

First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 09-0578.01 Ed DeCecco

HOUSE BILL 09-1105

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HOUSE SPONSORSHIP

Kefalas,

SENATE SPONSORSHIP

(None),

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House Committees  
Business Affairs and Labor  
Finance

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE CREATION OF THE COLORADO INNOVATION  
102 INVESTMENT TAX CREDIT TO BE APPLIED AGAINST STATE  
103 INCOME TAXES.

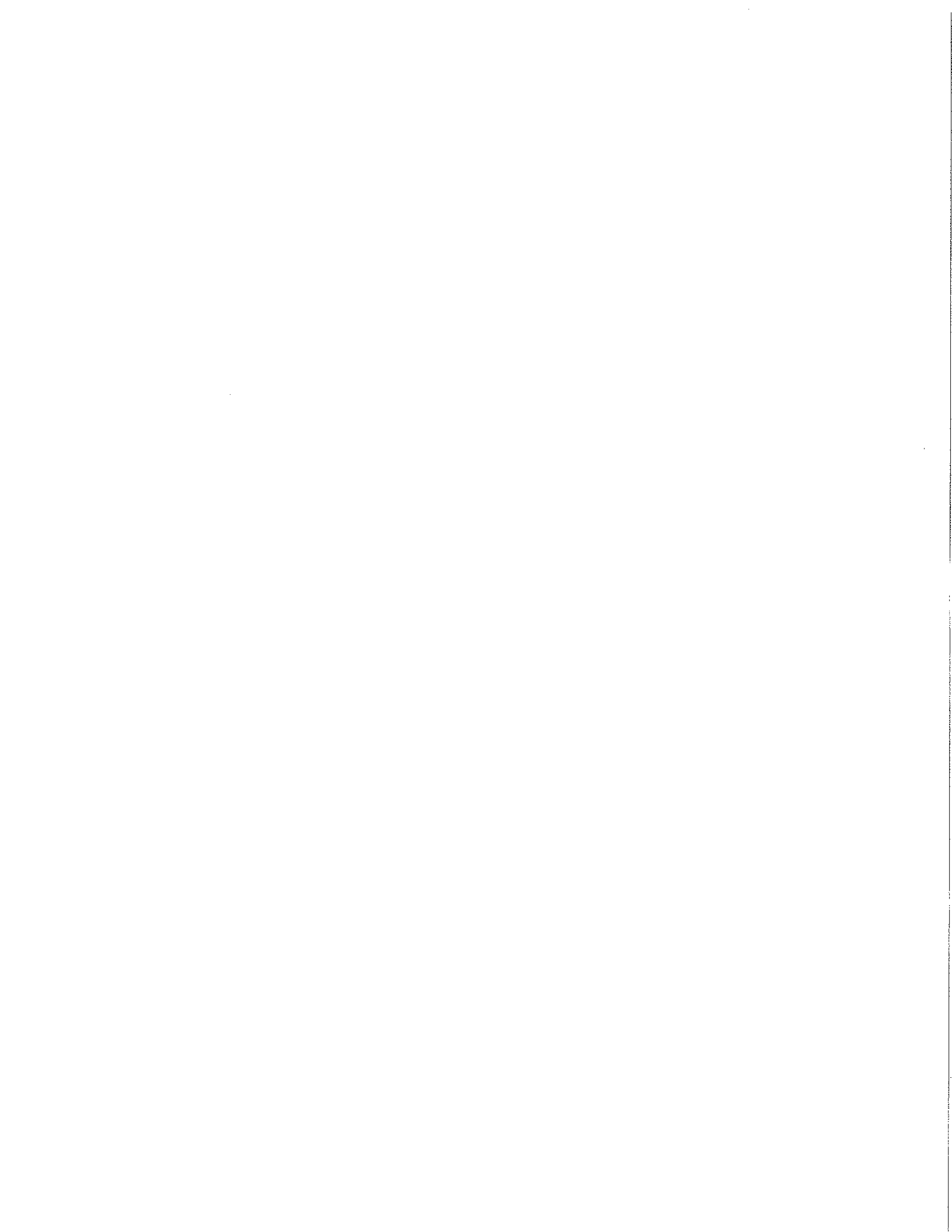
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Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Creates the Colorado innovation investment tax credit (tax credit) to be applied against state income tax liability. Permits the tax credit for an equity investment in a qualified small business that is in the aerospace, bioscience, clean energy, or information technology industry. Establishes that the tax credit is equal to a specified percentage of the total investment

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



evenly spread over the 2 tax years after the investment. Limits the tax credit to a maximum amount. Prohibits a tax credit from being refunded, but permits the tax credit to be carried forward a specified number of years.

Requires the Colorado office of economic development (office) to determine the eligibility for the tax credit and to issue nontransferable tax credit certificates as evidence of eligibility and the amount of the tax credit. Requires a taxpayer to submit a copy of the tax credit certificate in order to claim the tax credit.

Requires the office and the department of revenue to share information related to the tax credits.

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

2           **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds and declares that:

4           (a) Growing new high-potential companies in our strategic  
5 technology industries is one of the most promising tools for helping  
6 facilitate the creation of high-paying jobs;

7           (b) Access to seed capital is one of the key challenges facing early  
8 stage technology companies, and many good business proposals go  
9 unfunded each year;

10           (c) Reducing risk to investors through a tax credit based on an  
11 investment in startup businesses in strategic industries will reduce some  
12 of the risk to investors and thereby draw additional investment dollars for  
13 such business;

14           (d) These successfully funded startup businesses will go on to  
15 raise additional capital, create jobs that pay high wages, and ultimately  
16 produce revenue and additional economic growth in the state; and

17           (e) Eighteen states currently offer some form of tax credits for  
18 investors, and Colorado needs to establish a similar investment credit in  
19 order to encourage startups to begin and stay in the state.



