

ECONOMIC DEVELOPMENT INCENTIVE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Patrick Painter

LONG TITLE

General Description:

This bill amends the Corporate Franchise and Income Taxes chapter, the Individual Income Tax Act, and the Economic Development Incentives Act relating to economic development incentives including tax credits.

Highlighted Provisions:

This bill:

- ▶ enacts and modifies definitions;
- ▶ provides that a local government entity or community development and renewal agency may claim a refundable economic development tax credit under certain circumstances;
- ▶ addresses the procedures, requirements, and administration related to the refundable economic development tax credit and the creation of economic development zones;
- ▶ addresses reporting requirements by the Governor's Office of Economic Development;
- ▶ addresses the expenditure of amounts received as a tax credit by a local government entity or community development and renewal agency;
- ▶ addresses the commingling of tax credit amounts with certain other amounts; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

30 This bill has retrospective operation for a taxable year beginning on or after January 1,
31 2010.

32 This bill coordinates with H.B. 24, Economic Development Incentives Act
33 Amendments, by merging substantive amendments.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **59-7-614.2**, as last amended by Laws of Utah 2009, Chapter 198

37 **59-10-1107**, as last amended by Laws of Utah 2009, Chapter 198

38 **63M-1-2403**, as enacted by Laws of Utah 2008, Chapter 372

39 **63M-1-2404**, as enacted by Laws of Utah 2008, Chapter 372

40 **63M-1-2405**, as enacted by Laws of Utah 2008, Chapter 372

41 **63M-1-2407**, as enacted by Laws of Utah 2008, Chapter 372

42 **63M-1-2408**, as last amended by Laws of Utah 2009, Chapter 183

43 ENACTS:

44 **63M-1-2409**, Utah Code Annotated 1953

45 **Utah Code Sections Affected by Coordination Clause:**

46 **63M-1-2405**, as enacted by Laws of Utah 2008, Chapter 372



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

49 Section 1. Section **59-7-614.2** is amended to read:

50 **59-7-614.2. Refundable economic development tax credit.**

51 (1) As used in this section:

52 (a) "Business entity" means a taxpayer that meets the definition of "business entity" as
53 defined in Section 63M-1-2403 or 63M-1-2803.

54 (b) "Community development and renewal agency" is as defined in Section
55 17C-1-102.

56 (c) "Local government entity" is as defined in Section 63M-1-2403.

57 [~~b~~] (d) "Office" means the Governor's Office of Economic Development.

58 (2) ~~[A]~~ Subject to the other provisions of this section, a business entity, local
 59 government entity, or community development and renewal agency may claim a refundable
 60 tax credit for economic development.

61 (3) The tax credit under this section is the amount listed as the tax credit amount on
 62 the tax credit certificate that the office issues to the business entity, local government entity, or
 63 community development and renewal agency for the taxable year.

64 (4) A community development and renewal agency may claim a tax credit under this
 65 section only if a local government entity assigns the tax credit to the community development
 66 and renewal agency in accordance with Section 63M-1-2404.

67 ~~[(4)]~~ (5) (a) In accordance with any rules prescribed by the commission under
 68 Subsection ~~[(4)]~~ (5)(b), the commission shall make a refund to the following that claim a tax
 69 credit under this section:

- 70 (i) a local government entity;
- 71 (ii) a community development and renewal agency; or
- 72 (iii) a business entity ~~[that claims a tax credit under this section]~~ if the amount of the
 73 tax credit exceeds the business entity's tax liability for a taxable year.

74 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
 75 the commission may make rules providing procedures for making a refund to a business
 76 entity, local government entity, or community development and renewal agency as required by
 77 Subsection ~~[(4)]~~ (5)(a).

78 ~~[(5)]~~ (6) (a) On or before October 1, 2013, and every five years after October 1, 2013,
 79 the Utah Tax Review Commission shall study the tax credit allowed by this section and make
 80 recommendations to the Revenue and Taxation Interim Committee and the Workforce
 81 Services and Community and Economic Development Interim Committee concerning whether
 82 the tax credit should be continued, modified, or repealed.

