

CHAPTER 274

TAXATION

HOUSE BILL 14-1012

BY REPRESENTATIVE(S) Tyler and Gerou, Exum, Ginal, Hulinghorst, Kraft-Tharp, Lee, May, McLachlan, Melton, Mitsch Bush, Pabon, Pettersen, Primavera, Rosenthal, Ryden, Salazar, Schafer, Singer, Vigil, Williams, Young; also SENATOR(S) Kefalas, Heath, Johnston, Kerr, Newell, Todd.

AN ACT**CONCERNING INCOME TAX CREDITS THAT PROMOTE INVESTMENT IN COLORADO ADVANCED INDUSTRIES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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) Growing new high-potential companies in our advanced industries is one of the most promising ways to stimulate the state economy and create high-paying jobs;

(b) Access to capital is one of the key challenges facing early stage companies in the advanced industries, and it remains one of the biggest hurdles for those companies getting their products to market;

(c) Creating a tax credit based on investment in an advanced industry business reduces some of the risk to investors and thereby draws additional investment dollars for that business;

(d) These successfully funded businesses may raise additional capital, produce more revenue, and create more high-paying, high-skill jobs in the state; and

(e) Increased investment in Colorado's innovative advanced industry sectors will promote economic growth within the state.

(2) Now, therefore, the general assembly hereby declares that the purpose of the tax credit created in this act is to help more Colorado advanced industry companies

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

receive more capital from Colorado investors.

SECTION 2. In Colorado Revised Statutes, **repeal and reenact, with amendments, 24-48.5-112** as follows:

24-48.5-112. Advanced industry investment tax credit - administration - cash fund - definitions - repeal. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADVANCED INDUSTRY" HAS THE SAME MEANING AS SET FORTH IN SECTION 24-48.5-117 (2) (a).

(b) "ADVANCED INDUSTRY INVESTMENT TAX CREDIT" OR "TAX CREDIT" MEANS THE CREDIT AGAINST INCOME TAX CREATED IN SECTION 39-22-532, C.R.S.

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

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

(e) "QUALIFIED INVESTMENT" MEANS AN INVESTMENT MADE AT ANY TIME ON OR AFTER JULY 1, 2014, BUT BEFORE JANUARY 1, 2018, 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 TEN THOUSAND DOLLARS;

(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; AND

(IV) THE QUALIFIED INVESTOR AND ITS AFFILIATES HOLD, OF RECORD OR BENEFICIALLY, IMMEDIATELY AFTER MAKING THE INVESTMENT, EQUITY SECURITIES POSSESSING LESS THAN FIFTY 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) IS IN AN ADVANCED INDUSTRY;

(II) HAS ITS HEADQUARTERS LOCATED IN COLORADO OR HAS AT LEAST FIFTY PERCENT OF ITS EMPLOYEES BASED IN COLORADO;

(III) HAS RECEIVED LESS THAN TEN MILLION DOLLARS FROM THIRD-PARTY INVESTORS, NOT INCLUDING GRANTS, SINCE THE BUSINESS WAS FORMED;

(IV) HAS ANNUAL REVENUES OF LESS THAN FIVE MILLION DOLLARS; AND

(V) HAS BEEN ACTIVELY OPERATING AND GENERATING REVENUE FOR LESS THAN FIVE YEARS.

(2) (a) THE OFFICE SHALL RECEIVE AND EVALUATE APPLICATIONS THAT ARE SUBMITTED BY QUALIFIED INVESTORS TO RECEIVE AN ADVANCED INDUSTRY INVESTMENT TAX CREDIT FOR QUALIFIED INVESTMENTS MADE IN A QUALIFIED SMALL BUSINESS.

(b) TO BE ELIGIBLE FOR AN ADVANCED INDUSTRY INVESTMENT TAX CREDIT, A QUALIFIED INVESTOR MUST FILE A COMPLETED APPLICATION WITH THE OFFICE WITHIN NINETY DAYS AFTER MAKING A QUALIFIED INVESTMENT. THE OFFICE SHALL PRESCRIBE THE MANNER AND FORM OF THE APPLICATION. THE OFFICE SHALL NOTE THE TIME AND DATE OF EACH APPLICATION RECEIVED. IN ADDITION TO ANY OTHER REQUIREMENTS ESTABLISHED BY THE OFFICE, THE APPLICATION MUST INCLUDE THE NAME, ADDRESS, AND FEDERAL INCOME TAX IDENTIFICATION NUMBER OF THE APPLICANT, THE NUMBER OF NEW EMPLOYEES HIRED BY THE QUALIFIED SMALL BUSINESS AS A RESULT OF THE QUALIFIED INVESTMENT, AND ANY ADDITIONAL INFORMATION THAT THE OFFICE REQUIRES.

