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HOUSE BILL 22-1418

BY REPRESENTATIVE(S) Herod and McCluskie, Ransom, Bennett, Bird, Hooton, Jodeh, Lindsay, Lontine, McKean, Ricks, Snyder, Garnett; also SENATOR(S) Hansen and Zenzinger, Rankin, Ginal.

CONCERNING THE EXTENSION OF THE PERIOD FOR WHICH UNUSED AND EXPIRING COLORADO JOB GROWTH INCENTIVE AND ENTERPRISE ZONE INCOME TAX CREDITS MAY BE CARRIED FORWARD TO SUBSEQUENT YEARS, 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, **amend** 24-46-106 as follows:

**24-46-106. Repeal of part.** This part 1 is repealed, effective ~~July 1, 2025~~ JULY 1, 2035.

**SECTION 2.** In Colorado Revised Statutes, **add** 24-46-107 as follows:

**24-46-107. Temporary extension of carry-forward provisions -**

*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.*

**Colorado job growth incentive tax credit - enterprise zone tax credits - definitions - repeal.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT CREATED IN SECTION 24-48.5-101.

(b) (I) "TAXPAYER" MEANS ANY PERSON DOING BUSINESS IN THE STATE, INCLUDING AN AFFILIATED GROUP, THAT OPERATES IN A STRATEGIC INDUSTRY THAT WAS DISPROPORTIONALLY IMPACTED BY THE COVID-19 PANDEMIC AND EXPERIENCED SIGNIFICANT FINANCIAL HARDSHIP CAUSED BY THE COVID-19 PANDEMIC.

(II) "STRATEGIC INDUSTRY" AND "SIGNIFICANT FINANCIAL HARDSHIP" FOR PURPOSES OF THE DEFINITION OF "TAXPAYER" IN SUBSECTION (1)(b)(I) OF THIS SECTION SHALL BE DETERMINED BY THE COMMISSION AND THE OFFICE. WHEN DETERMINING SIGNIFICANT FINANCIAL HARDSHIP, ANY FINANCIAL ASSISTANCE OR RELIEF THAT THE TAXPAYER MAY HAVE RECEIVED FROM OTHER SOURCES INCLUDING FEDERAL, STATE, OR LOCAL ASSISTANCE MAY BE CONSIDERED BUT SHALL NOT BE DISPOSITIVE FOR PURPOSES OF ELIGIBILITY.

(2) THE COMMISSION MAY ALLOW A TAXPAYER TO CARRY FORWARD FOR A PERIOD OF FIVE YEARS THE TAX CREDITS SET FORTH IN SECTION 39-22-531 AND IN ARTICLE 30 OF TITLE 39 THAT WOULD OTHERWISE EXPIRE BETWEEN JANUARY 1, 2021, AND DECEMBER 31, 2025; EXCEPT THAT THE AGGREGATE AMOUNT OF ALL TAX CREDITS PERMITTED TO BE CARRIED FORWARD PURSUANT TO THIS SUBSECTION (2) IS ZERO DOLLARS FOR THE FIRST TWO YEARS IN THE FIVE-YEAR PERIOD, TEN MILLION DOLLARS FOR THE THIRD YEAR IN THE FIVE-YEAR PERIOD, AND FIFTEEN MILLION DOLLARS FOR THE FOURTH AND FIFTH YEAR IN THE FIVE-YEAR PERIOD AND THE TAX CREDIT SET FORTH IN SECTION 39-30-103.5 IS NOT ELIGIBLE FOR THE FIVE-YEAR CARRY-FORWARD PERIOD SET FORTH IN THIS SECTION. TAXPAYERS MUST APPLY TO THE COMMISSION AND THE OFFICE PURSUANT TO SUBSECTION (3) OF THIS SECTION FOR APPROVAL TO CARRY FORWARD THE TAX CREDITS AS SET FORTH IN THIS SUBSECTION (2).

