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REAUTHORIZATION OF UTAH STEAM COAL

TAX CREDIT

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Dmitrich

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This act modifies the Revenue and Taxation Code to delay the repeal of the Utah steam coal tax credit until taxable years beginning on or after January 1, 2007, and to make technical changes.

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

AMENDS:

59-7-604, as last amended by Chapter 346, Laws of Utah 1997

63-55b-159, as renumbered and amended by Chapter 21, Laws of Utah 1999

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

Section 1. Section **59-7-604** is amended to read:

59-7-604. Utah steam coal tax credit.

(1) For purposes of this section, "Utah steam coal sold" means coal:

(a) mined in Utah, as certified by the producer of the coal; and

(b) that is sold:

(i) by the taxpayer;

(ii) from a permitted mine; and

(iii) to a purchaser outside of the United States.

~~(1)~~ (2) For taxable years beginning on or after January 1, 1993, there is allowed, as a nonrefundable credit against any taxes imposed by this chapter or Chapter 8, an amount equal to \$1 per ton for each ton of Utah steam coal sold during the taxpayer's current taxable year that exceeds the number of tons of Utah steam coal sold during the taxpayer's taxable year beginning:

(a) on or after January 1, 1992~~[-]~~; but~~[-]~~

28 (b) on or before December 31, 1992.

29 [~~(2) For purposes of this section, "Utah steam coal sold" means coal:~~]

30 [~~(a) mined in Utah, as certified by the producer of the coal; and]~~

31 [~~(b) that is sold;~~]

32 [~~(i) by the taxpayer;~~]

33 [~~(ii) from a permitted mine; and]~~

34 [~~(iii) to a purchaser outside of the United States.]~~

35 (3) If the amount of a credit under this section for which a taxpayer is eligible for the
36 taxable year exceeds the taxpayer's tax liability for the taxable year, the taxpayer may carry forward
37 for 15 taxable years the portion of the tax credit that exceeds the taxpayer's tax liability for the
38 taxable year.

39 (4) The credit allowed by this section is repealed effective for taxable years beginning on
40 or after January 1, [~~2002~~] 2007.

41 Section 2. Section **63-55b-159** is amended to read:

42 **63-55b-159. Repeal dates -- Title 59.**

43 (1) Section 59-7-604 is repealed January 1, [~~2002~~] 2007.

44 (2) Section 59-7-611 and Sections 59-10-601 through 59-10-604 are repealed January 1,
45 2001.

46 (3) Section 59-9-101.1 is repealed January 1, 2001, and the department may not impose
47 an assessment under Section 59-9-101.1 after December 31, 2000.

Legislative Review Note
as of 11-14-00 4:22 PM

This legislation raises the following constitutional or statutory concerns:

The United States has entered into international agreements that favor free trade. Two of these agreements, the World Trade Organization/General Agreement on Tariffs and Trade and the North American Free Trade Agreement (Trade Agreements), include provisions designed to eliminate nontariff barriers to free trade, such as a statute that favors an internal market. Utah's steam coal tax credit could be viewed as a statute favoring an internal market. However, in some circumstances a statute favoring an internal market could be permissible under the Trade Agreements, and a statute that is in conflict with the Trade Agreements does not automatically result in the statute's invalidation or preemption. Such conflicts are generally resolved through compliance proceedings provided for in the Trade Agreements.

Utah's steam coal tax credit might also be found to violate the Commerce Clause of the Constitution of the United States (Commerce Clause), which protects the national economy from undue state interference. The Supreme Court of the United States has relied upon the Commerce Clause in striking down laws that favor local businesses over competitors engaged in interstate operations. The tax credit could be found to violate the Commerce Clause because it favors coal that is mined in Utah. On the other hand, a court could uphold the tax credit as a permissible subsidy for economic development.

Office of Legislative Research and General Counsel

Committee Note

The Revenue and Taxation Interim Committee recommended this bill.