COMMISSION MAY APPROVE ANY JOB GROWTH INCENTIVE TAX CREDITS ALLOWED PURSUANT TO SUBSECTION (2) OF THIS SECTION SUBJECT TO THE FOLLOWING:

(a) DURING A CREDIT PERIOD A PROJECT SHALL:

(I) (A) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I), BRING A NET JOB GROWTH OF AT LEAST TWENTY NEW JOBS TO THE STATE WITH AN AVERAGE YEARLY WAGE OF AT LEAST ONE HUNDRED TEN PERCENT OF THE AVERAGE YEARLY WAGE OF THE COUNTY IN WHICH THE TAXPAYER IS LOCATED.

(B) IF THE PROJECT WILL BE LOCATED IN A DESIGNATED ENHANCED RURAL ENTERPRISE ZONE AS SUCH ZONE IS DESCRIBED IN SECTION 39-30-103.2 (1) AND THE LOCAL COMMUNITY OF THE DESIGNATED ENHANCED RURAL ENTERPRISE ZONE PROVIDES RATIONALE TO THE COMMISSION OUTLINING THE PROJECT'S ECONOMIC IMPORTANCE TO THE COMMUNITY, THE PROJECT SHALL, DURING A CREDIT PERIOD, BRING A NET JOB GROWTH OF AT LEAST FIVE NEW JOBS TO THE STATE WITH AN AVERAGE YEARLY WAGE OF AT LEAST ONE HUNDRED TEN PERCENT OF THE AVERAGE YEARLY WAGE OF THE ENHANCED RURAL ENTERPRISE ZONE IN WHICH THE TAXPAYER IS LOCATED.

(II) RESULT IN THE RETENTION OF ANY NEW EMPLOYEES HIRED FOR THE PROJECT FOR AT LEAST ONE YEAR; AND

(III) BE APPROVED BY THE COMMISSION ONLY IF THE PROJECT WOULD NOT OCCUR BUT FOR THE CREDIT ALLOWED IN THIS SECTION.

(b) A TAXPAYER SHALL SUBMIT A COMPLETE WRITTEN APPLICATION FOR A CREDIT ALLOWED IN THIS SECTION TO THE COMMISSION BEFORE THE PROJECT COMMENCES IN THE STATE. THE APPLICATION SHALL INCLUDE:

(I) AN IDENTIFICATION OF THE SPECIFIC JOBS THAT WILL BE CREATED.

(II) AN IDENTIFICATION OF THE COST DIFFERENTIAL IN THE PROJECTED COSTS OF THE PROJECT COMPARED TO THE PROJECTED COSTS WERE THE PROJECT COMMENCED IN A COMPETING STATE. THE COST DIFFERENTIAL SHALL INCLUDE ANY IMPACT OF THE COMPETING STATE'S INCENTIVE PROGRAMS AND MAY INCLUDE:

(A) SPECIFIC COSTS FOR LABOR, UTILITIES, TAXES, AND ANY OTHER COSTS OF A COMPETING STATE'S SITE; AND

(B) THE COST STRUCTURE OF THE TAXPAYER'S INDUSTRY IN THE COMPETING STATE.

(III) DOCUMENTATION TO DEMONSTRATE THAT WITHOUT THE CREDIT ALLOWED IN THIS SECTION, THE PROJECT WOULD NOT OCCUR IN THIS STATE. SUCH DOCUMENTATION SHALL INCLUDE INFORMATION THAT INDICATES THAT:

(A) THE TAXPAYER COULD REASONABLY AND EFFICIENTLY LOCATE THE PROJECT

OUTSIDE OF THIS STATE;

(B) AT LEAST ONE OTHER STATE IS BEING CONSIDERED FOR THE PROJECT;

(C) RECEIPT OF THE CREDIT ALLOWED IN THIS SECTION IS A MAJOR FACTOR IN THE TAXPAYER'S DECISION; AND

(D) WITHOUT THE CREDIT ALLOWED IN THIS SECTION, THE TAXPAYER IS NOT LIKELY TO COMMENCE THE PROJECT IN THE STATE.

(c) IN THE EXERCISE OF THE COMMISSION'S DISCRETION GRANTED BY THIS SUBSECTION (3), THE COMMISSION SHALL ONLY CONSIDER THE FOLLOWING:

(I) THE ECONOMIC HEALTH OF THIS STATE;

(II) THE ECONOMIC VIABILITY OF THE PROPOSED NEW JOBS;

(III) THE ECONOMIC BENEFITS TO THE STATE OF THE NEW JOBS; AND

(IV) THE MAXIMUM AMOUNT OF THE CREDIT NEEDED TO ATTRACT THE NEW JOBS TO THIS STATE.