1           (2) Now, therefore, it is the intent of the general assembly to  
2 create an income tax credit for investment in certain qualified businesses  
3 in the clean energy, bioscience, information technology, and aerospace  
4 industries to be known as the Colorado innovation investment tax credit.

5           **SECTION 2.** Article 48.5 of title 24, Colorado Revised Statutes,  
6 is amended BY THE ADDITION OF A NEW SECTION to read:

7           **24-48.5-111. Administration of Colorado innovation**  
8 **investment tax credit - definitions.** (1) AS USED IN THIS SECTION,  
9 UNLESS THE CONTEXT OTHERWISE REQUIRES:

10           (a) "AFFILIATE" MEANS ANY PERSON OR ENTITY THAT CONTROLS,  
11 IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER  
12 PERSON OR ENTITY. FOR PURPOSES OF THIS PARAGRAPH (a), "CONTROL"  
13 MEANS THE POWER TO DETERMINE THE POLICIES OF AN ENTITY WHETHER  
14 THROUGH OWNERSHIP OF VOTING SECURITIES, BY CONTRACT, OR  
15 OTHERWISE.

16           (b) "ASSET" MEANS ANY OWNED PROPERTY THAT HAS VALUE,  
17 INCLUDING FINANCIAL ASSETS AND PHYSICAL ASSETS. INTELLECTUAL  
18 PROPERTY SHALL NOT BE INCLUDED WHEN DETERMINING TOTAL ASSETS.

19           (c) "CLEAN ENERGY" SHALL HAVE THE SAME MEANING AS SET  
20 FORTH IN SECTION 40-9.7-103 (5), C.R.S.

21           (d) "COLORADO INNOVATION INVESTMENT TAX CREDIT" OR "TAX  
22 CREDIT" MEANS THE CREDIT AGAINST INCOME TAX CREATED IN SECTION  
23 39-22-531, C.R.S.

24           (e) "INFORMATION TECHNOLOGY" SHALL HAVE THE SAME  
25 MEANING AS SET FORTH IN SECTION 24-37.5-102 (2).

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



1 (g) "QUALIFIED INVESTMENT" MEANS AN INVESTMENT MADE ON  
2 OR AFTER JANUARY 1, 2010, IN AN EQUITY SECURITY THAT MEETS ALL OF  
3 THE FOLLOWING REQUIREMENTS:

4 (I) THE EQUITY SECURITY IS COMMON STOCK, PREFERRED STOCK,  
5 AN INTEREST IN A PARTNERSHIP OR LIMITED LIABILITY COMPANY, A  
6 SECURITY THAT IS CONVERTIBLE INTO AN EQUITY SECURITY, OR OTHER  
7 EQUITY SECURITY AS DETERMINED BY THE OFFICE;

8 (II) THE INVESTMENT IS AT LEAST TWENTY-FIVE THOUSAND  
9 DOLLARS; AND

10 (III) THE QUALIFIED INVESTOR AND ITS AFFILIATES DO NOT HOLD,  
11 OF RECORD OR BENEFICIALLY, IMMEDIATELY BEFORE MAKING AN  
12 INVESTMENT, EQUITY SECURITIES POSSESSING MORE THAN THIRTY  
13 PERCENT OF THE TOTAL VOTING POWER OF ALL EQUITY SECURITIES OF THE  
14 QUALIFIED SMALL BUSINESS.

15 (h) "QUALIFIED INVESTOR" MEANS AN INDIVIDUAL, LIMITED  
16 LIABILITY COMPANY, PARTNERSHIP, S CORPORATION, AS DEFINED IN  
17 SECTION 39-22-103 (10.5), C.R.S., OR OTHER BUSINESS ENTITY THAT  
18 MAKES A QUALIFIED INVESTMENT IN A QUALIFIED SMALL BUSINESS.  
19 "QUALIFIED INVESTOR" DOES NOT INCLUDE A C CORPORATION, AS DEFINED  
20 IN SECTION 39-22-103 (2.5), C.R.S.

21 (i) "QUALIFIED SMALL BUSINESS" MEANS A CORPORATION, LIMITED  
22 LIABILITY COMPANY, PARTNERSHIP, OR OTHER BUSINESS ENTITY THAT:

23 (I) MAINTAINS ITS PRINCIPLE PLACE OF BUSINESS IN THE STATE;

24 (II) HAS AT LEAST FIFTY PERCENT OF ITS GROSS ASSETS AND FIFTY  
25 PERCENT OF ITS EMPLOYEES LOCATED WITHIN THE STATE. IF THE ENTITY  
26 IS A MEMBER OF AN AFFILIATE, THE GROSS ASSETS AND THE NUMBER OF  
27 EMPLOYEES OF ALL MEMBERS OF THE AFFILIATE, WHEREVER THOSE ASSETS





1 AND EMPLOYEES ARE LOCATED, SHALL BE INCLUDED FOR THE PURPOSE OF  
2 DETERMINING THE PERCENTAGE OF THE ENTITY'S GROSS ASSETS AND  
3 EMPLOYEES THAT ARE LOCATED IN THE STATE.

4 (III) HAS AT LEAST TWO NONADMINISTRATIVE, FULL-TIME  
5 EQUIVALENT EMPLOYEES WHO ARE RESIDENTS OF THE STATE;

6 (IV) HAS A PRINCIPAL BUSINESS INVOLVED PRIMARILY IN  
7 RESEARCH AND DEVELOPMENT OR MANUFACTURING OF NEW  
8 TECHNOLOGIES, PRODUCTS, OR PROCESSES IN ANY OF THE FOLLOWING  
9 INDUSTRIES:

10 (A) AEROSPACE;

11 (B) BIOSCIENCE;

12 (C) CLEAN ENERGY; OR

13 (D) INFORMATION TECHNOLOGY;

14 (V) HAS BEEN IN OPERATION FOR LESS THAN FIVE YEARS; AND

15 (VI) HAS TOTAL YEARLY REVENUES OF LESS THAN TWO MILLION  
16 DOLLARS AND TOTAL ASSETS OF LESS THAN TWO MILLION DOLLARS,  
17 EXCLUDING ANY INVESTMENT THAT IS THE BASIS OF A COLORADO  
18 INNOVATION INVESTMENT TAX CREDIT.

