

CHAPTER 378

TAXATION

HOUSE BILL 09-1105

BY REPRESENTATIVE(S) Kefalas, Casso, Kerr J., McFadyen, Ryden, Scanlan, Schafer S., Summers, Fischer;
also SENATOR(S) Scheffel, Bacon, Groff, Shaffer B.

AN ACT

CONCERNING THE CREATION OF THE COLORADO INNOVATION INVESTMENT TAX CREDIT TO BE APPLIED AGAINST STATE INCOME TAXES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Access to seed capital is one of the key challenges facing early stage companies, and many good business proposals go unfunded each year;

(b) Reducing risk to investors through a tax credit based on an investment in startup businesses will reduce some of the risk to investors and thereby draw additional investment dollars for such business;

(c) These successfully funded startup businesses will go on to raise additional capital, create jobs that pay high wages, and ultimately produce revenue and additional economic growth in the state; and

(d) Eighteen states currently offer some form of tax credits for investors, and Colorado needs to establish a similar investment credit in order to encourage startups to begin and stay in the state.

(2) Now, therefore, it is the intent of the general assembly to create a pilot income tax credit for investment in certain qualified businesses to be known as the Colorado innovation investment tax credit.

SECTION 2. Article 48.5 of title 24, Colorado Revised Statutes, is amended BY

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 ADDITION OF A NEW SECTION to read:

24-48.5-112. Administration of Colorado innovation investment tax credit-cash fund - created - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "AFFILIATE" MEANS ANY PERSON OR ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER PERSON OR ENTITY. FOR PURPOSES OF THIS PARAGRAPH (a), "CONTROL" MEANS THE POWER TO DETERMINE THE POLICIES OF AN ENTITY WHETHER THROUGH OWNERSHIP OF VOTING SECURITIES, BY CONTRACT, OR OTHERWISE.

(b) "ASSET" MEANS ANY OWNED PROPERTY THAT HAS VALUE, INCLUDING FINANCIAL ASSETS AND PHYSICAL ASSETS. INTELLECTUAL PROPERTY SHALL NOT BE INCLUDED WHEN DETERMINING TOTAL ASSETS.

(c) "COLORADO INNOVATION INVESTMENT TAX CREDIT" OR "TAX CREDIT" MEANS THE CREDIT AGAINST INCOME TAX CREATED IN SECTION 39-22-532, C.R.S.

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

(e) "QUALIFIED INVESTMENT" MEANS AN INVESTMENT MADE DURING THE 2010 CALENDAR YEAR IN AN EQUITY SECURITY THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(I) THE EQUITY SECURITY IS COMMON STOCK, PREFERRED STOCK, AN INTEREST IN A PARTNERSHIP OR LIMITED LIABILITY COMPANY, A SECURITY THAT IS CONVERTIBLE INTO AN EQUITY SECURITY, A CONVERTIBLE DEBT INVESTMENT, OR OTHER EQUITY SECURITY AS DETERMINED BY THE OFFICE;

(II) THE INVESTMENT IS AT LEAST TWENTY-FIVE THOUSAND DOLLARS; AND

(III) THE QUALIFIED INVESTOR AND ITS AFFILIATES DO NOT HOLD, OF RECORD OR BENEFICIALLY, IMMEDIATELY BEFORE MAKING AN INVESTMENT, EQUITY SECURITIES POSSESSING MORE THAN THIRTY PERCENT OF THE TOTAL VOTING POWER OF ALL EQUITY SECURITIES OF THE QUALIFIED SMALL BUSINESS.

(f) "QUALIFIED INVESTOR" MEANS AN INDIVIDUAL, LIMITED LIABILITY COMPANY, PARTNERSHIP, S CORPORATION, AS DEFINED IN SECTION 39-22-103 (10.5), C.R.S., OR OTHER BUSINESS ENTITY THAT MAKES A QUALIFIED INVESTMENT IN A QUALIFIED SMALL BUSINESS. "QUALIFIED INVESTOR" DOES NOT INCLUDE A C CORPORATION, AS DEFINED IN SECTION 39-22-103 (2.5), C.R.S.

