



## FYI Income 10 Enterprise Zone New Business Facility Employee Credits

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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 in excess of the maximum number employed in any prior tax year. [§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 five years.

For tax years beginning on or after January 1, 2003, an additional \$2,000 credit for each new business facility employee is available to businesses located in an enhanced rural enterprise zone. The enhanced portion of the new business facility employee credit not used to offset tax can be carried forward for a period of up to seven years.

**Example 1:** The Brown Corporation, a calendar year income taxpayer, established a new business facility in an enterprise zone on March 18, 2001. 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
December	41

The average number of new business facility employees during 2001 was 15.33 (184 divided by 12). The basic enterprise zone new business facility employee credit the Brown Corporation may claim for 2001 is: the average number of new business facility employees (15.33) times the credit rate (\$500), or \$7,665.

**Example 2:** If the Brown Corporation's average number of enterprise zone new business facility employees during 2002 were 43.25 the allowable 2002 credit would be: increase in average number of new business facility employees [27.92(43.25-15.33)] times \$500 or \$13,960.

**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, 2003 would be: average number of employees 60 (assumed) minus 43.25 equals 16.75 multiplied by \$500 times 10/12 equals \$6,979.

**Example 4:** Assume the average number of employees of the Brown Corporation decreases in fiscal year ending October 31, 2004 then increases in the subsequent two years. The credit will be computed using the prior highest annual average number of employees as a base year as follows:

Fiscal Year Ending October 31, 2004  
Average number of employees 50  
Increase in number of employees 50-60 = - 10  
Credit available \$0

Fiscal Year Ending  
October 31, 2005  
Average number of employees - 55  
Increase in number of employees 55-60 = - 5  
Credit available \$0

Fiscal Year Ending  
October 31, 2006  
Average number of employees 62  
Increase in number of employees 62-60 = 2  
Credit available \$1,000

#### **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 credit is available for all employees working at the agricultural processing facility, including employees who are not themselves directly engaged in the agricultural processing operation.

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 changing their form does 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 five years.

For tax years beginning on or after January 1, 2003, an additional \$500 credit for each new business facility agricultural processing employee is available to businesses located in an enhanced rural enterprise zone. The enhanced portion of the new business facility employee credit not used to offset tax can be carried forward for a period of up to seven years.

**Example:** TTT Corporation qualifies as an agricultural processing new business facility and is located in an enhanced rural enterprise zone. In 2002, the company's base number of employees for computing employee credits was 23. In 2003, the average number of employees increases to 24.2. The employee credits are computed as follows:

Standard employee credit:  $\$500 \times 1.2 = \$600$   
Enhanced employee credit:  $\$2,000 \times 1.2 = \$2,400$   
Standard agricultural employee credit:  $\$500 \times 1.2 = \$600$   
Enhanced agricultural employee credit:  $\$500 \times 1.2 = \$600$   
*Total 2003 employee credit is \$4,200*

*Agricultural commodity means a commodity resulting from the application of agricultural or horticultural techniques. Insofar as the term refers to products of the soil, it means commodities that are planted and cultivated by man such as grains, forage crops, fruits, vegetables, nuts, sugar crops, fiber crops, tobacco, and nursery products. The term also includes domesticated animals and some of their products such as milk, wool, eggs, and honey. The term does not include commodities produced by industrial techniques, by exploitation of mineral wealth or other natural resources, by uncultivated natural growth, or other natural resources such as timber or wood products and peat moss.*

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

Yes. An agricultural processing new business facility employee is a type of new business facility employee. Therefore, all of the qualifying rules for new business facility employees generally 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 that 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 five 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:** The Lincoln Corporation, a calendar year taxpayer, established a new business facility in a Colorado enterprise zone on September 1, 2003. The Lincoln Corporation paid the entire cost of a health maintenance plan for its employees. The average number of covered employees during 2004 was 41 and during 2005 it was 62.5. The allowable credits, limited to the corporation's tax liability for such years, are \$8,200 for 2004 and \$12,500 for 2005. No credit would be allowed for 2003 or 2006.

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

Yes. A qualifying business in 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. [§39-30-105(7)(c), C.R.S.]

#### **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 closed for reasons other than the sale of the business and a new owner revives the business, it may qualify as 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 re-qualify 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 below, it will not re-qualify 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 re-qualify 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 Facility**

The facility must be used 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.

### **Construction Site**

A construction site does not qualify as a new business facility.

## **HOW AN EXISTING BUSINESS FACILITY CAN BECOME A NEW BUSINESS FACILITY**

An existing business facility that has not previously qualified as a new business facility can qualify as a "new business facility" if it expands to qualify as a "qualified replacement facility" or a "qualified expansion facility."

### **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% of the investment in the old facility. [§39-30-105 (7)(i)(II),C.R.S.]

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.[§39-30-105 (7)(i)(I),C.R.S.] Generally, replacement business facilities do not qualify for the new business facility employee credits. The exception is a "qualified replacement facility."

**Example 1:** Mr. Mason operated a restaurant from January 1, of 1988 until October 15, of 2005 when he closed it down. He opened a new restaurant in an enterprise zone on April 16, 2006. 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, 2002 to October 18, 2005 when she lost her lease and went out of business. She opened a new pet grooming business in an enterprise zone on March 11, 2006. 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 2006.

