

# ***FYI – For Your Information***

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## ***Enterprise Zone New Business Facility Employee Credits***

This FYI contains information on the three "new business facility" employee credits available to qualified businesses located in an enterprise zone. They are:

- The new business facility employee credit.
- The new business facility agricultural processing employee credit.
- The employer-sponsored health insurance credit.

See FYI General 6, "General Information About Colorado Enterprise Zones" for information about other enterprise zone credits.

### ***THE NEW BUSINESS FACILITY EMPLOYEE CREDIT***

Any taxpayer who establishes a new business facility in an enterprise zone can claim an income tax credit 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. [39-30-105 C.R.S.]

For tax years beginning on or after January 1, 1993, the excess credit is not refundable but may be carried forward for a period of up to 5 years.

**Example 1:** The Brown Corporation, a calendar year income taxpayer, established a new business facility in an enterprise zone on March 18, 1999. 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 1999 was 15 (180 divided by 12). The basic enterprise zone new business facility employee credit the Brown Corporation may claim for 1999 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 2000 were 43, the allowable 2000 credit would be: increase in average number of new business facility employees [28 (43-15)] times \$41.67 times 12, 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, 2001 would be: average number of employees 60 (assumed) minus 43 equals 17 multiplied by \$41.67 times 10 equals \$7,084.



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**THE NEW BUSINESS FACILITY  
AGRICULTURAL PROCESSING  
EMPLOYEE CREDIT**

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 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. [39-30-105 (3) C.R.S.]

The enterprise zone new business facility agricultural processing employee credit is available only to businesses 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 change their form do not qualify. Businesses that package and ship commodities as well as restaurants or food retailers do not qualify for this credit.

For tax years beginning on or after January 1, 1993, the excess credit is not refundable but may be carried forward for a period of up to 5 years.

The base number of persons employed at a facility is the average number of persons employed at the facility on the last day of the 12 months preceding the month in which the expansion takes place. The base number of employees shall be assigned to the old facility and shall not qualify for the employee credit. Any increase in the number of employees in excess of the base number of employees shall be new business facility expansion.

*Can an existing agricultural processing business claim this credit for adding employees?*

An agricultural processing new business facility employee is a type of new business facility employee. Therefore, all of the rules regarding qualification of new business facility employees in general also apply to agricultural processing new business facility employees.

*Is this credit in addition to the basic new business facility employee tax credit?*

Yes. A qualifying agricultural processing business in an enterprise zone may claim a total credit of \$1,000 per new business facility employee.

**THE EMPLOYER SPONSORED  
HEALTH INSURANCE CREDIT**

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, the program must be reduced to writing and it must be legally enforceable against the taxpayer. [39-30-105 (1)(b) C.R.S.]

For tax years beginning on or after January 1, 1996, the excess credit is not refundable but may be carried forward for a period of up to 5 years.

If the same taxpayer opens a separate new business facility in the zone, the separate facility would have its own two-year health insurance qualifying period.

In the case of an existing facility that qualifies as a new business facility due to expansion, the health insurance credit can be claimed for the first two full income tax years they operate in the enterprise zone as a new business facility. However, the credit is only available for the new business facility employees as computed for an expansion facility. The employees employed at the facility prior to expansion will not qualify for the insurance credit.

Example 1: The Lincoln Corporation, a calendar year taxpayer, established a new business facility in a Colorado enterprise zone on September 1, 1999. The Lincoln Corporation paid the entire cost of a health maintenance plan for its employees. The average number of covered employees during 2000 was 41 and during 2001 it was 62.5. The allowable credits, limited to the corporation's tax liability

for such years, are \$8,200 for 2000 and \$12,500 for 2001. No credit would be allowed for 1999 or 2002.

*Is this credit in addition to the basic new business facility employee tax credit?*

Yes. A qualifying business is an enterprise zone may claim a total credit of \$700 (\$1,200 for agricultural processing businesses) per new business facility employee covered under employer-sponsored health insurance.

### **WHAT QUALIFIES AS A NEW BUSINESS FACILITY?**

A new business facility is a newly acquired, constructed or leased facility used by the taxpayer to operate a revenue-producing enterprise. This includes any factory, mill, plant, refinery, warehouse, feedlot, building or complex of buildings, including land, buildings, machinery and equipment located at the facility and used in connection with the operation of the facility. [§39-22-508.2 (2)(a) C.R.S.] However, an existing business facility can qualify as a "new business facility" if it expands to create a qualified replacement facility or a qualified expansion facility.

