

1                                   **RESEARCH TAX CREDITS MODIFICATIONS**

2   1999 GENERAL SESSION

3   STATE OF UTAH

4                                   **Sponsor: Howard C. Nielson**

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

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

21 AMENDS:

22           **59-7-612**, as enacted by Chapter 367, Laws of Utah 1998

23           **59-7-613**, as enacted by Chapter 371, Laws of Utah 1998

24           **59-10-131**, as enacted by Chapter 367, Laws of Utah 1998

25           **59-10-132**, as enacted by Chapter 371, Laws of Utah 1998

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

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

28           **59-7-612. Credits for research activities conducted in the state -- Carry forward --**  
29 **Commission to report modification or repeal of federal credits -- Tax Review Commission**  
30 **study.**

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

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

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

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

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

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

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

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

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

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

51           (a) the credits authorized under Subsection (1) shall be calculated as provided in Section  
52 41, Internal Revenue Code; and

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

55           (4) For purposes of this section:

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

58           (i) the base amount does not include the calculation of the alternative incremental credit

59 provided for in Section 41(c)(4), Internal Revenue Code; [and]

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

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

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

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

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

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

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

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

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

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

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

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

89 (6) If a federal tax credit under Section 41, Internal Revenue Code, is modified or repealed,

90 the commission shall report the modification or repeal to the Tax Review Commission within 60  
91 days after the day on which the modification or repeal becomes effective.

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

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

96 (ii) October 1, 2004.

97 (b) Notwithstanding Subsection (7)(a), the Tax Review Commission is not required to  
98 review the credits provided for in this section if the only modification to a federal tax credit under  
99 Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section  
100 41(h), Internal Revenue Code.

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

102 (i) cost of the credit;

103 (ii) purpose and effectiveness of the credit;

104 (iii) whether the credit benefits the state; and

105 (iv) whether the credit should be:

106 (A) continued;

107 (B) modified; or

108 (C) repealed.

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

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

114 **59-7-613. Credits for either machinery, equipment, or both primarily used for**  
115 **conducting qualified research or basic research -- Carry forward -- Commission to report**  
116 **modification or repeal of federal credits -- Tax Review Commission study.**

117 (1) As used in this section:

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

120 (b) "Equipment" includes:

- 121 (i) computers;
- 122 (ii) computer equipment; and
- 123 (iii) computer software.
- 124 (c) "Purchase price":
- 125 (i) includes the cost of installing an item of machinery or equipment; and
- 126 (ii) does not include sales or use taxes imposed on an item of machinery or equipment.
- 127 (d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.
- 128 (e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except that
- 129 the term includes only qualified research conducted in this state.

130 (2) (a) [~~For~~ Except as provided in Subsection (2)(c), for taxable years beginning on or

131 after January 1, 1999, but beginning before December 31, 2010, a taxpayer [~~meeting the~~

132 requirements of this section] shall qualify for the following nonrefundable credits for the taxable

133 year in which the machinery, equipment, or both meets the requirements of either Subsection

134 (2)(a)(i) or (2)(a)(ii):

- 135 (i) a credit of 6% of the purchase price of either machinery, equipment, or both:
- 136 (A) purchased by the taxpayer during the taxable year;
- 137 (B) that is not exempt from sales or use taxes; and
- 138 (C) that is primarily used to conduct qualified research in this state; and
- 139 (ii) a credit of 6% of the purchase price of either machinery, equipment, or both:
- 140 (A) purchased by the taxpayer during the taxable year;
- 141 (B) that is not exempt from sales or use taxes; [~~and~~]
- 142 (C) that is donated to a qualified organization [~~to be~~]; and
- 143 (D) that is primarily used to conduct basic research in this state.

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

145 the taxpayer shall:

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

151 (c) Notwithstanding Subsection (2)(a), if a taxpayer qualifies for a credit under Subsection

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

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

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

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

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

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

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

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

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

178 (b) Notwithstanding Subsection (8)(a), the Tax Review Commission is not required to  
179 review the credits provided for in this section if the only modification to a federal tax credit under  
180 Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section  
181 41(h), Internal Revenue Code.

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

- 183 (i) cost of the credit;  
184 (ii) purpose and effectiveness of the credit;  
185 (iii) whether the credit benefits the state; and  
186 (iv) whether the credit should be:  
187 (A) continued;  
188 (B) modified; or  
189 (C) repealed.  
190 (d) If the Tax Review Commission reviews the credits provided for in this section, the Tax  
191 Review Commission shall report its findings to the Revenue and Taxation Interim Committee on  
192 or before the November interim meeting of the year in which the Tax Review Commission reviews  
193 the credits.

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

195 **59-10-131. Credits for research activities conducted in the state -- Carry forward**  
196 **-- Commission to report modification or repeal of federal credits -- Tax Review Commission**  
197 **study.**

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

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

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

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

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

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

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

213 (c) The credits provided for in this section do not include the alternative incremental credit

214 provided for in Section 41(c)(4), Internal Revenue Code.

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

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

218 (a) the credits authorized under Subsection (1) shall be calculated as provided in Section  
219 41, Internal Revenue Code; and

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

222 (4) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

245 Revenue Code; and

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

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

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

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

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

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

261 (i) October 1 of the year after the year in which the commission reports under Subsection

262 (6) a modification or repeal of a federal tax credit under Section 41, Internal Revenue Code; or

263 (ii) October 1, 2004.

264 (b) Notwithstanding Subsection (7)(a), the Tax Review Commission is not required to  
265 review the credits provided for in this section if the only modification to a federal tax credit under  
266 Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section  
267 41(h), Internal Revenue Code.

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

269 (i) cost of the credit;

270 (ii) purpose and effectiveness of the credit;

271 (iii) whether the credit benefits the state; and

272 (iv) whether the credit should be:

273 (A) continued;

274 (B) modified; or

275 (C) repealed.

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

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

281 **59-10-132. Credits for either machinery, equipment, or both primarily used for**  
282 **conducting qualified research or basic research -- Carry forward -- Commission to report**  
283 **modification or repeal of federal credits -- Tax Review Commission study.**

284 (1) As used in this section:

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

287 (b) "Equipment" includes:

288 (i) computers;

289 (ii) computer equipment; and

290 (iii) computer software.

291 (c) "Purchase price":

292 (i) includes the cost of installing an item of machinery or equipment; and

293 (ii) does not include sales or use taxes imposed on an item of machinery or equipment.

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

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

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

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

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

304 (B) that is not exempt from sales or use taxes; and

305 (C) that is primarily used to conduct qualified research in this state; and

306 (ii) a credit of 6% of the purchase price paid by the taxpayer for either machinery,

307 equipment, or both:

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

309 (B) that is not exempt from sales or use taxes; [and]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

345 (ii) October 1, 2004.

346 (b) Notwithstanding Subsection (8)(a), the Tax Review Commission is not required to  
347 review the credits provided for in this section if the only modification to a federal tax credit under  
348 Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section  
349 41(h), Internal Revenue Code.

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

351 (i) cost of the credit;

352 (ii) purpose and effectiveness of the credit;

353 (iii) whether the credit benefits the state; and

354 (iv) whether the credit should be:

355 (A) continued;

356 (B) modified; or

357 (C) repealed.

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

362 Section 5. **Retrospective operation.**

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

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**Legislative Review Note**  
**as of 11-19-98 12:12 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**Committee Note**

The Revenue and Taxation Interim Committee recommended this bill.