(c) A BUSINESS MAY REQUEST THE OFFICE TO DETERMINE WHETHER IT IS A QUALIFIED SMALL BUSINESS. UPON RECEIVING SUCH REQUEST OR UPON RECEIPT OF AN APPLICATION FOR AN ADVANCED INDUSTRY INVESTMENT TAX CREDIT FROM A QUALIFIED INVESTOR, THE OFFICE SHALL DETERMINE WHETHER THE BUSINESS 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 THAT IS CERTIFIED AFTER JULY 1, 2014, IS VALID UNTIL JANUARY 1, 2018; EXCEPT THAT THE CERTIFICATION IS REVOKED IF THE BUSINESS NO LONGER MEETS THE QUALIFICATIONS. A 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 THAT IS EQUAL TO THE AMOUNT OF THE ADVANCED INDUSTRY INVESTMENT TAX CREDITS AUTHORIZED AFTER THE DATE THAT THE BUSINESS NO LONGER MEETS THE QUALIFICATIONS. THE STATE TREASURER SHALL DEPOSIT THE PENALTY INTO THE STATE GENERAL FUND. IF THE CERTIFICATION IS REVOKED, SUBSEQUENT INVESTMENTS IN THE BUSINESS DO NOT QUALIFY FOR A TAX CREDIT. ALL TAX CREDITS ISSUED BEFORE THE REVOCATION OF THE CERTIFICATION SHALL

REMAIN VALID. THE OFFICE SHALL NOT DENY ANY APPLICATION FOR A TAX CREDIT 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 AN ADVANCED INDUSTRY INVESTMENT TAX CREDIT, THE APPLICANT AND THE QUALIFIED SMALL BUSINESS THAT RECEIVES THE INVESTMENT MUST 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 IS LIMITED TO DISCLOSURE OF 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 MUST 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., MUST PROVIDE A WRITTEN AUTHORIZATION WITH CONTENT SIMILAR TO THE AUTHORIZATION, AND IN THE SAME MANNER, AS ANY OTHER APPLICANT IS REQUIRED TO PROVIDE. IF AN APPLICANT OR QUALIFIED SMALL BUSINESS FAILS TO COMPLY WITH THIS PARAGRAPH (d), AN APPLICANT IS INELIGIBLE FOR A TAX CREDIT.

(e) AS PART OF THE APPLICATION FOR AN ADVANCED INDUSTRY INVESTMENT TAX CREDIT, THE APPLICANT MUST STATE THAT THE TAX CREDIT WAS A SIGNIFICANT FACTOR IN THE APPLICANT'S DECISION TO MAKE THE INVESTMENT AND THAT WITHOUT THE TAX CREDIT, THE APPLICANT WOULD NOT HAVE MADE THE INVESTMENT OR WOULD HAVE MADE AN INVESTMENT AT A SUBSTANTIALLY LOWER LEVEL.

(f) THE OFFICE SHALL REVIEW AND MAKE A DETERMINATION WITH RESPECT TO EACH APPLICATION FOR AN ADVANCED INDUSTRY 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 LIMITATIONS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (3), THE OFFICE SHALL AUTHORIZE AN ADVANCED INDUSTRY INVESTMENT TAX CREDIT FOR EACH QUALIFIED INVESTOR WHO MAKES A QUALIFIED INVESTMENT IN A QUALIFIED SMALL BUSINESS. THE AMOUNT OF THE TAX CREDIT IS TWENTY-FIVE PERCENT OF THE AMOUNT OF THE QUALIFIED INVESTMENT OR THIRTY PERCENT OF THE QUALIFIED INVESTMENT IF THE QUALIFIED SMALL BUSINESS IS LOCATED IN A RURAL AREA OR ECONOMICALLY DISTRESSED AREA OF THE STATE AS DETERMINED BY THE OFFICE. 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 TAX CREDIT, AND OTHER RELEVANT INFORMATION RELATING TO THE TAX CREDIT.

(b) (I) THE TOTAL AMOUNT OF THE ADVANCED INDUSTRY INVESTMENT TAX CREDITS SHALL NOT EXCEED THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE 2014 CALENDAR YEAR AND SEVEN HUNDRED FIFTY THOUSAND DOLLARS FOR EACH OF THE 2015, 2016, AND 2017 CALENDAR YEARS; EXCEPT THAT THE AMOUNT OF TAX CREDITS THAT WERE NOT AUTHORIZED FOR 2014 MAY BE ALLOCATED TO 2015. THE OFFICE SHALL AUTHORIZE THE TAX CREDITS IN THE ORDER THAT APPLICATIONS ARE RECEIVED BY THE OFFICE AND SHALL DENY ANY APPLICATION RECEIVED AFTER THE LIMIT HAS BEEN MET. THE OFFICE MAY PARTIALLY AUTHORIZE THE LAST TAX CREDIT THAT IS AWARDED UP TO THE LIMIT.

