

RESEARCH TAX CREDITS MODIFICATIONS

1999 GENERAL SESSION

STATE OF UTAH

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AN ACT RELATING TO REVENUE AND TAXATION; MODIFYING THE INDIVIDUAL INCOME TAX AND CORPORATE FRANCHISE AND INCOME TAX CREDITS FOR RESEARCH ACTIVITIES CONDUCTED IN THE STATE TO ALLOW CERTAIN TAXPAYERS AN IRREVOCABLE ELECTION TO BE TREATED AS A START-UP COMPANY FOR PURPOSES OF CALCULATING THE BASE AMOUNT; PROVIDING THAT A TAXPAYER QUALIFYING FOR A CREDIT FOR A PURCHASE OF MACHINERY, EQUIPMENT, OR BOTH MAY NOT CLAIM THE CREDIT OR CARRY THE CREDIT FORWARD IF THE MACHINERY, EQUIPMENT, OR BOTH IS PRIMARILY USED TO CONDUCT QUALIFIED RESEARCH IN THE STATE FOR A TIME PERIOD THAT IS LESS THAN 12 CONSECUTIVE MONTHS; CLARIFYING THE REQUIREMENTS FOR ELIGIBILITY FOR THE INDIVIDUAL INCOME TAX AND CORPORATE FRANCHISE AND INCOME TAX CREDITS FOR MACHINERY, EQUIPMENT, OR BOTH, USED FOR QUALIFIED RESEARCH OR BASIC RESEARCH; MAKING TECHNICAL CHANGES; AND PROVIDING FOR RETROSPECTIVE OPERATION.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

59-7-612, as enacted by Chapter 367, Laws of Utah 1998

59-7-613, as enacted by Chapter 371, Laws of Utah 1998

59-10-131, as enacted by Chapter 367, Laws of Utah 1998

59-10-132, as enacted by Chapter 371, Laws of Utah 1998

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

Section 1. Section **59-7-612** is amended to read:

59-7-612. Credits for research activities conducted in the state -- Carry forward -- Commission to report modification or repeal of federal credits -- Tax Review Commission study.

(1) (a) For taxable years beginning on or after January 1, 1999, but beginning before December 31, 2010, a taxpayer meeting the requirements of this section shall qualify for the following nonrefundable credits for increasing research activities in this state:

(i) a research credit of 6% of the taxpayer's qualified research expenses for the current taxable year that exceed the base amount provided for under Subsection (4); and

(ii) a credit for payments to qualified organizations for basic research as provided in Section 41(e), Internal Revenue Code of 6% for the current taxable year that exceed the base amount provided for under Subsection (4).

(b) If a taxpayer qualifying for a credit under Subsection (1)(a) seeks to claim the credit, the taxpayer shall:

(i) claim the credit or a portion of the credit for the taxable year immediately following the taxable year for which the taxpayer qualifies for the credit;

(ii) carry the credit or a portion of the credit forward as provided in Subsection (4)(f); or

(iii) claim a portion of the credit and carry forward a portion of the credit as provided in Subsections (1)(b)(i) and (ii).

(c) The credits provided for in this section do not include the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

(2) For purposes of claiming a credit under this section, a unitary group as defined in Section 59-7-101 is considered to be one taxpayer.

(3) Except as specifically provided for in this section:

(a) the credits authorized under Subsection (1) shall be calculated as provided in Section 41, Internal Revenue Code; and

(b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating the credits authorized under Subsection (1).

(4) For purposes of this section:

(a) the base amount shall be calculated as provided in Sections 41(c) and 41(h), Internal Revenue Code, except that:

(i) the base amount does not include the calculation of the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code; [and]

(ii) a taxpayer's gross receipts include only those gross receipts attributable to sources within this state as provided in Part 3, Allocation and Apportionment of Income -- Utah UDITPA Provisions; and

(iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating the base amount, a taxpayer:

(A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B) regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II); and

(B) may not revoke an election to be treated as a start-up company under Subsection (4)(a)(iii)(A);

(b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except that the term includes only basic research conducted in this state;

(c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except that the term includes only qualified research conducted in this state;

(d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal Revenue Code, except that the term includes only those expenses incurred in conducting qualified research in this state;

(e) notwithstanding the provisions of Section 41(h), Internal Revenue Code, the credits provided for in this section shall not terminate if the credits terminate under Section 41, Internal Revenue Code; and

(f) notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code, governing the carry forward and carry back of federal tax credits, if the amount of a tax credit claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability:

(i) may be carried forward for a period that does not exceed the next 14 taxable years; and

(ii) may not be carried back to a taxable year preceding the current taxable year.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules for purposes of this section prescribing a certification process for qualified organizations to ensure that amounts paid to the qualified organizations are for basic research conducted in this state.

