

DEPARTMENT OF REVENUE

Taxation Division

AIRCRAFT MANUFACTURER NEW EMPLOYEE INCOME TAX CREDIT

1 CCR 201-6

Rule 39-35-104. Aircraft Manufacturer New Employee Income Tax Credit.

- 1) Credit.
 - a) For tax years beginning on or after January 1, 2006, but prior to January 1, 2017, an income tax credit of \$1,200 per employee is available to aircraft manufacturers located in a Colorado aviation development zone for hiring qualified new aviation zone employees.
 - b) The excess credit is not refundable but may be carried forward for a period of up to five years.
- 2) New Aviation Zone Employee.
 - a) "Aviation zone employee" is a person who is employed by the taxpayer and whose primary place of work is in the operation of an aircraft manufacturer's facility that is located in an aviation development zone.
 - b) "New aviation zone employee" means an aviation zone employee who is hired by an aviation manufacturer at the manufacturer's facility that employs ten or more employees, and such hire increases the overall employment at the facility above previous employment levels.
 - c) A person shall be deemed to be so employed if he or she performs duties at the aviation manufacturer's facility on a regular, full time basis. Full time is defined as working at least 35 hours per week. Part time employees do not qualify as aviation zone employees.
 - d) Leased employees or employees from a temporary service hired prior to August 3, 2007 do not qualify as aviation zone employees. Leased employees or employees from a temporary service hired on or after August 3, 2007 qualify as aviation zone employees if either the aircraft manufacturer as the work site employer or the employee leasing company withholds social security, medicare and income taxes under either of their own federal and state taxpayer identification numbers. A credit for said qualifying aviation zone employee will be available only to the aircraft manufacturer.
- 3) Credit Computation.

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a) The number of aviation zone employees at an aircraft manufacturer's facility during a year is the average of the number of employees at the facility on the last business day of each month during the tax year.

b) If an aircraft manufacturer relocates to an aviation development zone after January 1, 2006, the number of qualifying new aviation zone employees shall not include the average number of individuals employed in the operation of the previous facility during the two taxable years preceding the taxable year in which the move was made by the manufacturer.

c) In the case of an aviation development zone facility that is already in operation on January 1, 2006, the number of qualifying new aviation zone employees shall not include the average number of individuals employed in the operation of the facility during the two taxable years preceding tax year 2006.

d) In the case of an aviation development zone facility that is sold or otherwise transferred to a new owner, the number of qualifying new aviation zone employees shall not include the base number of employees utilized for the purposes of this credit by the previous owner.

e) The aircraft manufacturer new employee credit is \$1,200 times the increase in the average number of aviation zone employees for the tax year from the previous base number of employees at that facility. The base number will be the largest of:

- I) The highest average number of aviation zone employees in any previous tax year beginning on or after January 1, 2006;
- II) For a replacement facility, the average number of individuals employed in the operation of the previous facility during the two taxable years preceding the taxable year in which commercial operations begin at the new facility;
- III) For an existing facility, the average number of individuals employed in the operation of the facility during the two taxable years preceding tax year 2006.

f) Example:

- I) Airmaker Company begins operations in an aviation zone in 2007. The average employment for 2007 is 8.4 employees. They do not qualify for a credit in 2007 because the number of new aviation zone employees for the year is less than ten.
- II) Airmaker Company's average employment in the aviation zone increases to 13.5 in 2008. The 2008 credit is \$6,120, computed by taking the difference between

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the 2008 average employment (13.5) and the base number of employees (8.4) times the \$1,200 credit amount.

III) Airmaker Company's average employment in the aviation zone increases to 16.1 in 2009. The 2009 credit is \$3,120, computed by taking the difference between the 2009 average employment (16.1) and the base number of employees (13.5) times the \$1,200 credit amount.

IV) Airmaker Company's average employment in the aviation zone decreases to 15.4 in 2010. There is no credit for 2010 because the average number of aviation zone employees is less than the base number of employees.

V) Airmaker Company's average employment in the aviation zone increases to 17.5 in 2011. The 2011 credit is \$1,680, computed by taking the difference between the 2011 average employment (17.5) and the base number of employees (16.1) times the \$1,200 credit amount. Note that the base number of employees did not change as a result of the decrease in employment in 2010.

g) Example:

I) Wrongway Inc. moves an existing facility to an aviation development zone in March 2008. The number of full-time employees at the facility is as follows:

	2006	2007	2008	2009
Jan	23	26	31	37
Feb	23	27	30	38
Mar	24	25	30	36
Apr	24	27	35	38
May	23	28	35	39
Jun	25	29	35	39
Jul	25	30	33	39
Aug	26	30	35	39

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Sep	26	30	36	39
Oct	26	30	37	40
Nov	26	30	37	39
Dec	26	33	37	39
TOTAL	297	345	411	462

II) Wrongway Inc.'s average number of employees during the two tax years preceding the relocation is 26.75 [(297+345)/24], which becomes the base number of employees for the facility. The average number of aviation zone employees for 2008 is 29.17, the total number of employees on the last day of March through December (350) divided by 12. Note that the employment numbers for January and February 2008 are not included in this computation because the facility was not located in the aviation development zone during those months. The credit available for 2008 is \$2,904, (29.17 - 26.75) X \$1,200.

