

1 **NEW CONVENTION HOTEL DEVELOPMENT INCENTIVE**

2 **ACT**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: J. Stuart Adams**

6 House Sponsor: Brad R. Wilson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill enacts the New Convention Hotel Development Incentive Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ establishes a tax credit for the owner of a new hotel under certain circumstances;
- 14 ▶ establishes requirements and criteria for qualifying for the tax credit;
- 15 ▶ establishes a process for applying for and issuing a tax credit certificate;
- 16 ▶ requires a local match for a new hotel owner to qualify for a tax credit; and
- 17 ▶ limits the use of money derived from a tax credit.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 ENACTS:

- 24 **59-7-616**, Utah Code Annotated 1953
- 25 **59-10-1110**, Utah Code Annotated 1953
- 26 **63M-1-3201**, Utah Code Annotated 1953
- 27 **63M-1-3202**, Utah Code Annotated 1953



- 28 **63M-1-3203**, Utah Code Annotated 1953
- 29 **63M-1-3204**, Utah Code Annotated 1953
- 30 **63M-1-3205**, Utah Code Annotated 1953
- 31 **63M-1-3206**, Utah Code Annotated 1953
- 32 **63M-1-3207**, Utah Code Annotated 1953

33

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

35 Section 1. Section **59-7-616** is enacted to read:

36 **59-7-616. Refundable tax credit for certain business entities.**

37 (1) As used in this section:

- 38 (a) "Office" means the Governor's Office of Economic Development.
- 39 (b) "Pass-through entity" has the same meaning as defined in Section 59-10-1402.
- 40 (c) "Pass-through entity taxpayer" has the same meaning as defined in Section

41 59-10-1402.

42 (d) "Qualifying hotel owner" means a person who:

- 43 (i) owns a qualified hotel, as defined in Section 63M-1-3202; and
- 44 (ii) receives a tax credit certificate.

45 (e) "Tax credit certificate" has the same meaning as defined in Section 63M-1-3202.

46 (2) Subject to the other provisions of this section, a qualifying hotel owner may:

- 47 (a) claim a refundable tax credit as provided in Subsection (3); or
- 48 (b) if the qualifying hotel owner is a pass-through entity, pass through to one or more
- 49 pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part
- 50 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a refundable tax credit that
- 51 the qualifying hotel owner could otherwise claim under this section.

52 (3) The amount of the tax credit a qualifying hotel owner may claim or pass through

53 for a taxable year is the amount listed on the tax credit certificate for that taxable year.

54 (4) A qualifying hotel owner may claim or pass through a tax credit under this section

55 only for a taxable year for which the qualifying hotel owner holds a tax credit certificate.

56 (5) A qualifying hotel owner may not:

- 57 (a) carry forward or carry back a tax credit under this section; or
- 58 (b) claim or pass through a tax credit for any taxable year in an amount greater than the

59 amount listed on a tax credit certificate issued under Section 63M-1-3205 for that taxable year.

60 (6) (a) In accordance with any rules prescribed by the commission under Subsection

61 (6)(b), the commission shall:

62 (i) make a refund to a qualifying hotel owner that claims a tax credit under this section

63 if the amount of the tax credit exceeds the qualifying hotel owner's tax liability under this

64 chapter; and

65 (ii) transfer at least annually from the General Fund into the Education Fund an amount

66 equal to the amount of tax credit claimed under this section.

67 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
68 commission may make rules providing procedures for making:

69 (i) a refund to a qualifying hotel owner as required by Subsection (6)(a)(i); or

70 (ii) transfers from the General Fund into the Education Fund as required by Subsection

71 (6)(a)(ii).

72 Section 2. Section **59-10-1110** is enacted to read:

73 **59-10-1110. Refundable tax credit for certain business entities.**

74 (1) As used in this section:

75 (a) "Office" means the Governor's Office of Economic Development.

76 (b) "Pass-through entity" has the same meaning as defined in Section 59-10-1402.

77 (c) "Pass-through entity taxpayer" has the same meaning as defined in Section

78 59-10-1402.

79 (d) "Qualifying hotel owner" means a person who:

80 (i) owns a qualified hotel, as defined in Section 63M-1-3202; and

81 (ii) receives a tax credit certificate.

82 (e) "Tax credit certificate" has the same meaning as defined in Section 63M-1-3202.

83 (2) Subject to the other provisions of this section, a qualifying hotel owner may:

84 (a) claim a refundable tax credit as provided in Subsection (3); or

85 (b) if the qualifying hotel owner is a pass-through entity, pass through to one or more

86 pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part

87 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a refundable tax credit that

88 the qualifying hotel owner could otherwise claim under this section.

89 (3) The amount of the tax credit is:

90 (a) for a qualifying hotel owner, the amount listed on the tax credit certificate that the
91 office issues under Section 63M-1-3205 to the qualifying hotel owner for the taxable year; or

92 (b) for a pass-through entity taxpayer, the amount of tax credit that a qualifying hotel
93 owner passes through to the pass-through entity taxpayer of the pass-through entity in
94 accordance with Subsection (2)(b) or Subsection 59-7-616(2)(b).

95 (4) A qualifying hotel owner or pass-through entity taxpayer to which a qualifying
96 hotel owner passes through a tax credit in accordance with Subsection (2)(b) or Subsection
97 59-7-616(2)(b) may claim or pass through a tax credit under this section only for a taxable year
98 for which the qualifying hotel owner holds a tax credit certificate issued under Section
99 63M-1-3205.