83 (b) For purposes of the study required by this Subsection ~~[(5)]~~ (6), the office shall
 84 provide the following information to the Utah Tax Review Commission:

- 85 (i) the amount of tax credit that the office grants to each business entity, local

86 government entity, or community development and renewal agency for each calendar year;

87 (ii) the criteria that the office uses in granting a tax credit;

88 (iii) (A) for a business entity, the new state revenues generated by [each] the business
89 entity for [each] the calendar year; or

90 (B) for a local government entity, regardless of whether the local government entity
91 assigns the tax credit in accordance with Section 63M-1-2404, the new state revenues
92 generated as a result of a new commercial project within the local government entity for each
93 calendar year;

94 (iv) the information contained in the office's latest report to the Legislature under
95 Section 63M-1-2406 or 63M-1-2806; and

96 (v) any other information that the Utah Tax Review Commission requests.

97 (c) The Utah Tax Review Commission shall ensure that its recommendations under
98 Subsection ~~(5)~~ (6)(a) include an evaluation of:

99 (i) the cost of the tax credit to the state;

100 (ii) the purpose and effectiveness of the tax credit; and

101 (iii) the extent to which the state benefits from the tax credit.

102 Section 2. Section **59-10-1107** is amended to read:

103 **59-10-1107. Refundable economic development tax credit.**

104 (1) As used in this section:

105 (a) "Business entity" means a claimant, estate, or trust that meets the definition of
106 "business entity" as defined in Section 63M-1-2403 or 63M-1-2803.

107 (b) "Office" means the Governor's Office of Economic Development.

108 (2) ~~[A]~~ Subject to the other provisions of this section, a business entity may claim a
109 refundable tax credit for economic development.

110 (3) The tax credit under this section is the amount listed as the tax credit amount on
111 the tax credit certificate that the office issues to the business entity for the taxable year.

112 (4) (a) In accordance with any rules prescribed by the commission under Subsection
113 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under

114 this section if the amount of the tax credit exceeds the business entity's tax liability for a
115 taxable year.

116 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
117 the commission may make rules providing procedures for making a refund to a business entity
118 as required by Subsection (4)(a).

119 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
120 Utah Tax Review Commission shall study the tax credit allowed by this section and make
121 recommendations to the Revenue and Taxation Interim Committee and the Workforce
122 Services and Community and Economic Development Interim Committee concerning whether
123 the tax credit should be continued, modified, or repealed.

124 (b) For purposes of the study required by this Subsection (5), the office shall provide
125 the following information to the Utah Tax Review Commission:

- 126 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;
- 127 (ii) the criteria the office uses in granting a tax credit;
- 128 (iii) the new state revenues generated by each taxpayer for each calendar year;
- 129 (iv) the information contained in the office's latest report to the Legislature under
130 Section 63M-1-2406 or 63M-1-2806; and
- 131 (v) any other information that the Utah Tax Review Commission requests.

132 (c) The Utah Tax Review Commission shall ensure that its recommendations under
133 Subsection (5)(a) include an evaluation of:

- 134 (i) the cost of the tax credit to the state;
- 135 (ii) the purpose and effectiveness of the tax credit; and
- 136 (iii) the extent to which the state benefits from the tax credit.

137 Section 3. Section **63M-1-2403** is amended to read:

138 **63M-1-2403. Definitions.**

139 As used in this part:

140 (1) "Business entity" means a person that enters into an agreement with the office to
141 initiate a new commercial project in Utah that will qualify the person to receive a tax credit

142 under Section 59-7-614.2 or 59-10-1107.

143 (2) "Community development and renewal agency" is as defined in Section
144 17C-1-102.

145 [~~2~~] (3) "Development zone" means an economic development zone created under
146 Section 63M-1-2404.

147 [~~3~~] (4) "High paying jobs" means:

148 (a) with respect to a business entity, the annual wages of employment positions in a
149 business entity that compare favorably against the average wage of a community in which the
150 employment positions will exist[-];

151 (b) with respect to a county, the annual wages of employment positions in a new
152 commercial project within the county that compare favorably against the average wage of the
153 county in which the employment positions will exist; or

154 (c) with respect to a city or town, the annual wages of employment positions in a new
155 commercial project within the city or town that compare favorably against the average wages
156 of the city or town in which the employment positions will exist.

157 (5) "Local government entity" means a county, city, or town that enters into an
158 agreement with the office to have a new commercial project that:

159 (a) is initiated within the county's, city's, or town's boundaries; and

160 (b) qualifies the county, city, or town to receive a tax credit under Section 59-7-614.2.

