

CHAPTER 395

TAXATION

SENATE BILL 10-162

BY SENATOR(S) Heath, Boyd, Steadman;
also REPRESENTATIVE(S) Hullinghorst and May, Court, Ferrandino, Frangas, Kagan, Kefalas, Kerr J., Labuda, Looper,
Weissmann.

AN ACT

**CONCERNING MODIFICATIONS TO THE "URBAN AND RURAL ENTERPRISE ZONE ACT" TO IMPROVE
THE ACCOUNTABILITY OF INCOME TAX CREDITS ALLOWED BY THE ACT.**

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

SECTION 1. The introductory portion to 39-30-103 (1) and 39-30-103 (4) (b) (I) and (4) (c) (II), Colorado Revised Statutes, are amended, and the said 39-30-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, 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~~ ONE HUNDRED FIFTEEN thousand persons AS CALCULATED PURSUANT TO SUBSECTION (1.3) OF THIS SECTION, or one hundred FIFTY thousand persons AS CALCULATED PURSUANT TO SUBSECTION (1.3) OF THIS SECTION if the area is a rural area, and meets at least one of the following additional criteria:

(1.3) FOR THE PURPOSES OF THIS ARTICLE, THE POPULATION OF AN ENTERPRISE ZONE SHALL BE CALCULATED USING DATA FROM THE MOST RECENT FEDERAL DECENNIAL CENSUS AT THE COUNTY, MUNICIPAL, OR BLOCK LEVELS. SUCH CALCULATIONS THAT REQUIRE THE USE OF BLOCK LEVEL DATA SHALL INCLUDE THE ENTIRE POPULATION OF EACH BLOCK IN WHICH THE ENTERPRISE ZONE IS LOCATED.

(4) (b) For any area designated as an enterprise zone or as a portion of an enterprise zone prior to July 1, 1999, the Colorado economic development commission shall work with the zone administrator to ensure that the area has

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

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 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, such annual documentation shall include, but need not be limited to, the most recent statistics available for companies claiming enterprise zone tax credits on:

(I) The number of jobs created in the enterprise zone and the ~~standard industrial classification code (SIC)~~ NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE of each company reporting the creation of jobs within the zone;

~~(4) (c) (II) The state auditor shall submit a report to the governor and the general assembly, at the discretion of the state auditor and the legislative audit committee, evaluating the implementation of the enterprise zone 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 the data included in the annual reports submitted by the director of the Colorado office of economic development on behalf of the Colorado economic development commission to the general assembly pursuant to paragraph (b.7) of this subsection (4) and objective verifiable data submitted by the ENTERPRISE zone administrators and maintained by the Colorado office of economic development, local governments, and ENTERPRISE zone administrators. The report shall also include information concerning the amounts of tax credits claimed and allowed under the 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 program, whether maintained by the Colorado office of economic development, local governments, or enterprise zone administrators.~~

(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, 39-30-105.5, 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 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 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:

(I) OBTAIN VERIFICATION FROM THE ENTERPRISE ZONE ADMINISTRATOR THAT THE TAXPAYER'S BUSINESS IS LOCATED IN AN ENTERPRISE ZONE;

(II) CERTIFY THAT THE TAXPAYER IS AWARE OF THE ENTERPRISE ZONE INCOME TAX CREDITS ALLOWED PURSUANT TO THIS ARTICLE;

(III) CERTIFY THAT THE ENTERPRISE ZONE INCOME TAX CREDITS ALLOWED PURSUANT TO THIS ARTICLE ARE A CONTRIBUTING FACTOR TO THE START-UP, EXPANSION, OR RELOCATION OF THE TAXPAYER'S BUSINESS IN THE ENTERPRISE ZONE; AND

(IV) CERTIFY THAT THE TAXPAYER ACKNOWLEDGES THAT THE PRE-CERTIFICATION REQUIRED PURSUANT TO THIS SECTION IS FOR ACTIVITIES THAT SHALL COMMENCE AFTER THE DATE THAT THE PRE-CERTIFICATION FORM IS EXECUTED BY THE ENTERPRISE ZONE ADMINISTRATOR THROUGH THE END OF THE BUSINESS'S THEN-CURRENT INCOME TAX YEAR;

(b) THE DEPARTMENT OF REVENUE SHALL AMEND THE CURRENT CERTIFICATION FORMS THAT A TAXPAYER IS REQUIRED TO COMPLETE IN CONNECTION WITH CLAIMING AN INCOME TAX CREDIT PURSUANT TO THIS ARTICLE, TO INCLUDE A SECTION THROUGH WHICH THE TAXPAYER OR AN AUTHORIZED COMPANY OFFICIAL OF THE TAXPAYER'S BUSINESS MAY PROVIDE THE INFORMATION REQUIRED PURSUANT TO SUBPARAGRAPHS (II) TO (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (7).

