

DEPARTMENT OF REVENUE

Taxation Division

ENTERPRISE ZONE REGULATIONS

1 CCR 201-13

Rule 39-30-104. Enterprise Zone Investment Tax Credit.

(1) Credit Allowed.

(a) For income tax years commencing on or after January 1, 1986, a Colorado income tax investment tax credit is allowed with respect to investments in qualified property as defined in section 48 of the internal revenue code which is first placed in service during the tax year in a Colorado enterprise zone and is used solely and exclusively in such enterprise zone for at least one year. The amount of the credit is three percent of the qualified investment in such property as defined in section 46 of the internal revenue code. To the extent the qualified investment is limited for any reason for federal income tax purposes, such limitation shall apply for Colorado income tax purposes. For example, only sixty percent of the investment in 3-year ACRS recovery property may be used to compute the enterprise zone investment tax credit; the qualified investment in used property is limited to \$150,000 per year, and any amounts expensed under section 179 of the internal revenue code do not qualify. Claiming the enterprise zone investment tax credit will have no effect on the taxpayer's basis in the property.

(b) *Leased Property.*

(i) The owner of the property may elect to pass on the investment credit to the lessee of the property if the leased property is new section 38 property both to the owner and to the lessee. A lessor cannot pass on the credit for used property to the lessee.

(ii) Non corporate lessors and S corporation lessors are eligible for the enterprise zone investment credit only if: (1) the leased property has been manufactured or produced by the lessor, or the term of the lease is less than 50 percent of the January 1, 1986 asset depreciation range (ADR) class life for recovery property (useful life for other property) of the leased property; and (2) the lessor's business expense deductions (other than rental payments and reimbursed expenses) related to the property are more than 15 percent of the rental income from the property for the first year of the lease.

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(iii) When new section 38 property with an ADR class life of more than 14 years is leased (not a net lease) for a period which is shorter than 80 percent of its class life, the lessor may pass through to the lessee only that portion of the credit which the lease period covers.

(iv) The investment tax credit will not be allowed when a tax-exempt organization sells depreciable property to pass the tax benefits to the new owner and then leases back the property.

(c) If qualifying property is used for business purposes outside of the enterprise zone during the twelve-month period immediately following the date the property was first placed in service, the enterprise zone investment tax credit will not be allowed with respect to such property. If an income tax return has already been filed claiming the credit, an amended return must be filed forfeiting such credit and any carrybacks and carryforwards must be recomputed as appropriate. Moving the property outside the zone for repairs will not disqualify the property. Neither will moving the property from one zone to another.

(2) **Limitations on Credit, Carrybacks and Carryovers.**

(a) For tax years beginning prior to January 1, 1996, the amount of enterprise zone investment tax credit that may be claimed for any tax year was limited to an amount equal to the first \$5,000 of tax liability plus 25% of the tax liability in excess of \$5,000 minus the amount of any "old" (section 39-22-507.5) investment tax credit claimed for the same tax year. Excess credits could be carried back three years and forward seven.

(b) For tax years beginning on or after January 1, 1996, the amount of enterprise zone investment tax credit that may be claimed for any tax year is limited to an amount equal to the first \$5,000 of tax liability plus 50% of such tax liability in excess of \$5,000 minus the amount of any "old" (section 39-22-507.5) investment tax credit claimed for the same tax year. Excess credits may be carried back three tax years and forward twelve.

(c) For tax years beginning on or after January 1, 2011 but prior to January 1, 2014, the total credit used to offset tax cannot exceed \$500,000 for the tax year. The portion of any credit deferred due to the \$500,000 limitation in tax years 2011-2013 may be carried forward one additional year for each tax year the deferral applies.

(d) The enterprise zone investment tax credit and the section 39-22-507.5, "old investment tax credit", may not be claimed with respect to the same expenditure. But there is no restriction as to claiming the enterprise zone investment tax credit and the section 39-22-507.6, "new investment tax credit", on the same expenditure.

(3) **Relocation Facility.** For tax years beginning on or after January 1, 1997, no enterprise zone investment tax credit will be allowed for any expenditures resulting from the relocation of a

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~~facility from a location in Colorado to a location in an enterprise zone. This rule shall not apply if during the relocation, the new facility meets one of the criteria for determining an expansion facility: a \$1,000,000 or 100% investment increase or a 10 employee or 10% employee increase.~~

(4) **No Recapture Required.** ~~There are no recapture provisions relative to the enterprise zone investment tax credit.~~

