

DEPARTMENT OF REVENUE

Taxation Division

AIRCRAFT MANUFACTURER NEW EMPLOYEE INCOME TAX CREDIT

1 CCR 201-6

Rule 39-35-104. Aircraft Manufacturer New Employee Income Tax Credit.

Basis and Purpose. The statutory bases for this rule are sections 39-21-112(1), 39-35-102, 39-35-103, and 39-35-104, C.R.S. The purpose of this rule is to clarify the calculation of the aircraft manufacturer new employee income tax credit.

(1) **Calculation of Total Aircraft Manufacturer Employees for the Tax Year.** The provisions of this paragraph (1) apply to the calculation of aircraft manufacturer employees pursuant to section 39-35-104(3), C.R.S.

(a) Except as provided in paragraph (1)(b) of this rule, the number of aircraft manufacturer employees for any taxable year is determined by dividing by twelve the sum of the number of employees employed by the aircraft manufacturer on the last business day of each month of the taxable year.

(b) If the aircraft manufacturer is in operation for less than the entire taxable year, the number of aircraft manufacturer employees is determined by dividing the sum of the number of employees employed by the aircraft manufacturer on the last business day of each full calendar month of the taxable year during which the aircraft manufacturer was in operation by the number of such full calendar months of operation. If the aircraft manufacturer's period of operation commences or ceases during a calendar month, and the aircraft manufacturer is therefore not in operation for the full calendar month, such partial month of operation is not considered in the calculation of aircraft manufacturer employees.

(i) An aircraft manufacturer is "in operation for less than the entire taxable year" only if all business activities conducted by the aircraft manufacturer cease temporarily for a period of not less than one full calendar month during the taxable year. Business activities are not deemed to have ceased in any month during which any employee performs work at for the aircraft manufacturer or during which the generation of any gross revenue can be attributed to any activity undertaken by the aircraft manufacturer.

(c) In the case of a taxable year that is less than twelve months, the number of aircraft manufacturer employees is determined pursuant to paragraph (1)(a) of this rule, unless the aircraft manufacturer is operation for less than the entire taxable year as determined pursuant to paragraph (1)(b) of this rule.

(d) If an employee performs duties both at and away from the aircraft manufacturer's facility in the aviation development zone, the employee is included in the calculation of employees pursuant to this paragraph (1) only if the employee works at the aircraft manufacturer's facility in the aviation development zone for a minimum of 35 hours per week on a regular basis throughout the taxable year.

~~(2) — Calculation of New or Additional Aircraft Manufacturer Employees.~~

- ~~(a) — *First Tax Year of Operation.* In determining the credit for the aircraft manufacturer's first year of operation, the number of aircraft manufacturer employees is calculated pursuant to section 39-35-104(3), C.R.S., and paragraph (1) of this rule.~~
- ~~(b) — *Subsequent Tax Years.* In determining the credit for each tax year subsequent to the aircraft manufacturer's first year of operation, the credit is allowed for each additional aircraft manufacturer employee calculated pursuant to section 39-35-104(3), C.R.S., and paragraph (1) of this rule over the highest number of aircraft manufacturer employees calculated for any prior tax year pursuant to section 39-35-104(3), C.R.S., and paragraph (1) of this rule.~~
- ~~(i) — The credit allowable for any tax year subsequent to the aircraft manufacturer's first year of operation is determined pursuant to section 39-35-104(3), C.R.S., and this paragraph (2)(b), regardless of whether the taxpayer claimed any credit for the first year of operation.~~
- ~~(ii) — A taxpayer who acquires an aircraft manufacturing facility that was operated by another party prior to the acquisition is allowed a credit for only the number of additional aircraft manufacturer employees, calculated pursuant to section 39-35-104(2), C.R.S., and this paragraph (2)(b), in excess of the highest total number of aircraft manufacture employees employed at the facility in any prior tax year.~~
- ~~(A) — The taxpayer acquiring the aircraft manufacturing facility must obtain from the prior operator such employee records as are necessary to determine the highest average number of employees of prior tax years.~~
- ~~(C) — The calculation provided in this paragraph (2)(b)(ii) applies regardless of whether the prior operator claimed any credit under section 39-30-105.1, C.R.S.~~