



**COLORADO**  
Department of Revenue  
Taxation Division

Physical Address:  
Office of Tax Policy Analysis  
1375 Sherman Street, Room 607  
Denver, CO 80203

Mailing Address:  
Office of Tax Policy Analysis, Room 607  
P.O. Box 17087  
Denver, CO 80217-0087

PLR 19-001

March 15, 2019

XXXXXXXXXX  
Attn: XXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Re: Transferable Tax Credit Program

Dear XXXXXX,

You submitted a request for a private letter ruling on behalf of your client, XXXXXX (“Company”), to the Colorado Department of Revenue (“Department”) pursuant to Department Rule 24-35-103.5. This letter is the Department’s private letter ruling. This ruling is binding on the Department to the extent set forth in Department Rule 1 CCR 201-1, 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

**Issues**

Company has been precertified to treat certain income tax credits as transferable tax credits, pursuant to § 24-46-104.3, C.R.S. Company requests Department guidance on the following issues:

1. When are Enterprise Zone Investment tax credits and Job Growth Incentive tax credits allowed?
2. Does Company and its transferees or assignees retain the Enterprise Zone Investment tax credit carryforward period of 14 years and Job Growth Incentive tax credit carryforward period of 10 years?
3. Can the transferees or assignees use Company’s approved advanced waiver to claim Enterprise Zone Investment tax credits in excess of the limitation in § 39-30-104(2)(c)(I), C.R.S., for any tax year?
4. Section 24-46-104.3(3), C.R.S., requires Company to obtain an audit opinion from an independent certified public accountant attesting that the income tax credits have been

properly calculated. Will the Department accept this opinion and forego audit of the income tax credits after transferring or assigning the income tax credits?

### **Conclusions**

1. The Enterprise Zone Investment tax credit and Job Growth Incentive tax credit are allowed when all of the qualifications provided under §§ 39-30-104 and 39-22-531, C.R.S., respectively, are met. Because Company did not request that we apply the statute to a particular set of facts, we are unable to provide a ruling as to whether or when Company will qualify for these credits.
2. Company retains the statutory carryforward period for each credit allowed until an election to treat the credits differently (“election”) is made under § 24-46-104.3, C.R.S. Transferees or assignees do not retain the same carryforward periods as Company.
3. The transferees or assignees may use Company’s approved advanced waiver to claim Enterprise Zone Investment tax credits in excess of the limitation in § 39-30-104(2)(c)(I), C.R.S., to the extent allowed by the Economic Development Commission (“EDC”) pursuant to a waiver under § 39-30-104(2)(c)(II)(A), C.R.S.
4. Under § 24-46-104.3(3), C.R.S., the EDC certifies the validity and amount of the tax credit in its certification process and reports the amount of the certified tax credit to the Department. The Department will accept the EDC’s certification of value for purposes of auditing a taxpayer’s return, but retains all other authority to audit a return.

### **Background**

In 2017, the Colorado General Assembly enacted provisions allowing businesses to elect to treat certain income tax credits<sup>1</sup> differently under certain conditions.<sup>2</sup> These provisions are administered by the EDC through the Office of Economic Development and International Trade (“OEDIT”). The statute provides:

The business shall notify the commission when the business has met the requirements of one or more of the income tax credits in the period, shall provide the commission with verifiable evidence that the strategic capital investment was made, and shall submit an audit opinion from an independent certified public accountant attesting that the income tax credit or income tax credits have been properly calculated. If the commission agrees that the business has satisfied the terms of the precertification, then the office shall notify

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<sup>1</sup> Credits eligible for the Program are the Enterprise Zone Investment tax credit, Enterprise Zone New Employee credit, the Enterprise Zone Research and Development tax credit, and the Job Growth Incentive tax credit. See § 24-46-104.3(1)(e), C.R.S.

<sup>2</sup> 2017 Colo. Sess. Laws 969.

the department in writing of the different treatment of the business' income tax credits for the business' period.<sup>3</sup>

Company is considering a project in a Colorado Enterprise Zone. Company anticipates that it will be eligible for Enterprise Zone Investment tax credits and Job Growth Incentive tax credits as a result of the project. Company has applied to, and been precertified by, the EDC to treat its income tax credits differently as provided under § 24-46-104.3, C.R.S.

### Discussion

As a preliminary matter, the Department's authority to issue binding private letter rulings extends to statutory provisions administered and enforced by the Department under Titles 29 and 39, C.R.S.<sup>4</sup> Although the election under § 24-46-104.3, C.R.S., affects a tax administered by the Department under Title 39, the election itself, and the approval process for that election, is administered by the EDC and OEDIT. The EDC and OEDIT are responsible for, among other things, notifying the Department when a taxpayer makes an election,<sup>5</sup> and tracking and certifying the ownership and amount of income tax credits.<sup>6</sup> The Department lacks statutory authority to bind the EDC or OEDIT regarding their exercise of statutory authority.

1. The Enterprise Zone Investment tax credit and Job Growth Incentive tax credit are allowed when all of the qualifications in §§ 39-30-104 and 39-22-531, C.R.S., respectively, are met. Because Company did not request that we apply the statute to a particular set of facts, we are unable to provide a ruling as to whether or when Company will qualify for these credits.