(g) "QUALIFIED SMALL BUSINESS" MEANS A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR OTHER BUSINESS ENTITY THAT:

(I) MAINTAINS ITS PRINCIPLE PLACE OF BUSINESS IN THE STATE;

(II) HAS AT LEAST FIFTY PERCENT OF ITS GROSS ASSETS AND FIFTY PERCENT OF ITS EMPLOYEES LOCATED WITHIN THE STATE. IF THE ENTITY IS A MEMBER OF AN

AFFILIATE, THE GROSS ASSETS AND THE NUMBER OF EMPLOYEES OF ALL MEMBERS OF THE AFFILIATE, WHEREVER THOSE ASSETS AND EMPLOYEES ARE LOCATED, SHALL BE INCLUDED FOR THE PURPOSE OF DETERMINING THE PERCENTAGE OF THE ENTITY'S GROSS ASSETS AND EMPLOYEES THAT ARE LOCATED IN THE STATE.

(III) HAS AT LEAST TWO NONADMINISTRATIVE, FULL-TIME EQUIVALENT EMPLOYEES WHO ARE RESIDENTS OF THE STATE;

(IV) HAS A PRINCIPAL BUSINESS INVOLVED PRIMARILY IN RESEARCH AND DEVELOPMENT OR MANUFACTURING OF NEW TECHNOLOGIES, PRODUCTS, OR PROCESSES.

(V) HAS BEEN IN OPERATION FOR LESS THAN FIVE YEARS; AND

(VI) HAS TOTAL YEARLY REVENUES OF LESS THAN TWO MILLION DOLLARS AND TOTAL ASSETS OF LESS THAN FIVE MILLION DOLLARS, EXCLUDING ANY INVESTMENT THAT IS THE BASIS OF A COLORADO INNOVATION INVESTMENT TAX CREDIT.

(2) (a) THE OFFICE SHALL RECEIVE AND EVALUATE APPLICATIONS THAT ARE SUBMITTED BY QUALIFIED INVESTORS TO RECEIVE A COLORADO INNOVATION INVESTMENT TAX CREDIT FOR QUALIFIED INVESTMENTS MADE IN A QUALIFIED SMALL BUSINESS DURING THE 2010 CALENDAR YEAR.

(b) TO BE ELIGIBLE FOR A COLORADO INNOVATION INVESTMENT TAX CREDIT, A QUALIFIED INVESTOR SHALL FILE AN APPLICATION WITH THE OFFICE WITHIN THIRTY DAYS AFTER MAKING A QUALIFIED INVESTMENT. AN APPLICATION SHALL BE MADE IN THE MANNER AND FORM PRESCRIBED BY THE OFFICE. THE OFFICE SHALL NOTE THE TIME AND DATE OF EACH APPLICATION RECEIVED. IN ADDITION TO ANY OTHER REQUIREMENTS ESTABLISHED BY THE OFFICE, THE APPLICATION SHALL INCLUDE:

(I) THE NAME, ADDRESS, AND FEDERAL INCOME TAX IDENTIFICATION NUMBER OF THE APPLICANT;

(II) THE NUMBER OF NEW EMPLOYEES HIRED BY THE QUALIFIED SMALL BUSINESS AS A RESULT OF THE QUALIFIED INVESTMENT;

(III) THE NAME AND FEDERAL EMPLOYER IDENTIFICATION NUMBER OF THE QUALIFIED SMALL BUSINESS THAT RECEIVED A QUALIFIED INVESTMENT MADE BY THE APPLICANT;

(IV) THE AMOUNT OF THE QUALIFIED INVESTMENT;

(V) THE NAME OF ANY PARTNER, MEMBER, OR SUBCHAPTER S SHAREHOLDER ENTITY, IF ANY, AND THE FEDERAL INCOME TAX IDENTIFICATION NUMBER OF SUCH PERSON OR ENTITY;

(VI) THE DATE THE QUALIFIED INVESTMENT WAS MADE; AND

(VII) ANY ADDITIONAL INFORMATION THAT THE OFFICE REQUIRES.