SECTION 2. 39-30-103.5, Colorado Revised Statutes, is 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. (8) (a) ANY ENTERPRISE ZONE ADMINISTRATOR THAT PROVIDES OVERSIGHT, MANAGEMENT, OR OTHER ADMINISTRATIVE SERVICES TO A PROGRAM, PROJECT, OR ORGANIZATION THAT HAS BEEN APPROVED BY THE ECONOMIC DEVELOPMENT COMMISSION FOR PURPOSES OF THE CONTRIBUTION TAX CREDIT AS DEFINED IN THIS SECTION IS AUTHORIZED TO CHARGE REASONABLE FEES TO PROGRAMS, PROJECTS, AND ORGANIZATIONS AS DEFINED IN THIS SECTION. EACH ENTERPRISE ZONE ADMINISTRATOR THAT CHARGES ADMINISTRATIVE FEES PURSUANT TO THIS PARAGRAPH (a) SHALL ESTABLISH A REASONABLE POLICY REGARDING THE IMPOSITION OF SUCH FEES AND SHALL SUBMIT THE POLICY TO THE COLORADO ECONOMIC DEVELOPMENT COMMISSION FOR REVIEW AND APPROVAL.

(b) THE COLORADO ECONOMIC DEVELOPMENT COMMISSION SHALL REVIEW THE ADMINISTRATIVE FEE POLICY ESTABLISHED BY AN ENTERPRISE ZONE ADMINISTRATOR AND SHALL APPROVE THE POLICY OR REQUIRE THAT THE ENTERPRISE ZONE ADMINISTRATOR MAKE MODIFICATIONS TO THE POLICY AS SPECIFIED BY THE COMMISSION BEFORE APPROVING THE POLICY.

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

39-30-110. Electronic submissions. (1) THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT SHALL COLLABORATE WITH THE COLORADO ECONOMIC DEVELOPMENT COMMISSION AND THE DEPARTMENT OF REVENUE TO DEVELOP THE CAPABILITY TO ALLOW TAXPAYERS THAT INTEND TO CLAIM ONE OR MORE INCOME TAX CREDITS PURSUANT TO THIS ARTICLE TO OBTAIN ANY NECESSARY CERTIFICATION, INCLUDING PRE-CERTIFICATION REQUIREMENTS, FROM THE ENTERPRISE ZONE ADMINISTRATOR IN AN ELECTRONIC FORMAT. THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT SHALL IMPLEMENT THE ELECTRONIC SUBMISSION SYSTEM BY JANUARY 1, 2013. IF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT IS UNABLE TO IMPLEMENT AN ELECTRONIC SUBMISSION SYSTEM BY JANUARY 1, 2013, THE OFFICE SHALL SUBMIT A REPORT TO THE COLORADO ECONOMIC DEVELOPMENT COMMISSION AND THE GENERAL ASSEMBLY THAT EXPLAINS THE REASONS THAT THE IMPLEMENTATION OF SUCH SYSTEM HAS NOT BEEN ACCOMPLISHED.

(2) NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE CONSTRUED TO PROHIBIT A TAXPAYER THAT INTENDS TO CLAIM ONE OR MORE INCOME TAX CREDITS PURSUANT TO THIS ARTICLE FROM SUBMITTING PRINTED COPIES OF CERTIFICATION FORMS, INCLUDING PRE-CERTIFICATION REQUIREMENTS.

39-30-111. Department of revenue - enterprise zone data - electronic filing - submission of carry forward schedule. (1) FOR THE 2012 INCOME TAX YEAR AND EACH INCOME TAX YEAR THEREAFTER, ANY TAXPAYER THAT CLAIMS ONE OR MORE INCOME TAX CREDITS PURSUANT TO THIS ARTICLE SHALL FILE A STATE INCOME TAX RETURN WITH THE DEPARTMENT OF REVENUE IN AN ELECTRONIC FORMAT, UNLESS FILING IN AN ELECTRONIC FORMAT WOULD CAUSE UNDUE HARDSHIP TO THE TAXPAYER BECAUSE THE TAXPAYER DOES NOT HAVE ACCESS TO A COMPUTER, OR DOES NOT HAVE SUFFICIENT INTERNET ACCESS, INTERNET CAPABILITY, OR COMPUTER KNOWLEDGE TO FILE INCOME TAXES ELECTRONICALLY.

