

1 **UTAH VENTURE CAPITAL ENHANCEMENT**

2 **ACT AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Scott K. Jenkins**

6 House Sponsor: Kevin S. Garn

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of the Utah Venture Capital Enhancement Act related to
11 the amount of contingent tax credits that could be redeemed in any fiscal year.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides that the Utah Capital Investment Board may issue contingent tax credits in
15 a manner that would allow for the redemption of not more than \$20,000,000 for
16 each increment of \$100,000,000 of outstanding certificates in any fiscal year; and
- 17 ▶ makes certain technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **63M-1-1218**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
25 amended by Laws of Utah 2008, Chapter 382

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

28 Section 1. Section **63M-1-1218** is amended to read:

29 **63M-1-1218. Certificates and contingent tax credits.**

30 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
31 the board, in consultation with the State Tax Commission, shall make rules governing the
32 form, issuance, transfer, and redemption of certificates.

33 (2) The board's issuance of certificates and related contingent tax credits to designated
34 investors is subject to the following:

35 (a) the aggregate outstanding certificates may not exceed a total of \$300,000,000 of
36 contingent tax credits;

37 (b) the board shall issue a certificate contemporaneously with an investment in the
38 Utah fund of funds by a designated investor;

39 (c) the board shall issue contingent tax credits in a manner that not more than
40 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax
41 credits may be [initially] redeemable in any fiscal year; and

42 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
43 make a cash redemption and the board does not exercise its other options under Subsection
44 63M-1-1220(3)(b).

45 (3) In determining the \$300,000,000 maximum limit in Subsection (2)(a) and the
46 \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in
47 Subsection (2)(c):

48 (a) the board shall use the cumulative amount of scheduled aggregate returns on
49 certificates issued by the board to designated investors;

50 (b) certificates and related contingent tax credits which have expired may not be
51 included; and

52 (c) certificates and related contingent tax credits which have been redeemed shall be
53 included only to the extent of tax credits actually allowed.

54 (4) Contingent tax credits are subject to the following:

55 (a) a contingent tax credit may not be redeemed except by a designated investor in
56 accordance with the terms of a certificate from the board;

57 (b) a contingent tax credit may not be redeemed prior to the time the Utah fund of

58 funds receives full payment from the designated investor for the certificate;

59 (c) a contingent tax credit shall be claimed for a tax year that begins during the
60 calendar year maturity date stated on the certificate;

61 (d) an investor who redeems a certificate and the related contingent tax credit shall
62 allocate the amount of the contingent tax credit to the taxpayers of the investor based on the
63 taxpayer's pro rata share of the investor's earnings; and

64 (e) a contingent tax credit shall be claimed as a refundable credit.

65 (5) In calculating the amount of a contingent tax credit:

66 (a) the board shall certify a contingent tax credit [~~shall be certified by the board~~] only
67 if the actual return or payment of principal and interest to the designated investor is less than
68 that targeted at the issuance of the certificate;

69 (b) the amount of the contingent tax credit for a designated investor with an equity
70 interest may not exceed the difference between:

71 (i) the sum of:

72 (A) the initial private investment of the designated investor in the Utah fund of funds;

73 and

74 (B) the scheduled aggregate return to the designated investor at rates of return
75 authorized by the board at the issuance of the certificate; and

76 (ii) the aggregate actual return received by the designated investor and any predecessor
77 in interest of the initial equity investment and interest on the initial equity investment;

78 (c) the rates, whether fixed rates or variable rates, shall be determined by a formula
79 stipulated in the certificate; and

80 (d) the amount of the contingent tax credit for a designated investor with a loan or
81 other debt obligation from the Utah fund of funds shall be equal to the amount of any
82 principal, interest, or interest equivalent unpaid at the redemption of the loan or other
83 obligation, as stipulated in the certificate.

84 (6) The board shall clearly indicate on the certificate:

85 (a) the targeted return on the invested capital, if the private investment is an equity

86 interest;

87 (b) the payment schedule of principal, interest, or interest equivalent, if the private
88 investment is a loan or other debt obligation;

89 (c) the amount of the initial private investment;

90 (d) the calculation formula for determining the scheduled aggregate return on the
91 initial equity investment, if applicable; and

92 (e) the calculation formula for determining the amount of the contingent tax credit that
93 may be claimed.

94 (7) Once moneys are invested by a designated investor, the certificate:

95 (a) is binding on the board; and

96 (b) may not be modified, terminated, or rescinded.

97 (8) Funds invested by a designated investor for a certificate shall be paid to the
98 corporation for placement in the Utah fund of funds.

99 (9) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah
100 Administrative Rulemaking Act, and in consultation with the board, make rules to help
101 implement this section.