19 (2) (a) BEGINNING JANUARY 1, 2010, THE OFFICE SHALL RECEIVE  
20 AND EVALUATE APPLICATIONS THAT ARE SUBMITTED BY QUALIFIED  
21 INVESTORS TO RECEIVE A COLORADO INNOVATION INVESTMENT TAX  
22 CREDIT FOR QUALIFIED INVESTMENTS MADE IN A QUALIFIED SMALL  
23 BUSINESS.

24 (b) TO BE ELIGIBLE FOR A COLORADO INNOVATION INVESTMENT  
25 TAX CREDIT, A QUALIFIED INVESTOR SHALL FILE AN APPLICATION WITH THE  
26 OFFICE WITHIN THIRTY DAYS AFTER MAKING A QUALIFIED INVESTMENT.  
27 ALL APPLICATIONS SHALL BE FILED IN PERSON AT THE OFFICE, AND THE



1 OFFICE SHALL STAMP ON THE APPLICATION THE TIME AND DATE WHEN THE  
2 APPLICATION IS RECEIVED. THE APPLICATION SHALL BE ON A FORM  
3 PRESCRIBED BY THE OFFICE, WHICH SHALL INCLUDE:

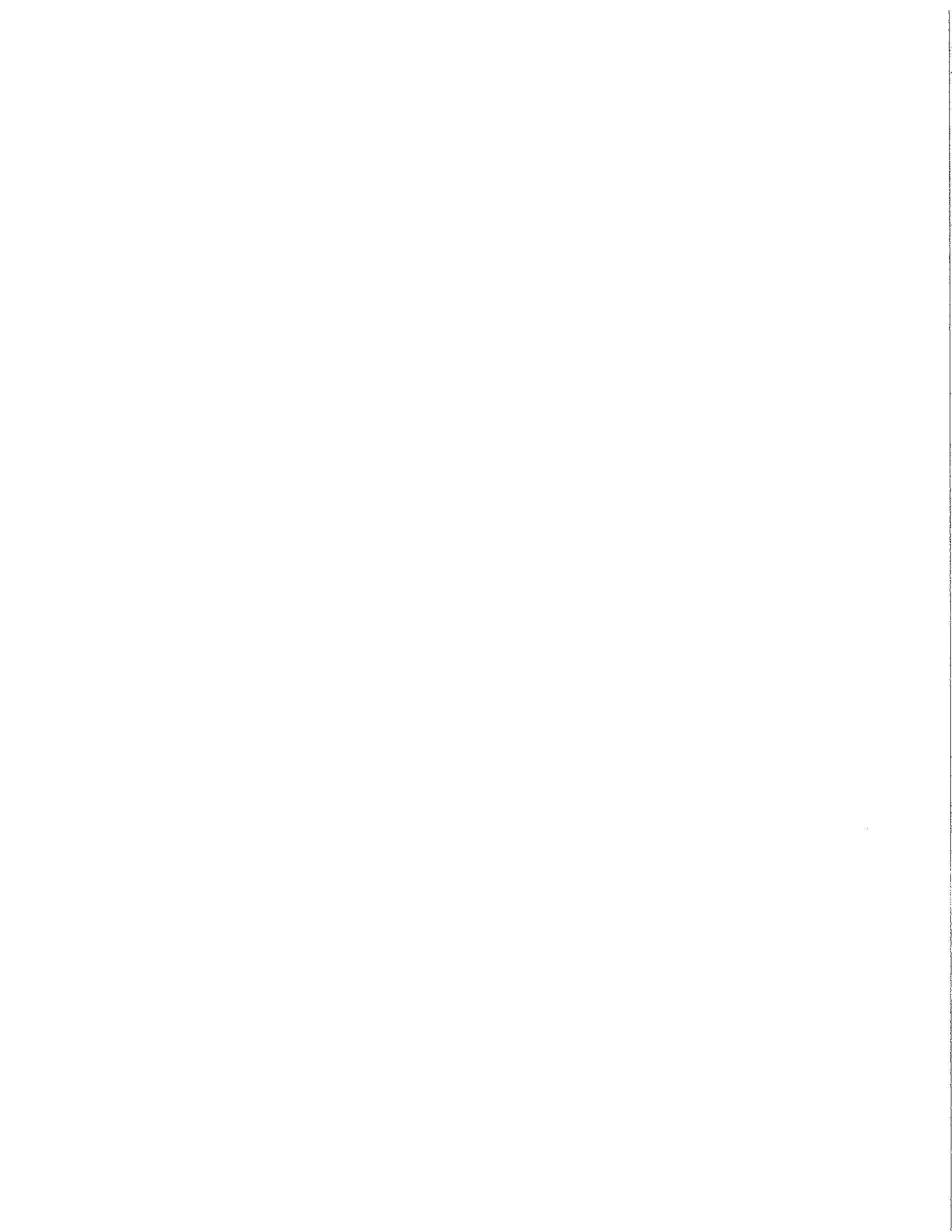
4 (I) THE NAME, ADDRESS, AND FEDERAL INCOME TAX  
5 IDENTIFICATION NUMBER OF THE APPLICANT;

6 (II) THE NAME AND FEDERAL EMPLOYER IDENTIFICATION NUMBER  
7 OF THE QUALIFIED SMALL BUSINESS THAT RECEIVED A QUALIFIED  
8 INVESTMENT MADE BY THE APPLICANT;

9 (III) THE DATE THE QUALIFIED INVESTMENT WAS MADE; AND

10 (IV) ANY ADDITIONAL INFORMATION THAT THE OFFICE REQUIRES.