161 [~~4~~] (6) (a) "New commercial project" means an economic development opportunity
162 that involves new or expanded industrial, manufacturing, distribution, or business services in
163 Utah.

164 (b) "New commercial project" does not include retail business.

165 [~~5~~] (7) "New incremental jobs" means employment positions that are:

166 (a) not shifted from one jurisdiction in the state to another jurisdiction in the state; and

167 (b) (i) with respect to a business entity, created in addition to the baseline count of
168 employment positions that existed within the business entity before the new commercial
169 project[-];

170 (ii) with respect to a county, created as a result of a new commercial project with
171 respect to which the county or a community development and renewal agency seeks to claim a
172 tax credit under Section 59-7-614.2; or

173 (iii) with respect to a city or town, created as a result of a new commercial project with
174 respect to which the city, town, or a community development and renewal agency seeks to
175 claim a tax credit under Section 59-7-614.2.

176 [~~(6)~~] (8) "New state revenues" means:

177 (a) with respect to a business entity:

178 [~~(a)~~] (i) incremental new state sales and use tax revenues that a business entity pays
179 under Title 59, Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in
180 a development zone;

181 [~~(b)~~] (ii) incremental new state tax revenues, if any, that a business entity pays as a
182 result of a new commercial project in a development zone under:

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

184 [~~(i)~~] (B) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability
185 and Information;

186 [~~(ii)~~] (C) Title 59, Chapter 10, Part 2, Trusts and Estates;

187 [~~(iii)~~] (D) Title 59, Chapter 10, Part 4, Withholding of Tax; or

188 [~~(iv)~~] Title 59, Chapter 7, Corporate Franchise and Income Taxes; or]

189 [~~(v)~~] (E) a combination of Subsections [~~(6)(b)(i) through (iv)] (8)(a)(ii)(A) through~~
190 (D);

191 [~~(c)~~] (iii) incremental new state tax revenues paid as individual income taxes under
192 Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by
193 employees of [~~the~~] a new or expanded industrial, manufacturing, distribution, or business
194 service within a new commercial project as evidenced by payroll records that indicate the
195 amount of employee income taxes withheld and transmitted to the State Tax Commission by
196 the [~~business entity~~] new or expanded industrial, manufacturing, distribution, or business
197 service within the new commercial project; or

198 ~~[(d)]~~ (iv) a combination of Subsections ~~[(6)(a) through (c)]~~ (8)(a)(i) through (iii); or
199 (b) with respect to a local government entity:
200 (i) incremental new state sales and use tax revenues that are collected under Title 59,
201 Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in a development
202 zone;
203 (ii) incremental new state tax revenues, if any, that are collected as a result of a new
204 commercial project in a development zone under:
205 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
206 (B) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
207 Information;
208 (C) Title 59, Chapter 10, Part 2, Trusts and Estates;
209 (D) Title 59, Chapter 10, Part 4, Withholding of Tax; or
210 (E) a combination of Subsections (8)(b)(ii)(A) through (D);
211 (iii) incremental new state tax revenues paid as individual income taxes under Title
212 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by
213 employees of a new or expanded industrial, manufacturing, distribution, or business service
214 within a new commercial project as evidenced by payroll records that indicate the amount of
215 employee income taxes withheld and transmitted to the State Tax Commission by the new or
216 expanded industrial, manufacturing, distribution, or business service within the new
217 commercial project; or
218 (iv) a combination of Subsections (8)(b)(i) through (iii).
219 ~~[(7)]~~ (9) "Office" means the Governor's Office of Economic Development.
220 ~~[(8)]~~ (10) "Tax credit" means an economic development tax credit created by Section
221 59-7-614.2 or 59-10-1107.
222 ~~[(9)]~~ (11) "Tax credit amount" means the amount the office lists as a tax credit on a
223 tax credit certificate for a taxable year.
224 ~~[(10)]~~ (12) "Tax credit certificate" means a certificate issued by the office that:
225 (a) lists the name of the ~~[applicant]~~ business entity, local government entity, or

226 community development and renewal agency to which the office authorizes a tax credit;

227 (b) lists the ~~[applicant's]~~ business entity's, local government entity's, or community
 228 development and renewal agency's taxpayer identification number;

229 (c) lists the amount of tax credit that the office ~~[awards the applicant]~~ authorizes the
 230 business entity, local government entity, or community development and renewal agency for
 231 the taxable year; and

232 (d) may include other information as determined by the office.

