

ENTERPRISE ZONE NEW BUSINESS FACILITY EMPLOYEE CREDITS

39-30-105

- (a) Credits identified. There are three Colorado enterprise zone new business facility employee credits. They are:
- (1) The enterprise zone basic new business facility employee credit;
 - (2) The enterprise zone new business facility agricultural processing employee credit; and
 - (3) The employer sponsored health insurance credit.
- (b) The enterprise zone basic new business facility employee credit.
- (1) For income tax years beginning on or after January 1, 1989, any taxpayer who establishes a new business facility in an enterprise zone shall be allowed a credit against his Colorado income tax of \$500 for each new business facility employee who is working within the zone prorated according to the number of months of employment during the tax year. For subsequent tax years, a credit of \$500 shall be allowed for any increase in the average number of new business facility employees working in the zone.
 - (1.5) For income tax years beginning on or after January 1, 2003, any taxpayer who qualifies for the basic new business facility employee credit on a new employee located in an enhanced rural enterprise zone will receive an additional \$2,000 credit for each new business facility employee.
 - (2) For income tax years beginning prior to January 1, 1993, the amount by which the enterprise zone new business facility employee credit exceeded the taxpayer's income tax liability for the tax year was refundable to the taxpayer. For tax years beginning on or after January 1, 1993, such excess credits were no longer refundable but could be carried forward for a period of up to five years. Any excess \$2,000 credit for employees working in an enhanced rural enterprise zone can be carried forward for a period of up to seven years.
 - (3) Examples of provisions of paragraph (b).

Example 1: The Brown Corporation, a calendar year income taxpayer, established a new business facility in an enterprise zone on March 18, 1989. The number of new business facility employees as of the end of each calendar month were: January-0, February-0, March-6, April-8, May-9, June-12, July-15, August-18, September-24, October-26, November-25, and December-37. The average number of new business facility employees during 1989 was 15 (180 divided by 12). The basic enterprise zone new business facility employee credit the Brown Corporation may claim for 1989 is: the average number of new business facility employees (15) times the monthly credit rate [\$41.67 (\$500 divided by 12)] times the number of months in the taxable year (12) or \$7,500.

Example 2: If the Brown Corporation's average number of enterprise zone new business facility employees during 1990 were 43, the allowable 1990 credit would be: increase in average number of new business facility employees [28 (43-15)] times \$41.67 times twelve, or \$14,000.

Example 3: If the Brown Corporation were to change to a fiscal year ending October 31, the credit computation for the period January 1 - October 31, 1991, would be:

Average number of employees (assumed)	60
Minus previously qualified employees	<u>43</u>
Newly qualified employees	17
Multiplied by \$500	\$8,500
Prorated for 10 months	\$7,084

Example 4: The Brown Company is located in an enhanced rural enterprise zone and adds 3.2 new business facility employees for the year ending October 31, 2004. The credit computation for the fiscal year ending October 31, 2004 would be:

Newly qualified employees	3.2
Multiplied by \$500	\$1,600
Multiplied by \$2,000	<u>\$6,400</u>
Total credit	\$8,000

(c) The enterprise zone new business facility agricultural processing employee credit.

- (1) If a new business facility established by a taxpayer in an enterprise zone on or after January 1, 1989, is engaged in a business which adds value through manufacturing or processing to agricultural commodities, an additional credit or refund of \$500 per new business facility employee is allowed. The enterprise zone new business facility agricultural processing employee credit is computed the same as is the enterprise zone basic new business facility employee credit and is allowed in addition thereto.
- (1.5) For income tax years beginning on or after January 1, 2003, any taxpayer who qualifies for the new business facility agricultural processing employee credit on a new employee located in an enhanced rural enterprise zone will receive an additional \$500 credit for each new business facility employee.
- (2) The enterprise zone new business facility agricultural processing employee credit is available only to business that are directly engaged in manufacturing or processing agricultural commodities into some form other than that which enters normal agricultural commodity marketing channels. Harvesting, cleaning, packaging, storing, transporting, wholesaling, retailing, or otherwise distributing products without changing their form do not qualify.
- (3) For income tax years beginning prior to January 1, 1993, the amount by which the enterprise zone new business facility agricultural processing employee credit exceeded the taxpayer's income tax liability for the tax year was refundable to the taxpayer. For tax years beginning on or after January 1, 1993, such excess credits were no longer refundable but could be carried forward for a period of up to five years. Any excess \$500 credit for employees working in an enhanced rural enterprise zone can be carried forward for a period of up to seven years.