#### **Qualified Replacement Facility**

A replacement business facility is a facility located in an enterprise zone that replaces an old facility located in Colorado but only if the taxpayer (or related taxpayer) operated the old facility for more than three full tax years of the five tax years immediately preceding the opening of the new facility. The taxpayer must continue operation of the same or a substantially identical revenue-producing enterprise at the newly acquired facility. [§39-22-508.2 (8) (a) C.R.S.] Generally, replacement business facilities do not qualify for the new business facility employee credits. An exception is a "qualified replacement facility."

A "qualified replacement facility" is a replacement business facility located in an enterprise zone in which the taxpayer's investment exceeds \$3 million or, if less, 300 percent of the investment in the old facility. [§39-22-508.2 (b) C.R.S.]

**Example 1:** Mr. Mason operated a restaurant from January 1, of 1984 until October 15, of 1998 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, 1996 to October 18, 1999 when she lost her lease and went out of business. She opened a new pet grooming business in an enterprise zone on March 11, 2000. 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 2000.

#### **Qualified Expansion Facility**

An expansion of an existing nonqualified facility may qualify as a new business facility. The expansion may be either by new investment or by an increase in the number of persons employed at the facility.

*Expansion by investment.* 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 the taxpayer's investment in the expansion exceeds \$1,000,000 or, if less, 100% of its investment in the original facility prior to expansion. 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. [§39-22-508.2 (2)(b)(I)(A) C.R.S.]

*Expansion by number of employees.* An expansion facility can be created by 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. [39-22-508.2 (2)(c)(I) C.R.S.]

**Example:** The following chart reflects the employment record of the Hometown Department Store:

	<u>Net Increase in Employees</u>	<u>Number of Employees</u>	<u>Average # of Employees During Prior 12 Mo. Period</u>	<u>Excess</u>
May 31, 1999	2	31	22.75	8.25
June 30, 1999	1	32	23.917	8.083
July 31, 1999	2	34	25.083	8.917
Aug. 31, 1999	2	36	26.333	9.667
Sept. 30, 1999	1	37	27.667	9.333
Oct. 31, 1999	2	39	29.0	10.0

This company would become an expansion new business facility in October, 1999. This example was made by started with 10 employees in June of 1997 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 new employees in one month to qualify as an expansion facility. The 10 employees that qualified the business in this example were hired over a six-month period.

*10% expansion in number of employees.* For tax years beginning on or after January 1, 1996, a 10% increase in the number of employees (such increase must be at least one full-time employee) at a facility over and above the average number of persons employed at the facility by the taxpayer for the preceding twelve months will constitute an expansion facility.

**Example:** The following chart reflects the employment record of the Widget Mfg. Company.

	<u>Net Increase in Employees</u>	<u>Number of Employees</u>	<u>Average # of Employees During Prior 12 Mo. Period</u>	<u>Excess</u>	<u>Percentage Increase</u>
June 30, 1998	0	40	40	0	0.0%
July 31, 1998	1	41	40	1	2.5%
August 31, 1998	1	42	40.083	1.917	4.8%
September 30, 1998	1	43	40.25	2.75	6.5%
October 31, 1998	2	45	40.5	4.5	11.1%
November 30, 1998	2	47	N/A	6.5	N/A
December 31, 1998	1	48	N/A	7.5	N/A

Effective in October 1998, due to the 10% expansion of employees, the company's location becomes a new business facility. To compute the new business facility employee credit for 1998, take the average number of new business facility employees for the year in excess of the base number of employees (40.5) for the prior 12 month period. The qualifying new business employees are counted as follows: Jan-Sept (0), Oct. (4.5), Nov. (6.5), and Dec. (7.5). The average for the year is 18.5/12, or 1.54. The credit for 1998 is computed by multiplying the average number of new business facility employees by the credit rate (1.54 times \$500), or \$770. Assuming that the company averages 52 employees for all of 1999, the 1999 credit would be computed by taking the 9.96 increase in average employees for 1991 (52 minus 42.04) times \$500, or 4,980.

### ***Purchase of an existing business facility***

If a business that is not yet qualified as a new business facility is purchased or leased and the business continues the same or substantially identical-revenue producing enterprise at such facility, then there is no "new business facility" as there is no "new business." However, if a business is shut down for reasons other than the sale of the business and a new owner revives the business, there is a new business facility as there is not a continuation of the old business.

### ***Moving, expanding or selling a new business facility***

In general, once a business facility qualifies as a "new business facility" it never loses that classification.