233 Section 4. Section **63M-1-2404** is amended to read:

234 **63M-1-2404. Creation of economic development zones -- Tax credits --**

235 **Assignment of tax credit.**

236 (1) The office, with advice from the board, may create an economic development zone
 237 in the state that satisfies all of the following requirements:

238 (a) the area is zoned commercial, industrial, manufacturing, business park, research
 239 park, or other appropriate use in a community-approved master plan; ~~[and]~~

240 (b) the request to create a development zone has been forwarded to the office after first
 241 being approved by an appropriate local government entity ~~[that has committed or will commit~~
 242 ~~to provide local incentives.]; and~~

243 (c) local incentives have been committed or will be committed to be provided within
 244 the area.

245 (2) (a) By following the procedures and requirements of Title 63G, Chapter 3, Utah
 246 Administrative Rulemaking Act, the office shall make rules establishing the conditions that a
 247 business entity ~~[must]~~ or local government entity shall meet to qualify for a tax credit under
 248 this part.

249 (b) The office shall ensure that ~~[those]~~ the conditions described in Subsection (2)(a)
 250 include the following requirements:

251 (i) the new commercial project must be within the development zone;

252 (ii) the new commercial project includes direct investment within the geographic
 253 boundaries of the development zone;

254 (iii) the new commercial project brings new incremental jobs to Utah;
255 (iv) the new commercial project includes significant capital investment, the creation of
256 high paying jobs, or significant purchases from Utah vendors and providers, or any
257 combination of these three economic factors;

258 (v) the new commercial project generates new state revenues; and

259 (vi) ~~the~~ (A) a business entity or local government entity qualifying for the tax credit
260 meets the requirements of Section 63M-1-2405[-]; or

261 (B) a community development and renewal agency to which a local government entity
262 assigns a tax credit under this section meets the requirements of Section 63M-1-2405.

263 (3) (a) ~~The~~ Subject to the other provisions of this Subsection (3), the office, with
264 advice from the board, may enter into an agreement with a business entity or local government
265 entity authorizing a tax credit to [a] the business entity [that] or local government entity if the
266 business entity or local government entity meets the standards established under Subsection
267 (2).

268 (b) (i) With respect to one new commercial project, the office may authorize a tax
269 credit to a business entity or a local government entity, but not both.

270 (ii) In determining whether to authorize a tax credit with respect to one new
271 commercial project to a business entity or a local government entity, the office shall authorize
272 the tax credit in a manner that the office determines will result in providing the most effective
273 incentive for the new commercial project.

274 ~~(b)~~ (c) The office may not authorize or commit to authorize a tax credit ~~to a~~
275 ~~business entity~~ if that tax credit exceeds:

276 (i) 50% of the new state revenues from the ~~[business entity's]~~ new commercial project
277 in any given year; or

278 (ii) 30% of the new state revenues from the ~~[business entity's]~~ new commercial project
279 over the life of a new commercial project or 20 years, whichever is less.

280 (d) (i) A local government entity may by resolution assign a tax credit that the office
281 authorizes to the local government entity to a community development and renewal agency.

282 (ii) The local government entity shall provide a copy of the resolution described in
283 Subsection (3)(d)(i) to the office.

284 (iii) If a local government entity assigns a tax credit to a community development and
285 renewal agency:

286 (A) the agreement described in this section shall:

287 (I) be among the office, the local government entity, and the community development
288 and renewal agency; and

289 (II) establish:

290 (Aa) the obligations of the local government entity and the community development
291 and renewal agency; and

292 (Bb) the extent to which any of the local government entity's obligations are
293 transferred to the community development and renewal agency;

294 (B) the community development and renewal agency shall retain records as described
295 in Subsection (4)(d); and

296 (C) a tax credit certificate issued in accordance with Section 63M-1-2406 shall list the
297 community development and renewal agency as the name of the applicant.