(4) (a) (I) THE COMMISSION SHALL REVIEW EACH APPLICATION FOR A CREDIT ALLOWED IN THIS SECTION SUBMITTED BY ANY TAXPAYER. BASED ON THE APPLICATION SUBMITTED, THE COMMISSION MAY OFFER CONDITIONAL APPROVAL TO A TAXPAYER FOR A CREDIT. THE CONDITIONAL APPROVAL SHALL INCLUDE THE MAXIMUM AMOUNT OF THE CREDIT AVAILABLE TO THE TAXPAYER FOR THE CREDIT PERIOD CALCULATED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (5) OF THIS SECTION AND THE SPECIFIC TERMS THAT SHALL BE MET TO QUALIFY FOR THE CREDIT.

(II) A TAXPAYER THAT RECEIVES CONDITIONAL APPROVAL FOR A CREDIT ALLOWED IN THIS SECTION SHALL NOTIFY THE COMMISSION PROMPTLY IF THE PROJECT IS CANCELED OR OTHERWISE BECOMES INELIGIBLE FOR THE ESTIMATED CREDIT, IN WHICH CASE THE CONDITIONAL APPROVAL MAY BE CANCELED. THE CONDITIONAL APPROVAL SHALL BE VOID AND ANY CREDIT CLAIMED SHALL BE REPAID IF A TAXPAYER THAT RECEIVES CONDITIONAL APPROVAL DOES NOT COMMENCE THE PROJECT WITHIN ONE AND A HALF YEARS OF THE RECEIPT OF THE CONDITIONAL APPROVAL OR FAILS TO MEET THE TERMS OF SUBSECTION (3) OF THIS SECTION.

(b) BY MARCH 1 OF THE CALENDAR YEAR AFTER THE COMMENCEMENT OF THE PROJECT, AND EACH MARCH 1 OF ANY CALENDAR YEAR FOLLOWING A YEAR OF THE CREDIT PERIOD, A TAXPAYER THAT RECEIVED CONDITIONAL APPROVAL AS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL SUBMIT AN ANNUAL REQUEST FOR A CREDIT CERTIFICATE. THE REQUEST SHALL INCLUDE DOCUMENTS THAT DETAIL THE NUMBER OF EMPLOYEES HIRED FOR THE PROJECT, THE NET JOB GROWTH FOR THE TAXPAYER, ALL DOCUMENTATION NECESSARY TO CALCULATE THE CREDIT AS SPECIFIED IN SUBSECTION (5) OF THIS SECTION, AND ANY OTHER INFORMATION REQUESTED BY THE COMMISSION.

(c) IF THE PROJECT HAS COMMENCED AND THE PROJECT MEETS OR EXCEEDS THE

CONDITIONS OF A PROJECT AS SPECIFIED IN PARAGRAPHS (a) AND (b) OF SUBSECTION (3) OF THIS SECTION, THE COMMISSION SHALL CALCULATE THE ANNUAL AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION AS SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION AND SHALL ISSUE A CREDIT CERTIFICATE FOR THAT CALENDAR YEAR IN THAT AMOUNT TO THE TAXPAYER. THE CREDIT CERTIFICATE SHALL BE SUBMITTED BY THE TAXPAYER TO THE DEPARTMENT WITH THE TAXPAYER'S INCOME TAX RETURN FOR THE TAX YEAR THAT INCLUDES THE DECEMBER 31 OF THE CALENDAR YEAR FOR WHICH THE CREDIT CERTIFICATE IS ISSUED.

(5) THE CREDIT ALLOWED IN THIS SECTION SHALL BE CALCULATED BY THE COMMISSION AS FOLLOWS:

(a) FOR THE MAXIMUM AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION AVAILABLE TO THE TAXPAYER FOR THE CREDIT PERIOD, THE COMMISSION SHALL MULTIPLY THE ESTIMATED NET JOB GROWTH FOR EACH OF THE YEARS IN THE CREDIT PERIOD BY FIFTY PERCENT OF THE TAXPAYER'S TOTAL ESTIMATED TAXES IMPOSED ON THE EMPLOYER EACH YEAR FOR THE NEW EMPLOYEES OF THE PROJECT UNDER THE "FEDERAL INSURANCE CONTRIBUTIONS ACT", 26 U.S.C. SEC. 3111 (a) AND (b). THE MAXIMUM AMOUNT OF THE CREDIT SHALL BE THE RESULT OF THIS CALCULATION OR SUCH LESSER AMOUNT AS THE COMMISSION DEEMS PROPER UNDER ITS DISCRETION AS SPECIFIED IN PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION.

(b) FOR THE ANNUAL AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION AVAILABLE TO THE TAXPAYER, THE COMMISSION SHALL MULTIPLY THE ACTUAL NET JOB GROWTH FOR THAT YEAR BY FIFTY PERCENT OF THE TAXPAYER'S TAXES IMPOSED ON THE EMPLOYER FOR THE NEW EMPLOYEES OF THE PROJECT UNDER THE "FEDERAL INSURANCE CONTRIBUTIONS ACT", 26 U.S.C. SEC. 3111 (a) AND (b). THE AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION SHALL BE THE RESULT OF THIS CALCULATION; EXCEPT THAT NO CREDIT CERTIFICATE SHALL BE ISSUED IF THE AGGREGATE OF ALL CREDITS CLAIMED OR TO BE CLAIMED BY THE TAXPAYER, INCLUDING THE CURRENT CREDIT CERTIFICATE, EXCEEDS THE MAXIMUM AMOUNT OF THE CREDIT AS CALCULATED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5).

