

CHAPTER 358

TAXATION

HOUSE BILL 22-1149

BY REPRESENTATIVE(S) Lynch and Bird, Bernett, Bockenfeld, Boesenecker, Exum, Hooton, Lindsay, Lontine, McCluskie, Pelton, Snyder, Soper, Titone, Valdez A., Valdez D., Ortiz, Ricks, Roberts;
also SENATOR(S) Rankin and Hansen, Bridges, Lee, Zenzinger, Fenberg.

AN ACT

CONCERNING THE EXPANSION OF THE ADVANCED INDUSTRY INVESTMENT TAX CREDIT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 24-48.5-112, **amend** (1)(e) introductory portion, (2)(c), (2)(d), (3)(a), (3)(b), and (6); and **add** (1.5) as follows:

24-48.5-112. Advanced industry investment tax credit - administration - legislative declaration - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(e) "Qualified investment" means an investment made at any time on or after July 1, 2014, but before ~~January 1, 2023~~ JANUARY 1, 2027, in an equity security that meets all of the following requirements:

(1.5) IN ACCORDANCE WITH SECTION 39-21-304(1), WHICH REQUIRES EACH BILL THAT EXTENDS AN EXPIRING TAX EXPENDITURE TO INCLUDE A TAX PREFERENCE PERFORMANCE STATEMENT AS PART OF A STATUTORY LEGISLATIVE DECLARATION, THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE GENERAL LEGISLATIVE PURPOSES OF THE TAX CREDIT ALLOWED BY THIS SECTION ARE:

- (I) TO INDUCE CERTAIN DESIGNATED BEHAVIOR BY TAXPAYERS;
- (II) TO IMPROVE INDUSTRY COMPETITIVENESS; AND

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(III) TO PROVIDE TAX RELIEF FOR CERTAIN BUSINESSES OR INDIVIDUALS;

(b) THE SPECIFIC LEGISLATIVE PURPOSE OF THE TAX CREDIT ALLOWED BY THIS SECTION IS TO ENCOURAGE INVESTMENT IN SMALL BUSINESSES LOCATED IN COLORADO IN ADVANCED INDUSTRIES, INCLUDING IN QUANTUM FIELDS, AND IN PARTICULAR IN SMALL BUSINESSES IN ADVANCED INDUSTRIES, INCLUDING IN QUANTUM FIELDS, LOCATED IN A RURAL AREA OR ECONOMICALLY DISTRESSED AREA OF THE STATE; AND

(c) THE STATEMENT REQUIRED BY AN APPLICANT ON THE APPLICATION FOR AN ADVANCED INDUSTRY INVESTMENT TAX CREDIT SET FORTH IN SUBSECTION (2)(e) OF THIS SECTION, AND THE REPORTS THAT THE OFFICE IS REQUIRED TO SUBMIT PURSUANT TO SUBSECTION (6) OF THIS SECTION, WILL ALLOW THE GENERAL ASSEMBLY AND THE STATE AUDITOR TO MEASURE THE EFFECTIVENESS OF THE TAX EXPENDITURE.

(2) (c) A business may request the office to determine whether it is a qualified small business. Upon receiving the 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, 2023~~ JANUARY 1, 2027, 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 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.~~ THAT IS A PARTNERSHIP, LIMITED LIABILITY COMPANY, SCORPORATION, OR SIMILAR PASS-THROUGH ENTITY AND THAT

MAY ALLOCATE THE CREDIT AMONG THE PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT QUALIFIED INVESTORS PURSUANT TO SECTION 39-22-532 (7) 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)~~ SUBSECTION (2)(d), an applicant is ineligible for a tax credit.

(3) (a) Subject to the limitations set forth in ~~paragraph (b) of this subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION, 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~~ THIRTY-FIVE 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 calendar year from 2015 through 2022; AND FOUR MILLION DOLLARS FOR EACH CALENDAR YEAR FROM 2023 THROUGH 2026; except that, if the total amount of the credits for 2018 or a later calendar year THROUGH 2022 is less than the maximum amount, then the maximum amount for the next year is increased by an amount equal to the remaining, unused tax credits from the prior year. 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~~ ONE HUNDRED 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.

(6) On November 1, 2017, the office shall submit a first 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, a projection of 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 qualified investment. Notwithstanding section 24-1-136 (11), the office shall submit a second report on November 1, 2022, AND A THIRD REPORT ON NOVEMBER 1, 2027, to the same legislative committees

summarizing, FOR THE SECOND REPORT, all of the tax certificates issued after January 1, 2018, AND, FOR THE THIRD REPORT, ALL OF THE TAX CERTIFICATES ISSUED AFTER JANUARY 1, 2023. The second ~~report~~ AND THIRD REPORTS must include the same information as the first report.

SECTION 2. In Colorado Revised Statutes, 39-22-532, **repeal** (5); and **add** (7) as follows:

39-22-532. Advanced industry investment tax credit - definitions.
~~(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.~~

(7) IF A QUALIFIED INVESTOR RECEIVING A CREDIT ALLOWED IN THIS SECTION IS A PARTNERSHIP, LIMITED LIABILITY COMPANY, S CORPORATION, OR SIMILAR PASS-THROUGH ENTITY, THE QUALIFIED INVESTOR MAY ALLOCATE THE CREDIT AMONG ITS PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT QUALIFIED INVESTORS IN ANY MANNER AGREED TO BY SUCH PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT QUALIFIED INVESTORS. THE QUALIFIED INVESTOR SHALL CERTIFY TO THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT THE AMOUNT OF THE CREDIT ALLOCATED TO EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT QUALIFIED INVESTOR, AND THE OFFICE SHALL ISSUE CREDIT CERTIFICATES IN THE APPROPRIATE AMOUNTS TO EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT QUALIFIED INVESTOR. EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER CONSTITUENT QUALIFIED INVESTOR SHALL BE ALLOWED TO CLAIM SUCH AMOUNT SUBJECT TO ANY RESTRICTIONS SET FORTH IN THIS SECTION AND SECTION 24-48.5-112.

SECTION 3. Appropriation. For the 2022-23 state fiscal year, \$90,000 is appropriated to the office of the governor for use by economic development programs. This appropriation is from the general fund and is based on an assumption that the office will require an additional 0.8 FTE. To implement this act, the office may use this appropriation for advanced industries.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; 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 such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 3, 2022