11 (c) A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP,  
12 OR OTHER BUSINESS ENTITY MAY REQUEST THE OFFICE TO DETERMINE  
13 WHETHER IT IS A QUALIFIED SMALL BUSINESS. UPON RECEIVING SUCH  
14 REQUEST OR UPON RECEIPT OF AN APPLICATION FOR A COLORADO  
15 INNOVATION INVESTMENT TAX CREDIT FROM A QUALIFIED INVESTOR, THE  
16 OFFICE SHALL DETERMINE WHETHER THE CORPORATION, LIMITED  
17 LIABILITY COMPANY, PARTNERSHIP, OR OTHER BUSINESS ENTITY THAT IS  
18 NAMED IN THE APPLICATION OR WRITTEN REQUEST IS A QUALIFIED SMALL  
19 BUSINESS. AFTER DETERMINING THE QUALIFICATIONS, THE OFFICE SHALL  
20 CERTIFY THE QUALIFIED SMALL BUSINESS AS BEING ELIGIBLE TO RECEIVE  
21 QUALIFIED INVESTMENTS FOR PURPOSES OF THIS SECTION. THE  
22 CERTIFICATION IS VALID FOR ONE YEAR, BUT THE OFFICE MAY REVOKE THE  
23 CERTIFICATION AT ANY TIME OR REFUSE TO RENEW THE CERTIFICATION IF  
24 THE QUALIFIED SMALL BUSINESS FAILS TO MAINTAIN THE REQUIRED  
25 QUALIFICATIONS. IF A QUALIFIED SMALL BUSINESS FAILS TO MAINTAIN THE  
26 QUALIFICATIONS, THE BUSINESS SHALL NOTIFY THE OFFICE WITHIN FIVE  
27 BUSINESS DAYS OF FAILING TO MEET THE QUALIFICATIONS. THE OFFICE



1 SHALL REVOKE THE CERTIFICATION OF THE BUSINESS AND MAY ASSESS A  
2 PENALTY AGAINST THE BUSINESS ENTITY EQUAL TO THE AMOUNT OF THE  
3 COLORADO INNOVATION INVESTMENT TAX CREDITS AUTHORIZED AFTER  
4 THE BUSINESS FAILED TO MEET THE QUALIFICATIONS. THE PENALTY SHALL  
5 BE DEPOSITED INTO THE STATE GENERAL FUND. IF THE CERTIFICATION IS  
6 REVOKED OR EXPIRES, SUBSEQUENT INVESTMENTS IN THE BUSINESS SHALL  
7 NOT QUALIFY FOR A TAX CREDIT. ALL TAX CREDITS ISSUED BEFORE ANY  
8 EXPIRATION OR REVOCATION OF THE CERTIFICATION SHALL REMAIN VALID.  
9 ANY APPLICATION FOR A TAX CREDIT SHALL NOT BE DENIED ON THE BASIS  
10 OF THE EXPIRATION OR REVOCATION OF THE CERTIFICATION IF THE  
11 INVESTMENT WAS MADE BEFORE THE DATE OF THE EXPIRATION OR  
12 REVOCATION.