(c) A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR OTHER

BUSINESS ENTITY MAY REQUEST THE OFFICE TO DETERMINE WHETHER IT IS A QUALIFIED SMALL BUSINESS. UPON RECEIVING SUCH REQUEST OR UPON RECEIPT OF AN APPLICATION FOR A COLORADO INNOVATION INVESTMENT TAX CREDIT FROM A QUALIFIED INVESTOR, THE OFFICE SHALL DETERMINE WHETHER THE CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR OTHER BUSINESS ENTITY THAT IS NAMED IN THE APPLICATION OR WRITTEN REQUEST IS A QUALIFIED SMALL BUSINESS. AFTER DETERMINING THE QUALIFICATIONS, THE OFFICE SHALL CERTIFY THE QUALIFIED SMALL BUSINESS AS BEING ELIGIBLE TO RECEIVE QUALIFIED INVESTMENTS FOR PURPOSES OF THIS SECTION. THE CERTIFICATION IS VALID FOR THE 2010 CALENDAR YEAR; EXCEPT THAT SUCH CERTIFICATION SHALL BE REVOKED IF THE QUALIFIED SMALL BUSINESS NO LONGER MEETS THE QUALIFICATIONS. A SMALL BUSINESS SHALL NOTIFY THE OFFICE WITHIN THIRTY BUSINESS DAYS FROM THE DATE THAT IT NO LONGER MEETS THE QUALIFICATIONS. IF THE CERTIFICATION IS REVOKED, THE OFFICE MAY ASSESS A PENALTY AGAINST THE BUSINESS ENTITY EQUAL TO THE AMOUNT OF THE COLORADO INNOVATION INVESTMENT TAX CREDITS AUTHORIZED AFTER THE DATE THAT THE BUSINESS NO LONGER MEETS THE QUALIFICATIONS. THE PENALTY SHALL BE DEPOSITED INTO THE STATE GENERAL FUND. IF THE CERTIFICATION IS REVOKED, SUBSEQUENT INVESTMENTS IN THE BUSINESS SHALL NOT QUALIFY FOR A TAX CREDIT. ALL TAX CREDITS ISSUED BEFORE THE REVOCATION OF THE CERTIFICATION SHALL REMAIN VALID. ANY APPLICATION FOR A TAX CREDIT SHALL NOT BE DENIED ON THE BASIS OF THE REVOCATION OF THE CERTIFICATION IF THE INVESTMENT WAS MADE BEFORE THE DATE OF THE REVOCATION.

(d) AS PART OF THE APPLICATION FOR A COLORADO INNOVATION INVESTMENT TAX CREDIT, THE APPLICANT AND THE QUALIFIED SMALL BUSINESS THAT RECEIVES THE INVESTMENT SHALL EACH PROVIDE WRITTEN AUTHORIZATION TO PERMIT THE DEPARTMENT OF REVENUE TO PROVIDE TAX INFORMATION TO THE OFFICE FOR THE PURPOSE OF DETERMINING IF THERE ARE ANY MISREPRESENTATIONS ON THE APPLICATION. THE AUTHORIZATION SHALL LIMIT DISCLOSURE TO INCOME TAX INFORMATION FOR THE LATEST TWO YEARS FOR WHICH RETURNS WERE FILED WITH THE DEPARTMENT OF REVENUE PRECEDING THE DATE THE APPLICATION IS FILED AND FOR ALL TAX YEARS THROUGH THE YEAR IN WHICH THE INVESTMENT WAS MADE FOR WHICH A RETURN WAS NOT FILED AS OF THE DATE OF THE APPLICATION. THE APPLICANT SHALL ALSO PROVIDE IN THE WRITTEN AUTHORIZATION INCOME TAX INFORMATION FOR ALL TAX YEARS IN WHICH THE APPLICANT ACTUALLY CLAIMS A TAX CREDIT OR CARRIES FORWARD A TAX CREDIT ON A RETURN FILED WITH THE DEPARTMENT OF REVENUE. AN APPLICANT WITH AN INDIVIDUAL OWNERSHIP INTEREST AS A CO-OWNER OF A BUSINESS AND THAT MAY BE ENTITLED TO A PRO RATA SHARE OF THE TAX CREDIT PURSUANT TO SECTION 39-22-532 (5), C.R.S., SHALL PROVIDE A WRITTEN AUTHORIZATION WITH CONTENT SIMILAR TO THE AUTHORIZATION, AND IN THE SAME MANNER, AS ANY OTHER APPLICANT IS REQUIRED TO PROVIDE.

