

**ENTERPRISE ZONE AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Bradley T. Johnson**

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**This act modifies provisions relating to enterprise zones to provide a refundable income tax credit to targeted businesses located in certain areas within enterprise zones. The act defines terms and makes technical changes. The act creates an application process and defines the duties of the department, local zone administrators, and the State Tax Commission. The act prohibits a targeted business claiming the refundable income tax credit from claiming other tax credits under certain circumstances.**

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

AMENDS:

**9-2-413**, as last amended by Chapter 170, Laws of Utah 1999

**59-7-610**, as last amended by Chapter 139, Laws of Utah 2000

**59-10-108.7**, as last amended by Chapter 139, Laws of Utah 2000

ENACTS:

**9-2-1801**, Utah Code Annotated 1953

**9-2-1802**, Utah Code Annotated 1953

**9-2-1803**, Utah Code Annotated 1953

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

Section 1. Section **9-2-413** is amended to read:

**9-2-413. State tax credits.**

(1) Subject to the limitations of Subsections (2) through (4), the following state tax credits against individual income taxes or corporate franchise and income taxes are applicable in an enterprise zone:

(a) a tax credit of \$750 may be claimed by a business for each new full-time position filled for not less than six months during a given tax year;

(b) an additional \$500 tax credit may be claimed if the new position pays at least 125%

of:

(i) the county average monthly nonagricultural payroll wage for the respective industry as determined by the Department of Workforce Services; or

(ii) if the county average monthly nonagricultural payroll wage is not available for the respective industry, the total average monthly nonagricultural payroll wage in the respective county where the enterprise zone is located;

(c) an additional credit of \$750 may be claimed if the new position is in a business that adds value to agricultural commodities through manufacturing or processing;

(d) an additional credit of \$200 may be claimed for two consecutive years for each new employee who is insured under an employer-sponsored health insurance program if the employer pays at least 50% of the premium cost for two consecutive years;

(e) a credit of 50% of the value of a cash contribution to a private nonprofit corporation, except that the credit claimed may not exceed \$100,000:

(i) that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;

(ii) whose primary purpose is community and economic development; and

(iii) that has been accredited by the board of directors of the Utah Rural Development Council;

(f) a credit of 25% of the first \$200,000 spent on rehabilitating a building in the enterprise zone that has been vacant for two years or more; and

(g) an annual investment tax credit of 10% of the first \$250,000 in investment, and 5% of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable property.

(2) (a) Subject to the limitations of Subsection (2)(b), a business claiming a credit under Subsections (1)(a) through (d) may claim a credit for 30 full-time employee positions or less in each of its taxable years.

(b) A business that received a credit for its full-time employee positions under Subsections (1)(a) through (d) may claim an additional credit for a full-time employee position under Subsections (1)(a) through (d) if:

- (i) the business creates a new full-time employee position;
  - (ii) the total number of full-time employee positions at the business is greater than the number of full-time employee positions previously claimed by the business under Subsections (1)(a) through (d); and
  - (iii) the total number of credits the business has claimed for its current taxable year, including the new full-time employee position for which the business is claiming a credit, is less than or equal to 30.
- (c) A business existing in an enterprise zone on the date of its designation shall calculate the number of full-time positions based on the average number of employees reported to the Department of Workforce Services.
- (d) Construction jobs are not eligible for the tax credit under Subsections (1)(a) through (d).
- (3) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried forward for a period that does not exceed the next three taxable years.
- (4) (a) If a business entity is located in a county that met the requirements of Subsections 9-2-404(1)(b) and (c) but did not qualify as an enterprise zone prior to January 1, 1998, because the county was located in a metropolitan statistical area in more than one state, the business entity:
- (i) shall qualify for tax credits for a taxable year beginning on or after January 1, 1997, but beginning before December 31, 1997;
  - (ii) may claim a tax credit as described in Subsection (4)(a) in a taxable year beginning on or after January 1, 1997, but beginning before December 31, 1997; and
  - (iii) may qualify for tax credits for any taxable year beginning on or after January 1, 1998, if the county is designated as an enterprise zone in accordance with this part.
- (b) If a business entity claims a tax credit under Subsection (4)(a)(ii), the business entity:
- (i) may claim the tax credit by filing for the taxable year beginning on or after January 1, 1997, but beginning before December 31, 1997:
    - (A) an individual income tax return;
    - (B) an amended individual income tax return;

(C) a corporate franchise and income tax return; or  
(D) an amended corporate franchise and income tax return; and  
(ii) may carry forward the tax credit to a taxable year beginning on or after January 1, 1998, in accordance with Subsection (3).