298 (4) [~~The~~] Subject to Subsection (3), the office shall ensure that the agreement [with the
299 business entity that is] described in Subsection (3):

300 (a) details the requirements that the business entity [~~must~~] or local government entity
301 shall meet to qualify for a tax credit under this part;

302 (b) specifies the maximum amount of tax credit that the business entity [~~may earn~~] or
303 local government entity may be authorized for a taxable year and over the life of the new
304 commercial project;

305 (c) establishes the length of time the business entity or local government entity may
306 claim a tax credit;

307 (d) requires the business entity or local government entity to retain records supporting
308 [~~its~~] a claim for a tax credit for at least four years after the business entity or local government
309 entity claims a tax credit under this part; and

310 (e) requires the business entity or local government entity to submit to audits for
311 verification of the tax credit claimed.

312 Section 5. Section **63M-1-2405** is amended to read:

313 **63M-1-2405. Qualifications for tax credit -- Procedure.**

314 (1) The office shall certify a business entity's or local government entity's eligibility
315 for a tax credit as provided in this section.

316 (2) A business entity or local government entity seeking to receive a tax credit shall
317 provide the office with:

318 (a) an application for a tax credit certificate;

319 (b) (i) for a business entity, documentation of the new state revenues from the business
320 entity's new commercial project that were paid during the preceding calendar year; [~~and~~] or

321 (ii) for a local government entity, documentation of the new state revenues from the
322 new commercial project within the local government entity that were paid during the
323 preceding calendar year;

324 (c) if a local government entity seeks to assign the tax credit to a community
325 development and renewal agency in accordance with Section 63M-1-2404, a statement
326 providing the name and taxpayer identification number of the community development and
327 renewal agency to which the local government entity seeks to assign the tax credit; and

328 [~~(c)~~] (d) (i) with respect to a business entity, a document that expressly directs and
329 authorizes the State Tax Commission to disclose the business entity's returns and other
330 information [~~concerning the business entity~~] that would otherwise be subject to confidentiality
331 under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office[-];

332 (ii) with respect to a local government entity that seeks to claim the tax credit:

333 (A) a document that expressly directs and authorizes the State Tax Commission to
334 disclose the local government entity's returns and other information that would otherwise be
335 subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to
336 the office; and

337 (B) if the new state revenues collected as a result of a new commercial project are

338 attributable in whole or in part to a new or expanded industrial, manufacturing, distribution, or
339 business service within a new commercial project within the local government, a document
340 signed by an authorized representative of the new or expanded industrial, manufacturing,
341 distribution, or business service that:

342 (I) expressly directs and authorizes the State Tax Commission to disclose the returns
343 of that new or expanded industrial, manufacturing, distribution, or business service and other
344 information that would otherwise be subject to confidentiality under Section 59-1-403 or
345 Section 6103, Internal Revenue Code, to the office; and

346 (II) lists the taxpayer identification number of that new or expanded industrial,
347 manufacturing, distribution, or business service; or

348 (iii) with respect to a local government entity that seeks to assign the tax credit to a
349 community development and renewal agency:

350 (A) a document signed by the members of the governing body of the community
351 development and renewal agency that expressly directs and authorizes the State Tax
352 Commission to disclose the returns of the community development and renewal agency and
353 other information that would otherwise be subject to confidentiality under Section 59-1-403 or
354 Section 6103, Internal Revenue Code, to the office; and

355 (B) if the new state revenues collected as a result of a new commercial project are
356 attributable in whole or in part to a new or expanded industrial, manufacturing, distribution, or
357 business service within a new commercial project within the community development and
358 renewal agency, a document signed by an authorized representative of the new or expanded
359 industrial, manufacturing, distribution, or business service that:

360 (I) expressly directs and authorizes the State Tax Commission to disclose the returns
361 of that new or expanded industrial, manufacturing, distribution, or business service and other
362 information that would otherwise be subject to confidentiality under Section 59-1-403 or
363 Section 6103, Internal Revenue Code, to the office; and

364 (II) lists the taxpayer identification number of that new or expanded industrial,
365 manufacturing, distribution, or business service.

366 (3) (a) The office shall submit the ~~[document]~~ documents described in Subsection
367 (2)~~(c)~~(d) to the State Tax Commission.

