

**TARGETED BUSINESS TAX CREDIT AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies tax credit provisions related to enterprise zones.

**Highlighted Provisions:**

This bill:

- ▶ modifies the targeted business tax credit program;
- ▶ modifies the application requirements for businesses to apply for a targeted business tax credit;
- ▶ modifies the Governor's Office of Economic Development (GOED) oversight and reporting responsibilities in administering the targeted business tax credit program;
- ▶ limits the amount of tax credits that may be awarded each year;
- ▶ defines terms; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63N-2-302**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-2-303**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-2-304**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-2-305**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 1

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **63N-2-302** is amended to read:

**63N-2-302. Definitions.**

As used in this part:

33 ~~[(1) "Allocated cap amount" means the total amount of the targeted business income~~  
 34 ~~tax credit that a business applicant is allowed to claim for a taxable year that represents a pro~~  
 35 ~~rata share of the total amount of \$300,000 for each fiscal year allowed under Subsection~~  
 36 ~~63N-2-305(2).]~~

37 ~~[(2)] (1) "Business applicant" means a business that:~~

38 (a) is a ~~a~~ ~~[(i)] claimant~~ ~~[(ii)]~~, estate ~~[(iii)]~~, or trust; and

39 (b) meets the criteria established in Section 63N-2-304.

40 ~~[(3)] (2) (a) Except as provided in Subsection [(3)] (2)(b), "claimant" means a resident~~  
 41 person or a nonresident person.

42 (b) "Claimant" does not include an estate or trust.

43 ~~[(4)] (3) "Community investment project" means a project that includes one or more of~~  
 44 the following criteria in addition to the normal operations of the business applicant:

45 (a) ~~[substantial]~~ significant new employment; or

46 (b) significant new capital development ~~[(c)]~~;

47 ~~[(c)] a combination of both Subsections (4)(a) and (b).]~~

48 ~~[(5) "Community investment project period" means the total number of years that the~~  
 49 ~~office determines a business applicant is eligible for a targeted business income tax credit for~~  
 50 ~~each community investment project.]~~

51 ~~[(6)] (4) "Enterprise zone" means an area within a county or municipality that has been~~  
 52 designated as an enterprise zone by the office under Part 2, Enterprise Zone Act.

53 ~~[(7)] (5) "Estate" means a [nonresident estate or a resident estate.]~~ resident estate or a  
 54 nonresident estate.

55 ~~[(8) "Local zone administrator" means a person:]~~

56 ~~[(a) designated by the governing authority of the county or municipal applicant as the~~  
 57 ~~local zone administrator in an enterprise zone application; and]~~

58 ~~[(b) approved by the office as the local zone administrator.]~~

59 ~~[(9)] (6) "Refundable tax credit" [or "tax credit"] means a tax credit that a claimant,~~  
 60 estate, or trust may claim:

61 (a) as provided by statute; and

62 (b) regardless of whether, for the taxable year for which the claimant, estate, or trust  
 63 claims the tax credit, the claimant, estate, or trust has a tax liability under:

64 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

65 (ii) Title 59, Chapter 10, Individual Income Tax Act.

66 ~~[(10)]~~ (7) "Targeted business income tax credit" means a refundable tax credit  
67 available under ~~[Section 63N-2-305]~~ this part.

68 ~~[(11)]~~ (8) "Targeted business income tax credit eligibility ~~[form]~~ certificate" means a  
69 document ~~[provided annually to the business applicant by the office that complies with the~~  
70 ~~requirements of Subsection 63N-2-305(8).]~~ provided by the office to a business applicant  
71 before the applicant may claim a targeted business income tax credit under this part.

72 ~~[(12)]~~ (9) "Trust" means a ~~[nonresident]~~ resident trust or a ~~[resident]~~ nonresident trust.