(5) The tax credits under Subsections (1)(a) through (g) may not be claimed by a business engaged in retail trade or by a public utilities business.

(6) A business may not claim or carry forward a tax credit available under this part for a taxable year during which the business has claimed the targeted business income tax credit available under Section 9-2-1803.

Section 2. Section **9-2-1801** is enacted to read:

**Part 18. Targeted Business Income Tax Credits Within an Enterprise Zone**

**9-2-1801. Definitions.**

(1) As used in this part:

(a) "Allocated cap amount" means the total amount of the targeted business income tax credit that a business applicant is allowed to claim for a taxable year that represents a pro rata share of the total amount of \$300,000 for each fiscal year allowed under Subsection 9-2-1803(2).

(b) "Business applicant" means a business that meets the criteria established in Section 9-2-1802.

(c) "Community investment project" means a project that includes one or more of the following criteria in addition to the normal operations of the business applicant:

(i) substantial new employment;

(ii) new capital development; or

(iii) a combination of both Subsections (1)(c)(i) and (ii).

(d) "Community investment project period" means the total number of years that the department determines a business applicant is eligible for a targeted business income tax credit for each community investment project.

(e) "Enterprise zone" means an area within a county or municipality that has been designated as an enterprise zone by the department under Part 4, Enterprise Zones.

(f) "Local zone administrator" means a person:

(i) designated by the governing authority of the county or municipal applicant as the local zone administrator in an enterprise zone application; and

(ii) approved by the department as the local zone administrator.

(g) "Targeted business income tax credit " means an income tax credit available under Section 9-2-1803.

(h) "Targeted business income tax credit eligibility form" means a document provided annually to the business applicant by the department that complies with the requirements of Subsection 9-2-1803(8).

(2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsection (1), the department shall make rules:

(a) to define what constitutes:

(i) substantial new employment;

(ii) new capital development; and

(iii) a project; and

(b) to establish a formula for determining the allocated cap amount for each business applicant.

Section 3. Section **9-2-1802** is enacted to read:

**9-2-1802. Application for targeted business income tax credits.**

(1) (a) For taxable years beginning on or after January 1, 2002, a business applicant may elect to claim a targeted business income tax credit available under Section 9-2-1803 if the business applicant:

(i) is located in:

(A) an enterprise zone; and

(B) a county with:

(I) a population of less than 25,000; and

(II) an unemployment rate that for six months or more of each calendar year is at least one percentage point higher than the state average;

(ii) meets the requirements of Section 9-2-412;

(iii) provides:

(A) a community investment project within the enterprise zone; and

(B) a portion of the community investment project during each taxable year for which the business applicant claims the targeted business tax incentive; and

(iv) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, is not engaged in the following, as defined by the State Tax Commission by rule:

(A) construction;

(B) retail trade; or

(C) public utility activities.

(b) For a taxable year for which a business applicant claims a targeted business income tax credit available under this part, the business applicant may not claim or carry forward a tax credit available under Section 9-2-413, 59-7-610, or 59-10-108.7.

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

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

(i) any documentation required by the local zone administrator to demonstrate that the business applicant meets the requirements of Subsection (1);

(ii) a plan developed by the business applicant that outlines:

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

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

(C) a description of how the business applicant's plan coordinates with:

(I) the goals of the enterprise zone in which the business applicant is providing a community investment project; and

(II) the overall economic development goals of the county or municipality in which the business applicant is providing a community investment project; and

(iii) any additional information required by the local zone administrator.

(3) (a) The local zone administrator shall:

(i) evaluate an application filed under Subsection (2); and

(ii) determine whether the business applicant is eligible for a targeted business income tax credit.