(5) **Certificate of Location.** ~~Taxpayers claiming an enterprise zone credit in excess of \$450 must attach to their income tax return a certificate from the zone administrator verifying that the taxpayer's place of business is located within the enterprise zone. The certificate must be provided in the manner requested by the Department in the case of electronically filed returns. No certificate will be issued for the credit for motor vehicles specified in paragraph 7) below because the Colorado Economic Development Commission (EDC) will provide information on available credits to the Department electronically. Credits will not be allowed unless that taxpayer is specifically listed in the electronic submission from the EDC.~~

(6) **Federal References.** ~~References in this rule to the internal revenue code means the internal revenue code as it existed prior to the enactment of the "Revenue Reconciliation Act of 1990".~~

(7) **Qualified Commercial Vehicles.**

(a) ~~For tax years beginning on or after January 1, 2011, a commercial truck, truck tractor, tractor, or semitrailer and any parts for such vehicle purchased at the same time will qualify for a limited enterprise zone investment tax credit if it meets all of the following:~~

- ~~• Sold as a new vehicle on or after July 1, 2011~~
- ~~• Model year 2010 or later~~
- ~~• 54,000 lbs. GVW or greater~~
- ~~• Designated as Class A personal property~~
- ~~• Licensed and registered in Colorado~~
- ~~• Predominantly housed and based at the taxpayer's business trucking facility located within an enterprise zone for at least the first year of its ownership by the taxpayer~~

(b) ~~The credit is limited to 1.5% of the qualified investment and is subject to allocated funding. Taxpayers must apply with the Colorado Economic Development Commission, which will determine if sufficient funding is available and, if so, will notify the Department of Revenue of the amount of the credit available to each taxpayer.~~

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Basis and Purpose. The statutory bases for this rule are sections 39-21-112(1), 39-30-103(7)(a), 39-30-104, 39-30-105, 39-30-108(1), 39-22-507.5, and 39-22-507.6, C.R.S. The purpose of this rule is to clarify the application of the enterprise zone investment tax credit.

- (1) Depreciation Expense Required.** For the purpose of section 39-30-104, C.R.S., "qualified property" includes only property to which section 168 of the Internal Revenue Code would have applied, or any other property with respect to which depreciation would have been allowable pursuant to section 167 of the Internal Revenue Code, that has a useful life of 3 years or more. If a taxpayer fully expenses the acquisition of any property pursuant to section 179 of the Internal Revenue Code and recovers its full cost in one year, then depreciation is not allowable and the property does not qualify for the credit. References in this paragraph (1) to sections of the Internal Revenue Code are to those sections as they existed immediately prior to the enactment of the federal "Revenue Reconciliation Act of 1990."
- (2) Limit on Amount of Credit.** Pursuant to section 39-30-104(2)(c)(I)(B), C.R.S., the amount of credit a taxpayer may claim for a tax year is limited to seven hundred fifty thousand dollars; except that any credits carried forward from a tax year commencing prior to January 1, 2014 are not subject to this limit. For the purpose of this limitation, any refund of the credit that a taxpayer receives for the tax year pursuant to section 39-30-104(2.6), C.R.S., is included in the amount of credit the taxpayer claims for that tax year. Therefore, a taxpayer who receives a refund of seven hundred fifty thousand dollars cannot claim for the same tax year any additional credit from any tax year commencing on or after January 1, 2014 to offset tax.
- (3) Related Investment Tax Credits.** A taxpayer cannot claim both the credit allowed pursuant to section 39-30-104, C.R.S., and the credit allowed pursuant to section 39-22-507.5, C.R.S., for the same qualified investment property. A taxpayer may claim both the credit allowed pursuant to section 39-30-104, C.R.S., and the credit allowed pursuant to section 39-22-507.6, C.R.S., for the same qualified investment property.
- (4) Used Solely and Exclusively in an Enterprise Zone for at Least One Year.** The credit authorized by section 39-30-104, C.R.S., is allowed for the tax year in which the investment is first placed in service, as determined by the applicable sections of the Internal Revenue Code. The credit is allowed only with respect to qualified property used solely and exclusively in an enterprise zone for at least one year. The one-year period commences on the date the investment is first placed into service. If a taxpayer files an income tax return claiming the credit within the one-year period, the taxpayer must file an amended income tax return to fully rescind the credit claim if the property is used anywhere outside of an enterprise zone before the conclusion of the one-year period.
- (5) Pre-certification.** No credit is allowed pursuant to section 39-30-104, C.R.S., with respect to any property acquired by the taxpayer, or with respect to which the taxpayer paid or incurred any expense, prior to the taxpayer's submission of a pre-certification form to the enterprise zone administrator pursuant to section 39-30-103(7)(a), C.R.S.

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Cross Reference

1. *Ball Corporation v. Fisher, 51 P.3rd 1053 (Colo. 2001).*

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