73 Section 2. Section **63N-2-303** is amended to read:

74 **63N-2-303. Powers of the office.**

75 The office shall:

76 (1) monitor the implementation and operation of this part and conduct a continuing  
77 evaluation of the effectiveness of the targeted business income tax credit in bringing significant  
78 new employment and significant new capital development to rural communities;

79 (2) determine a business entity's eligibility for a targeted business income tax credit  
80 award;

81 (3) ensure that the amount of targeted business income tax credit awarded to a business  
82 applicant through a targeted business income tax credit eligibility certificate is no more than  
83 \$100,000 for the business applicant's taxable year;

84 (4) ensure that the aggregate amount of targeted business income tax credits awarded to  
85 business applicants through targeted business income tax credit eligibility certificates is no  
86 more than \$300,000 for each fiscal year;

87 (5) as part of the annual written report described in Section 63N-1-301, prepare an  
88 annual evaluation that provides:

89 (a) the identity of each business applicant that was provided a targeted business income  
90 tax credit eligibility certificate by the office during the year of the annual report; and

91 (b) the total amount awarded in targeted business income tax credit for each  
92 development zone; and

93 (6) ~~[It]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
94 and ~~[for purposes of this part, the office shall]~~ in accordance with the provisions of this part.

95 make rules regarding:

96 ~~[(1) to determine]~~ (a) the determination of what constitutes:

97 ~~[(a) substantial]~~ (i) significant new employment;

98 ~~[(b)]~~ (ii) significant new capital development; and

99 ~~[(c) a]~~ (iii) a community investment project; ~~[and (2) to establish a formula for~~

100 ~~determining the allocated cap amount for each business applicant.]~~

101 (b) the form and content of an application for a targeted business income tax credit

102 certificate under this part;

103 (c) documentation or other requirements for a business applicant to receive a targeted

104 business income tax credit certificate under this part; and

105 (d) administration of targeted business income tax credit awards and the issuing of

106 targeted business income tax credit certificates, including relevant timelines and deadlines.

107 Section 3. Section **63N-2-304** is amended to read:

108 **63N-2-304. Application for targeted business income tax credit.**

109 (1) (a) For ~~[taxable years]~~ a taxable year beginning on or after January 1, ~~[2002]~~ 2017,

110 a business applicant may ~~[elect to claim a targeted business income tax credit available under~~

111 ~~Section 63N-2-305]~~ apply to the office for a targeted business income tax credit certificate

112 under this part if the business applicant:

113 (i) is located in:

114 (A) an enterprise zone; and

115 (B) a county with~~[-(F)]~~ a population of less than 25,000; ~~[and (H) an unemployment~~

116 ~~rate that for six months or more of each calendar year is at least one percentage point higher~~

117 ~~than the state average;]~~

118 (ii) meets the requirements of Section 63N-2-212;

119 (iii) provides~~[-(A)]~~ a community investment project within the enterprise zone; and

120 ~~[(B) a portion of the community investment project during each taxable year for which~~

121 ~~the business applicant claims the targeted business tax incentive; and]~~

122 (iv) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, is

123 not engaged in the following, as defined by the State Tax Commission by rule:

124 (A) construction;

125 (B) retail trade; or

126 (C) public utility activities.

127 (b) For a taxable year for which a business applicant claims a targeted business income  
128 tax credit available under this part, the business applicant may not claim or carry forward a tax  
129 credit available under Section 59-7-607, 59-7-610, 59-10-1007, 59-10-1010, or 63N-2-213.

130 (2) (a) A business applicant seeking to claim a targeted business income tax credit  
131 under this part shall ~~[file]~~ submit an application ~~[as provided in Subsection (2)(b) with the local~~  
132 ~~zone administrator]~~ to the office by no later than June 1 of the taxable year in which the  
133 business applicant is seeking to claim ~~[a]~~ the targeted business income tax credit.

134 (b) The application described in Subsection (2)(a) shall include:

135 (i) any documentation required by the ~~[local zone administrator]~~ office to demonstrate  
136 that the business applicant meets the requirements of Subsection (1);

137 (ii) a plan developed by the business applicant that ~~[outlines]~~ describes:

138 (A) if the community investment project includes ~~[substantial]~~ significant new  
139 employment, the projected number and anticipated wage level of the jobs that the business  
140 applicant plans to create as the basis for qualifying for a targeted business income tax credit;

141 (B) if the community investment project includes significant new capital development,  
142 ~~[a description of]~~ the capital development the business applicant plans to make as the basis for  
143 qualifying for a targeted business income tax credit; ~~[and]~~

144 (C) ~~[a description of]~~ how the business applicant's plan coordinates with~~[:(F)]~~ the goals  
145 of the enterprise zone in which the business applicant is providing a community investment  
146 project; ~~[and]~~

147 ~~[(H)]~~ (D) how the business applicant's plan coordinates with the overall economic  
148 development goals of the county or municipality in which the business applicant is providing a  
149 community investment project; ~~[and]~~

150 (E) any matching funds that will be used for the community investment project;

151 (F) how any targeted business income tax credit incentives that were awarded in a  
152 previous year have been utilized for the community investment project by the business  
153 applicant; and

154 (G) the requested value of the targeted business income tax credit; and

155 (iii) any additional information required by the ~~[local zone administrator]~~ office.