368 (b) Upon receipt of ~~[the]~~ a document described in Subsection (2)~~(c)~~(d), the State Tax
369 Commission shall provide the office with the returns and other information requested by the
370 office that ~~[the business entity directed or authorized]~~ the State Tax Commission is directed or
371 authorized to provide to the office in ~~[the document described in]~~ accordance with Subsection
372 (2)~~(c)~~(d).

373 (4) If, after review of the returns and other information provided by the State Tax
374 Commission, the office determines that the ~~[documentation provided by the business entity is]~~
375 returns and other information are inadequate to provide a reasonable justification for
376 authorizing a tax credit, the office shall either:

377 (a) deny the tax credit; or

378 (b) inform the business entity or local government entity that the ~~[documentation was]~~
379 returns or other information were inadequate and ask the business entity or local government
380 entity to submit new documentation.

381 (5) If after review of the returns and other information provided by the State Tax
382 Commission, the office determines that the ~~[documentation]~~ returns and other information
383 provided by the business entity ~~[provides]~~ or local government entity provide reasonable
384 justification for authorizing a tax credit, the office shall, based upon the ~~[documentation]~~
385 returns and other information:

386 (a) determine the amount of the tax credit to be granted to the business entity, local
387 government entity, or if the local government entity assigns the tax credit in accordance with
388 Section 63M-1-2404, to the community development and renewal agency to which the local
389 government entity assigns the tax credit;

390 (b) issue a tax credit certificate to the business entity, local government entity, or if the
391 local government entity assigns the tax credit in accordance with Section 63M-1-2404, to the
392 community development and renewal agency to which the local government entity assigns the
393 tax credit; and

394 (c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

395 (6) A business entity, local government entity, or community development and
396 renewal agency may not claim a tax credit unless the business entity, local government entity,
397 or community development and renewal agency has a tax credit certificate issued by the office.

398 (7) (a) A business entity, local government entity, or community development and
399 renewal agency may claim a tax credit in the amount listed on the tax credit certificate on its
400 tax return.

401 (b) A business entity, local government entity, or community development and
402 renewal agency that claims a tax credit under this section shall retain the tax credit certificate
403 in accordance with Section 59-7-614.2 or 59-10-1107.

404 Section 6. Section **63M-1-2407** is amended to read:

405 **63M-1-2407. Reports of new state revenues, partial rebates, and tax credits.**

406 (1) Before December 1 of each year, the office shall submit a report to the Governor's
407 Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the Division of
408 Finance identifying:

409 (a) (i) the total estimated amount of new state revenues created from new commercial
410 projects in the development zones; and

411 (ii) the estimated amount of new state revenues from new commercial projects in the
412 development zones that will be generated from:

413 (A) sales tax;

414 (B) income tax; and

415 (C) corporate franchise and income tax;

416 (b) (i) the total estimated amount of partial rebates as defined in Section 63M-1-2408
417 that the office projects will be required to be paid in the next fiscal year; and

418 (ii) the estimated amount of partial rebates as defined in Section 63M-1-2408 that are
419 attributable to:

420 (A) sales tax;

421 (B) income tax; and

422 (C) corporate franchise and income tax; and
423 (c) the total estimated amount of tax credits that the office projects that business
424 entities, local government entities, or community development and renewal agencies will
425 qualify to claim under this part.

426 (2) By the first business day of each month, the office shall submit a report to the
427 Governor's Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the
428 Division of Finance identifying:

429 (a) each new agreement entered into by the office since the last report;
430 (b) the estimated amount of new state revenues that will be generated under each
431 agreement; and

432 (c) the estimated amount of tax credits that a business entity, local government entity,
433 or community development and renewal agency could qualify for under each agreement.

434 Section 7. Section **63M-1-2408** is amended to read:

435 **63M-1-2408. Transition clause -- Modification of agreements -- Payment of**
436 **partial rebates -- Economic Incentive Restricted Account.**

437 (1) As used in this section, "partial rebate" means an agreement between the office and
438 a business entity under which the state agrees to pay back to the business entity a portion of
439 new state revenues generated by a business entity's new commercial project.

440 (2) (a) Unless modified or renegotiated as provided in Subsection (2)(b), the Division
441 of Finance shall make partial rebate payments due under agreements entered into by the office
442 before May 5, 2008 as provided in this section.