### **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. [§39-30-105 (7)(c) (II) (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. [§39-30-105 (7)(c)(III)(A),C.R.S.]

**Example:** The following chart reflects the employment record of the Hometown Department Store, which became a new business facility in October 2006. The company started with 10 employees in June 2004 and increased its number of employees 5% a month.

	Net Increase in Employees	Number of Employees	Average Number of Employees During Prior 12 Month Period	Excess
May 31, 2006	2	31	22.75	8.25
June 30, 2006	1	32	23.917	8.083
July 31, 2006	2	34	25.083	8.917
August 31, 2006	2	36	26.333	9.667
September 30, 2006	1	37	27.667	9.333
October 31, 2006	2	39	29.0	10.0

This company would become an expansion new business facility in October, 2006. This example was made by starting with 10 employees in June of 2004 and increasing the number of employees by 5% a month (rounded to the nearest employee). This example illustrates that it is not necessary to hire 10 new employees in one month to qualify as an expansion facility. The 10 qualifying employees 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.

	Net Increase in Employees	Number of Employees	During Prior 12 Month Period Average Number of Employees	Excess	Percentage Increase
June 30, 2006	0	40	40	0	0.0%
July 31, 2006	1	41	40	1	2.5%
August 31, 2006	1	42	40.083	1.917	4.8%
September 30, 2006	1	43	40.25	2.75	6.5%
October 31, 2006	2	45	40.5	4.5	11.1%
November 30, 2006	2	47	N/A	6.5	N/A
December 31, 2006	1	48	N/A	7.5	N/A

Effective in October 2006, 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 2006, 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 2006 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 2007, the 2007 credit is calculated by taking the 9.96 increase in average employees for 2007 (52 minus 42.04) times \$500, or \$4,980.

**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:* Prior to August 3, 2007, leased employees or employees from a temporary service do not qualify as new business facility employees for the company leasing the employees. The lessor company may claim the credit if its office is a new business facility located in an enterprise zone and the leased employees represent net new jobs (as opposed to replacing employees of the company leasing the employees, of replacing employees or another lessor.)

On or after August 3, 2007, the employee leasing company does not qualify for the enterprise zone new business facility employee credit for employees leased to a work-site employer. The leased employees will qualify for the enterprise zone new business facility employee credits of the work-site employer if the work-site employer or employee leasing company withholds social security, Medicare, and income taxes under either of their own federal and state taxpayer identification numbers. The work site employer may not claim a credit for leased employees for which the credit could have been previously claimed by a leasing company. These employees must be added to the work-site employer's base number of employees when computing future credits. [§8-70-114, C.R.S.]

*Part-time employees:* For a part-time employee to be included as a new business facility employee, the employee must work at least 20 hours per week for the majority of the weeks in the tax year. In the case of a part-time seasonal worker, the employee must work at least 20 hours per week for the majority of the weeks in the season customary for that position.

*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 2006. 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 2006 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 that 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.

### **ENHANCED RURAL ENTERPRISE ZONES**

Any part of a rural county that lies within an enterprise zone is designated as an enhanced rural enterprise zone. For tax years beginning on or after January 1, 2003, any new business facility located in an enhanced rural enterprise zone will be eligible for an additional new business employee credit and new business facility agricultural processing employee credit [§39-30-103.2, C.R.S.].

The Department of Local Affairs designated counties as enhanced rural enterprise zones in November 2008 for 2009 and 2010 tax years. The designation is reviewed every two years. These counties meet at least two of the following criteria:

- County unemployment rate is at least 50% above the state average,
- County population growth rate is less than 25% above the state average,
- County average per capita income is less than 75% of the state average,
- County assessed value of nonresidential value ranks in bottom half of all Colorado counties,
- County population is 5,000 or less.

See the table located in this FYI for a list of counties and their status.

### Enhanced Rural Enterprise Zone Counties

County	2003-2004	2005-2006	2007-2008	2009-2010	2011-2012
Alamosa	X	X	X	X	X
Archuleta	X	X	X	X	X
Baca	X	X	X	X	X
Bent	X	X	X	X	X
Chaffee	X		X	X	
Cheyenne	X	X	X	X	X
Clear Creek			X		
Conejos	X	X	X	X	X
Costilla	X	X	X	X	X
Crowley	X	X	X	X	X
Custer	X	X	X	X	X
Delta	X	X	X	X	X
Dolores	X	X	X	X	X
Fremont				X	X
Hinsdale	X	X	X	X	X
Huerfano	X	X	X	X	X
Jackson	X	X	X	X	X
Kiowa	X	X	X	X	X
Kit Carson		X	X	X	
Lake	X	X	X	X	X
Las Animas	X				
Lincoln	X	X	X	X	X
Logan			X	X	X
Mineral	X	X	X	X	X
Moffat			X		X
Morgan					X
Otero	X	X	X	X	X
Ouray	X	X	X	X	X
Phillips	X	X	X	X	X
Prowers	X	X	X	X	X
Rio Grande	X		X	X	X
Saguache	X	X	X	X	X
San Juan	X	X	X	X	X
Sedgwick	X	X	X	X	X
Washington	X	X	X	X	X
Yuma		X			

#### DEFINITIONS

*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.

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