(6) If a federal tax credit under Section 41, Internal Revenue Code, is modified or repealed, the commission shall report the modification or repeal to the Tax Review Commission within 60 days after the day on which the modification or repeal becomes effective.

(7) (a) Except as provided in Subsection (7)(b), the Tax Review Commission shall review the credits provided for in this section on or before the earlier of:

(i) October 1 of the year after the year in which the commission reports under Subsection (6) a modification or repeal of a federal tax credit under Section 41, Internal Revenue Code; or

(ii) October 1, 2004.

(b) Notwithstanding Subsection (7)(a), the Tax Review Commission is not required to review the credits provided for in this section if the only modification to a federal tax credit under Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section 41(h), Internal Revenue Code.

(c) The Tax Review Commission shall address in a review under this section the:

(i) cost of the credit;

(ii) purpose and effectiveness of the credit;

(iii) whether the credit benefits the state; and

(iv) whether the credit should be:

(A) continued;

(B) modified; or

(C) repealed.

(d) If the Tax Review Commission reviews the credits provided for in this section, the Tax Review Commission shall report its findings to the Revenue and Taxation Interim Committee on or before the November interim meeting of the year in which the Tax Review Commission reviews the

credits.

Section 2. Section **59-7-613** is amended to read:

59-7-613. Credits for machinery, equipment, or both primarily used for conducting qualified research or basic research -- Carry forward -- Commission to report modification or repeal of federal credits -- Tax Review Commission study.

(1) As used in this section:

(a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except that the term includes only basic research conducted in this state.

(b) "Equipment" includes:

- (i) computers;
- (ii) computer equipment; and
- (iii) computer software.

(c) "Purchase price":

- (i) includes the cost of installing an item of machinery or equipment; and
- (ii) does not include sales or use taxes imposed on an item of machinery or equipment.

(d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.

(e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except that the term includes only qualified research conducted in this state.

(2) (a) [For] Except as provided in Subsection (2)(c), for taxable years beginning on or after January 1, 1999, but beginning before December 31, 2010, a taxpayer ~~[meeting the requirements of this section]~~ shall qualify for the following nonrefundable credits for the taxable year in which the machinery, equipment, or both, meets the requirements of either Subsection (2)(a)(i) or (2)(a)(ii):

(i) a credit of 6% of the purchase price of either machinery, equipment, or both:

- (A) purchased by the taxpayer during the taxable year;
- (B) that is not exempt from sales or use taxes; and
- (C) that is primarily used to conduct qualified research in this state; and

(ii) a credit of 6% of the purchase price of either machinery, equipment, or both:

- (A) purchased by the taxpayer during the taxable year;

- (B) that is not exempt from sales or use taxes; ~~[and]~~
- (C) that is donated to a qualified organization ~~[to be]; and~~
- (D) that is primarily used to conduct basic research in this state.

(b) If a taxpayer qualifying for a credit under Subsection (2)(a) seeks to claim the credit, the taxpayer shall:

- (i) claim the credit or a portion of the credit for the taxable year immediately following the taxable year for which the taxpayer qualifies for the credit;
- (ii) carry the credit or a portion of the credit forward as provided in Subsection (5); or
- (iii) claim a portion of the credit and carry forward a portion of the credit as provided in Subsections (2)(b)(i) and (ii).

(c) Notwithstanding Subsection (2)(a), if a taxpayer qualifies for a credit under Subsection (2)(a) for a purchase of machinery, equipment, or both, the taxpayer may not claim the credit or carry the credit forward if the machinery, equipment, or both, is primarily used to conduct qualified research in the state for a time period that is less than 12 consecutive months.

(3) For purposes of claiming a credit under this section, a unitary group as defined in Section 59-7-101 is considered to be one taxpayer.

(4) Notwithstanding the provisions of Section 41(h), Internal Revenue Code, the credits provided for in this section shall not terminate if the credits terminate under Section 41, Internal Revenue Code.

(5) Notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code, governing the carry forward and carry back of federal tax credits, if the amount of a tax credit claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability:

- (a) may be carried forward for a period that does not exceed the next 14 taxable years; and
- (b) may not be carried back to a taxable year preceding the current taxable year.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules for purposes of this section prescribing a certification process for qualified organizations to ensure that either machinery, equipment, or both provided to the qualified

organization is to be primarily used to conduct basic research in this state.

(7) If a federal tax credit under Section 41, Internal Revenue Code, is modified or repealed, the commission shall report the modification or repeal to the Tax Review Commission within 60 days after the day on which the modification or repeal becomes effective.