(2) FOR THE 2012 INCOME TAX YEAR AND EACH INCOME TAX YEAR THEREAFTER, ANY TAXPAYER THAT CLAIMS ONE OR MORE INCOME TAX CREDITS PURSUANT TO THIS ARTICLE SHALL SUBMIT TO THE DEPARTMENT OF REVENUE ALONG WITH THE TAXPAYER'S STATE INCOME TAX RETURN, A FULL CARRY FORWARD SCHEDULE FOR EACH INCOME TAX CREDIT CLAIMED PURSUANT TO THIS ARTICLE.

(3) FOR THE 2012 INCOME TAX YEAR AND EACH INCOME TAX YEAR THEREAFTER, THE DEPARTMENT OF REVENUE SHALL AGGREGATE AND REPORT DATA ON ALL OF THE INCOME TAX CREDITS THAT ARE CLAIMED PURSUANT TO THIS ARTICLE FOR EACH INCOME TAX YEAR. THE DEPARTMENT SHALL CATEGORIZE SUCH AGGREGATED DATA BY THE DATE THAT THE INCOME TAX CREDIT WAS CERTIFIED BY AN ENTERPRISE ZONE ADMINISTRATOR, THE SPECIFIC INCOME TAX CREDIT ALLOWED PURSUANT TO THIS ARTICLE THAT EACH TAXPAYER WAS AUTHORIZED TO CLAIM, AND THE TOTAL AMOUNT OF THE INCOME TAX CREDITS CLAIMED FOR EACH INCOME TAX CREDIT ALLOWED PURSUANT TO THIS ARTICLE.

(4) THE DEPARTMENT OF REVENUE SHALL SUBMIT THE DATA COLLECTED PURSUANT TO SUBSECTIONS (2) AND (3) OF THIS SECTION TO THE COLORADO OFFICE

OF ECONOMIC DEVELOPMENT ON AUGUST 1, 2013, AND ON AUGUST 1 EACH YEAR THEREAFTER.

39-30-112. Data provided to department of revenue. (1) ON OR BEFORE SEPTEMBER 30 OF EACH CALENDAR YEAR, THE DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT OR THE DIRECTOR'S DESIGNEE SHALL TRANSMIT TO THE DEPARTMENT OF REVENUE THE DATA REGARDING INCOME TAX CREDITS ALLOWED PURSUANT TO THIS ARTICLE THAT ARE CERTIFIED BY ENTERPRISE ZONE ADMINISTRATORS FROM JANUARY 1 THROUGH JUNE 30 OF THE SAME CALENDAR YEAR.

(2) ON OR BEFORE MARCH 31 OF EACH CALENDAR YEAR, THE DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT OR THE DIRECTOR'S DESIGNEE SHALL TRANSMIT TO THE DEPARTMENT OF REVENUE THE DATA REGARDING INCOME TAX CREDITS ALLOWED PURSUANT TO THIS ARTICLE THAT ARE CERTIFIED BY ENTERPRISE ZONE ADMINISTRATORS FROM JULY 1 THROUGH DECEMBER 31 OF THE PREVIOUS CALENDAR YEAR.

SECTION 4. 39-21-113, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-21-113. Reports and returns - repeal. (22) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL SUPPLY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT WITH INFORMATION RELATING TO THE ACTUAL AMOUNT OF ANY ENTERPRISE ZONE TAX CREDIT CLAIMED PURSUANT TO ARTICLE 30 OF THIS TITLE AS WELL AS INFORMATION SUBMITTED TO THE DEPARTMENT PURSUANT TO SECTION 39-30-111 (2) AND (3) REGARDING THE CARRY FORWARD OF SUCH INCOME TAX CREDITS. ANY INFORMATION PROVIDED TO THE OFFICE PURSUANT TO THIS SUBSECTION (22) SHALL REMAIN CONFIDENTIAL, AND ALL OFFICE EMPLOYEES SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (4) OF THIS SECTION AND THE PENALTIES CONTAINED IN SUBSECTION (6) OF THIS SECTION. NOTHING IN THIS SUBSECTION (22) SHALL PREVENT THE OFFICE FROM MAKING AGGREGATED DATA REGARDING ENTERPRISE ZONE TAX CREDITS AVAILABLE.

SECTION 5. 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, to unforeseen delays caused by the failure of processing equipment, or because of a tax credit allowed in section 39-22-531, OR BECAUSE THE TAXPAYER CLAIMED AN ENTERPRISE ZONE TAX CREDIT PURSUANT TO ARTICLE 30 OF THIS TITLE AND THE DEPARTMENT IS AWAITING CONFIRMATION FROM THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT THAT THE TAXPAYER IS ELIGIBLE FOR SUCH CREDIT. Such ~~determination~~ DETERMINATIONS shall be made in good faith by the department of revenue.

SECTION 6. Act subject to petition - specified effective date. This act shall take effect January 1, 2012; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section,

or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on January 1, 2012, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: June 9, 2010