

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0505.01 Megan McCall x4215

HOUSE BILL 22-1149

HOUSE SPONSORSHIP

Lynch and Bird,

SENATE SPONSORSHIP

Rankin and Hansen,

House Committees

Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE EXPANSION OF THE ADVANCED INDUSTRY**
102 **INVESTMENT TAX CREDIT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill extends the advanced industry investment tax credit for an additional 5 years, increases the annual maximum amount of the tax credit from \$750,000 to \$4 million and increases the tax credit from 30% to 35% of a qualified investment in rural or economically distressed areas.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-48.5-112, **amend**
3 (1)(e) introductory portion, (2)(c), (2)(d), (3)(a), (3)(b), and (6); and **add**
4 (1.5) as follows:

5 **24-48.5-112. Advanced industry investment tax credit -**
6 **administration - legislative declaration - definitions - repeal.** (1) As
7 used in this section, unless the context otherwise requires:

8 (e) "Qualified investment" means an investment made at any time
9 on or after July 1, 2014, but before ~~January 1, 2023~~ JANUARY 1, 2028, in
10 an equity security that meets all of the following requirements:

11 (1.5) IN ACCORDANCE WITH SECTION 39-21-304 (1), WHICH
12 REQUIRES EACH BILL THAT EXTENDS AN EXPIRING TAX EXPENDITURE TO
13 INCLUDE A TAX PREFERENCE PERFORMANCE STATEMENT AS PART OF A
14 STATUTORY LEGISLATIVE DECLARATION, THE GENERAL ASSEMBLY HEREBY
15 FINDS AND DECLARES THAT:

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

- 18 (I) TO INDUCE CERTAIN DESIGNATED BEHAVIOR BY TAXPAYERS;
- 19 (II) TO IMPROVE INDUSTRY COMPETITIVENESS; AND
- 20 (III) TO PROVIDE TAX RELIEF FOR CERTAIN BUSINESSES OR
21 INDIVIDUALS;

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

27 (c) THE STATEMENT REQUIRED BY AN APPLICANT ON THE

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

6 (2) (c) A business may request the office to determine whether it
7 is a qualified small business. Upon receiving the request or upon receipt
8 of an application for an advanced industry investment tax credit from a
9 qualified investor, the office shall determine whether the business that is
10 named in the application or written request is a qualified small business.
11 After determining the qualifications, the office shall certify the qualified
12 small business as being eligible to receive qualified investments for
13 purposes of this section. The certification for a qualified small business
14 that is certified after July 1, 2014, is valid until ~~January 1, 2023~~ JANUARY
15 1, 2028; except that the certification is revoked if the business no longer
16 meets the qualifications. A business shall notify the office within thirty
17 business days from the date that it no longer meets the qualifications. If
18 the certification is revoked, the office may assess a penalty against the
19 business that is equal to the amount of the advanced industry investment
20 tax credits authorized after the date that the business no longer meets the
21 qualifications. The state treasurer shall deposit the penalty into the state
22 general fund. If the certification is revoked, subsequent investments in the
23 business do not qualify for a tax credit. All tax credits issued before the
24 revocation of the certification remain valid. The office shall not deny any
25 application for a tax credit on the basis of the revocation of the
26 certification if the investment was made before the date of the revocation.

27 (d) As part of the application for an advanced industry investment

1 tax credit, the applicant and the qualified small business that receives the
2 investment must each provide written authorization to permit the
3 department of revenue to provide tax information to the office for the
4 purpose of determining if there are any misrepresentations on the
5 application. The authorization is limited to disclosure of income tax
6 information for the latest two years for which returns were filed with the
7 department of revenue preceding the date the application is filed and for
8 all tax years through the year in which the investment was made for
9 which a return was not filed as of the date of the application. The
10 applicant must also provide in the written authorization income tax
11 information for all tax years in which the applicant actually claims a tax
12 credit or carries forward a tax credit on a return filed with the department
13 of revenue. An applicant ~~with an individual ownership interest as a~~
14 ~~co-owner of a business and that may be entitled to a pro rata share of the~~
15 ~~tax credit pursuant to section 39-22-532 (5), C.R.S. THAT IS A~~
16 ~~PARTNERSHIP, LIMITED LIABILITY COMPANY, S CORPORATION, OR SIMILAR~~
17 ~~PASS-THROUGH ENTITY AND THAT MAY ALLOCATE THE CREDIT AMONG THE~~
18 ~~PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT QUALIFIED~~
19 ~~INVESTORS PURSUANT TO SECTION 39-22-532 (7) must provide a written~~
20 ~~authorization with content similar to the authorization, and in the same~~
21 ~~manner, as any other applicant is required to provide. If an applicant or~~
22 ~~qualified small business fails to comply with this paragraph (d)~~
23 ~~SUBSECTION (2)(d), an applicant is ineligible for a tax credit.~~

24 (3) (a) Subject to the limitations set forth in ~~paragraph (b) of this~~
25 ~~subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION, the office shall
26 authorize an advanced industry investment tax credit for each qualified
27 investor who makes a qualified investment in a qualified small business.