(e) THE OFFICE SHALL REVIEW AND MAKE A DETERMINATION WITH RESPECT TO EACH APPLICATION FOR A COLORADO INNOVATION INVESTMENT TAX CREDIT WITHIN NINETY DAYS AFTER RECEIVING THE APPLICATION. THE OFFICE MAY REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT IN ORDER TO MAKE AN INFORMED DECISION REGARDING THE ELIGIBILITY OF THE QUALIFIED INVESTOR OR QUALIFIED SMALL BUSINESS.

(3) (a) SUBJECT TO THE LIMITATION SET FORTH IN SUBSECTION (4) OF THIS

SECTION, THE OFFICE SHALL AUTHORIZE A COLORADO INNOVATION INVESTMENT TAX CREDIT FOR EACH QUALIFIED INVESTOR WHO MAKES A QUALIFIED INVESTMENT IN A QUALIFIED SMALL BUSINESS. THE AMOUNT OF THE CREDIT SHALL BE FIFTEEN PERCENT OF THE AMOUNT OF THE INVESTMENT; EXCEPT THAT THE TOTAL AMOUNT OF THE CREDIT SHALL NOT EXCEED TWENTY THOUSAND DOLLARS. THE OFFICE SHALL ISSUE A TAX CREDIT CERTIFICATE TO THE QUALIFIED INVESTOR STATING THE AMOUNT OF THE TAX CREDIT THAT IS AUTHORIZED FOR PURPOSES OF SECTION 39-22-532, C.R.S. A TAX CREDIT CERTIFICATE IS NONTRANSFERABLE. THE OFFICE SHALL CERTIFY TO THE DEPARTMENT OF REVENUE THE NAME OF EACH QUALIFIED INVESTOR WHO RECEIVES A TAX CREDIT CERTIFICATE, THE AMOUNT OF THE CREDIT, AND OTHER RELEVANT INFORMATION RELATING TO THE TAX CREDITS.

(b) A QUALIFIED INVESTOR SHALL SUBMIT A COPY OF A TAX CREDIT CERTIFICATE AS PART OF A TAX RETURN TO THE DEPARTMENT OF REVENUE IN ACCORDANCE WITH SECTION 39-22-532 (3), C.R.S., BY THE DUE DATE OF THE RETURN, INCLUDING EXTENSIONS, FOR THE 2010 TAX YEAR. IF THE QUALIFIED INVESTOR FAILS TO TIMELY FILE THE TAX CREDIT CERTIFICATE, THE TAX CREDIT EXPIRES FOR THAT TAXABLE YEAR AND THERE SHALL BE NO CARRYFORWARD OF THE EXPIRED CREDIT. CREDITS THAT EXPIRE OR THAT OTHERWISE ARE NOT TIMELY USED BY THE QUALIFIED INVESTOR SHALL NOT BE REISSUED.

(4) (a) THE TOTAL AMOUNT OF COLORADO INNOVATION INVESTMENT TAX CREDITS ALLOWED FOR THE 2010 TAX YEAR SHALL NOT EXCEED SEVEN HUNDRED FIFTY THOUSAND DOLLARS.

(b) IF QUALIFYING APPLICATIONS IN THE 2010 TAX YEAR EXCEED SEVEN HUNDRED FIFTY THOUSAND DOLLARS, THE OFFICE SHALL AUTHORIZE COLORADO INNOVATION INVESTMENT TAX CREDITS IN THE ORDER OF THE DATE AND TIME THAT THE APPLICATIONS ARE RECEIVED BY THE OFFICE, AS EVIDENCED BY THE TIME AND DATE THAT THE OFFICE RECEIVED THE APPLICATION. IF AN APPLICATION IS RECEIVED THAT, IF AUTHORIZED, WOULD REQUIRE THE OFFICE TO EXCEED THE SEVEN HUNDRED FIFTY THOUSAND DOLLAR LIMIT, THE OFFICE SHALL ONLY GRANT THE APPLICANT THE REMAINING AMOUNT OF TAX CREDITS THAT WOULD NOT EXCEED THE SEVEN HUNDRED FIFTY THOUSAND DOLLAR LIMIT.