(6) 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.

(7) THE COMMISSION OR ITS DESIGNEE MAY AUDIT THE ACCOUNTS OF A TAXPAYER UP TO TWELVE MONTHS FOLLOWING THE ISSUANCE OF ANY CREDIT CERTIFICATE.

(8) THE COMMISSION SHALL INCLUDE INFORMATION REGARDING ALL CONDITIONAL APPROVALS GRANTED AND CREDIT CERTIFICATES ISSUED PURSUANT TO THIS SECTION, INCLUDING THE CREDITS CLAIMED, THE NAMES OF THE RECIPIENTS OF THE CREDITS, AND THE AMOUNTS CLAIMED, IN ITS ANNUAL REPORT REQUIRED TO BE PRESENTED TO THE GENERAL ASSEMBLY PURSUANT TO SECTION 24-46-104 (2),

C.R.S.

(9) IF A TAXPAYER RECEIVING A CREDIT ALLOWED IN THIS SECTION IS A PARTNERSHIP, LIMITED LIABILITY COMPANY, S CORPORATION, OR SIMILAR PASS-THROUGH ENTITY, THE TAXPAYER MAY ALLOCATE THE CREDIT AMONG ITS PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT TAXPAYERS IN ANY MANNER AGREED TO BY SUCH PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT TAXPAYERS. THE TAXPAYER SHALL CERTIFY TO THE COMMISSION AND THE DEPARTMENT THE AMOUNT OF THE CREDIT ALLOCATED TO EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT TAXPAYER, AND THE COMMISSION SHALL ISSUE CREDIT CERTIFICATES IN THE APPROPRIATE AMOUNTS TO EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT TAXPAYER. EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT TAXPAYER SHALL BE ALLOWED TO CLAIM SUCH AMOUNT SUBJECT TO ANY RESTRICTIONS SET FORTH IN THIS SECTION.

(10) NO LATER THAN SEPTEMBER 1, 2010, AND NO LATER THAN SEPTEMBER 1 OF EACH YEAR THEREAFTER THROUGH SEPTEMBER 1, 2019, THE COMMISSION SHALL PROVIDE THE DEPARTMENT WITH AN ELECTRONIC REPORT OF THE TAXPAYERS RECEIVING A CREDIT ALLOWED IN THIS SECTION FOR THE PRECEDING CALENDAR YEAR OR ANY FISCAL YEAR ENDING IN THE PRECEDING CALENDAR YEAR, AND ANY CREDITS DISALLOWED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBSECTION (4) OF THIS SECTION FOR ANY YEAR, THAT INCLUDES THE FOLLOWING INFORMATION:

(a) THE TAXPAYER'S NAME;

(b) THE TAXPAYER'S COLORADO ACCOUNT NUMBER AND FEDERAL EMPLOYER IDENTIFICATION NUMBER;

(c) THE AMOUNT OF THE CREDIT ALLOWED IN THIS SECTION; AND

(d) ANY ASSOCIATED TAXPAYER'S NAMES, COLORADO ACCOUNT NUMBERS, AND FEDERAL EMPLOYER IDENTIFICATION NUMBERS OR SOCIAL SECURITY NUMBERS, IF THE CREDIT ALLOWED IN THIS SECTION IS ALLOCATED FROM A PASS-THROUGH ENTITY PURSUANT TO SUBSECTION (9) OF THIS SECTION.

(11) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY PROMULGATE RULES AS MAY BE NECESSARY TO ADMINISTER AND ENFORCE ANY PROVISION OF THIS SECTION. THE RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(12) ANY TAXPAYER WHO OFFSETS A TAX DEFICIENCY WITH A CREDIT ALLOWED IN THIS SECTION THAT IS DISALLOWED PURSUANT TO THIS SECTION SHALL BE LIABLE FOR SUCH TAX DEFICIENCY, INTEREST, AND PENALTIES AS MAY BE SPECIFIED IN THIS ARTICLE OR OTHERWISE PROVIDED BY LAW.

(13) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2025.

SECTION 2. 39-22-622 (4), Colorado Revised Statutes, is amended to read:

39-22-622. Refunds. (4) The provisions of subsection (2) of this section shall not apply to any return that is being audited or to any return that may take longer than normal to process due to the mathematical or clerical errors contained in said return, ~~or~~ to unforeseen delays caused by the failure of processing equipment, ~~OR~~ BECAUSE OF A TAX CREDIT ALLOWED IN SECTION 39-22-531. Such determination shall be made in good faith by the department OF REVENUE. Any refund attributable to a return ~~which~~ THAT takes longer than normal to process for reasons specified in this subsection (4) shall be subject to the requirements of section 39-22-604 (9).

SECTION 3. Act subject to petition - 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 5, 2009, if adjournment sine die is on May 6, 2009); 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: May 4, 2009