HB 20-1298

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 20-1009	**Date:**	March 6, 2020
Prime Sponsors:	Rep. Kraft-Tharp; Esgar Sen. Garcia; Tate	**Bill Status:**	House Business Affairs
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Bill Topic: **TREAT ECONOMIC DEVELOPMENT INCOME TAX CREDITS DIFFERENTLY**

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☒ TABOR Refund
- ☐ Local Government
- ☐ Statutory Public Entity

This bill extends the number of tax years that the Colorado Economic Development Commission may allow certain businesses to treat specific income tax credits as transferable income tax credits. It decreases state revenue and has ongoing workload impact beginning in FY 2021-22.

Appropriation Summary: No appropriation is required

Fiscal Note Status: This fiscal note reflects the introduced version of the bill.

Table 1
State Fiscal Impacts Under HB 20-1298

		FY 2020-21	FY 2021-22	FY 2022-23
Revenue	General Fund	($3.8 million)	($8.8 million)	($10 million)
Expenditures		-	-	-
Transfers		-	-	-
TABOR Refund	General Fund	($3.8 million)	($8.8 million)	Not Estimated

Summary of Legislation

This bill extends the number of tax years that the Colorado Economic Development Commission (EDC) may allow certain businesses to treat specific income tax credits as transferable credits. Under current law, the EDC is allowed to precertify transferable income tax credits through FY 2019-20. House Bill 20-1298 allows the EDC to precertify $10 million transferable income tax credits annually through FY 2022-23 for a total of $30 million.

Background

HB 17-1356 authorized the Colorado EDC to allow certain businesses to treat specific income tax credits as transferable income tax credits. The EDC is allowed to precertify $10 million in transferable credits in each fiscal year from FY 2017-18 to FY 2019-20 for a total of $30 million. Any portion of the $10 million not precertified by the EDC in any of the fiscal years may not be certified in a future year. The EDC may precertify transferable credits for the same business in all three fiscal years. To qualify, the business is required to make at least $100 million in capital investments for each precertification that the EDC finds will be significant to the state and be productive over time.

Transferability is limited to four existing state income tax credits:

- enterprise zone investment tax credit (ITC);
- job growth incentive tax credit;
- enterprise zone new business facility credit; and
- research and experiential activities credit.

Precertified tax credits cannot be transferred until tax year 2019. Renewable energy projects that receive approval for transferable credits may not elect to receive a refund of the credit, as allowed under current law.

Approval Process. The qualified business is required to notify the EDC and provide verifiable evidence that the capital investment has been made before the tax credits can be treated as transferable credits. Once the income tax credits are approved to transfer, the business can apply the credit to any tax liability, carry forward the credit, or transfer the income tax credit. The business has five years from when the EDC approved the credits to transfer them.

Transferability. If the business chooses to transfer its tax credits, then the income tax credits are freely transferable subject to the preapproved amount. The transferee may use all or a portion of transferred income tax credits to offset any tax liability or they may transfer any unused portion to a secondary transferee. The unused portion of the tax credit can be transferred on multiple occasions for three subsequent tax years from when the income tax credit was first transferred. If the EDC waives the $750,000 annual limit for the ITC at the initial precertification stage, the waiver applies to all transferred credits.

Credits Precertified to Date. As of June 30, 2019, the program has pre-certified $20 million worth of transferable credits. These pre-certifications are split among two companies, and these two companies are anticipated to claim the remaining $10 million in FY 2019-20, according to the 2019 Office of International Trade and Economic Development 2019 Annual Report.

State Revenue

The bill will decrease General Fund revenue by an estimated $3.8 million in FY 2020-21, $8.8 million in FY 2021-22, $10 million in FY 2022-23, $6.3 million in FY 2023-24, and $1.3 million in FY 2024-25. The estimates for FY 2020-21 and FY 2024-25 represent half-year impacts.

It is important to note that transferability of tax credits creates uncertainty about when the credit will be claimed because the purchasing entity may utilize a different fiscal year than when the entity was awarded the credit. Further, the amount and duration from when the EDC precertifies transferability to when the taxpayer is certified to transfer the credit depends on the credit types. For example, ITC credits generally take a longer period of time before being certified and are typically for larger amounts, while the job growth incentive credit can be earned more frequently for generally smaller amounts and earned over a longer period of time.

For the purposes of this fiscal note, the following is assumed:

- The EDC will precertify the full $10 million in each of the three fiscal years it is allowed.
- 75 percent of transferable credits will be claimed one year after they have been precertified by the EDC and the remaining 25 percent claimed in the second year.

To the extent the EDC does not precertify the full $30 million, General Fund revenue decrease will be smaller. If transferees claim their income tax credits sooner (or later), revenue declines will be greater (or smaller) in the short-term than the amount estimated in the fiscal note.

State Expenditures

The Office of International Trade and Economic Development will have increased workload to precertify credits and oversee the program, but this work can be accomplished within existing appropriations.

TABOR refund. The bill is expected to decrease state General Fund obligations for TABOR refunds by $3.8 million in FY 2020-21 and $8.8 million in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly decrease the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Information Technology   OEDIT   Personnel   Revenue