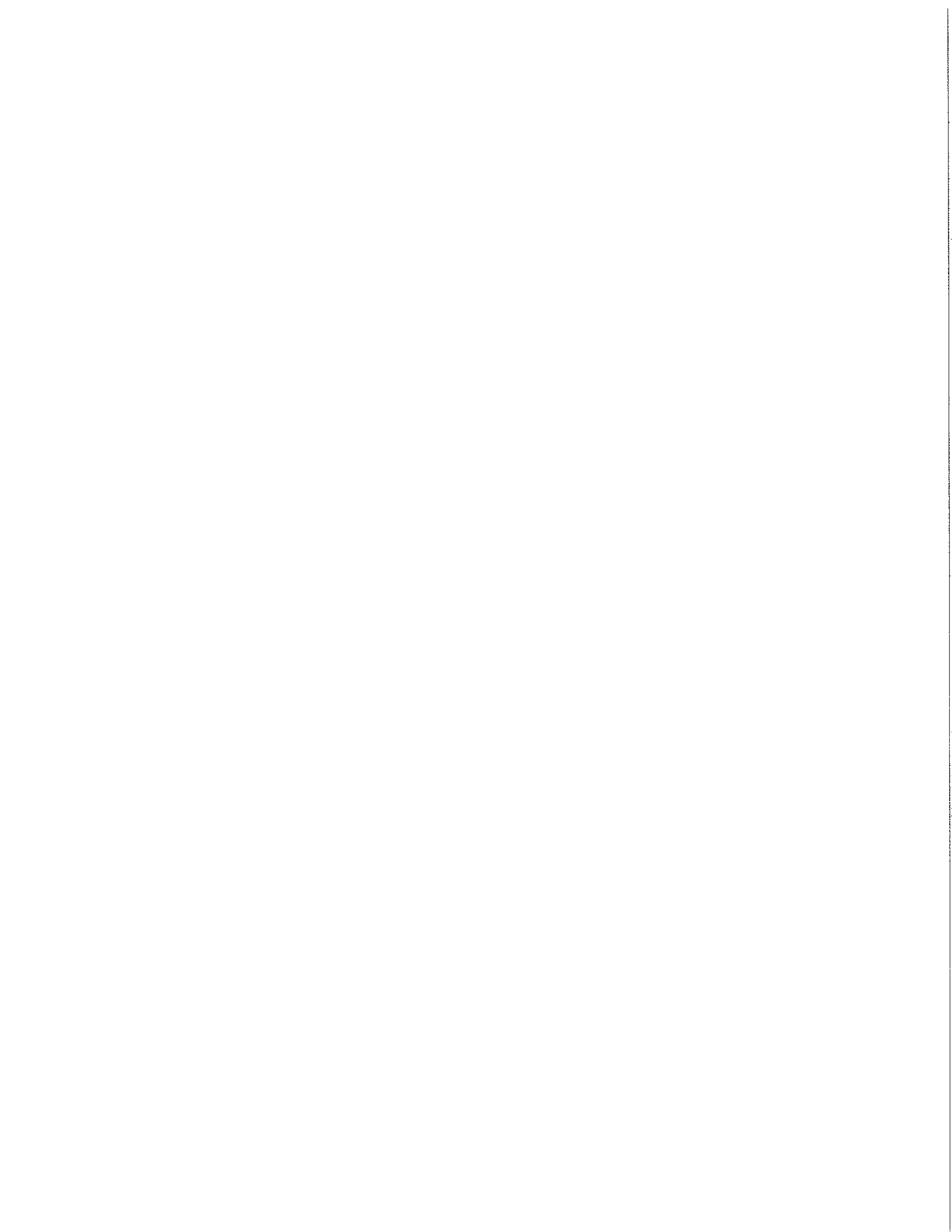
13 (d) AS PART OF THE APPLICATION FOR A COLORADO INNOVATION  
14 INVESTMENT TAX CREDIT, THE APPLICANT AND THE QUALIFIED SMALL  
15 BUSINESS THAT RECEIVES THE INVESTMENT SHALL EACH PROVIDE WRITTEN  
16 AUTHORIZATION TO PERMIT THE DEPARTMENT OF REVENUE TO PROVIDE  
17 TAX INFORMATION TO THE OFFICE FOR THE PURPOSE OF DETERMINING IF  
18 THERE ARE ANY MISREPRESENTATIONS ON THE APPLICATION. THE  
19 AUTHORIZATION SHALL LIMIT DISCLOSURE TO INCOME TAX INFORMATION  
20 FOR THE LATEST TWO YEARS FOR WHICH RETURNS WERE FILED WITH THE  
21 DEPARTMENT OF REVENUE PRECEDING THE DATE THE APPLICATION IS  
22 FILED AND FOR ALL TAX YEARS THROUGH THE YEAR IN WHICH THE  
23 INVESTMENT WAS MADE FOR WHICH A RETURN WAS NOT FILED AS OF THE  
24 DATE OF THE APPLICATION. THE APPLICANT SHALL ALSO PROVIDE IN THE  
25 WRITTEN AUTHORIZATION INCOME TAX INFORMATION FOR ALL TAX YEARS  
26 IN WHICH THE APPLICANT ACTUALLY CLAIMS A TAX CREDIT OR CARRIES  
27 FORWARD A TAX CREDIT ON A RETURN FILED WITH THE DEPARTMENT OF



1 REVENUE. AN APPLICANT WITH AN INDIVIDUAL OWNERSHIP INTEREST AS  
2 A CO-OWNER OF A BUSINESS AND THAT MAY BE ENTITLED TO A PRO RATA  
3 SHARE OF THE TAX CREDIT PURSUANT TO SECTION 39-22-531 (6), C.R.S.,  
4 SHALL PROVIDE A WRITTEN AUTHORIZATION WITH CONTENT SIMILAR TO  
5 THE AUTHORIZATION, AND IN THE SAME MANNER, AS ANY OTHER  
6 APPLICANT IS REQUIRED TO PROVIDE.

7 (e) THE OFFICE SHALL REVIEW AND MAKE A DETERMINATION WITH  
8 RESPECT TO EACH APPLICATION FOR A COLORADO INNOVATION  
9 INVESTMENT TAX CREDIT WITHIN NINETY DAYS AFTER RECEIVING THE  
10 APPLICATION. THE OFFICE MAY REQUEST ADDITIONAL INFORMATION FROM  
11 THE APPLICANT IN ORDER TO MAKE AN INFORMED DECISION REGARDING  
12 THE ELIGIBILITY OF THE QUALIFIED INVESTOR OR QUALIFIED SMALL  
13 BUSINESS.

14 (3)(a) SUBJECT TO THE LIMITATION SET FORTH IN SUBSECTION (4)  
15 OF THIS SECTION, THE OFFICE SHALL AUTHORIZE A COLORADO INNOVATION  
16 INVESTMENT TAX CREDIT FOR EACH QUALIFIED INVESTOR WHO MAKES A  
17 QUALIFIED INVESTMENT IN A QUALIFIED SMALL BUSINESS. THE AMOUNT  
18 OF THE CREDIT SHALL BE FIFTEEN PERCENT OF THE AMOUNT OF THE  
19 INVESTMENT PER YEAR FOR THE FIRST AND SECOND TAXABLE YEARS  
20 AFTER THE INVESTMENT IS MADE; EXCEPT THAT THE TOTAL AMOUNT OF  
21 THE CREDIT FOR EACH QUALIFIED INVESTOR SHALL NOT EXCEED ONE  
22 HUNDRED THOUSAND DOLLARS. THE OFFICE SHALL ISSUE A TAX CREDIT  
23 CERTIFICATE TO THE QUALIFIED INVESTOR STATING THE AMOUNT OF THE  
24 TAX CREDIT THAT IS AUTHORIZED FOR PURPOSES OF SECTION 39-22-531,  
25 C.R.S. THE OFFICE SHALL ISSUE A SEPARATE TAX CREDIT CERTIFICATE  
26 FOR EACH TAXABLE YEAR. A TAX CREDIT CERTIFICATE IS  
27 NONTRANSFERABLE. THE OFFICE SHALL CERTIFY TO THE DEPARTMENT OF





1 REVENUE THE NAME OF EACH QUALIFIED INVESTOR WHO RECEIVES A TAX  
2 CREDIT CERTIFICATE, THE AMOUNT OF THE CERTIFICATE, AND OTHER  
3 RELEVANT INFORMATION RELATING TO THE TAX CREDITS.

4 (b) A QUALIFIED INVESTOR SHALL SUBMIT A TAX CREDIT  
5 CERTIFICATE AS PART OF A TAX RETURN TO THE DEPARTMENT OF REVENUE  
6 IN ACCORDANCE WITH SECTION 39-22-531 (3), C.R.S., BY THE DUE DATE  
7 OF THE RETURN, INCLUDING EXTENSIONS, FOR THE TAX YEAR FOR WHICH  
8 THE TAX CREDIT CERTIFICATE FIRST APPLIES. IF THE QUALIFIED INVESTOR  
9 FAILS TO TIMELY FILE THE TAX CREDIT CERTIFICATE, THE TAX CREDIT  
10 EXPIRES FOR THAT TAXABLE YEAR AND THERE SHALL BE NO  
11 CARRYFORWARD OF THE EXPIRED CREDIT. CREDITS THAT EXPIRE OR THAT  
12 OTHERWISE ARE NOT TIMELY USED BY THE QUALIFIED INVESTOR SHALL  
13 NOT BE REISSUED.

14 (4) (a) THE TOTAL AMOUNT OF COLORADO INNOVATION  
15 INVESTMENT TAX CREDITS ALLOWED FOR EACH TAX YEAR SHALL NOT  
16 EXCEED THREE MILLION DOLLARS.

17 (b) IF QUALIFYING APPLICATIONS IN A TAX YEAR EXCEED THREE  
18 MILLION DOLLARS, THE OFFICE SHALL AUTHORIZE COLORADO INNOVATION  
19 INVESTMENT TAX CREDITS IN THE ORDER OF THE DATE AND TIME THAT THE  
20 APPLICATIONS ARE RECEIVED BY THE OFFICE, AS EVIDENCED BY THE TIME  
21 AND DATE STAMPED ON THE APPLICATION BY THE OFFICE. IF AN  
22 APPLICATION IS RECEIVED THAT, IF AUTHORIZED, WOULD REQUIRE THE  
23 OFFICE TO EXCEED THE THREE MILLION DOLLAR LIMIT, THE OFFICE SHALL  
24 ONLY GRANT THE APPLICANT THE REMAINING AMOUNT OF TAX CREDITS  
25 THAT WOULD NOT EXCEED THE THREE MILLION DOLLAR LIMIT.

26 (5) THE OFFICE SHALL PROVIDE TO THE DEPARTMENT OF REVENUE  
27 NECESSARY INFORMATION REQUIRED TO ADMINISTER SECTION 39-22-531,



1 C.R.S. IF THE OFFICE SUBSEQUENTLY DISCOVERS THAT AN APPLICANT WHO  
2 RECEIVED A COLORADO INNOVATION INVESTMENT TAX CREDIT  
3 MISREPRESENTED INFORMATION ON THE APPLICATION, THE OFFICE SHALL  
4 IMMEDIATELY NOTIFY THE DEPARTMENT OF REVENUE AND PROVIDE THE  
5 DEPARTMENT OF REVENUE ALL INFORMATION THAT RELATES TO THAT  
6 APPLICANT. IF THE DEPARTMENT OF REVENUE DETERMINES THAT THERE  
7 HAS BEEN A MISREPRESENTATION ON THE APPLICATION, THE DEPARTMENT  
8 OF REVENUE SHALL DENY THE TAX CREDIT IF THE MISREPRESENTATION  
9 RELATES TO WHETHER THE APPLICANT WAS A QUALIFIED INVESTOR OR  
10 MADE A QUALIFIED INVESTMENT. IF THE MISREPRESENTATION RELATES TO  
11 WHETHER THE INVESTMENT WAS MADE TO A QUALIFIED SMALL BUSINESS,  
12 THE DEPARTMENT OF REVENUE SHALL DENY THE TAX CREDIT ONLY IF THE  
13 APPLICANT KNEW OR SHOULD HAVE KNOWN AT ANY TIME BEFORE THE  
14 CERTIFICATION THAT THE REPRESENTATION WAS FALSE.

15 **SECTION 3.** 39-21-113, Colorado Revised Statutes, is amended  
16 BY THE ADDITION OF A NEW SUBSECTION to read:

17 **39-21-113. Reports and returns - repeal.**  
18 (18) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE  
19 EXECUTIVE DIRECTOR SHALL PROVIDE THE COLORADO OFFICE OF  
20 ECONOMIC DEVELOPMENT WITH INFORMATION AS REQUIRED PURSUANT TO  
21 SECTION 24-48.5-111 (2) (d), C.R.S.

22 **SECTION 4.** Part 5 of article 22 of title 39, Colorado Revised  
23 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
24 read:

25 **39-22-531. Colorado innovation investment tax credit -**  
26 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT  
27 OTHERWISE REQUIRES:



1 (a) "COLORADO INNOVATION INVESTMENT TAX CREDIT" OR "TAX  
2 CREDIT" MEANS THE CREDIT AGAINST INCOME TAX CREATED IN THIS  
3 SECTION.

4 (b) "QUALIFIED INVESTMENT" SHALL HAVE THE SAME MEANING AS  
5 SET FORTH IN SECTION 24-48.5-111 (1) (g), C.R.S.

6 (c) "QUALIFIED INVESTOR" SHALL HAVE THE SAME MEANING AS  
7 SET FORTH IN SECTION 24-48.5-111 (1) (h), C.R.S.

8 (d) "QUALIFIED SMALL BUSINESS" SHALL HAVE THE SAME  
9 MEANING AS SET FORTH IN SECTION 24-48.5-111 (1) (i), C.R.S.

10 (e) "TAX CREDIT CERTIFICATE" MEANS A TAX CREDIT CERTIFICATE  
11 ISSUED TO A QUALIFIED INVESTOR PURSUANT TO SECTION 24-48.5-111 (3),  
12 C.R.S.