(3)(a) A TAXPAYER MAY APPLY FOR APPROVAL BY THE COMMISSION TO CARRY FORWARD A TAX CREDIT AS SET FORTH IN SUBSECTION (2) OF THIS SECTION IN ACCORDANCE WITH TIMING, DEADLINES, POLICIES, AND

PROCEDURES ESTABLISHED BY THE COMMISSION, IN CONSULTATION WITH THE OFFICE, AND AS FOLLOWS:

(I) A TAXPAYER SHALL APPLY ONE TIME TO THE COMMISSION FOR THE EXTENDED CARRY-FORWARD PERIOD SET FORTH IN SUBSECTION (2) OF THIS SECTION AND MUST IDENTIFY IN THE APPLICATION ALL OF THE ANTICIPATED CREDITS THAT THE TAXPAYER REQUESTS TO EXTEND FOR EACH TAX YEAR THAT THE EXTENDED PERIOD APPLIES TO;

(II) AT A MINIMUM, THE APPLICATION MUST INCLUDE CERTIFICATION BY THE TAXPAYER'S PRESIDENT, CHIEF EXECUTIVE OFFICER, OR CHIEF FINANCIAL OFFICER THAT, BASED ON THE TAXPAYER'S CURRENT AND EXPECTED FINANCIAL RESULTS, IT IS ANTICIPATED THAT THE TAXPAYER WILL NOT BE ABLE TO USE THE TAX CREDITS BEFORE THE CREDITS EXPIRE AS THE RESULT OF LOSSES EXPERIENCED DURING TAX YEARS 2020 AND 2021 DUE TO THE COVID-19 PANDEMIC;

(III) THE APPLICATION MUST INCLUDE DOCUMENTATION FROM THE TAXPAYER DEMONSTRATING SIGNIFICANT FINANCIAL HARDSHIP CAUSED BY THE COVID-19 PANDEMIC; AND

(IV) IN CONSULTATION WITH POTENTIAL APPLICANTS, THE COMMISSION AND THE OFFICE SHALL DETERMINE ADDITIONAL APPROPRIATE POLICIES, PROCEDURES, REQUIREMENTS, AND DEADLINES TO ADMINISTER THE APPLICATION PROCESS AND EXTENSION APPROVALS PURSUANT TO THIS SECTION, WHICH MAY INCLUDE ADDITIONAL VERIFICATION PROCEDURES TO DEMONSTRATE THAT APPLICANTS ARE MAKING BONAFIDE REQUESTS FOR THE FIVE-YEAR EXTENSION.

(b) IN CONSULTATION WITH THE OFFICE, THE COMMISSION SHALL RECEIVE, REVIEW, AND APPROVE APPLICATIONS BY TAXPAYERS ON A FIRST COME, FIRST SERVED, ROLLING BASIS. IN ADDITION TO THE APPLICATION REQUIREMENTS SET FORTH IN SUBSECTION (3)(a) OF THIS SECTION, THE COMMISSION MAY CONSIDER ADDITIONAL ECONOMIC DEVELOPMENT COMMITMENTS TO THE STATE BY THE TAXPAYER IN DETERMINING APPROVAL OF APPLICATIONS INCLUDING:

(I) THE SIZE OF THE TAXPAYER'S CURRENT OPERATION IN THE STATE RELATIVE TO BOTH THE STATE AS A WHOLE AND THE REGION THE TAXPAYER IS BASED IN;

(II) ANY STRATEGIC ECONOMIC DEVELOPMENT BENEFITS THAT THE TAXPAYER PROVIDES WITH EXISTING OPERATIONS TO THE STATE IN TERMS OF SUPPLY CHAIN, BENEFITS TO OTHER INDUSTRIES, OR OTHER SPILLOVER BENEFITS THAT THE APPLICANT'S OPERATIONS PROVIDE TO THE STATE OR REGION; AND

(III) ANY ADDITIONAL FORTHCOMING ECONOMIC DEVELOPMENT BENEFITS THAT THE TAXPAYER MAY PROVIDE TO THE STATE OR REGION BASED ON COMMITMENTS THAT THE APPLICANT HAS RECENTLY MADE OR PROPOSES THAT ARE OUTSIDE THE SCOPE OF THE ORIGINAL INCENTIVE AWARD.

(c) WHEN AN APPLICATION IS APPROVED, THE COMMISSION SHALL ISSUE LETTERS TO THE DEPARTMENT OF REVENUE AND APPROVED TAXPAYERS THAT MUST SPECIFY THE TYPE AND AMOUNT OF CREDITS ELIGIBLE FOR THE FIVE-YEAR EXTENSION AND FOR WHAT YEARS IN THE PERIOD THE EXTENSION IS ELIGIBLE.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2035.

**SECTION 3.** In Colorado Revised Statutes, 39-22-531, **amend** (6) and (13) as follows:

**39-22-531. Colorado job growth incentive tax credit - rules - definitions - repeal.** (6) Except as provided in ~~section 24-46-104.3~~ SECTIONS 24-46-104.3 AND 24-46-107, if the amount of the credit allowed in this section exceeds the amount of income taxes otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in the current income tax year may be carried forward and used as a credit against subsequent years' income tax liability for a period not to exceed ten years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(13) This section is repealed, effective ~~January 1, 2031~~ JULY 1, 2042.

