

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

ENTERPRISE ZONE REGULATIONS

1 CCR 201-13

Rule 39-30-105.1. Enterprise Zone Business Facility Employee Credits.

Basis and Purpose. The statutory bases for this rule are sections 39-21-112(1), 39-30-103(7)(a), 39-30-105, 39-30-105.1, and 39-30-108(1), C.R.S. The purpose of this rule is to clarify the calculation of enterprise zone business facility employee credits.

- (1) Business Facilities.** The term “business facility” as defined in section 39-30-105.1(6)(b) and (e), C.R.S., does not include any temporary structures or mobile units, except where such temporary structures or mobile units are used in association with one or more permanent structures defined as a “business facility” by section 39-30-105.1(6)(b) and (e), C.R.S.
- (2) Calculation of Total Business Facility Employees for the Tax Year.** The provisions of this paragraph (2) apply to the calculation of business facility employees pursuant to section 39-30-105.1(5), C.R.S.

 - (a)** Except as provided in paragraph (2)(b) of this rule, the number of business facility employees for any taxable year is determined by dividing by twelve the sum of the number of business facility employees employed by the taxpayer at the business facility on the last business day of each month of the taxable year.
 - (b)** If the business facility is in operation for less than the entire taxable year, the number of business facility employees is determined by dividing the sum of the number of business facility employees employed by the taxpayer at the business facility on the last business day of each full calendar month of the taxable year during which the business facility was in operation by the number of such full calendar months of operation. If the business facility’s period of operation commences or ceases during a calendar month, and the business facility is therefore not in operation for the full calendar month, such partial month of operation is not considered in the calculation of business facility employees.

 - (i)** A business facility is “in operation for less than the entire taxable year” only if all business activities conducted at the facility 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 at a facility in any month during which any

employee performs work at or in the facility or during which the generation of any gross revenue can be attributed to the facility.

(c) In the case of a taxable year that is less than twelve months, the number of business facility employees is determined pursuant to paragraph (2)(a) of this rule, unless the business facility is operation for less than the entire taxable year as determined pursuant to paragraph (2)(b) of this rule.

(d) *Pre-certification.*

(i) *Calculating Employees for the Tax Year.* For the purpose of section 39-30-105.1(5), C.R.S., and this rule, if a taxpayer does not pre-certify pursuant to section 39-30-103(7)(a), C.R.S, prior to the commencement of the tax year, the number of employees for any month that commences prior to pre-certification during such tax year shall be deemed not to exceed the highest number of business facility employees calculated for any prior tax year pursuant to section 39-30-105.1(5)(a), C.R.S.

(ii) *Calculating Employees for Prior Years.* In calculating the number of business facility employees for any prior year, in order to determine the increase in employees in the current tax year, the number of business facility employees employed by the taxpayer at the business facility on the last business day of each month of the prior year(s) shall be included in the calculation, regardless of whether the taxpayer pre-certified pursuant to section 39-30-103(7)(a), C.R.S, prior to or during such prior year(s).

(e) For the purpose of applying the provisions of section 39-30-105.1(5)(b), C.R.S., “replacement business facility” means a business facility at which the taxpayer (or a related taxpayer) operates a revenue-producing enterprise substantially similar to a revenue-producing enterprise that was operated by the taxpayer (or a related taxpayer) at another business facility in this state that discontinued operating on or before the close of the first taxable year in which commercial operations commenced at the new business facility.

(f) Except as provided in paragraph (2)(e)(i) of this rule, if any or all of a business facility employee’s duties are not in connection with the operation of the business facility or are performed outside of the enterprise zone, the employee is included in the calculation of business facility employees pursuant to section 39-30-105.1(5), C.R.S., only to the extent of the employee’s duties performed both in connection with the operation of the business facility and within the enterprise zone. However, in accordance with section 39-30-105.1(6)(c)(II), C.R.S., an employee is fully included in the calculation of business facility employees pursuant to section 39-30-105.1(5), C.R.S., if the employee customarily performs duties within the zone and in connection with the operation of the business facility for at least twenty hours per week throughout the

taxable year, regardless of whether the employee also performs duties unconnected with the business facility or outside the enterprise zone.

