

ENTERPRISE ZONE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Bradley T. Johnson

This act modifies provisions relating to enterprise zones to provide a refundable income tax credit to targeted businesses located in an enterprise zone. The act defines terms and makes technical changes. The act creates an application process and defines the duties of the department. 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%

28 of:

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

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

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

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

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

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

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

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

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

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

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

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

56 (i) the business creates a new full-time employee position;

57 (ii) the total number of full-time employee positions at the business is greater than the
58 number of full-time employee positions previously claimed by the business under Subsections

59 (1)(a) through (d); and

60 (iii) the total number of credits the business has claimed for its current taxable year,
61 including the new full-time employee position for which the business is claiming a credit, is less
62 than or equal to 30.

63 (c) A business existing in an enterprise zone on the date of its designation shall calculate
64 the number of full-time positions based on the average number of employees reported to the
65 Department of Workforce Services.

66 (d) Construction jobs are not eligible for the tax credit under Subsections (1)(a) through
67 (d).

68 (3) If the amount of a tax credit under this section exceeds a business entity's tax liability
69 under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried
70 forward for a period that does not exceed the next three taxable years.

71 (4) (a) If a business entity is located in a county that met the requirements of Subsections
72 9-2-404(1)(b) and (c) but did not qualify as an enterprise zone prior to January 1, 1998, because
73 the county was located in a metropolitan statistical area in more than one state, the business entity:

74 (i) shall qualify for tax credits for a taxable year beginning on or after January 1, 1997, but
75 beginning before December 31, 1997;

76 (ii) may claim a tax credit as described in Subsection (4)(a) in a taxable year beginning on
77 or after January 1, 1997, but beginning before December 31, 1997; and

78 (iii) may qualify for tax credits for any taxable year beginning on or after January 1, 1998,
79 if the county is designated as an enterprise zone in accordance with this part.

80 (b) If a business entity claims a tax credit under Subsection (4)(a)(ii), the business entity:

81 (i) may claim the tax credit by filing for the taxable year beginning on or after January 1,
82 1997, but beginning before December 31, 1997:

83 (A) an individual income tax return;

84 (B) an amended individual income tax return;

85 (C) a corporate franchise and income tax return; or

86 (D) an amended corporate franchise and income tax return; and

87 (ii) may carry forward the tax credit to a taxable year beginning on or after January 1,
88 1998, in accordance with Subsection (3).

89 (5) The tax credits under Subsections (1)(a) through (g) may not be claimed by a business

90 engaged in retail trade or by a public utilities business.

91 (6) A business may not claim a tax credit available under this part for a taxable year during
92 which the business has claimed the targeted business income tax credit available under Section
93 9-2-1803.

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

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

96 **9-2-1801. Definitions.**

97 (1) As used in this part:

98 (a) "Business applicant" means a business that meets the criteria established in Section
99 9-2-1802.

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

102 (i) substantial new employment;

103 (ii) new capital development; or

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

105 (c) "Community investment project period" means the total number of years that the
106 department determines a business applicant to be eligible for a targeted business income tax credit
107 for each community investment project.

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

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

112 (f) "Targeted business income tax credit eligibility form" means a document provided
113 annually to the business applicant by the department that complies with the requirements of
114 Subsection 9-2-1803(6).

115 (2) For purposes of Subsection (1)(b), the department shall make rules, in accordance with
116 Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to define what constitutes:

117 (a) substantial new employment;

118 (b) new capital development; and

119 (c) a project.

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

121 **9-2-1802. Application for targeted business income tax credits.**

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

125 (i) is located in an enterprise zone;

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

127 (iii) provides:

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

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

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

133 (A) construction;

134 (B) retail trade; or

135 (C) public utility activities.

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

139 (2) A business applicant seeking to claim a targeted business income tax credit under this
140 part shall file an application with the department that includes:

141 (a) any documentation required by the department to demonstrate that the business
142 applicant meets the requirements of Subsection (1);

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

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

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

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

151 (A) the goals of the enterprise zone in which the business applicant is providing a

152 community investment project; and

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

155 (c) any additional information required by the department.