(d) The employer sponsored health credit.

- (1) For the first two full income tax years while located in an enterprise zone, taxpayers are allowed a credit of \$200 for each new business facility employee insured under a health

insurance plan or program at least 50% of the cost of which is paid by the taxpayer. Such plan or program may be any health insurance, health maintenance organization or pre-paid health plan which is approved by the State Insurance Commissioner for sale in Colorado or it may be a self-insurance program. In the case of a self-insurance program, the program must be reduced to writing and it must be legally enforceable against the taxpayer.

- (2) Health insurance credits earned in taxable years beginning on or after January 1, 1996, may be carried forward for up to five years.
- (3) Example of the provisions of paragraph (d).

Example: The Lincoln Corporation, a calendar year taxpayer, established a new business facility in a Colorado enterprise zone on September 1, 1989. The Lincoln Corporation paid the entire cost of a health maintenance plan for its employees. The average number of covered employees during 1990 was 41 and during 1991 it was 63. The allowable credits, limited to the corporation's tax liability for such years, would be \$8,200 for 1990 and \$12,600 for 1991. No credit would be allowed for 1989 or 1992.

(e) New business facility employees working in and out of the zone.

- (1) Generally, a new business facility employee who works in and outside of the enterprise zone shall be counted as a partial enterprise zone new business facility employee in the ratio of his time spent working in the zone to his total working time.
- (2) For income tax years beginning on or after January 1, 1994, a new business facility 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 facility of the employer other than the facility within the zone. This rule is not retroactive. The employer may not use this rule to claim additional credit for any employees employed prior to January 1, 1994.

(f) New business facilities established in enterprise zones prior to January 1, 1989.

- (1) In the case of a new business facility created in an enterprise zone prior to January 1, 1989, the enterprise zone basic new business facility employee credit and the enterprise zone new business facility agricultural processing employee credit were not allowed to be claimed until the facility was in operation in the enterprise zone for a full tax year.
- (2) Example of the provisions of paragraph (f):

Example: If the Brown Corporation in example 1 in Regulation 39-30-105(b)(3) had established a new business facility in an enterprise zone on March 18, 1988, instead of March 18, 1989, no credit would have been allowed for 1988 as the facility was not located in the zone for the full tax year. The credit allowed for 1989, assuming an average number of employees during the second year of operations of 43 as in example (2) under regulation 39-30-105(b)(3), would be \$21,500, the same as the total credit allowed for the first two years under the current income tax provisions.

(g) Facility defined. A facility is any factory, mill, plant, refinery, warehouse, feedlot, building, or complex of buildings located within the state of Colorado, including the land on which such facility is located and all machinery, equipment, and other real and tangible personal property located at or within such facility and used in connection with the operation of such facility. The word building

includes only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment, or other property.

- (h) New business facility defined. A new business facility is a facility which satisfies the following requirements:
- (1) The facility must be employed by the taxpayer in the operation of a revenue-producing enterprise. A facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue-producing enterprise and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue-producing enterprise, only the portion employed by the taxpayer in the operation of a revenue-producing enterprise may qualify as a new business facility.
 - (2) Three factors apply in determining whether a facility acquired or leased by a new business within an enterprise zone is treated as a new business facility. First, a facility acquired or leased by a business should be acquired by or leased by the taxpayer on or after the date the enterprise zone was designated. Effective date of acquisition means the date title is transferred and effective date of a lease means the date that the lease commences. Second, if a taxpayer continues to operate in the same or substantially identical business as was operated prior to a change in business ownership, the facility does not qualify as a new business facility merely because of the ownership change. Third, if taxpayer starts a new type of business in an enterprise zone or establishes an additional business location in an enterprise zone, then the facility relating to such new business would be considered a new business facility.