156 (3) (a) The ~~[local zone administrator]~~ office shall:

157 (i) evaluate an application filed under Subsection (2); and  
158 (ii) determine whether the business applicant is eligible for a targeted business income  
159 tax credit.

160 (b) If the ~~[local zone administrator]~~ office determines that the business applicant is  
161 eligible for a targeted business income tax credit, the ~~[local zone administrator]~~ office shall:

162 (i) certify that the business applicant is eligible for the targeted business income tax  
163 credit;

164 (ii) determine the amount of the targeted business income tax credit to award the  
165 business applicant through a targeted business income tax credit certificate, which amount may  
166 be no more than \$100,000 for the business applicant in a taxable year;

167 ~~[(ii) structure the]~~ (iii) issue the targeted business income tax credit [for] certificate to  
168 the business applicant in accordance with Section 63N-2-305 and provide a duplicate copy of  
169 the targeted business income tax credit certificate to the State Tax Commission; and

170 ~~[(iii)]~~ (iv) monitor a business applicant to ensure compliance with this section.

171 ~~[(4) A local zone administrator shall report to the office by no later than June 30 of~~  
172 ~~each year.]~~

173 ~~[(a) (i) any application approved by the local zone administrator during the last fiscal~~  
174 ~~year; and]~~

175 ~~[(ii) the information established in Subsections 63N-2-305(4)(a) through (d) for each~~  
176 ~~new business applicant; and]~~

177 ~~[(b) (i) the status of any existing business applicants that the local zone administrator~~  
178 ~~monitors; and]~~

179 ~~[(ii) any information required by the office to determine the status of an existing~~  
180 ~~business applicant.]~~

181 ~~[(5) (a) By July 15 of each year, the department shall notify the local zone~~  
182 ~~administrator of the allocated cap amount that each business applicant that the local zone~~  
183 ~~administrator monitors is eligible to claim.]~~

184 ~~[(b) By September 15 of each year, the local zone administrator shall notify, in writing,~~  
185 ~~each business applicant that the local zone administrator monitors of the allocated cap amount~~  
186 ~~determined by the office under Subsection (5)(a) that the business applicant is eligible to claim~~  
187 ~~for a taxable year.]~~

188 Section 4. Section **63N-2-305** is amended to read:

189 **63N-2-305. Targeted business income tax credit structure -- Revenue and**  
 190 **Taxation Interim Committee study.**

191 (1) A business applicant that is certified and issued a targeted business tax credit  
 192 certificate by the office under Subsection 63N-2-304(3) [~~and issued a targeted business tax~~  
 193 ~~credit eligibility form by the office under Subsection (8)] may claim a refundable tax credit in  
 194 the amount specified on the targeted business tax credit certificate:~~

195 (a) against the business applicant's tax liability under:

196 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

197 (ii) Title 59, Chapter 10, Individual Income Tax Act; and

198 (b) subject to requirements and limitations provided by this part.

199 (2) The total amount of the targeted business income tax credits allowed under this part  
 200 for all business applicants may not exceed \$300,000 in any fiscal year.

201 (3) (a) A targeted business income tax credit allowed under this part for each  
 202 community investment project provided by a business applicant may not ~~[(i) be claimed by a~~  
 203 ~~business applicant for more than seven consecutive taxable years from the date the business~~  
 204 ~~applicant first qualifies for a targeted business income tax credit on the basis of a community~~  
 205 ~~investment project;(ii)] be carried forward or carried back[;].~~

206 ~~[(iii) exceed \$100,000 in total amount for the community investment project period~~  
 207 ~~during which the business applicant is eligible to claim a targeted business income tax credit;~~  
 208 ~~or]~~

209 ~~[(iv) exceed in any year that the targeted business income tax credit is claimed the~~  
 210 ~~lesser of:]~~