We interpret the term "allowed" in your request to refer to the conditions under which Company may validly claim the credits provided under §§ 39-30-104 and 39-22-531, C.R.S., against its income tax liability. Income tax credits eligible for different treatment under § 24-46-104.3, C.R.S., function as the credits' authorizing statutes dictate until an election is made. The credits are subject to specific statutory requirements and criteria, and cannot be claimed as a credit against Company's income tax until those requirements and criteria are met. Generally, OEDIT and/or the EDC (and not the Department) are responsible for determining when those requirements and criteria are met for the Job Growth Incentive tax credit and issuing a certificate authorizing the taxpayer to claim the credit and in what amount. For Enterprise Zone Investment tax credits, an enterprise zone administrator issues a certificate to the taxpayer certifying that the taxpayer is operating in an Enterprise Zone. A taxpayer may claim the credit(s) by filing their income tax return, and including the appropriate credit certificate(s). Furthermore, because Company did not request that we apply the statute to a particular set of

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<sup>3</sup> § 24-46-104.3(3), C.R.S.

<sup>4</sup> § 24-35-103.5(1)(b), C.R.S.

<sup>5</sup> § 24-46-104.3(3), C.R.S.

<sup>6</sup> § 24-46-104.3(4)(f), C.R.S.

facts, we are unable to provide a ruling as to whether or when Company will qualify for these credits.

2. Company retains the statutory carryforward period for each credit allowed, until an election is made. Transferees or assignees do not retain the same carryforward periods as Company.

Prior to making an election under § 24-46-104.3, C.R.S., credits earned in the program function as their statute dictates. Enterprise Zone Investment credits that are unused in any tax year may be carried forward to subsequent tax years for up to fourteen years.<sup>7</sup> Job Growth Incentive tax credits that are unused in any tax year may be carried forward to subsequent tax years for up to ten years.<sup>8</sup>

Once Company makes an election, and the EDC certifies some or all of the tax credits for which the election is made, the treatment of the credits is then governed by § 24-26-104.3(2)(a)(I), C.R.S., and the carryforward periods available under each credit's authorizing statute are no longer applicable.<sup>9</sup> Transferees or assignees are allowed a more limited carryforward period of three income tax years following the date of transfer of the transferable tax credits from Company to the first transferee.<sup>10</sup>

3. The transferees or assignees may use Company's approved advanced waiver to claim Enterprise Zone Investment tax credits in excess of the limitation in § 39-30-104(2)(c)(I), C.R.S., to the extent allowed pursuant to a waiver issued by the EDC under § 39-30-104(2)(c)(II)(A), C.R.S.

The amount of Enterprise Zone Investment tax credits a taxpayer may claim in a year are limited to:

- (A) The sum of up to five thousand dollars of the taxpayer's actual tax liability for the income tax year plus fifty percent of any portion of the tax liability for the income tax year that exceeds five thousand dollars; or
- (B) Seven hundred fifty thousand dollars plus any investment tax credit carryovers allowed in subsection (2.5) of this section.<sup>11</sup>

Taxpayers may seek a waiver of this limitation through application to the EDC.<sup>12</sup> The EDC, not the Department, has the statutory authority to issue these waivers. Such waivers issued to a

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<sup>7</sup> § 39-30-104(2)(c)(III)(A), C.R.S.

<sup>8</sup> § 39-22-531(6), C.R.S.

<sup>9</sup> § 24-46-104.3(2)(a)(I), C.R.S. Excess credit allowed under a waiver pursuant to § 39-30-104(2)(c)(I), C.R.S., may be carried forward up to fourteen years. § 39-30-104(2)(c)(III)(A), C.R.S.

<sup>10</sup> § 24-46-104.3(4)(b), C.R.S.

<sup>11</sup> § 39-30-104(2)(c)(I), C.R.S.

<sup>12</sup> § 39-30-104(2)(c)(II)(A), C.R.S.

company certified to participate in the transferable tax credit program extend to transferees that receive the credit.<sup>13</sup>

4. The Department will accept the EDC's certification of value issued pursuant to § 24-46-104.3(2)(a)(I), C.R.S., for purposes of auditing a taxpayer's return, but retains all other authority to audit a return.

Section 24-46-104.3(3), C.R.S., requires, among other things, that the Company "submit an audit opinion from an independent certified public accountant attesting that the income tax credit or income tax credits have been properly calculated." The EDC relies on this opinion, as well as any other information and considerations set forth in the statute, to determine whether to certify tax credits for different treatment under § 24-26-104.3, C.R.S., and in what amount. For purposes of the Department's audit of a tax return in which a tax credit certified by the EDC pursuant to §24-26-104.3, C.R.S., is claimed, the Department will accept the EDC's certification of compliance with that section including the value of the credit. Except as so limited, the Department retains all other authority to audit returns submitted to the Department.

#### **Miscellaneous**

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts and that all representations are true and complete. The Department reserves the right, among others, to independently evaluate Company's representations and assumptions. The ruling is null and void if any such assumption and representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter. Please notify XXXXXXXX in writing within that 60 day period if you have any suggestions or concerns about this redacted version of the ruling. If you have any other questions regarding this ruling, please contact XXXXXXXX at XXXXXXXX or XXXXXXXX@state.co.us.

Sincerely,

Colorado Department of Revenue  
Office of Tax Policy Analysis

**This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.**

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<sup>13</sup> § 24-46-104.3(4)(c), C.R.S.