(II) THE TOTAL AMOUNT OF THE TAX CREDIT FOR EACH QUALIFIED INVESTMENT SHALL NOT EXCEED FIFTY THOUSAND DOLLARS. A QUALIFIED INVESTOR MAY NOT CLAIM MORE THAN ONE TAX CREDIT PER QUALIFIED SMALL BUSINESS, BUT MAY BE ELIGIBLE FOR A TAX CREDIT FOR QUALIFIED INVESTMENTS IN DIFFERENT QUALIFIED SMALL BUSINESSES IN THE SAME OR A DIFFERENT YEAR.

(c) TO CLAIM AN ADVANCED INDUSTRY INVESTMENT TAX CREDIT, A QUALIFIED INVESTOR MUST SUBMIT A COPY OF 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 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 IS NO CARRY FORWARD OF THE EXPIRED TAX CREDIT. THE OFFICE SHALL NOT REISSUE A TAX CREDIT CERTIFICATE FOR A CREDIT THAT EXPIRES OR THAT OTHERWISE IS NOT TIMELY USED BY THE QUALIFIED INVESTOR.

(4) NO LATER THAN APRIL 30 OF EACH YEAR FOLLOWING A YEAR DURING WHICH THE OFFICE AUTHORIZES AN ADVANCED INDUSTRY 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) AND PARAGRAPH (a) OF SUBSECTION (3) 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 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.

(5) THE STATE TREASURER SHALL TRANSFER THE UNEXPENDED AND UNENCUMBERED MONEYS THAT WERE IN THE INNOVATION INVESTMENT TAX CREDIT CASH FUND ON THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, TO THE ADVANCED INDUSTRY INVESTMENT TAX CREDIT CASH FUND, WHICH IS CREATED IN THE STATE TREASURY. THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE MONEYS IN THE FUND TO THE OFFICE 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. 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.

(6) ON NOVEMBER 1, 2017, THE OFFICE OF ECONOMIC DEVELOPMENT SHALL SUBMIT A REPORT TO THE FINANCE AND THE BUSINESS, LABOR, AND ECONOMIC AND WORKFORCE DEVELOPMENT COMMITTEES OF THE HOUSE OF REPRESENTATIVES; TO THE BUSINESS, LABOR, AND TECHNOLOGY AND THE FINANCE COMMITTEES OF THE SENATE, OR ANY SUCCESSOR COMMITTEES; AND TO THE JOINT BUDGET COMMITTEE SUMMARIZING ALL OF THE TAX CERTIFICATES ISSUED SINCE JULY 1, 2014. AT A MINIMUM, THE REPORT MUST INCLUDE THE AMOUNT OF THE CAPITAL INVESTED BY QUALIFIED INVESTORS AND THE TAX CREDIT THAT EACH QUALIFIED INVESTOR RECEIVED, A DESCRIPTION OF THE QUALIFIED BUSINESSES THAT RECEIVED THE QUALIFIED INVESTMENT, THE NUMBER OF NEW EMPLOYEES HIRED BY THE QUALIFIED SMALL BUSINESSES AS A RESULT OF THE QUALIFIED INVESTMENT, THE GEOGRAPHIC DISTRIBUTION OF THE JOBS, AND ANY OTHER ECONOMIC IMPACTS THAT RESULTED FROM THE GRANT.

SECTION 3. In Colorado Revised Statutes, 39-22-532, **amend** (1) (a), (2), (3), (4), and (6) as follows:

39-22-532. Advanced industry investment tax credit - definitions. (1) As used in this section, unless the context otherwise requires:

(a) ~~"Colorado innovation investment tax credit"~~ "ADVANCED INDUSTRY INVESTMENT TAX CREDIT" or "tax credit" means the credit against income tax created in this section.

(2) There shall be allowed ~~a Colorado innovation~~ AN ADVANCED INDUSTRY 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~~ ADVANCED INDUSTRY 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~~ ADVANCED INDUSTRY investment tax credit exceeds the amount of income tax due on the income of the taxpayer for the 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~~ IS NOT allowed as a refund. ~~but may be carried forward and applied~~ THE TAXPAYER MAY CARRY FORWARD AND APPLY THE UNUSED CREDIT against the income tax due in each of the five succeeding income tax years, but THE TAXPAYER shall ~~be first applied~~ APPLY THE CREDIT 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~~ THIS period ~~shall not be~~ IS NOT refundable.

(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~~ ADVANCED INDUSTRY 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 4. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of the advanced industry investment tax credit cash fund created in section 24-48.5-112 (5), Colorado Revised Statutes, for the fiscal year beginning July 1, 2014, the sum of \$80,307 and 0.5 FTE, or so much thereof as may be necessary, to be allocated to economic development programs to implement and administer the advanced industry investment tax credit.

(2) In addition to any other appropriation, for the fiscal year beginning July 1, 2014, there is hereby appropriated, out of any moneys in the general fund, not otherwise appropriated, to the department of revenue, the sum of \$16,480, for allocation to the taxation business group for CITA annual maintenance and support related to 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 29, 2014