



**COLORADO**  
**Department of Revenue**  
Taxation Division

Office of Tax Policy Analysis  
P.O. Box 17087  
Denver, CO 80217-0087  
dor\_taxpolicy@state.co.us

PLR 20-003

May 6, 2020

XXXXXX  
Attn: XXXXXX  
XXXXXX  
XXXXXX

Re: Enterprise Zone Investment Tax Credits

Dear XXXXXX,

You submitted a request for a private letter ruling on behalf of XXXXXX ("Company") to the Colorado Department of Revenue ("Department") pursuant to 1 CCR 201-1, 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 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

**Issue(s)**

1. In which tax year is the enterprise zone investment tax credit allowed for qualified investments?
2. Does the sale of 77.5 percent equity interests in Project LLCs to Passive Investors within one year of the dates the Projects are placed in service disqualify Company from claiming enterprise zone investment tax credits for the Projects?

**Conclusion(s)**

1. The enterprise zone investment tax credit is allowed for the taxable year in which the qualified property is placed in service.
2. Company's sale of 77.5 percent equity interests in Project LLCs to Passive Investors does not, by itself, disqualify the Company from claiming enterprise zone investment tax credits for the Projects.

**Background**

Company has provided the following statement of facts:

Company is a C corporation that plans to build and operate two projects ("Projects") in Colorado that will be considered renewable energy investments pursuant to section 39-30-104(2.8), C.R.S. To facilitate the construction of the Projects, Company has created two limited liability companies ("Project LLCs"). Project LLCs will build the Projects and place them into service. Project LLCs will initially be single member limited liability companies disregarded for federal and Colorado income tax purposes.

Company has filed pre-certification forms with the applicable county enterprise zone administrators that the Projects are located within enterprise zones and are eligible for renewable energy investment tax credits. When the Projects are completed and placed into service, Company will file certification applications with the enterprise zone administrators for approval permitting Company to claim the tax credits on its corporate Colorado income tax return.

Shortly after each Project is placed into service, the Company will enter into an agreement with a passive investor ("Passive Investor") pursuant to which the Passive Investor will purchase an approximate 77.5 percent equity interest in each Project LLC. For federal and Colorado income tax purposes, each Project LLC will become a partnership upon the sale of the equity interest to the Passive Investor with Company retaining an approximate 22.5 percent equity interest in each Project LLC.

Company will continue to manage Project LLCs after they become partnerships. In addition to maintaining responsibility for the Project LLCs and Projects, Company will also bear the risk of loss for the Projects.

### **Discussion<sup>1</sup>**

The enterprise zone investment tax credit is equal to a percentage of a taxpayer's total qualified investment, as determined under section 46(c) of the Internal Revenue Code, in the taxable year.<sup>2</sup> Section 46(c) of the Internal Revenue Code provides that the "qualified investment" is the applicable percentage of either the basis in new qualified property or the cost of used qualified property, as applicable, placed in service by the taxpayer during the taxable year.<sup>3</sup> Consequently, the enterprise zone investment tax credit is allowed for the taxable year in which the qualified property is placed in service.

However, the qualified property must be "used solely and exclusively in an enterprise zone for at least one year."<sup>4</sup> If the qualified property is used outside of the enterprise zone during the twelve-month period immediately following the date the property was first placed in service, the enterprise zone investment tax credit will not be allowed with respect to such property.<sup>5</sup> If an income tax return has been filed claiming the credit for any property that is used outside of the enterprise zone during the twelve-month period immediately following the date the property was first placed in service, an amended return must be filed forfeiting such credit.<sup>6</sup>

Company will retain partial ownership of the Projects and exercise control over the Projects after selling an equity interest in Project LLCs to Passive Investors. Consequently, Company will be sufficiently equipped to either ensure use of the Projects solely and exclusively within the enterprise zone for at least one year or, if used outside of the enterprise zone, to file original or amended returns, as necessary, to forfeit any credit claimed for the Projects. Therefore, Company's sale of 77.5 percent equity interest in the

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<sup>1</sup> All references in this letter to sections of the Internal Revenue Code are to such sections as they existed immediately prior to the enactment of the federal "Revenue Reconciliation Act of 1990".

<sup>2</sup> § 39-30-104(1)(a), C.R.S.

<sup>3</sup> See 26 CFR § 1.46-3(d) for criteria used in determining the taxable year in which qualified property is considered to be placed in service.

<sup>4</sup> § 39-30-104(1)(a), C.R.S.

<sup>5</sup> 1 CCR 201-13, Rule 39-30-104(1)(c).

<sup>6</sup> 1 CCR 201-13, Rule 39-30-104(1)(c).

Projects to Passive Investors does not, by itself, disqualify Company from claiming enterprise zone investment tax credits for the Projects. Although, if Projects are used outside of the enterprise zone at any time during the twelve months immediately following the date they are placed into service, they will not qualify for the credit and Company will be required to file amended tax returns to forfeit and repay the full amount of any credit claimed for the Projects on any previously filed returns.

#### **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 1 CCR 201-1, Rule 24-35-103.5.

This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Sincerely,

Office of Tax Policy Analysis  
Colorado Department of Revenue

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