(i) An employee whose primary duties consist of operating a commercial motor vehicle with a commercial driver's license shall be deemed to be working one hundred percent within the zone if the employee spends no more than five percent of his or her total time at any business of the employer other than the business within the zone.

(ii) An employee's duties are performed in connection with the operation of a business facility only if and to the extent that such duties contribute materially to the operation of a revenue-producing enterprise conducted in or at the business facility. An employee's duties need not necessarily be performed at a business facility to be performed in connection with the operation of a business facility.

(3) Calculation of New or Additional Business Facility Employees.

(a) First Tax Year of Operation. In determining the credit for the business facility's first year of operation, the number of business facility employees is calculated pursuant to section 39-30-105.1(5)(a), C.R.S., and paragraph (2) of this rule.

(b) Subsequent Tax Years. In determining the credit for each tax year subsequent to the business facility's first year of operation, the credit is allowed for each additional business facility employee calculated pursuant to section 39-30-105.1(5)(a), C.R.S., and paragraph (2) of this rule over the highest number of business facility employees calculated for any prior tax year pursuant to section 39-30-105.1(5)(a), C.R.S., and paragraph (2) of this rule.

(i) The credit allowable for any tax year subsequent to the business facility's first year of operation is determined pursuant to section 39-30-105.1(1)(a)(III), C.R.S., and this paragraph (3)(b), regardless of whether the taxpayer claimed any credit for the first year of operation.

(ii) A taxpayer who acquires a business facility that was operated by another party prior to the acquisition and continues operating the business facility in a substantially similar revenue-producing enterprise is allowed a credit for only the number of additional business facility employees, calculated pursuant to section 39-30-105.1(1)(a)(III), C.R.S., and this paragraph (3)(b), in excess of the highest total number of business facility employees employed at the facility in any prior tax year.

(A) It is presumed that an acquired business facility was operated in a revenue-producing enterprise prior to the acquisition unless the

revenue-producing enterprise under the prior operator substantially ceased at least six months prior to such acquisition or, in the case of seasonal cessation, the cessation was for at least twelve months prior to such acquisition.

(B) The taxpayer acquiring the business 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 (3)(b)(ii) applies regardless of whether the prior operator claimed any credit under section 39-30-105.1, C.R.S.

(4) Rules for Specific Additional Credits.

(a) Credits for Business Facilities in Enhanced Rural Enterprise Zones and Business Facilities That Add Value to Agricultural Commodities Through Manufacturing or Processing.

(i) The additional credits authorized by section 39-30-105.1(1)(a)(II), (3)(a), and (3)(b), C.R.S., are allowed only with respect to employees for which the taxpayer claims credit for the same tax year pursuant to section 39-30-105.1(1)(a)(I) or (III), C.R.S.

(ii) For the purpose of section 39-30-105.1(3), C.R.S., a business “adds value through manufacturing or processing to agricultural commodities” if it engages directly in an activity that substantially transforms an agricultural commodity into a form other than that which enters the normal agricultural commodity marketing channels. Harvesting, cleaning, packaging, storing, transporting, wholesaling, retailing, or otherwise distributing commodities without substantially changing the form of the commodity do not qualify.

(b) Credit for Employee Health Insurance.

(i) For each of the first two full tax years that a taxpayer operates a business facility in an enterprise zone, the taxpayer is allowed an additional credit for each business facility employee, calculated in accordance with paragraph (2) of this rule, for whom the taxpayer provides insurance under a health insurance plan or program that satisfies the requirements prescribed under section 39-30-105.1(1)(b), C.R.S. The credit is not allowed for any tax year subsequent to the first two full tax years that a taxpayer operates a business facility in an enterprise zone, regardless of whether the taxpayer qualified for or claimed any credit for the first two full tax years.

(ii) For the purpose of section 39-30-105.1(1)(b), C.R.S., and this paragraph (4)(b), a “full tax year” is a tax year comprised of twelve months and does not include a short period as defined in section 443 of the Internal Revenue Code.

DRAFT