(b) If the local zone administrator determines that the business applicant is eligible for a targeted business income tax credit, the local zone administrator shall:

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

(ii) structure the targeted business income tax credit for the business applicant in accordance with Section 9-2-1803; and

(iii) monitor a business applicant to ensure compliance with this section.

(4) A local zone administrator shall report to the department by no later than June 30 of each year:

(a) (i) any application approved by the local zone administrator during the last fiscal year; and

(ii) the information established in Subsections 9-2-1803(4)(a) through (d) for each new business applicant; and

(b) (i) the status of any existing business applicants that the local zone administrator monitors; and

(ii) any information required by the department to determine the status of an existing business applicant.

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

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

Section 4. Section **9-2-1803** is enacted to read:

**9-2-1803. Targeted business income tax credit structure -- Duties of the local zone administrator -- Duties of the State Tax Commission.**

(1) For taxable years beginning on or after January 1, 2002, a business applicant that is certified under Subsection 9-2-1802(3) and issued a targeted business tax credit eligibility form by the department under Subsection (8) may claim a refundable income tax credit:

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

(i) Title 59, Chapter 10, Individual Income Tax Act; or

(ii) Title 59, Chapter 7, Corporate Franchise and Income Taxes; and

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

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

(3) (a) A targeted business income tax credit allowed under this part for each community investment project provided by a business applicant may not:

(i) be claimed by a business applicant for more than seven consecutive taxable years from the date the business applicant first qualifies for a targeted business income tax credit on the basis of a community investment project;

(ii) be carried forward or carried back;

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

(iv) exceed in any year that the targeted business income tax credit is claimed the lesser of:

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

(B) the allocated cap amount determined by the department under Subsection 9-2-1802(5).

(b) A business applicant may apply to the local zone administrator to claim a targeted



business income tax credit allowed under this part for each community investment project provided by the business applicant as the basis for its eligibility for a targeted business income tax credit.

(4) Subject to other provisions of this section, the local zone administrator shall establish for each business applicant that qualifies for a targeted business income tax credit:

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

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

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

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

(e) requirements for a business applicant to report to the local zone administrator specifying:

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

(ii) the information needed by the local zone administrator to monitor the business applicant's compliance with this Subsection (4) or Section 9-2-1802 that shall be included in the report.

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

(6) The amount of a targeted business income tax credit that a business applicant is allowed to claim for a taxable year shall be reduced by 25% for each quarter in which the department or the local zone administrator determines that the business applicant has failed to comply with a requirement of Subsection (3) or Section 9-2-1802.

(7) The department or local zone administrator may audit a business applicant to ensure:

(a) eligibility for a targeted business income tax credit; or

(b) compliance with Subsection (3) or Section 9-2-1802.

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

(a) the maximum amount of the targeted business income tax credit that the business applicant is eligible for that taxable year;

(b) any reductions in the maximum amount of the targeted business income tax credit because of failure to comply with a requirement of Subsection (3) or Section 9-2-1802;

(c) the allocated cap amount that the business applicant may claim for that taxable year; and

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

(9) (a) A business applicant shall attach a copy of the targeted business income tax credit eligibility form provided by the department under this Subsection (9) to any return upon which a business applicant claims a targeted business income tax credit under this section.

(b) The tax commission may audit a business applicant to ensure:

(i) eligibility for a targeted business income tax credit; or

(ii) compliance with Subsection (3) or Section 9-2-1802.

Section 5. Section **59-7-610** is amended to read:

**59-7-610. Credit -- Recycling market development zone.**

(1) For tax years beginning on or after January 1, 1996, the following state tax credits are applicable to businesses operating in a recycling market development zone as defined in Section 9-2-1602:

(a) (i) There shall be allowed a nonrefundable tax credit of 5% of the purchase price paid for machinery and equipment used directly in:

(A) commercial composting; or

(B) manufacturing facilities or plant units that:

(I) manufacture, process, compound, or produce recycled items of tangible personal property for sale; or

(II) reduce or reuse postconsumer waste material.

(ii) The Department of Community and Economic Development shall certify that the machinery and equipment are integral to the composting or recycling process on a form provided by the tax commission before the taxpayer is entitled to the tax credit under this section.