Example 1: Mr. Jones sold his drug store to Mr. Thompson. Mr. Thompson continued to operate the drug store. The drug store is not a new business facility for Mr. Thompson. However, if Mr. Thompson converted the drug store to a hardware store, it could qualify as a new business facility.

Example 2: Mr. Jones operated a drug store in an enterprise zone. Mr. Jones started a new supermarket business in a different business facility within the same enterprise zone. Such new business, since it is a distinct business from the drug store, would be considered a new business and such new business would be considered a new business facility. Thus, the employee credits with regard to the new business would be available.
 - (3) The facility must not simply replace another facility. A replacement facility is a facility which replaces another facility located within Colorado which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first tax year in which the enterprise zone new business facility employee credit is claimed. A facility shall be deemed to replace another facility if the following conditions are met:
 - (A) The previously held facility was operated by the taxpayer or a related taxpayer for more than three full taxable years out of the five taxable years next preceding the taxable year in which commencement of commercial operations occur at the newly acquired facility; and
 - (B) The previously held facility was employed by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the newly acquired facility.
 - (C) Examples of the provisions of paragraph (3):

Example 1: Mr. Mason operated a restaurant in Colorado from January 1 of 1964 until October 15 of 1988 when he closed it down. He opened a new restaurant in an enterprise zone on April 16, 1989. The new restaurant is a replacement facility and does not qualify for any of the enterprise zone new business facility employee credits.

Example 2: Mary Walker operated a pet grooming business from May 6, 1986 to October 18, 1989, when she lost the lease and went out of business. She opened a new pet grooming business in an enterprise zone on March 11, 1990. The new business is not a replacement facility as she did not operate the old business for more than three full taxable years of the five taxable years immediately preceding 1990.

- (4) The replacement facility provisions of paragraph (3) immediately preceding this paragraph (4) will not apply in the case of a business which is moved from one qualified new business facility in an enterprise zone to another such facility. In such case, the new facility will simply substitute for the old facility.
- (i) Qualifying replacement facility. Notwithstanding the provisions of paragraph (h)(3) above, a facility shall not be considered to be a replacement facility if the taxpayer's investment in the facility exceeds three million dollars or, if less, three-hundred percent of the investment in the previously held facility by the taxpayer or related taxpayer. (See paragraph (l)(2) below for computation of qualifying employees.)
- (j) Expansion facility. If a facility which is not a new business facility is expanded by the taxpayer, the expansion shall be a new business facility if the expansion otherwise meets the definition of a new business facility, and:
 - (1) The taxpayer's investment in the expansion exceeds one million dollars or, if less, one hundred percent of its investment in the original facility prior to expansion, or
 - (2) The expansion results in the employment of ten or more new business facility employees over and above the average number of employees employed in the enterprise zone by the taxpayer during the twelve months immediately prior to the expansion. This paragraph (2) is effective as of June 7, 1989.
 - (3) Example of the provisions of paragraph (2). The following chart reflects the employment record of the Hometown Department Store:

	Net Increase in Employees	Number of Employees	Average Number of Employees during prior 12-Month Period	Excess
May 31, 1990	2	31	22.75	8.25
June 30, 1990	1	32	23.917	8.083
July 31, 1990	2	34	25.083	8.917
Aug. 31, 1990	2	36	26.333	9.667
Sept. 30, 1990	1	37	27.667	9.333
Oct. 31, 1990	2	39	29	10.00

This company would become an expansion new business facility in October 1990. This example was made by starting with ten employees in June of 1988 and increasing the number of employees by 5% a month (rounded to the nearest employee). This example shows that it is not necessary to hire 10 employees in one month to qualify as an

expansion business facility. The 10 employees that qualified the business in this example were hired over a six month period.