(8) (a) Except as provided in Subsection (8)(b), the Tax Review Commission shall review the credits provided for in this section on or before the earlier of:

(i) October 1 of the year after the year in which the commission reports under Subsection (7) a modification or repeal of a federal tax credit under Section 41, Internal Revenue Code; or

(ii) October 1, 2004.

(b) Notwithstanding Subsection (8)(a), the Tax Review Commission is not required to review the credits provided for in this section if the only modification to a federal tax credit under Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section 41(h), Internal Revenue Code.

(c) The Tax Review Commission shall address in a review under this section the:

(i) cost of the credit;

(ii) purpose and effectiveness of the credit;

(iii) whether the credit benefits the state; and

(iv) whether the credit should be:

(A) continued;

(B) modified; or

(C) repealed.

(d) If the Tax Review Commission reviews the credits provided for in this section, the Tax Review Commission shall report its findings to the Revenue and Taxation Interim Committee on or before the November interim meeting of the year in which the Tax Review Commission reviews the credits.

Section 3. Section **59-10-131** is amended to read:

59-10-131. Credits for research activities conducted in the state -- Carry forward -- Commission to report modification or repeal of federal credits -- Tax Review Commission

study.

(1) (a) For taxable years beginning on or after January 1, 1999, but beginning before December 31, 2010, a taxpayer meeting the requirements of this section shall qualify for the following nonrefundable credits for increasing research activities in this state:

(i) a research credit of 6% of the taxpayer's qualified research expenses for the current taxable year that exceed the base amount provided for under Subsection (4); and

(ii) a credit for payments to qualified organizations for basic research as provided in Section 41(e), Internal Revenue Code of 6% for the current taxable year that exceed the base amount provided for under Subsection (4).

(b) If a taxpayer qualifying for a credit under Subsection (1)(a) seeks to claim the credit the taxpayer shall:

(i) claim the credit or a portion of the credit for the taxable year immediately following the taxable year for which the taxpayer qualifies for the credit;

(ii) carry the credit or a portion of the credit forward as provided in Subsection (4)(f); or

(iii) claim a portion of the credit and carry forward a portion of the credit as provided in Subsections (1)(b)(i) and (ii).

(c) The credits provided for in this section do not include the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

(2) For purposes of claiming a credit under this section, a unitary group as defined in Section 59-7-101 is considered to be one taxpayer.

(3) Except as specifically provided for in this section:

(a) the credits authorized under Subsection (1) shall be calculated as provided in Section 41, Internal Revenue Code; and

(b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating the credits authorized under Subsection (1).

(4) For purposes of this section:

(a) the base amount shall be calculated as provided in Sections 41(c) and 41(h), Internal Revenue Code, except that:

(i) the base amount does not include the calculation of the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code; [and]

(ii) a taxpayer's gross receipts include only those gross receipts attributable to sources within this state as provided in Chapter 7, Part 3, Allocation and Apportionment of Income -- Utah UDITPA

Provisions; and

(iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating the base amount, a taxpayer:

(A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B) regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II); and

(B) may not revoke an election to be treated as a start-up company under Subsection (4)(a)(iii)(A);

(b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except that the term includes only basic research conducted in this state;

(c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except that the term includes only qualified research conducted in this state;

(d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal Revenue Code, except that the term includes only those expenses incurred in conducting qualified research in this state;

(e) notwithstanding the provisions of Section 41(h), Internal Revenue Code, the credits provided for in this section shall not terminate if the credits terminate under Section 41, Internal Revenue Code; and

(f) notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code, governing the carry forward and carry back of federal tax credits, if the amount of a tax credit claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability:

(i) may be carried forward for a period that does not exceed the next 14 taxable years; and

(ii) may not be carried back to a taxable year preceding the current taxable year.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

commission may make rules for purposes of this section prescribing a certification process for qualified organizations to ensure that amounts paid to the qualified organizations are for basic research conducted in this state.

(6) If a federal tax credit under Section 41, Internal Revenue Code, is modified or repealed, the commission shall report the modification or repeal to the Tax Review Commission within 60 days after the day on which the modification or repeal becomes effective.

(7) (a) Except as provided in Subsection (7)(b), the Tax Review Commission shall review the credits provided for in this section on or before the earlier of:

(i) October 1 of the year after the year in which the commission reports under Subsection (6) a modification or repeal of a federal tax credit under Section 41, Internal Revenue Code; or

(ii) October 1, 2004.

(b) Notwithstanding Subsection (7)(a), the Tax Review Commission is not required to review the credits provided for in this section if the only modification to a federal tax credit under Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section 41(h), Internal Revenue Code.

(c) The Tax Review Commission shall address in a review under this section the:

(i) cost of the credit;

(ii) purpose and effectiveness of the credit;

(iii) whether the credit benefits the state; and

(iv) whether the credit should be:

(A) continued;

(B) modified; or

(C) repealed.