**SECTION 4.** In Colorado Revised Statutes, 39-30-104, **amend** (2)(c)(III) and (2.5) as follows:

**39-30-104. Credit against tax - investment in certain property - definitions.** (2) (c) (III) (A) Except as otherwise provided in ~~section 24-46-104.3~~ SECTIONS 24-46-104.3 AND 24-46-107 and subsection (2)(c)(III)(B) of this section, any excess credit allowed pursuant to this subsection (2)(c) shall be an investment tax credit carryover to each of the fourteen income tax years following the unused credit year.

(B) Except as otherwise provided in ~~section 24-46-104.3~~ SECTIONS 24-46-104.3 AND 24-46-107, any excess credit allowed pursuant to this subsection (2)(c) for a renewable energy investment made in an income tax year commencing before January 1, 2018, shall be an investment tax credit carryover for twenty-two income tax years following the year the credit was originally allowed.

(2.5) (a) (I) Notwithstanding section 39-22-507.5 (7)(b), EXCEPT AS PROVIDED IN SECTION 24-46-107, and except as otherwise provided in subsections (2.5)(a)(II) and (2.5)(b) of this section, any excess credit allowed pursuant to this section shall be an investment tax credit carryover to each of the twelve income tax years following the unused credit year.

(II) EXCEPT AS PROVIDED IN SECTION 24-46-107, any excess credit claimed pursuant to this section for a renewable energy investment made in an income tax year commencing before January 1, 2018, shall be an investment tax credit carryover for twenty income tax years following the year the credit was originally allowed.

(b) (I) Except as provided in ~~subparagraph (II) of this paragraph (b)~~ SECTION 24-46-107 AND SUBSECTION (2.5)(b)(II) OF THIS SECTION, a taxpayer that deferred claiming any credit in excess of five hundred thousand dollars during an income tax year commencing on or after January 1, 2011, but prior to January 1, 2014, pursuant to ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section shall be allowed to claim the deferred credit as an investment tax credit carryover for twelve income tax years following the year the credit was originally allowed plus one additional income tax year for each income tax year that the credit was deferred pursuant to ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section.

(II) EXCEPT AS PROVIDED IN SECTION 24-46-107, a taxpayer is allowed to claim the deferred credit described in ~~subparagraph (I) of this~~

~~paragraph (b)~~ SUBSECTION (2.5)(b)(I) OF THIS SECTION for a renewable energy investment made in an income tax year commencing before January 1, 2018, as an investment tax credit carryover for twenty income tax years following the year the credit was originally allowed plus one additional income tax year for each income tax year that the credit was deferred pursuant to ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section.

**SECTION 5.** In Colorado Revised Statutes, 39-30-105.1, **amend** (4)(a) as follows:

**39-30-105.1. Credit for new enterprise zone business employees - definitions.** (4) (a) (I) Except as provided in ~~section 24-46-104.3~~ SECTIONS 24-46-104.3 AND 24-46-107, for any income tax year commencing on or after January 1, 2014, if the total amount of the credits claimed by a taxpayer pursuant to subsections (1)(a)(I), (1)(b), and (3)(a) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of the credits not used as an offset against income taxes in said income tax year is not allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding five years and is applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period is not refundable to the taxpayer.

(II) Except as provided in ~~section 24-46-104.3~~ SECTIONS 24-46-104.3 AND 24-46-107, for any income tax year commencing on or after January 1, 2014, if the total amount of credits claimed by a taxpayer pursuant to subsections (1)(a)(II) and (3)(b) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of credits not used as an offset against income taxes in said income tax year is not allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding seven years and is applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period is not refundable to the taxpayer.

**SECTION 6.** In Colorado Revised Statutes, 39-30-105.6, **amend** (3) as follows:

**39-30-105.6. Credit against tax - rehabilitation of vacant buildings.** (3) EXCEPT AS PROVIDED IN SECTION 24-46-107, if the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding five years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

**SECTION 7. Appropriation.** For the 2022-23 state fiscal year, \$18,412 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 0.2 FTE. To implement this act, the office may use this appropriation for economic development commission - general economic incentives and marketing.

**SECTION 8. 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.

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Alec Garnett  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Steve Fenberg  
PRESIDENT OF  
THE SENATE

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Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_  
(Date and Time)

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Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO