

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0578.01 Ed DeCecco

HOUSE BILL 09-1105

HOUSE SPONSORSHIP

Kefalas,

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs and Labor
Finance

Senate Committees

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.**

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.

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.