(5) NO LATER THAN JANUARY 30, 2011, THE OFFICE SHALL PROVIDE TO THE DEPARTMENT OF REVENUE AN ELECTRONIC REPORT THAT INCLUDES THE INFORMATION SET FORTH IN PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION AND ANY OTHER INFORMATION REQUIRED TO ADMINISTER SECTION 39-22-532, C.R.S. IF THE OFFICE SUBSEQUENTLY DISCOVERS THAT AN APPLICANT WHO RECEIVED A COLORADO INNOVATION INVESTMENT TAX CREDIT MISREPRESENTED INFORMATION ON THE APPLICATION, THE OFFICE SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF REVENUE AND PROVIDE THE DEPARTMENT OF REVENUE ALL INFORMATION THAT RELATES TO THAT APPLICANT. IF THE DEPARTMENT OF REVENUE DETERMINES THAT THERE HAS BEEN A MISREPRESENTATION ON THE APPLICATION, THE DEPARTMENT OF REVENUE SHALL DENY THE TAX CREDIT IF THE MISREPRESENTATION RELATES TO WHETHER THE APPLICANT WAS A QUALIFIED INVESTOR OR MADE A QUALIFIED INVESTMENT. IF THE MISREPRESENTATION RELATES TO WHETHER THE INVESTMENT WAS MADE TO A QUALIFIED SMALL BUSINESS, THE DEPARTMENT OF REVENUE SHALL DENY THE TAX CREDIT ONLY IF THE APPLICANT KNEW OR SHOULD HAVE KNOWN AT ANY TIME BEFORE THE CERTIFICATION THAT THE

REPRESENTATION WAS FALSE.

(6) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE COLORADO INNOVATION INVESTMENT TAX CREDIT CASH FUND, REFERRED TO IN THIS SUBSECTION (6) AS THE "FUND", TO PROVIDE FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE ADMINISTRATION OF THE TAX CREDIT AND TO OFFSET LOST GENERAL FUND REVENUE AS A RESULT OF THE TAX CREDIT. THE OFFICE IS AUTHORIZED TO SEEK AND ACCEPT GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES. ALL PRIVATE AND PUBLIC FUNDS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE ADMINISTRATION OF THIS SECTION. ANY MONEYS IN THE FUND NOT EXPENDED FOR SUCH PURPOSE MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. EXCEPT AS OTHERWISE SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (6), ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

(b) (I) ON JUNE 30, 2010, THE STATE TREASURER SHALL TRANSFER THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FROM THE FUND TO THE GENERAL FUND.

(II) ON JULY 1, 2010, THE STATE TREASURER SHALL TRANSFER THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FROM THE FUND TO THE GENERAL FUND.

SECTION 3. 39-21-113, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-21-113. Reports and returns - repeal. (20) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL PROVIDE THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT WITH INFORMATION AS REQUIRED PURSUANT TO SECTION 24-48.5-112 (2) (d), C.R.S.

SECTION 4. Part 5 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-22-532. Colorado innovation investment tax credit - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COLORADO INNOVATION INVESTMENT TAX CREDIT" OR "TAX CREDIT" MEANS THE CREDIT AGAINST INCOME TAX CREATED IN THIS SECTION.

(b) "QUALIFIED INVESTMENT" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-48.5-112 (1) (e), C.R.S.

(c) "QUALIFIED INVESTOR" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-48.5-112 (1) (f), C.R.S.

(d) "QUALIFIED SMALL BUSINESS" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-48.5-112 (1) (g), C.R.S.

(e) "TAX CREDIT CERTIFICATE" MEANS A TAX CREDIT CERTIFICATE ISSUED TO A QUALIFIED INVESTOR PURSUANT TO SECTION 24-48.5-112 (3), C.R.S.