13 (2) THERE SHALL BE ALLOWED A COLORADO INNOVATION  
14 INVESTMENT TAX CREDIT AGAINST THE INCOME TAXES IMPOSED PURSUANT  
15 TO THIS ARTICLE FOR A QUALIFIED INVESTMENT IN A QUALIFIED SMALL  
16 BUSINESS. THE AMOUNT OF THE CREDIT IS THE AMOUNT DETERMINED AND  
17 AUTHORIZED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT  
18 PURSUANT TO SECTION 24-48.5-111, C.R.S., AND SET FORTH IN A TAX  
19 CREDIT CERTIFICATE.

20 (3) TO CLAIM THE COLORADO INNOVATION INVESTMENT TAX  
21 CREDIT, THE TAXPAYER SHALL ATTACH TO THE TAXPAYER'S TAX RETURN  
22 A COPY OF THE TAX CREDIT CERTIFICATE. NO TAX CREDIT IS ALLOWED  
23 UNDER THIS SECTION UNLESS THE TAXPAYER PROVIDES THE COPY OF THE  
24 TAX CREDIT CERTIFICATE.

25 (4) THE BASIS OF ANY INVESTMENT WITH RESPECT TO WHICH THE  
26 TAXPAYER HAS CLAIMED A COLORADO INNOVATION INVESTMENT TAX  
27 CREDIT SHALL BE REDUCED BY THE AMOUNT OF THE TAX CREDIT CLAIMED



1 WITH RESPECT TO THAT INVESTMENT.

2 (5) IF THE ALLOWABLE COLORADO INNOVATION INVESTMENT TAX  
3 CREDIT EXCEEDS THE AMOUNT OF INCOME TAX DUE ON THE INCOME OF  
4 THE TAXPAYER FOR THE TAXABLE YEAR, THE AMOUNT OF THE TAX CREDIT  
5 NOT USED AS AN OFFSET AGAINST INCOME TAXES IN SUCH INCOME TAX  
6 YEAR SHALL NOT BE ALLOWED AS A REFUND, BUT MAY BE CARRIED  
7 FORWARD AND APPLIED AGAINST THE INCOME TAX DUE IN EACH OF THE  
8 FIVE SUCCEEDING INCOME TAX YEARS, BUT SHALL BE FIRST APPLIED  
9 AGAINST THE INCOME TAX DUE FOR THE EARLIEST OF THE INCOME TAX  
10 YEARS POSSIBLE. ANY AMOUNT OF THE TAX CREDIT THAT IS NOT USED  
11 AFTER SAID PERIOD SHALL NOT BE REFUNDABLE.

12 (6) INDIVIDUALS WHO ARE CO-OWNERS OF A BUSINESS, INCLUDING  
13 PARTNERS IN A PARTNERSHIP AND SHAREHOLDERS OF AN S CORPORATION,  
14 MAY EACH CLAIM ONLY THEIR INDIVIDUAL PRO RATA SHARES OF THE  
15 COLORADO INNOVATION INVESTMENT TAX CREDIT ALLOWED UNDER THIS  
16 SECTION BASED ON THEIR OWNERSHIP INTERESTS. THE TOTAL OF THE TAX  
17 CREDITS ALLOWED TO ALL SUCH OWNERS MAY NOT EXCEED THE AMOUNT  
18 THAT WOULD HAVE BEEN ALLOWED TO A SOLE OWNER.

19 (7) IF THE DEPARTMENT OF REVENUE DETERMINES THAT THERE  
20 HAS BEEN A MISREPRESENTATION ON AN APPLICATION SUBMITTED TO THE  
21 COLORADO OFFICE OF ECONOMIC DEVELOPMENT PURSUANT TO SECTION  
22 24-48.5-111, C.R.S., THE DEPARTMENT OF REVENUE SHALL DENY THE  
23 COLORADO INNOVATION INVESTMENT TAX CREDIT IF THE  
24 MISREPRESENTATION RELATES TO WHETHER THE APPLICANT WAS A  
25 QUALIFIED INVESTOR OR MADE A QUALIFIED INVESTMENT. IF THE  
26 MISREPRESENTATION RELATES TO WHETHER THE INVESTMENT WAS MADE  
27 TO A QUALIFIED SMALL BUSINESS, THE DEPARTMENT OF REVENUE SHALL





1 DENY THE TAX CREDIT ONLY IF THE APPLICANT KNEW OR SHOULD HAVE  
2 KNOWN AT ANY TIME BEFORE THE CERTIFICATION THAT THE  
3 REPRESENTATION WAS FALSE.

4         **SECTION 5. Act subject to petition - effective date.** This act  
5 shall take effect at 12:01 a.m. on the day following the expiration of the  
6 ninety-day period after final adjournment of the general assembly that is  
7 allowed for submitting a referendum petition pursuant to article V,  
8 section 1 (3) of the state constitution, (August 4, 2009, if adjournment  
9 sine die is on May 6, 2009); except that, if a referendum petition is filed  
10 against this act or an item, section, or part of this act within such period,  
11 then the act, item, section, or part, if approved by the people, shall take  
12 effect on the date of the official declaration of the vote thereon by  
13 proclamation of the governor.



Colorado Legislative Council Staff Fiscal Note



**REVISED FISCAL IMPACT**

(replaces fiscal note dated February 2, 2009)

**Drafting Number:** LLS 09-0578

**Date:** February 3, 2009

**Prime Sponsor(s):** Rep. Kefalas

**Bill Status:** House Finance

**Fiscal Analyst:** Natalie Mullis (303-866-4778)

**TITLE:** CONCERNING THE CREATION OF THE COLORADO INNOVATION INVESTMENT TAX CREDIT TO BE APPLIED AGAINST STATE INCOME TAXES.