(iii) The taxpayer shall enclose with its tax return the certification received under Subsection (1)(a)(ii).

(b) There shall be allowed a nonrefundable tax credit equal to 20% of net expenditures up to \$10,000 to third parties for rent, wages, supplies, tools, test inventory, and utilities made by the taxpayer for establishing and operating recycling or composting technology in Utah, with an annual maximum credit of \$2,000.

(2) The total nonrefundable credit allowed under this section may not exceed 40% of the Utah income tax liability of the taxpayer prior to any credits in the taxable year of purchase prior to claiming the credit authorized by this section.

(3) (a) Any tax credit not used for the taxable year in which the purchase price on composting or recycling machinery and equipment was paid may be carried over for credit against the business's income taxes in the three succeeding taxable years until the total credit amount is used.

(b) Tax credits not claimed by a business on its state income tax return within three years are forfeited.

(4) The tax commission shall make rules governing what information shall be filed with the tax commission to verify the entitlement to and amount of a tax credit.

(5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim or carry forward a tax credit described in Subsection (1)(a) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

(b) For a taxable year other than a taxable year during which the taxpayer may not claim or carry forward a tax credit in accordance with Subsection (5)(a), a taxpayer may claim or carry forward a tax credit described in Subsection (1)(a):

(i) if the taxpayer may claim or carry forward the credit in accordance with Subsections (1) and (2); and

(ii) subject to Subsections (3) and (4).

(6) Notwithstanding Subsection (1)(b), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim a tax credit described in Subsection (1)(b) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

(7) A taxpayer may not claim or carry forward a tax credit available under this section for a taxable year during which the taxpayer has claimed the targeted business income tax credit available under Section 9-2-1803.

Section 6. Section **59-10-108.7** is amended to read:

**59-10-108.7. Recycling market development zones credit.**

(1) For tax years beginning on or after January 1, 1996, the following state tax credits are applicable to an individual in a recycling market development zone as defined in Section 9-2-1602:

(a) (i) There shall be allowed a nonrefundable tax credit of 5% of the purchase price paid for machinery and equipment used directly in:

(A) commercial composting; or

(B) manufacturing facilities or plant units that:

(I) manufacture, process, compound, or produce recycled items of tangible personal property for sale; or

(II) reduce or reuse postconsumer waste material.

(ii) The Department of Community and Economic Development shall certify that the machinery and equipment are integral to the composting or recycling process on a form provided by the tax commission before the taxpayer is entitled to the tax credit under this section.

(iii) The taxpayer shall enclose with its tax return the certification received under Subsection (1)(a)(ii).

(b) There shall be allowed a nonrefundable tax credit equal to 20% of net expenditures up to \$10,000 to third parties for rent, wages, supplies, tools, test inventory, and utilities made by the taxpayer for establishing and operating recycling or composting technology in Utah, with an annual maximum credit of \$2,000.

(2) The total credit allowed under this section may not exceed 40% of the Utah income tax liability of the taxpayer prior to any credits in the taxable year of purchase prior to claiming the credit

authorized by this section.

(3) (a) Any tax credit not used for the taxable year in which the purchase price on composting or recycling machinery and equipment was paid may be carried over for credit against the individual's income taxes in the three succeeding taxable years until the total credit amount is used.

(b) Tax credits not claimed by an individual on the individual's state income tax return within three years are forfeited.

(4) The tax commission shall make rules governing what information shall be filed with the tax commission to verify the entitlement to and amount of a tax credit.

(5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim or carry forward a tax credit described in Subsection (1)(a) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

(b) For a taxable year other than a taxable year during which the taxpayer may not claim or carry forward a tax credit in accordance with Subsection (5)(a), a taxpayer may claim or carry forward a tax credit described in Subsection (1)(a):

(i) if the taxpayer may claim or carry forward the credit in accordance with Subsections (1) and (2); and

(ii) subject to Subsections (3) and (4).

(6) Notwithstanding Subsection (1)(b), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim a tax credit described in Subsection (1)(b) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

(7) A taxpayer may not claim or carry forward a tax credit available under this section for a taxable year during which the taxpayer has claimed the targeted business income tax credit available under Section 9-2-1803.