1. If a new business facility moves from one location in an enterprise zone to another location in the same or a different zone, it will not be considered to be a qualified replacement facility and cannot requalify as a new business facility in order to claim additional employee credits.
2. If a new business facility expands, even if it meets the qualified expansion criteria listed above, it will not requalify as a new business facility in order to claim additional employee credits.
3. If a new business facility is sold and the business continues to operate the same or substantially identical business, it will not requalify as a new business facility in order to claim additional employee credits.

In all of these situations, the moved/expanded/sold business continues to be a new business facility and, except to the extent it adds additional employees over its previous base, cannot claim employee credits as if it had just qualified as a new business facility.

### ***Leased Facilities***

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.

### ***NEW BUSINESS FACILITY EMPLOYEE***

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.

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.

Leased employees or employees from a temporary service do not qualify as new business facility employees.

*Truck Drivers:* For taxable 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. [39-30-105 (1)(a)(I) C.R.S.]

### ***Computing the number of new business facility employees***

The number of new business employees at a new business facility during a year is the average of the number of new business employees at the end of each month during the tax year.

**Example:** XYZ Company starts a new business facility in March 2000. The number of employees at the end of each month is as follows: Jan-0, Feb-0, March-17, April-20, May-19, June-21, July-21, Aug-30, Sept-26, Oct-26, Nov-31, Dec-32. The number of new business facility employees for 2000 is 20.25 (243/12).

*Qualified replacement facility.* In the case of a qualified replacement facility, the number of qualifying enterprise zone new business facility employees shall not include 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.

*Qualified expansion facility.* In the case of a qualified expansion facility, the number of qualifying enterprise zone new business facility employees shall not include the average number of individuals employed in the operation of the facility during the 12 months preceding the expansion.

### ***DEFINITIONS***

*Related Taxpayer.* Related taxpayer means a corporation, partnership, trust, or association controlled by the taxpayer; an individual, corporation, partnership, trust, or association under the control of the taxpayer; or a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association under the control of the taxpayer.

*Control* of a corporation means the ownership, directly or indirectly, of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of all other classes of stock of the corporation. Control of a partnership or association means ownership of at least 80% of the capital or profits interest in such

partnership or association. Control of a trust means ownership, directly or indirectly, of at least 80% of the beneficial and equitable interest in the principal or income of such trust.

*Revenue-producing enterprise means:*

- The production, assembly, fabrication, manufacturing, or processing of any agricultural, mineral, or manufactured product;
- The storage, warehousing, distribution, or sale of any products of agriculture, mining, or manufacturing;
- The feeding of livestock at a feedlot;
- The operation of laboratories or other facilities of scientific, agricultural, animal husbandry, or industrial research, development, or testing;
- The performance of services of any type;
- The administrative management of any of the activities listed above.

*Same or substantially identical revenue-producing enterprise.* 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.

*Commencement of Commercial Operations.* 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 intends to use the new business facility.

### ***FURTHER INFORMATION***

For more information on related topics, consult the following DOR publications:

- FYI General 1 “Department of Revenue Publications”;
- FYI General 6 “General Information About Colorado Enterprise Zones”;
- FYI General 8 “The FYI Program - Index and General Information”;
- FYI Income 11 “Enterprise Zone Investment Tax Credit”;
- FYI Income 22 “Research and Development Income Tax Credit For Enterprise Zones”;
- FYI Income 23 “Tax Credit for Private Contributions to Enterprise Zone Programs”;
- FYI Income 24 “Tax Credit for the Rehabilitation of Vacant Buildings in an Enterprise Zone”;
- FYI Sales 10 “Sales/Use Tax Exemption for Manufacturing Equipment.”

Single FYIs are free from the Taxpayer Service Division. They may be obtained at any statewide Taxpayer Service Center; or by writing to the Colorado Department of Revenue, 1375 Sherman St., Denver, CO 80261; or by calling the DOR Forms Hotline at (303) 232-2414. Please use the FYI number (General 1, Sales 9) when ordering FYI publications. FYIs and commonly used forms are available on the Web at [www.revenue.state.co.us](http://www.revenue.state.co.us)

More information on Colorado Enterprise Zones is available through the Colorado Office of Economic Development, 1625 Broadway, Suite 1700, Denver, Colorado 80202; (303) 892-3840. Or, see the Web site at [www.state.co.us/gov\\_dir/oed/ezfacts.html](http://www.state.co.us/gov_dir/oed/ezfacts.html)