



FYI Income 24

Vacant Commercial Building Rehabilitation Credit for Enterprise Zones

The owner or tenant of a building in an enterprise zone that is at least 20 years old and that has been completely vacant for at least two years can claim a tax credit of 25% of the cost of rehabilitating such building for commercial use. The credit is limited to \$50,000 per building. [§39-30-105.6, C.R.S.]

This tax credit is intended to encourage building owners and tenants in enterprise zones to put these buildings back into use. A taxpayer must submit the Certification of Qualified Nature of Enterprise Zone Rehabilitation Expenditures (DR 0076) from the Enterprise Zone administrator and documentation of the qualified expenditure. However, any taxpayer who claims the historic preservation credit or is allowed a credit for costs incurred in the rehabilitation of property through the provisions of section 38 of the Internal Revenue Code of 1986, as amended, shall not be allowed to claim the tax credit for rehabilitation of vacant buildings in an enterprise zone. The taxpayer is allowed to claim the enterprise zone investment tax credit for such rehabilitation.

If the amount of the credit exceeds the amount of income taxes owed by the taxpayer, the remaining credit which is not claimed in a tax year may be carried forward up to five years. The credit must be applied to the earliest income tax year possible.

PRECERTIFYING THE CREDIT

For any credit generated on or after January 1, 2012, most enterprise zone credits must be precertified by the zone administrator prior to any business activity that would generate the enterprise zone credit. This includes the rehabilitation of vacant commercial buildings credit. [§39-30-103(7), C.R.S.]

Precertification must be applied for online at www.advancecolorado.com/ez or by submitting the DR 0076 certification form to the zone administrator. Precertification is effective from the date approved/signed by the zone administrator until the close of the tax year indicated in the application. Any credit not precertified cannot be claimed on a tax return.

QUALIFIED REHABILITATION EXPENDITURES

"Qualified expenditures" are expenditures associated with any exterior improvements, structural improvements, mechanical improvements, or electrical improvements necessary to rehabilitate a building for commercial use.

Qualified expenditures include but shall not be limited to: expenditures associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, sprinkler systems installed for fire protection purposes, roofing and flashing, exterior repair, cleaning, tuckpointing, and cleanup.

Qualified expenditures **do not include**: expenditures commonly referred to as soft costs, which include but are not limited to costs associated with appraisals; architectural, engineering, and interior design fees; legal, accounting, and realtor fees; loan fees; sales and marketing; closing; building permit, use and inspection fees; bids; insurance; project signs and phones; temporary power; bid bonds; copying; and rent loss during construction. Qualified expenditures also do not include: costs associated with acquisition; interior furnishings; new additions except as may be required to comply with building and safety codes; total demolition followed by new construction; excavation; grading; paving; landscaping; and repairs to outbuildings. [§39-20-105.6 (4), C.R.S.]

CALCULATING THE CREDIT

For example, Mr. Harrison owns an apartment building which has been vacant for three years. The building is 22 years old. During 2010, Mr. Harrison invests \$450,000 in repairing ceilings, fixtures, doors, windows and the roof. Of that amount, Harrison spent \$50,000 on engineering. Since engineering costs do not qualify for the rehabilitation credit, only \$400,000 will be used to calculate the credit.

Total qualified rehabilitation expenditures	\$400,000
25% of qualified expenditures	\$100,000
Credit allowed	\$50,000

Since the credit for rehabilitation of vacant commercial buildings is limited to \$50,000 per building, Mr. Harrison may take a credit of only \$50,000. Mr. Harrison's 2010 income tax liability is \$10,000. He may carryforward the remaining \$40,000 credit for as much as five years.

BUILDING REQUIREMENTS

“Building” means any structure built for permanent use as a house, factory, etc., which is valued separately for general property tax purposes. A structure that has been subdivided into multiple ownership units, such as office condominiums, is still considered one building unless the subdivision occurred more than twenty years ago. A single business entity consisting of related structures on the same site, such as an old motor court, that is valued as one unit for property tax purposes will be considered one building. The determination of what constitutes a building is integral in determining the applicability of the \$50,000 limitation on the credit.

“Commercial Building” means any building that produces income.

In order to qualify for the credit, a building must be completely vacant for two years prior to the commencement of remodeling. Any use during the two-year period will disqualify the building from qualifying for the credit. This includes limited uses such as storage, warehouse, or use of only a small part of the building. It also includes part time uses such as a haunted house or rental for a weekend trade show. Use of the yard outside of a building will not affect the vacant status of the building itself.

CLAIMING THE CREDIT

Electronic Certification Process

The enterprise zone certification is now available online at www.advancecolorado.com/ez and taxpayers are encouraged to use this new system, which is more accurate and secure than the paper certification process. This online system will be used for both the precertification process and the final certification of the tax credits.

Electronic Notification

For tax years beginning on or after January 1, 2012, the Office of Economic Development and International Trade (OEDIT) will electronically notify the Department of Revenue of any credits generated in 2012 or later. Enterprise Zone credits cannot be claimed on a tax return filed prior to this notification. The Department of Revenue will post notification on its Web site in the Income Tax Index when the information is available and returns can be filed to claim these credits, which should occur no later than March 31.

The department strongly recommends that taxpayers use the online certification process to ensure that the credit data is accurately and timely transmitted to the Department of Revenue. This is particularly important for pass-through entities that must provide the name, ID number and the amount of the distributed credit of each partner/shareholder/member of the entity. Failure to accurately provide this information will result in the tax credit being denied until the information is corrected with the Enterprise Zone administrator.

Electronic Filing Required

For tax years beginning on or after January 1, 2012, any Colorado original or amended income tax return that claims an enterprise zone credit **must be filed electronically**. The return must also include the EZ Carryforward Schedule (DR 1366) for all enterprise zone credits. If your e-file software does not support the DR 1366, you may electronically submit the DR 1366 through Revenue Online using the E-Filer Attachment option.

Taxpayers who are unable to file electronically must request a hardship waiver by calling (303) 238-7378. The waiver must be requested before a paper return is submitted. Failure to include form DR 1366 may result in the enterprise zone credits being denied. [39-30-111, C.R.S.]

COMMON QUESTIONS

How is commercial use defined on a mixed-use project where the ground floor is developed for retail and the upper floor for residential use?

Only the costs directly associated with the commercial portion of the project would qualify for the tax credit.

Is there a minimum length of time that a rehabilitated building must remain in commercial use to qualify for the credit?

There is no time limit that the building must be used commercially. However, if the commercial use is too short, an argument may be made that the building wasn't truly renovated for commercial use and the credit would be disallowed.

How do I determine if I am located in an enterprise zone?

Go to www.advancecolorado.com/ezadministrators for a list of enterprise zones and the contact information.

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.