

## CHAPTER 209

---

**TAXATION**

---

**HOUSE BILL 11-1045**

BY REPRESENTATIVE(S) Kefalas, Ferrandino, Fields, Fischer, Hullinghorst, Labuda, Lee, Pace, Peniston, Todd, Tyler, Wilson;  
also SENATOR(S) Newell, Aguilar, Heath, Jahn, Johnston, King S., Williams S.

**AN ACT**

**CONCERNING MODIFICATIONS TO THE COLORADO INNOVATION INVESTMENT TAX CREDIT, 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, determines, and declares that:

- (a) Job creation is the number one priority for the state of Colorado;
- (b) Job creation programs are most effective when there is a strong and innovative public-private partnership;
- (c) In 2010, the Colorado innovation investment tax credit program proved to be an effective economic development tool that has leveraged private-sector investments to help more than twenty start-up businesses throughout Colorado to access seed capital; and
- (d) Access to this seed capital allowed these businesses to create jobs.

(2) Now, therefore, it is the purpose of House Bill 11-1045, enacted in 2011, to continue, improve, and expand the Colorado innovation investment tax credit program and create the framework for future expansion of the program contingent on additional moneys being available to backfill lost income tax revenue and to pay related administrative expenses.

**SECTION 2.** 24-48.5-112 (1) (a), the introductory portion to 24-48.5-112 (1) (e), 24-48.5-112 (1) (g) (III), (1) (g) (V), (2) (a), the introductory portion to 24-48.5-112 (2) (b), and 24-48.5-112 (2) (c), (3), (4), (5), and (6), Colorado Revised Statutes, are

---

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

amended, and the said 24-48.5-112 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, 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.~~ "ADDITIONAL FUNDING" MEANS THAT, ON OR AFTER JANUARY 1, 2011, THE STATE TREASURER CREDITS MONEYS TO THE FUND PURSUANT TO PARAGRAPH (a) OF SUBSECTION (6) OF THIS SECTION.

(a.5) "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.5), "CONTROL" MEANS THE POWER TO DETERMINE THE POLICIES OF AN ENTITY WHETHER THROUGH OWNERSHIP OF VOTING SECURITIES, BY CONTRACT, OR OTHERWISE.

(c.3) "CONTINGENT YEAR" MEANS ALL OR PART OF A CALENDAR YEAR IDENTIFIED IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION DURING WHICH ADDITIONAL COLORADO INNOVATION INVESTMENT TAX CREDITS ARE AVAILABLE.

(c.7) "FUND" MEANS THE COLORADO INNOVATION INVESTMENT TAX CREDIT CASH FUND CREATED IN SUBSECTION (6) OF THIS SECTION.

(e) "Qualified investment" means an investment made during the 2010 calendar year OR A CONTINGENT YEAR in an equity security that meets all of the following requirements:

(g) "Qualified small business" means a corporation, limited liability company, partnership, or other business entity that:

~~(III) Has at least two nonadministrative, full-time equivalent employees who are residents of the state;~~

~~(V) Has been in operation~~ ACTIVELY OPERATING for less than five years; and

(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 OR A CONTINGENT YEAR.

(b) To be eligible for a Colorado innovation investment tax credit, a qualified investor shall file an application with the office within ~~thirty~~ NINETY 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:

(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 FOR A QUALIFIED SMALL BUSINESS, INCLUDING A BUSINESS THAT WAS CERTIFIED IN THE 2010 CALENDAR YEAR, is valid for ~~the 2010 calendar year~~ TWO YEARS; 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.

(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 FOR EACH QUALIFIED INVESTMENT shall not exceed twenty thousand dollars. A QUALIFIED INVESTOR MAY NOT CLAIM MORE THAN ONE TAX CREDIT PER QUALIFIED SMALL BUSINESS. The office shall issue a tax credit certificate to the qualified investor FOR EACH QUALIFIED INVESTMENT 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~~ EACH 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 DURING WHICH THE QUALIFIED INVESTMENT WAS MADE. 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 carry forward of the expired credit. Credits that expire or that otherwise are not timely used by the qualified investor shall not be reissued.

(4) (a) (I) The total amount of Colorado innovation investment tax credits allowed for the 2010 tax year shall not exceed seven hundred fifty thousand dollars.

(II) (A) IF, ON OR AFTER JANUARY 1, 2011, THERE IS ADDITIONAL FUNDING, ADDITIONAL COLORADO INNOVATION INVESTMENT TAX CREDITS SHALL BE

AVAILABLE FOR QUALIFIED INVESTMENTS MADE DURING THE REMAINDER OF THE CALENDAR YEAR AFTER THE ADDITIONAL FUNDING AND ANY FUTURE CALENDAR YEAR; EXCEPT THAT NO TAX CREDITS SHALL BE AVAILABLE AFTER THE LIMIT SET FORTH IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II) IS MET.

(B) THE TOTAL AMOUNT OF COLORADO INNOVATION INVESTMENT TAX CREDITS ALLOWED PURSUANT TO THIS SUBPARAGRAPH (II) SHALL NOT EXCEED THE TOTAL AMOUNT OF THE MONEYS CREDITED TO THE FUND THROUGH THE ADDITIONAL FUNDING LESS ANY MONEYS USED BY THE OFFICE TO PROVIDE FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE ADMINISTRATION OF THE TAX CREDIT.

(C) THE OFFICE SHALL POST ON ITS WEB SITE THE AMOUNT OF THE ADDITIONAL COLORADO INNOVATION INVESTMENT TAX CREDITS THAT ARE AVAILABLE PURSUANT TO THIS SUBPARAGRAPH (II).

(b) If qualifying applications in the 2010 tax year exceed seven hundred fifty thousand dollars OR THE ADDITIONAL AMOUNT SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (4), 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 OR THE ADDITIONAL AMOUNT SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (4).

(5) No later than ~~January 30, 2011~~ APRIL 30 OF THE YEAR FOLLOWING A YEAR DURING WHICH THE OFFICE AUTHORIZES A COLORADO INNOVATION INVESTMENT TAX CREDIT, 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~~ MONEYS 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.

(III) IF THERE IS ADDITIONAL FUNDING AND THE OFFICE AUTHORIZES A COLORADO INNOVATION INVESTMENT TAX CREDIT PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION, THE STATE TREASURER SHALL TRANSFER AN AMOUNT EQUAL TO THE TAX CREDIT FROM THE FUND TO THE GENERAL FUND. TRANSFERS SHALL BE MADE ON JUNE 30 OF THE YEAR IMMEDIATELY FOLLOWING THE CONTINGENT YEAR IN WHICH THE OFFICE AUTHORIZES THE TAX CREDIT.

**SECTION 3.** 39-22-532 (4), Colorado Revised Statutes, is amended to read:

**39-22-532. Colorado innovation investment tax credit - definitions.** (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 DURING WHICH THE QUALIFIED INVESTMENT WAS MADE, 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.

**SECTION 4. 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 the economic development programs division, for the fiscal year beginning July 1, 2011, the sum of thirty-five thousand three hundred ninety-eight dollars (\$35,398) cash funds and 0.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 23, 2011