(2) THERE SHALL BE ALLOWED A COLORADO INNOVATION INVESTMENT TAX CREDIT AGAINST THE INCOME TAXES IMPOSED PURSUANT TO THIS ARTICLE FOR A QUALIFIED INVESTMENT IN A QUALIFIED SMALL BUSINESS. THE AMOUNT OF THE CREDIT IS THE AMOUNT DETERMINED AND AUTHORIZED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION 24-48.5-112, C.R.S., AND SET FORTH IN A TAX CREDIT CERTIFICATE.

(3) TO CLAIM THE COLORADO INNOVATION INVESTMENT TAX CREDIT, THE TAXPAYER SHALL ATTACH TO THE TAXPAYER'S TAX RETURN A COPY OF THE TAX CREDIT CERTIFICATE. NO TAX CREDIT IS ALLOWED UNDER THIS SECTION UNLESS THE TAXPAYER PROVIDES THE COPY OF THE TAX CREDIT CERTIFICATE.

(4) IF THE ALLOWABLE COLORADO INNOVATION INVESTMENT TAX CREDIT EXCEEDS THE AMOUNT OF INCOME TAX DUE ON THE INCOME OF THE TAXPAYER FOR THE 2010 TAX YEAR, THE AMOUNT OF THE TAX CREDIT NOT USED AS AN OFFSET AGAINST INCOME TAXES IN SUCH INCOME TAX YEAR SHALL NOT BE ALLOWED AS A REFUND, BUT MAY BE CARRIED FORWARD AND APPLIED AGAINST THE INCOME TAX DUE IN EACH OF THE FIVE SUCCEEDING INCOME TAX YEARS, BUT SHALL BE FIRST APPLIED AGAINST THE INCOME TAX DUE FOR THE EARLIEST OF THE INCOME TAX YEARS POSSIBLE. ANY AMOUNT OF THE TAX CREDIT THAT IS NOT USED AFTER SAID PERIOD SHALL NOT BE REFUNDABLE.

(5) INDIVIDUALS WHO ARE CO-OWNERS OF A BUSINESS, INCLUDING PARTNERS IN A PARTNERSHIP AND SHAREHOLDERS OF AN S CORPORATION, MAY EACH CLAIM ONLY THEIR INDIVIDUAL PRO RATA SHARES OF THE COLORADO INNOVATION INVESTMENT TAX CREDIT ALLOWED UNDER THIS SECTION BASED ON THEIR OWNERSHIP INTERESTS. THE TOTAL OF THE TAX CREDITS ALLOWED TO ALL SUCH OWNERS MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN ALLOWED TO A SOLE OWNER.

(6) IF THE DEPARTMENT OF REVENUE DETERMINES THAT THERE HAS BEEN A MISREPRESENTATION ON AN APPLICATION SUBMITTED TO THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION 24-48.5-112, C.R.S., THE DEPARTMENT OF REVENUE SHALL DENY THE COLORADO INNOVATION INVESTMENT TAX CREDIT IF THE MISREPRESENTATION RELATES TO WHETHER THE APPLICANT WAS A QUALIFIED INVESTOR OR MADE A QUALIFIED INVESTMENT. IF THE MISREPRESENTATION RELATES TO WHETHER THE INVESTMENT WAS MADE TO A QUALIFIED SMALL BUSINESS, THE DEPARTMENT OF REVENUE SHALL DENY THE TAX CREDIT ONLY IF THE APPLICANT KNEW OR SHOULD HAVE KNOWN AT ANY TIME BEFORE THE CERTIFICATION THAT THE REPRESENTATION WAS FALSE.

SECTION 5. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado innovation investment tax credit cash fund created in section 24-48.5-112 (6) (a), Colorado Revised Statutes, not otherwise appropriated, to the governor -- lieutenant governor -- state planning and budgeting, for allocation to economic development programs, for the fiscal year

beginning July 1, 2009, the sum forty-three thousand six hundred eighty-two dollars (\$43,682) cash funds and 0.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 6. Act subject to petition - effective date. (1) This act shall take effect September 1, 2009; except that this act shall not take effect unless, prior to such date, the revisor of statutes has received written notice from the Colorado office of economic development that the office has transmitted at least eight hundred thirty-two thousand fifty-five dollars to the state treasurer for deposit in the Colorado innovation investment tax credit cash fund.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during 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, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

Approved: June 1, 2009