Fiscal Impact Summary	FY 2009-2010	FY 2010-2011
<b>State Revenue</b>		
General Fund - Income Taxes	(\$1.5 Million)	(\$3.0 Million)
<b>State Expenditures</b>		
General Fund*	\$112,035*	\$76,827
<b>FTE Position Change</b>	1.0 FTE	1.0 FTE
<b>Effective Date:</b> August 4, 2009, assuming the General Assembly adjourns as scheduled and unless a referendum petition is filed. Tax credits may be claimed for investments made in 2010 through 2014.		
<b>Appropriation Summary for FY 2009-2010:</b> \$82,055 for the Office of Economic Development.		
<b>Local Government Impact:</b> None.		

*This note is revised to correct errors in the Summary of Legislation in the note released on February 2, 2009. Compared with the note released on January 28, 2009, it incorporates both new information received from the Office of Economic Development and amendments adopted in the House Business Affairs and Labor Committee.*

*\* Of this amount, \$29,980 may be funded by line item in the FY 2009-10 Long Bill for programming costs in the Department of Revenue for 2009 legislation.*

**Summary of Legislation**

This bill allows certain investors to receive an income tax credit for investments made in certain aerospace, bioscience, clean energy, and information technology small businesses during tax years 2010 through 2014. The credit is equal to 15 percent of the investment for the tax year in which the investment is made and the following tax year, up to a maximum total of \$100,000. The credit is non-refundable, non-transferable, and may be carried forward for five years. The state may grant a maximum of \$3.0 million in credits during each tax year. If applications worth more than \$3.0 million qualify, they will be approved on a first-come, first-serve basis.

In order to qualify for a credit, an investor must make an investment of at least \$25,000, may not own more than a 30 percent controlling interest in the small business immediately before making the investment, and cannot be a C corporation. In addition, the small business must:

- maintain its principal place of business in Colorado,
- have at least half of its gross assets and employee base located in Colorado,
- have less than \$2.0 million in annual revenue and total assets of less than \$5.0 million prior to receiving the investment,
- have been in operation for less than five years, and
- have at least two non-administrative, full-time-equivalent employees residing in Colorado.

An investor must apply for and receive a tax credit certificate from the Governor's Office of Economic Development. The tax credit certificate must then be presented to the Department of Revenue with the investor's income tax return. The bill requires the Office of Economic Development and the Department of Revenue to share information and specifies penalties for the misrepresentation of qualifications for the credit.

### **State Revenue**

General Fund revenue will be reduced \$1.5 million in FY 2009-10 (half-year impact) and \$3.0 million in FY 2010-11. The maximum amount allowed for the credit is assumed because sufficient venture capital investment occurs in these industries in Colorado each year to allow for at least 30 tax credits worth the maximum allowable credit of \$100,000 to occur. For example, Cleantech Group, LLC. reports \$460 million of venture capital investments in Colorado clean technology firms during 2008. In addition, the Colorado Bioscience Association reports \$276 million of venture capital investments in Colorado bioscience firms during 2008. It is important to note that a taxpayer's federal tax liability may increase as a result of this credit.

Because the degree to which new economic activity may be created expressly due to the bill is unknown, the fiscal impact stated above does not incorporate increased revenue from potential new activity. To the extent that tax credit is the determining reason that activity is created in the state, tax revenue from the new activity would serve to partially offset the estimated loss of state revenue.

### **State Expenditures**

State expenditures will increase \$112,035 and 1.0 FTE in FY 2009-10 and \$76,827 and 1.0 FTE in FY 2010-11.

**Governor's Office of Economic Development: \$82,055 and 1.0 FTE in FY 2009-10.** The Governor's Office of Economic Development will incur additional personnel costs to administer the bill each year beginning in FY 2009-10. These costs are summarized in Table 1. Personnel services are required to develop application procedures, coordinate with small businesses, investors, and the Department of Revenue, evaluate applications and issue tax credit certificates, and develop database and tracking processes.

<b>Table 1. Expenditures for the Governor's Office of Economic Development Under HB09-1105</b>		
<b>Cost Components</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>
Personal Services	\$76,747	\$76,747
FTE	1.0	1.0
Operating Expenses and Capital Outlay	\$5,308	\$80
<b>TOTAL</b>	<b>\$82,055</b>	<b>\$76,827</b>

**Department of Revenue: \$29,980 in FY 2009-10.** The Department of Revenue will incur information technology costs to adjust the state's computer systems and forms for the new credit. The annual Long Bill may include line item funding for information technology costs associated with new legislation. While the department identified additional need for postage, taxpayer services, and tax conferees, these costs are assumed to be minimal because of the limited number of tax credit certificates expected to be received each year by the Department. It is estimated that the Office of Economic Development will issue between 30 and 50 tax credit certificates each year.

**Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 2.

<b>Table 2. Expenditures Not Included Under HB09-1105*</b>		
<b>Cost Components</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$6,276	\$6,846
Supplemental Employee Retirement Payments	2,235	2,845
Leased Space	1,408	1,408
<b>TOTAL</b>	<b>\$9,919</b>	<b>\$11,099</b>

\*More information is available at: [http://www.state.co.us/gov\\_dir/leg\\_dir/lcsstaff/2009/comsched/CommonPolicies2009.pdf](http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2009/comsched/CommonPolicies2009.pdf)

**Other State Impacts**

Based on the December 2008 Legislative Council Staff revenue forecast, there is insufficient revenue in the General Fund to allow General Fund appropriations to increase by the maximum allowable growth rate of 6 percent in FY 2009-10. By reducing General Fund revenue, this bill will reduce the amount of money available for General Fund appropriations in FY 2009-10 by \$1.5 million.

**State Appropriations**

This note implies that the Governor's Office of Economic Development requires an appropriation of \$82,055 General Fund and 1.0 FTE in FY 2009-10.

**Departments Contacted**

Revenue            Governor's Office of Economic Development