443 (b) By January 1, 2009, the office shall:

444 (i) contact each business entity with whom the office entered into an agreement under
445 former Section 63M-1-1304 or 63M-1-1704; and

446 (ii) subject to the limits established in Subsection 63M-1-2404(3)(~~b~~)(c), seek to
447 modify those agreements for the sole purpose of providing the incentives in the form of tax
448 credits under this part rather than partial rebates.

449 (c) The office shall:

450 (i) for each modified agreement granting tax credits, follow the procedures and
451 requirements of Section 63M-1-2405;

452 (ii) for each agreement that still requires the state to pay partial rebates to the business
453 entity, follow the procedures and requirements of this section; and

454 (iii) provide a report to the Executive Appropriations Committee and the Legislative
455 Fiscal Analyst by December 1, 2008, about the progress of its efforts to modify agreements
456 reached before May 5, 2008.

457 (3) (a) There is created a restricted account in the General Fund known as the
458 Economic Incentive Restricted Account.

459 (b) The account shall consist of monies transferred into the account by the Division of
460 Finance from the General Fund as provided in this section.

461 (c) The Division of Finance shall make payments from the account as required by this
462 section.

463 (4) (a) Each business entity seeking a partial rebate shall follow the procedures and
464 requirements of this Subsection (4) to obtain a partial rebate.

465 (b) Within 90 days of the end of each calendar year, a business entity seeking a partial
466 rebate shall:

467 (i) provide the office with documentation of the new state revenues that the business
468 entity generated during the preceding calendar year; and

469 (ii) ensure that the documentation includes:

470 (A) the types of taxes and corresponding amounts of taxes paid directly to the State
471 Tax Commission; and

472 (B) the sales taxes paid to Utah vendors and suppliers that were indirectly paid to the
473 State Tax Commission.

474 (c) The office shall:

475 (i) audit or review the documentation for accuracy;

476 (ii) based upon its analysis of the documentation, determine the amount of partial
477 rebates that the business entity earned under the agreement; and

478 (iii) submit to the Division of Finance:
479 (A) a request for payment of partial rebates to the business entity;
480 (B) the name and address of the payee; and
481 (C) any other information requested by the Division of Finance.
482 (5) Upon receipt of a request for payment of partial rebates from the office, the
483 Division of Finance shall:

484 (a) transfer from the General Fund to the restricted account the amount contained in
485 the request for payment of partial rebates after reducing the amount transferred by any
486 unencumbered balances in the restricted account; and

487 (b) notwithstanding Subsections 51-5-3(23)(b) and 63J-1-104(3)(b), after receiving a
488 request for payment of partial rebates and making the transfer required by Subsection (5)(a),
489 the Division of Finance shall pay the partial rebates from the account.

490 Section 8. Section **63M-1-2409** is enacted to read:

491 **63M-1-2409. Expenditure of amounts received by a local government entity or**
492 **community development and renewal agency as a tax credit -- Commingling of tax credit**
493 **amounts with certain other amounts.**

494 (1) Subject to Subsections (2) and (3), a local government entity or community
495 development and renewal agency may expend amounts the local government entity or
496 community development and renewal agency receives as a tax credit under Section
497 59-7-614.2:

498 (a) for infrastructure, including real property or personal property, if that infrastructure
499 is related to the new commercial project with respect to which the local government entity or
500 community development and renewal agency claims the tax credit under Section 59-7-614.2;
501 or

502 (b) for another economic development purpose related to the new commercial project
503 with respect to which the local government entity or community development and renewal
504 agency claims the tax credit under Section 59-7-614.2.

505 (2) A local government entity may:

506 (a) commingle amounts the local government entity receives as a tax credit under
507 Section 59-7-614.2 with amounts the local government entity receives under Title 63M,
508 Chapter 1, Part 9, Industrial Assistance Fund; and

509 (b) expend the commingled amounts described in Subsection (2)(a) for a purpose
510 described in Title 63M, Chapter 1, Part 9, Industrial Assistance Fund, if that purpose is related
511 to the new commercial project with respect to which the local government entity claims the tax
512 credit under Section 59-7-614.2.

513 (3) A community development and renewal agency may:

514 (a) commingle amounts the community development and renewal agency receives as a
515 tax credit under Section 59-7-614.2 with amounts the community development and renewal
516 agency receives under Title 17C, Chapter 1, Part 4, Tax Increment and Sales Tax; and

517 (b) expend the commingled amounts described in Subsection (3)(a) for a purpose
518 described in Title 17C, Chapter 1, Part 4, Tax Increment and Sales Tax, if that purpose is
519 related to the new commercial project with respect to which the community development and
520 renewal agency claims the tax credit under Section 59-7-614.2.

