

The Advanced Industry Investment Tax Credit

Program Overview

The Advanced Industry Investment Tax Credit (AITC) program issues tax credits to investors who make investments in qualified small businesses (investee) based in Colorado that operate in advanced industries. AITC is based on House Bill 14-1012 (C.R.S. § 24-48.5-112) and runs from July 2014 through December 2022. The program is administered by the Colorado Office of Economic Development and International Trade (OEDIT). Information on the Advanced Industry Investment Tax Credit program can also be found at www.choosecolorado.com/aitc. Participants in the Advanced Industry Investment Tax Credit are encouraged to also participate in other OEDIT and state programs.

Program Funding

The legislation that created this program has placed an annual limit on the dollar value in tax credit issuance in the amount of \$750,000. In normal processing, OEDIT will authorize credits for their full value; however, the only exception would be applications that would have caused the program to reach the annual limit, whereby those applications will be partially approved to that annual limit. Once the maximum amount of tax credits for the year has been authorized, the system will not allow investors to apply for tax credits for that year. Although the annual program limits may prevent OEDIT from accepting tax credit applications, the system will always accept investee certification forms.

OEDIT Neutrality

Provided that the investor, investee, and investment meet all statutory requirements, OEDIT does not discriminate for or against any application. All fully completed applications that meet the statutory requirements are processed in the order they were submitted. OEDIT does not discriminate between applications based on factors such as the industry category, geographical location, level of risk, structure of the deal, etc.

Definitions:

- "Affiliate" means any person or entity that controls, is controlled by or is under common control with another person or entity. In the case of individuals, an affiliate is defined as a spouse, child, or parent.
- "Control" means the power to determine the policies of an entity whether through ownership of voting securities, by contract, or otherwise. The investment must be a transfer of funds to the investee in exchange for an equity security. Any investment that is being held in an escrow account, or is contingent, or is refundable, does not qualify for this tax credit.
- "Investor" means qualified investor
- "Investee" means qualified small business



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Investee

Investee Step 1: Identify Application Process

- Investee must have an active account for the OEDIT application system.
- Applications are submitted through: <https://oedit.secure.force.com/oedit/>.
- Investee fills out AI Tax Credit Investee pre-certification to deem eligibility.
- Investee with successful pre-certifications fill out the AI Tax Credit Investee Certification.
- Investee with successful applications receive notice of certification via email.

Investee Step 2: Review Application Requirements

- Must be a corporation, partnership, LLC or other business entity. Individuals are not qualified to participate in this program as investees.
 - Submit your Proof of Business Organization and Tax ID Number
- Must have its headquarters located in Colorado or have at least 50% of its employees in Colorado. The investee may be incorporated in another state.
 - Submit your Statement of Good Standing with State of Colorado
- Must have received less than \$10 million from third-party investors since the business was formed. This total includes both debt and equity financing.
 - Submit your current balance sheet reflecting
 - Submit an OEDIT approved Third-Party Funding Table
 - Submit the most recent capitalization table with third-party funding (loans, equity investments, etc.), except for grants, reflecting the total amount of investor funding received
- Must have annual revenues of less than \$5 million.
 - Submit revenue filed with Colorado Department of Revenue for the last two years
 - Submit your year-to-date and year-end income statements from the last 3 years or from business formation in a single PDF attachment
- Must have been actively operating and generating revenue for less than 5 years.
 - Submit the dates the company started operating
 - Submit the dates the company started generating revenue
- Must be in one of the advanced industries:
 - Advanced Manufacturing
 - Aerospace
 - Bioscience
 - Electronics
 - Energy/Natural Resources/Cleantech
 - Information Tech
 - Infrastructure Engineering

When determining if a business is in an advanced industry, OEDIT will look at the following factors:

- *Is the company advancing the industry or advancing the state of the art?*
- *What is the company's intellectual property strategy?*
- *Do they hold or are they applying for patents, or do they have trade secrets?*
- *Does the company perform Research & Development?*
- *What percent of employees are in STEM-related fields?*

Investees are strongly encouraged to apply for this program even if they do not have an investor lined up. Certification in the program is free and incurs no obligation. If an investor is found at a later date, they will need the certification number to proceed. Pre-revenue companies are qualified to participate in the Advanced Industry Tax Credit program.