III) Wrongway Inc.'s average number of aviation zone employees for 2009 is 38.5 (462/12). The credit available for 2009 is \$11,196, [(38.5 - 29.17) X \$1,200].

4) Pass-Through Entities.

Enterprise zone new business facility employee credits can be passed through to partners, shareholders or members of a pass-through entity in any ratio agreed upon subject only to that entity's allocation and distribution requirements.

5) Documentation.

- a) Any aircraft manufacturer that claims an aircraft manufacturer new employee credit must file the "Aircraft Manufacturer New Employee Credit Progress Report" within 90 days of the end of its income tax year.
- b) The report is a public record and available for inspection by any person at the Office of Economic Development.
- c) The progress report will include all information required by §39-35-105, C.R.S. and any other information deemed necessary by the Office of Economic Development or the Department of Revenue.
- d) A separate schedule listing the names of the partners, shareholders or members, the social security number or Colorado account number, and the credit allocated to each will be attached to the Progress Report submitted to the Department of Revenue by a pass-through entity. This separate schedule is considered confidential tax information and is not part of the public record.

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e) The aircraft manufacturer new employee income tax credit may not be claimed on a Colorado income tax return prior to the filing of the required documentation.

6) Mixed Use Facility.

If a facility performs both manufacturing and maintenance functions, only employees working exclusively in the manufacturing portion of the business may qualify for the credit. [§39-35-102(1) C.R.S.] **Basis and Purpose.** The statutory bases for this rule are sections 39-21-112(1), 39-35-102, 39-35-103, and 39-35-104, C.R.S. The purpose of this rule is to clarify the calculation of the aircraft manufacturer new employee income tax credit.

(1) **Calculation of Total Aircraft Manufacturer Employees for the Tax Year.** The provisions of this paragraph (1) apply to the calculation of aircraft manufacturer employees pursuant to section 39-35-104(3), C.R.S.

(a) Except as provided in paragraph (1)(b) of this rule, the number of aircraft manufacturer employees for any taxable year is determined by dividing by twelve the sum of the number of employees employed by the aircraft manufacturer on the last business day of each month of the taxable year.

(b) If the aircraft manufacturer is in operation for less than the entire taxable year, the number of aircraft manufacturer employees is determined by dividing the sum of the number of employees employed by the aircraft manufacturer on the last business day of each full calendar month of the taxable year during which the aircraft manufacturer was in operation by the number of such full calendar months of operation. If the aircraft manufacturer's period of operation commences or ceases during a calendar month, and the aircraft manufacturer is therefore not in operation for the full calendar month, such partial month of operation is not considered in the calculation of aircraft manufacturer employees.

(i) A aircraft manufacturer is "in operation for less than the entire taxable year" only if all business activities conducted by the aircraft manufacturer cease temporarily for a period of not less than one full calendar month during the taxable year. Business activities are not deemed to have ceased in any month during which any employee performs work at for the aircraft manufacturer or during which the generation of any gross revenue can be attributed to any activity undertaken by the aircraft manufacturer.

(c) In the case of a taxable year that is less than twelve months, the number of aircraft manufacturer employees is determined pursuant to paragraph (1)(a) of this rule, unless the aircraft manufacturer is operation for less than the entire taxable year as determined pursuant to paragraph (1)(b) of this rule.

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(d) If an employee performs duties both at and away from the aircraft manufacturer's facility in the aviation development zone, the employee is included in the calculation of employees pursuant to this paragraph (1) only if the employee works at the aircraft manufacturer's facility in the aviation development zone for a minimum of 35 hours per week on a regular basis throughout the taxable year.

(2) Calculation of New or Additional Aircraft Manufacturer Employees.

(a) *First Tax Year of Operation.* In determining the credit for the aircraft manufacturer's first year of operation, the number of aircraft manufacturer employees is calculated pursuant to section 39-35-104(3), C.R.S., and paragraph (1) of this rule.

(b) *Subsequent Tax Years.* In determining the credit for each tax year subsequent to the aircraft manufacturer's first year of operation, the credit is allowed for each additional aircraft manufacturer employee calculated pursuant to section 39-35-104(3), C.R.S., and paragraph (1) of this rule over the highest number of aircraft manufacturer employees calculated for any prior tax year pursuant to section 39-35-104(3), C.R.S., and paragraph (1) of this rule.

(i) The credit allowable for any tax year subsequent to the aircraft manufacturer's first year of operation is determined pursuant to section 39-35-104(3), C.R.S., and this paragraph (2)(b), regardless of whether the taxpayer claimed any credit for the first year of operation.

(ii) A taxpayer who acquires an aircraft manufacturing facility that was operated by another party prior to the acquisition is allowed a credit for only the number of additional aircraft manufacturer employees, calculated pursuant to section 39-35-104(2), C.R.S., and this paragraph (2)(b), in excess of the highest total number of aircraft manufacturer employees employed at the facility in any prior tax year.

(A) The taxpayer acquiring the aircraft manufacturing facility must obtain from the prior operator such employee records as are necessary to determine the highest average number of employees of prior tax years.

(C) The calculation provided in this paragraph (2)(b)(ii) applies regardless of whether the prior operator claimed any credit under section 39-30-105.1, C.R.S.