521 **Section 9. Retrospective operation.**

522 This bill has retrospective operation for a taxable year beginning on or after January 1,
523 2010.

524 **Section 10. Coordinating S.B. 198 with H.B. 24 -- Merging substantive**
525 **amendments.**

526 If this S.B. 198 and H.B. 24, Economic Development Incentives Act Amendments,
527 both pass, it is the intent of the Legislature that the Office of Legislative Research and General
528 Counsel, in preparing the Utah Code database for publication, modify Subsection
529 63M-1-2405(2) to read:

530 “(2) A business entity or local government entity seeking to receive a tax credit shall
531 provide the office with:

532 (a) an application for a tax credit certificate;

533 (b) (i) for a business entity, documentation of the new state revenues from the business

534 entity's new commercial project that were paid during the preceding calendar year; ~~[and]~~ or
535 (ii) for a local government entity, documentation of the new state revenues from the
536 new commercial project within the local government entity that were paid during the
537 preceding calendar year;

538 (c) if a local government entity seeks to assign the tax credit to a community
539 development and renewal agency in accordance with Section 63M-1-2404, a statement
540 providing the name and taxpayer identification number of the community development and
541 renewal agency to which the local government entity seeks to assign the tax credit;

542 ~~[(e)]~~ (d) (i) with respect to a business entity, a document that expressly directs and
543 authorizes the State Tax Commission to disclose the business entity's returns and other
544 information [concerning the business entity] that would otherwise be subject to confidentiality
545 under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office[-];

546 (ii) with respect to a local government entity that seeks to claim the tax credit:

547 (A) a document that expressly directs and authorizes the State Tax Commission to
548 disclose the local government entity's returns and other information that would otherwise be
549 subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to
550 the office; and

551 (B) if the new state revenues collected as a result of a new commercial project are
552 attributable in whole or in part to a new or expanded industrial, manufacturing, distribution, or
553 business service within a new commercial project within the local government, a document
554 signed by an authorized representative of the new or expanded industrial, manufacturing,
555 distribution, or business service that:

556 (I) expressly directs and authorizes the State Tax Commission to disclose the returns
557 of that new or expanded industrial, manufacturing, distribution, or business service and other
558 information that would otherwise be subject to confidentiality under Section 59-1-403 or
559 Section 6103, Internal Revenue Code, to the office; and

560 (II) lists the taxpayer identification number of that new or expanded industrial,
561 manufacturing, distribution, or business service; or

562 (iii) with respect to a local government entity that seeks to assign the tax credit to a
563 community development and renewal agency:

564 (A) a document signed by the members of the governing body of the community
565 development and renewal agency that expressly directs and authorizes the State Tax
566 Commission to disclose the returns of the community development and renewal agency and
567 other information that would otherwise be subject to confidentiality under Section 59-1-403 or
568 Section 6103, Internal Revenue Code, to the office; and

569 (B) if the new state revenues collected as a result of a new commercial project are
570 attributable in whole or in part to a new or expanded industrial, manufacturing, distribution, or
571 business service within a new commercial project within the community development and
572 renewal agency, a document signed by an authorized representative of the new or expanded
573 industrial, manufacturing, distribution, or business service that:

574 (I) expressly directs and authorizes the State Tax Commission to disclose the returns
575 of that new or expanded industrial, manufacturing, distribution, or business service and other
576 information that would otherwise be subject to confidentiality under Section 59-1-403 or
577 Section 6103, Internal Revenue Code, to the office; and

578 (II) lists the taxpayer identification number of that new or expanded industrial,
579 manufacturing, distribution, or business service; and

580 (e) for a business entity only, documentation that the business entity has satisfied the
581 performance benchmarks outlined in the agreement described in Subsection
582 63M-1-2404(3)(a), including:

583 (i) significant capital investment;

584 (ii) the creation of high paying jobs;

585 (iii) significant purchases from Utah vendors and providers; or

586 (iv) any combination of Subsections (2)(e)(i), (ii), and (iii)."