156 (3) (a) The department 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 tax
159 credit.

160 (b) If the department determines that the business applicant is eligible for a targeted
161 business income tax credit, the department shall:

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

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

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

167 **9-2-1803. Targeted business income tax credit structure -- Duties of the department**
168 **-- Duties of the State Tax Commission.**

169 (1) For taxable years beginning on or after January 1, 2002, a business applicant that is
170 certified under Subsection 9-2-1802(3) and issued a targeted business tax credit eligibility form
171 by the department under Subsection (6) may claim a refundable income tax credit:

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

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

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

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

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

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

181 (ii) be carried forward or carried back;

182 (iii) exceed \$100,000 in total amount for the community investment project period during

183 which the business applicant is eligible to claim a targeted business income tax credit; or

184 (iv) exceed in any year that the targeted business income tax credit is claimed 50% of the
185 maximum amount allowed by the department.

186 (b) A business applicant may apply to the department to claim a targeted business income
187 tax credit allowed under this part for each community investment project provided by the business
188 applicant as the basis for its eligibility for a targeted business income tax credit.

189 (3) Subject to other provisions of this section, the department shall establish for each
190 business applicant that qualifies for a targeted business income tax credit:

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

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

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

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

200 (e) requirements for a business applicant to report to the department specifying:

201 (i) the frequency of the business applicant's reports to the department, which shall be made
202 at least quarterly; and

203 (ii) the information needed by the department to monitor the business applicant's
204 compliance with this Subsection (3) or Section 9-2-1802 that shall be included in the report.

205 (4) In accordance with Subsection (3)(e), a business applicant allowed a targeted business
206 income tax credit under this part shall report to the department.

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

211 (6) (a) The department:

212 (i) may audit a business applicant to ensure:

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

214 (B) compliance with Subsection (3) or Section 9-2-1802;
215 (ii) shall issue a targeted business income tax credit eligibility form in a form jointly
216 developed by the State Tax Commission and the department no later than 30 days after the last day
217 of the business applicant's taxable year showing:

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

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

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

224 (b) (i) A business applicant shall attach a copy of the targeted business income tax credit
225 eligibility form provided by the department under this Subsection (5) to any return upon which a
226 business applicant claims a targeted business income tax credit under this section.

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

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

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

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

231 **59-7-610. Credit -- Recycling market development zone.**

232 (1) For tax years beginning on or after January 1, 1996, the following state tax credits are
233 applicable to businesses operating in a recycling market development zone as defined in Section
234 9-2-1602:

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

237 (A) commercial composting; or

238 (B) manufacturing facilities or plant units that:

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

241 (II) reduce or reuse postconsumer waste material.

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

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

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

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

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

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

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

262 (5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after January
263 1, 2001, a taxpayer may not claim or carry forward a tax credit described in Subsection (1)(a) in
264 a taxable year during which the taxpayer claims or carries forward a tax credit under Section
265 9-2-413.

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

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

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

272 (6) Notwithstanding Subsection (1)(b), for taxable years beginning on or after January 1,
273 2001, a taxpayer may not claim a tax credit described in Subsection (1)(b) in a taxable year during
274 which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

275 (7) A taxpayer may not claim a tax credit available under this section for a taxable year

276 during which the taxpayer has claimed the targeted business income tax credit available under
277 Section 9-2-1803.

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

279 **59-10-108.7. Recycling market development zones credit.**

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

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

284 (A) commercial composting; or

285 (B) manufacturing facilities or plant units that:

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

288 (II) reduce or reuse postconsumer waste material.

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

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

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

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

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

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

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

309 (5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after January
310 1, 2001, a taxpayer may not claim or carry forward a tax credit described in Subsection (1)(a) in
311 a taxable year during which the taxpayer claims or carries forward a tax credit under Section
312 9-2-413.

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

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

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

319 (6) Notwithstanding Subsection (1)(b), for taxable years beginning on or after January 1,
320 2001, a taxpayer may not claim a tax credit described in Subsection (1)(b) in a taxable year during
321 which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

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

Legislative Review Note
as of 1-16-01 10:50 AM

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

Office of Legislative Research and General Counsel