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Investor

Investor Step 1: Identify Application Process

- Investor must have an active account for the OEDIT application system
- Applications are submitted through: <https://oedit.secure.force.com/oedit/>
- Investor, after the investment is funded, fills out the AI Tax Credit Investor Eligibility Check.
- Investors with successful eligibility checks fill out the AI Tax Credit Investor Application 2018
- Investors with successful applications receive a tax credit certificate via email
- There is a limit to the dollar value of credits that can be authorized, all tax credit applications are processed on a first come, first served basis, according to the date and time that the application was submitted.

Investor Step 2: Review Application Requirements

- Must be an individual, limited liability Company, partnership, S corporation, or other business entity. C corporations are not qualified to receive this tax credit.
 - Submit your Proof of Business Organization and Tax ID Number
- The investment must be at least \$10,000, and applications must be submitted within 90 days from the date of funding. The date of funding is the date that the funds were sent to the recipient company (the investee). In those cases where a convertible note is converted to equity, the date of the original funding is the funding date, not the date of conversion. Investments made in tranches or multiple payments must be submitted within 90 days of the initial funding and must be within the same calendar year.
 - Submit proof of funding in PDF format (cancelled check, bank statement, a screenshot of bank account activity) showing investor's contact name, business invested in and the date that funds were sent to the recipient company.
- The investment must be in the form of common stock, preferred stock, an interest in a partnership or Limited Liability Company, a security that is convertible into an equity security, a convertible debt investment, or other equity security as determined by OEDIT.
- The investor and its affiliates must hold no more than 30% of the voting power immediately before the investment and must hold no more than 50% of the voting power immediately after the investment.
 - In coordination with investee, submit the most recent capitalization table with investors' names, investment amount, dates of investments, and percentage of voting power
 - Submit the term sheet for the funding round with dates of investments
 - Submit the Investee's certification number (APP-#####)
- An investor may not claim more than one tax credit per qualified small business for the lifetime of the program but may be eligible for a tax credit for qualified investments in different qualified small businesses in the same or a different year. However, multiple payments under one investment within a single cycle may be submitted through a single application and must meet the second rule written above. Second applications will not be accepted. If an individual is participating in an investment organization then the investment organization must apply for the tax credit, not the individual.



Investor Step 3: Calculating Tax Credit

The tax credit certificate is 25% of the qualified investment, up to the \$50,000 maximum allowable tax credit amount per investor. If the business receiving the investment is in a rural or economically distressed area, the tax credit to the investor is 30% of the qualified investment, up to the \$50,000 maximum allowable tax credit amount per investor.

This program defines a rural area by county and uses the same set of rural counties that the Certified Capital Companies Program (CAPCO) uses. There are 49 rural counties: *Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Elbert, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Washington, and Yuma.*

This program uses the same definition of economically distressed areas that the OEDIT Enterprise Zone program uses. Enterprise Zone pre-certification is a simple procedure, and there is no cost and no obligation in getting this pre-certification. To find out if a business is in an Enterprise Zone, go to www.choosecolorado.com/ez and enter the address of the investee in the zone territory map.

Investor Step 4: Claiming Tax Credit

Investors with tax credit certificates must claim the credit against income tax filing in the year in which the investment was made. Tax Credits are a credit against a Colorado state income tax liability. These credits are issued to the investor, not the investee. Credits must be used by the investor; they are not transferable or salable. If the allowable tax credit exceeds the amount of income tax due on the income of the taxpayer for the tax year which the qualified investment was made, the amount of the tax credit not used will not be refunded but may be carried forward for 5 years. Any amount not used after this period will not be refunded.

Credits issued to a non-taxable entity will flow through to the partners/owners in that entity. From C.R.S. § 39-22-532: “Individuals who are co-owners of a business, including partners in a partnership and shareholders of an S corporation, may each claim only their individual pro rata shares of the Colorado innovation investment tax credit allowed under this section based on their ownership interests.” The investor organization is responsible for allocating the tax credit to the owners.