1 The amount of the tax credit is twenty-five percent of the amount of the
2 qualified investment or ~~thirty~~ THIRTY-FIVE percent of the qualified
3 investment if the qualified small business is located in a rural area or
4 economically distressed area of the state as determined by the office. The
5 office shall issue a tax credit certificate to the qualified investor for each
6 qualified investment stating the amount of the tax credit that is authorized
7 for purposes of section 39-22-532. ~~C.R.S.~~ A tax credit certificate is
8 nontransferable. The office shall certify to the department of revenue the
9 name of each qualified investor who receives a tax credit certificate, the
10 amount of the tax credit, and other relevant information relating to the tax
11 credit.

12 (b) (I) The total amount of the advanced industry investment tax
13 credits shall not exceed three hundred seventy-five thousand dollars for
14 the 2014 calendar year; ~~and~~ seven hundred fifty thousand dollars for each
15 calendar year from 2015 through 2022; AND FOUR MILLION DOLLARS FOR
16 EACH CALENDAR YEAR FROM 2023 THROUGH 2027; except that, if the total
17 amount of the credits for 2018 or a later calendar year THROUGH 2022 is
18 less than the maximum amount, then the maximum amount for the next
19 year is increased by an amount equal to the remaining, unused tax credits
20 from the prior year. The office shall authorize the tax credits in the order
21 that applications are received by the office and shall deny any application
22 received after the limit has been met. The office may partially authorize
23 the last tax credit that is awarded up to the limit.

24 (II) The total amount of the tax credit for each qualified
25 investment shall not exceed ~~fifty~~ ONE HUNDRED thousand dollars. A
26 qualified investor may not claim more than one tax credit per qualified
27 small business, but may be eligible for a tax credit for qualified

1 investments in different qualified small businesses in the same or a
2 different year.

3 (6) On November 1, 2017, the office shall submit a first report to
4 the finance and the business, labor, and economic and workforce
5 development committees of the house of representatives; to the business,
6 labor, and technology and the finance committees of the senate, or any
7 successor committees; and to the joint budget committee summarizing all
8 of the tax certificates issued since July 1, 2014. At a minimum, the report
9 must include the amount of the capital invested by qualified investors and
10 the tax credit that each qualified investor received, a description of the
11 qualified businesses that received the qualified investment, a projection
12 of the number of new employees hired by the qualified small businesses
13 as a result of the qualified investment, the geographic distribution of the
14 jobs, and any other economic impacts that resulted from the qualified
15 investment. Notwithstanding section 24-1-136 (11), the office shall
16 submit a second report on November 1, 2022, AND A THIRD REPORT ON
17 NOVEMBER 1, 2027, to the same legislative committees summarizing, FOR
18 THE SECOND REPORT, all of the tax certificates issued after January 1,
19 2018, AND, FOR THE THIRD REPORT, ALL OF THE TAX CERTIFICATES ISSUED
20 AFTER JANUARY 1, 2023. The second ~~report~~ AND THIRD REPORTS must
21 include the same information as the first report.

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

24 **39-22-532. Advanced industry investment tax credit -**
25 **definitions.** ~~(5) Individuals who are co-owners of a business, including~~
26 ~~partners in a partnership and shareholders of an S corporation, may each~~
27 ~~claim only their individual pro rata shares of the Colorado innovation~~

1 ~~investment tax credit allowed under this section based on their ownership~~
2 ~~interests. The total of the tax credits allowed to all such owners may not~~
3 ~~exceed the amount that would have been allowed to a sole owner.~~

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

20 **SECTION 3. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly; except
23 that, if a referendum petition is filed pursuant to section 1 (3) of article V
24 of the state constitution against this act or an item, section, or part of this
25 act within such period, then the act, item, section, or part will not take
26 effect unless approved by the people at the general election to be held in

- 1 November 2022 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.