(d) If the Tax Review Commission reviews the credits provided for in this section, the Tax Review Commission shall report its findings to the Revenue and Taxation Interim Committee on or before the November interim meeting of the year in which the Tax Review Commission reviews the credits.

Section 4. Section **59-10-132** is amended to read:

59-10-132. Credits for machinery, equipment, or both primarily used for conducting qualified research or basic research -- Carry forward -- Commission to report modification or repeal of federal credits -- Tax Review Commission study.

(1) As used in this section:

(a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except that the term includes only basic research conducted in this state.

(b) "Equipment" includes:

- (i) computers;
- (ii) computer equipment; and
- (iii) computer software.

(c) "Purchase price":

- (i) includes the cost of installing an item of machinery or equipment; and
- (ii) does not include sales or use taxes imposed on an item of machinery or equipment.

(d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.

(e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except that the term includes only qualified research conducted in this state.

(2) (a) [For] Except as provided in Subsection (2)(c), for taxable years beginning on or after January 1, 1999, but beginning before December 31, 2010, a taxpayer [meeting the requirements of this section] shall qualify for the following nonrefundable credits for the taxable year in which the machinery, equipment, or both, meets the requirements of either Subsection (2)(a)(i) or (2)(a)(ii):

(i) a credit of 6% of the purchase price of either machinery, equipment, or both:

- (A) purchased by the taxpayer during the taxable year;
- (B) that is not exempt from sales or use taxes; and
- (C) that is primarily used to conduct qualified research in this state; and

(ii) a credit of 6% of the purchase price paid by the taxpayer for either machinery, equipment, or both:

- (A) purchased by the taxpayer during the taxable year;
- (B) that is not exempt from sales or use taxes; [and]

(C) that is donated to a qualified organization ~~[to be]; and~~

(D) that is primarily used to conduct basic research in this state.

(b) If a taxpayer qualifying for a credit under Subsection (2)(a) seeks to claim the credit, the taxpayer shall:

(i) claim the credit or a portion of the credit for the taxable year immediately following the taxable year for which the taxpayer qualifies for the credit;

(ii) carry the credit or a portion of the credit forward as provided in Subsection (5);

(iii) claim a portion of the credit and carry forward a portion of the credit as provided in Subsections (2)(b)(i) and (ii).

(c) Notwithstanding Subsection (2)(a), if a taxpayer qualifies for a credit under Subsection (2)(a) for a purchase of machinery, equipment, or both, the taxpayer may not claim the credit or carry the credit forward if the machinery, equipment, or both, is primarily used to conduct qualified research in the state for a time period that is less than 12 consecutive months.

(3) For purposes of claiming a credit under this section, a unitary group as defined in Section 59-7-101 is considered to be one taxpayer.

(4) Notwithstanding the provisions of Section 41(h), Internal Revenue Code, the credits provided for in this section shall not terminate if the credits terminate under Section 41, Internal Revenue Code.

(5) Notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code, governing the carry forward and carry back of federal tax credits, if the amount of a tax credit claimed by a taxpayer under this section exceeds a taxpayer's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability:

(a) may be carried forward for a period that does not exceed the next 14 taxable years; and

(b) may not be carried back to a taxable year preceding the current taxable year.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules for purposes of this section prescribing a certification process for qualified organizations to ensure that either machinery, equipment, or both provided to the qualified organization is to be primarily used to conduct basic research in this state.

(7) If a federal tax credit under Section 41, Internal Revenue Code, is modified or repealed, the commission shall report the modification or repeal to the Tax Review Commission within 60 days after the day on which the modification or repeal becomes effective.

(8) (a) Except as provided in Subsection (8)(b), the Tax Review Commission shall review the credits provided for in this section on or before the earlier of:

- (i) October 1 of the year after the year in which the commission reports under Subsection (7) a modification or repeal of a federal tax credit under Section 41, Internal Revenue Code; or
- (ii) October 1, 2004.

(b) Notwithstanding Subsection (8)(a), the Tax Review Commission is not required to review the credits provided for in this section if the only modification to a federal tax credit under Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section 41(h), Internal Revenue Code.

(c) The Tax Review Commission shall address in a review under this section the:

- (i) cost of the credit;
- (ii) purpose and effectiveness of the credit;
- (iii) whether the credit benefits the state; and
- (iv) whether the credit should be:
 - (A) continued;
 - (B) modified; or
 - (C) repealed.

(d) If the Tax Review Commission reviews the credits provided for in this section, the Tax Review Commission shall report its findings to the Revenue and Taxation Interim Committee on or before the November interim meeting of the year in which the Tax Review Commission reviews the credits.

Section 5. Retrospective operation.

This act has retrospective operation for taxable years beginning on or after January 1, 1999.