

Regulation 39-22-507.6. The "new" Colorado investment credit.

(1) The investment tax credit allowed by section 39-22-507.6, C.R.S. is designated the "new" Colorado investment tax credit. Such credit is allowed for tax years beginning on or after January 1, 1988, and was enacted as a partial replacement for the "regular percentage" investment tax credit flow-through from the federal investment credit which was allowed under section 39-22-507.5, C.R.S., but which ceased to exist when the federal credit was repealed. (The 39-22-507.5 allowable credit was 10% of the allowable federal credit.) Only C corporations may claim the "new" investment credit.

(2) The "new" investment tax credit is limited to \$1,000 per tax year reduced by any "old" investment tax credit claimed for the same tax year. Excess tax credits may be carried forward for up to three tax years. The "new" investment tax credit has no recapture provisions. Within such limitations, the "new" investment tax credit is 1% of the qualifying investment in pre-1990 "Section 38 property" (disregarding the termination provisions of Internal Revenue Code Section 49 as such section existed prior to the enactment of the federal Revenue Reconciliation Act of 1990) to the extent such property qualified for the federal "regular percentage" investment tax credit and to the extent such property is used in Colorado.

(3) Qualified investment in Section 38 property.

(i) For new Section 38 property subject to Internal Revenue Code Section 168 (Accelerated Cost Recovery System) the amount of qualified investment is 100% of basis of property other than three-year property and 60% of the basis for three-year property. For used Section 38 property subject to Code Section 168, the amount of qualified investment is 100% of cost for property other than three-year property and 60% of cost for three-year property. For used property, cost is limited to a maximum of \$150,000.

(ii) For Section 38 property not subject to Code Section 168, the basis or cost (up to \$150,000 for the cost of used property) that qualifies is limited if the property has a useful life of less than seven years. Only 66 2/3% of the basis or cost qualifies if the useful life is at least five but less than seven years. Only 33 1/3% qualifies where the useful life is at least three but less than five years. No credit is allowed if the useful life is less than three years.

(iii) A controlled corporate group must apportion the \$150,000 limitations on the cost of used property among its members.

(iv) No investment tax credit is allowed to the purchaser of used property if the property is used by a person who used it before the purchase or by a related person. This would include a leaseback of used property or a purchase of leased property by the lessee.

(v) No investment tax credit is allowed for Section 38 property to the extent such property is financed with nonqualified nonrecourse financing. This limitation applies to

certain closely held corporations engaged in business activities that are subject to the loss limitation at-risk rules of Internal Revenue Code Section 465.

(4) **"Section 38 property."**

(i) The "new" investment tax credit is available only for expenditures in Section 38 property. Section 38 property means Section 38 property as defined in Section 48 of the Internal Revenue Code as said Section 48 existed prior to the enactment of the federal Revenue Reconciliation Act of 1990.

(ii) Section 38 property is either property subject to Internal Revenue Code Section 168 (Accelerated Cost Recovery System) or other depreciable or amortizable property having a useful life of three years or more that is: (A) tangible personal property (other than air conditioning units, heating units, and certain boilers fueled by petroleum or petroleum products and failing to meet special qualifications; (B) other tangible property (not including a building or its components) used as an integral part of (I) manufacturing, (II) extraction, (III) production or (IV) furnishing of transportation, communications, electrical energy, gas, water, or sewage disposal services; (C) elevators and escalators; (D) research facilities and facilities for the bulk storage of fungible commodities (including liquids or gases) used in connection with the activities in (B)(I) through (IV); (E) single purpose agricultural or horticultural structures; (F) in the case of qualified timber property (within the meaning of Internal Revenue Code Section 194(c)(1)), that portion of the basis of such property constituting the amortizable basis acquired during the taxable year (other than that portion of such amortizable basis attributable to property which otherwise qualifies as (pre-1991) Internal Revenue Code Section 38 property) and taken into account under Internal Revenue Code Section 194 (after application of Internal Revenue Code Section 194(b)(1); or (G) a storage facility (not including a building and its structural components) used in connection with the distribution of petroleum or any primary product of petroleum. Both new property, including property reconstructed by a taxpayer (but only to the extent of the basis that is attributable to the reconstruction), and used property qualify for the credit.

(iii) Property used predominantly to furnish lodging (or in connection with furnishing it) is not Section 38 property except in the case of (A) a hotel or motel furnishing accommodations predominantly to transients and (B) coin-operated vending machines, washing machines and dryers in lodging facilities. Also nonlodging commercial facilities, such as tangible personal property in a drug store or restaurant situated in an apartment building or hotel, can qualify as Section 38 property if they are available to persons not using the lodging facilities.

(iv) Livestock (not including horses) qualify for the investment credit. However, if within a one-year period starting six months before the date of acquisition, substantially identical livestock is disposed of without any federal investment credit recapture, the credit will be allowed only on the excess of the cost of the acquired livestock over the amount realized on the disposition. The age and sex of the livestock and the use to which the livestock is put determine whether the livestock disposed of is substantially identical.

(v) In the case of pollution control facilities, if the property has a useful life or recovery period of at least five years and the taxpayer elects to amortize under the 60-month rule of Internal Revenue Code Section 169, 100% of its amortizable basis qualifies for the investment credit. If the facility is financed by federally tax exempt industrial development bond proceeds, the applicable percentage is only 50% of the rapidly amortized basis.

(5) Leased property.

(i) The owner may elect to pass on the "new" investment credit to a C corporation lessee if the leased property is new Section 38 property and is qualifying property both to the owner and to the lessee. A lessor cannot pass on the credit for used property to the lessee. The credit to the lessee is computed on the fair market value of the property except where the property is leased by a corporation that is a member of a controlled corporate group to another member of the same group. In the latter event, the lessee takes the owner's basis as the basis for computing the investment credit.

(ii) Where new Section 38 property with an asset depreciation range (ADR) class life of more than 14 years is leased (not a net lease) for a period which is shorter than 80% of its class life, the lessor may pass through to the C corporation lessee only that portion of the credit which the lease period is of the class life of the property.

(iii) When a tax exempt entity sells depreciable property to pass the tax benefits to the new owners and then leases back the property, the "new" investment tax credit will be denied for the property.