211 ~~[(A) 50% of the maximum amount allowed by the local zone administrator; or]~~

212 ~~[(B) the allocated cap amount determined by the office under Subsection~~  
 213 ~~63N-2-304(5).]~~

214 ~~[(b) A business applicant may apply to the local zone administrator to claim a targeted~~  
 215 ~~business income tax credit allowed under this part for each community investment project~~  
 216 ~~provided by the business applicant as the basis for its eligibility for a targeted business income~~  
 217 ~~tax credit.]~~

218 ~~[(4) Subject to other provisions of this section, the local zone administrator shall~~

219 establish for each business applicant that qualifies for a targeted business income tax credit:]

220 [(a) criteria for maintaining eligibility for the targeted business income tax credit that  
221 are reasonably related to the community investment project that is the basis for the business  
222 applicant's targeted business income tax credit;]

223 [(b) the maximum amount of the targeted business income tax credit the business  
224 applicant is allowed for the community investment project period;]

225 [(c) the time period over which the total amount of the targeted business income tax  
226 credit may be claimed;]

227 [(d) the maximum amount of the targeted business income tax credit that the business  
228 applicant will be allowed to claim each year; and]

229 [(e) requirements for a business applicant to report to the local zone administrator  
230 specifying;]

231 [(f) the frequency of the business applicant's reports to the local zone administrator,  
232 which shall be made at least quarterly; and]

233 [(g) the information needed by the local zone administrator to monitor the business  
234 applicant's compliance with this Subsection (4) or Section 63N-2-304 that shall be included in  
235 the report.]

236 [(5) In accordance with Subsection (4)(c), a business applicant allowed a targeted  
237 business income tax credit under this part shall report to the local zone administrator.]

238 [(6) The amount of a targeted business income tax credit that a business applicant is  
239 allowed to claim for a taxable year shall be reduced by 25% for each quarter in which the office  
240 or the local zone administrator determines that the business applicant has failed to comply with  
241 a requirement of Subsection (3) or Section 63N-2-304.]

242 [(7) (4) The office [or local zone administrator] may audit a business applicant to  
243 ensure:

244 (a) eligibility for a targeted business income tax credit; [or] and

245 (b) compliance with this part, including Subsection (3) or Section 63N-2-304.

246 [(8) The office shall issue a targeted business income tax credit eligibility form in a  
247 form jointly developed by the State Tax Commission and the office no later than 30 days after  
248 the last day of the business applicant's taxable year showing:]

249 [(a) the maximum amount of the targeted business income tax credit that the business



250 applicant is eligible for that taxable year;]

251 [~~(b)~~ any reductions in the maximum amount of the targeted business income tax credit  
252 because of failure to comply with a requirement of Subsection (3) or Section 63N-2-304;]

253 [~~(c)~~ the allocated cap amount that the business applicant may claim for that taxable  
254 year; and]

255 [~~(d)~~ the actual amount of the targeted business income tax credit that the business  
256 applicant may claim for that taxable year.]

257 [~~(9)~~ (5)] (a) A business applicant shall retain the targeted business income tax credit  
258 eligibility form provided by the office under this Subsection [~~(9)~~ (5)].

259 (b) The State Tax Commission may audit a business applicant to ensure:

260 (i) eligibility for a targeted business income tax credit; [~~or~~] and

261 (ii) compliance with this part, including Subsection (3) [~~or~~] and Section 63N-2-304.

262 [~~(10)~~ (6)] (a) On or before November 30, 2018, and every three years after 2018, the  
263 Revenue and Taxation Interim Committee shall review the tax credit provided by this section  
264 and make recommendations concerning whether the tax credit should be continued, modified,  
265 or repealed.

266 (b) In conducting the review required by Subsection [~~(10)~~ (6)](a), the Revenue and  
267 Taxation Interim Committee shall:

268 (i) schedule time on at least one committee agenda to conduct the review;

269 (ii) invite state agencies, individuals, and organizations concerned with the credit under  
270 review to provide testimony;

271 (iii) ensure that the recommendations described in this section include an evaluation of:

272 (A) the cost of the tax credit to the state;

273 (B) the purpose and effectiveness of the tax credit; and

274 (C) the extent to which the state benefits from the tax credit; and

275 (iv) undertake other review efforts as determined by the chairs of the Revenue and  
276 Taxation Interim Committee.