- (4) The investment in the original facility shall be the total investment in the facility not reduced by depreciation, and not including inventory, as of the close of business of the day preceding the designation of the enterprise zone. The investment in the expansion shall be the total investment in the expansion not reduced by depreciation, and not including inventory, beginning with the date of designation of the enterprise zone.
 - (5) Beginning with taxable years beginning on or after January 1, 1996, an expansion facility may be created by a 10% increase in the number of persons employed at a facility over and above the average number of persons employed at the facility on the last day of the 12 months preceding the 10% increase if such 10% increase amounts to at least one full-time employee.
- (k) Commencement of commercial operations defined. Commencement of commercial operations shall be deemed to occur during the first taxable year for which the new business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue-producing enterprise in which the taxpayer intended to use the new business facility.
- (l) New business facility employee defined.
- (1) New business facility employee means a person employed by the taxpayer in the operation of a new business facility. A person shall be deemed to be so engaged if he performs duties in connection with the operation of the new business facility on: a regular full-time basis; a part-time basis if such person is customarily performing such duties at least twenty hours per week throughout the taxable year; or a seasonal basis if such person performs such duties for substantially all of the season customary for the position in which such person is employed.
 - (2) In the case of a facility which qualifies as a new business facility because of the investment by a taxpayer of \$3,000,000 in the facility or at least 300% of his investment in a previously held facility, the number of qualifying enterprise zone new business facility employees shall be reduced by the average number of individuals employed in the operation of the facility which the new business facility replaces during the three taxable years preceding the taxable year in which commencement of commercial operations occur at such new business facility.
 - (3) In the case of a facility which qualifies as an expansion facility, the number of qualifying enterprise zone new business facility employees shall be reduced by the average number of individuals employed in the operation of the facility during the twelve months immediately prior to the expansion.
- (m) Related taxpayer defined.
- (1) Related taxpayer means a corporation, partnership, limited liability company, trust, or association controlled by the taxpayer; an individual, corporation, limited liability company, partnership, trust, or association under the control of the taxpayer; or a corporation, limited liability company, partnership, trust or association controlled by an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer.
 - (2) Control of a corporation means ownership, directly or indirectly, of stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and at least eighty percent of all other classes of stock of the corporation. Control of

a partnership, limited liability company, or association means ownership of at least eighty percent of the capital or profits interest in such partnership, limited liability company, or association; and control of a trust means ownership, directly or indirectly, of at least eighty percent of the beneficial interest in the principal or income of such trust.

- (n) Revenue-producing enterprise defined. Revenue-producing enterprise means:
- (1) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral, or manufactured product;
 - (2) The storage, warehousing, distribution, or sale of any products of agriculture, mining, or manufacturing;
 - (3) The feeding of livestock at a feedlot;
 - (4) The operation of laboratories or other facilities of scientific, agricultural, animal husbandry, or industrial research, development, or testing;
 - (5) The performance of services of any type;
 - (6) The administrative management of any of the activities listed in paragraphs (1) through (5); or
 - (7) Any combination of any of the activities referred to in paragraph (6).
- (o) Same or substantially identical revenue-producing enterprise defined. Same or substantially identical revenue-producing enterprise means a revenue-producing enterprise in which the products produced or sold, the services performed, or the activities conducted are the same in character and use and are produced, sold, performed, or conducted in the same manner and to or for the same types of customers as the products, services, or activities produced, sold, performed, or conducted in another revenue-producing enterprise.
- (p) Pass-through entities. Enterprise zone new business facility employee credits can be passed through to partners, shareholders or members of a pass-through entity in any ratio agreed upon by the partners, shareholders or members.
- (q) Leased employees. Leased employees hired prior to August 3, 2007 do not qualify for enterprise zone new business facility employee credits for the company leasing the employees. Leased employees hired on or after August 3, 2007 qualify for enterprise zone new business facility employee credits for the company leasing the employees if either the lessee or lessor of the employees withholds social security, medicare and income taxes under either of their own federal and state taxpayer identification numbers. In the case of qualifying leased employees, only the lessee may claim the new business facility employee credit.