100 (5) A qualifying hotel owner or a pass-through entity taxpayer may not:

101 (a) carry forward or carry back a tax credit under this section; or

102 (b) claim a tax credit under both this section and Section 59-7-616.

103 (6) (a) In accordance with any rules prescribed by the commission under Subsection
104 (6)(b), the commission shall:

105 (i) make a refund to a qualifying hotel owner or pass-through entity taxpayer that
106 claims a tax credit under this section if the amount of the tax credit exceeds the qualifying hotel
107 owner's or pass-through entity taxpayer's tax liability under this chapter; and

108 (ii) transfer at least annually from the General Fund into the Education Fund an amount
109 equal to the amount of tax credit claimed under this section.

110 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
111 commission may make rules providing procedures for making:

112 (i) a refund to a qualifying hotel owner or pass-through entity taxpayer as required by
113 Subsection (6)(a)(i); or

114 (ii) transfers from the General Fund into the Education Fund as required by Subsection
115 (6)(a)(ii).

116 Section 3. Section **63M-1-3201** is enacted to read:

117 **Part 32. New Convention Hotel Development Incentive Act**

118 **63M-1-3201. Title.**

119 This part is known as the "New Convention Hotel Development Incentive Act."

120 Section 4. Section **63M-1-3202** is enacted to read:

121 **63M-1-3202. Definitions.**122 As used in this part:123 (1) "Eligibility period" means a period that:124 (a) (i) begins the date construction of a qualified hotel begins; and125 (ii) ends the date that is 20 years after the date of initial occupancy of the hotel; or126 (b) is defined in an agreement under Section 63M-1-3204, if that period is shorter than
127 the period described in Subsection (1)(a).128 (2) "Financial incentive" means a grant, fee waiver, financing assistance, improvement,
129 or property tax or other tax incentive, including a rebate of a property tax or sales and use tax.130 (3) "Hotel property" means a qualified hotel and any property that is included in the
131 same development as the qualified hotel, including convention and meeting space, retail shops,
132 restaurants, parking, and other ancillary facilities and amenities.133 (4) "Local match" means a financial incentive provided by a county, municipality,
134 school district, local district, special service district, community development and renewal
135 agency, or other political subdivision of the state to the owner of a qualified hotel in a
136 cumulative amount during the eligibility period that equals or exceeds the cumulative amount
137 of tax credits to the qualified hotel owner during that same period.138 (5) "Qualified hotel" means a privately owned hotel constructed in the state on or after
139 July 1, 2013 that:140 (a) includes at least 850 guest rooms;141 (b) includes at least 85 square feet of convention and meeting space per guest room;
142 and143 (c) is located within 1,000 feet of a convention center that contains at least 500,000
144 square feet of convention and meeting space.145 (6) "Sales tax proceeds" means the total amount of revenue remitted to the state during
146 a tax year from a state sales and use tax imposed under Section 59-12-103 on transactions
147 described in Subsection 59-12-103(1) that take place on the hotel property during the eligibility
148 period.149 (7) "Tax credit" means a tax credit under Section 59-7-616 or 59-10-1110 in the
150 amount of sales tax proceeds.151 (8) "Tax credit applicant" means a person that applies to the office to receive a tax

152 credit certificate.

153 (9) "Tax credit certificate" means a certificate issued by the office that:

154 (a) lists the name of the tax credit certificate recipient;

155 (b) lists the tax credit certificate recipient's taxpayer identification number;

156 (c) lists the amount of the tax credit certificate recipient's tax credits authorized under
157 this part for a taxable year; and

158 (d) includes other information as determined by the office.

159 (10) "Tax credit certificate recipient" means an owner of a qualified hotel that receives
160 a tax credit certificate.

161 Section 5. Section **63M-1-3203** is enacted to read:

162 **63M-1-3203. Tax credit application process.**

163 (1) An owner of a qualified hotel may apply to the office for a tax credit as provided in
164 this part.

165 (2) An owner seeking a tax credit under this part shall file an application with the
166 office:

167 (a) on or before the deadline established by the office by rule made in accordance with
168 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

169 (b) on a form and in the manner prescribed by the office.

170 (3) An application under Subsection (2) shall include:

171 (a) sales and use tax return information as required by the office that is necessary for
172 the office to determine eligibility for and the amount of a tax credit; and

173 (b) other documentation as required by the office.

174 (4) As part of the application required by this section, a tax credit applicant shall:

175 (a) sign a separate document that expressly directs and authorizes the State Tax

176 Commission to disclose to the office the returns filed by the owner for a state sales and use tax
177 paid under Section 59-12-103 and other information concerning the tax credit certificate that:

178 (i) would otherwise be subject to confidentiality under Section 59-1-403; and

179 (ii) are necessary for the office to determine eligibility for and the amount of a tax
180 credit;

181 (b) require each other person who collects a state sales and use tax under Section

182 59-12-103 on transactions described in Subsection 59-12-103(1) that take place on the hotel

183 property to comply with Subsection (4)(a) as though that subsection applied to that person; and
184 (c) provide an independent audit of the taxable sales upon which a tax credit applicant's
185 application for a tax credit is based.

186 (5) (a) Upon receipt of the documents described in Subsections (4)(a) and (b), the State
187 Tax Commission shall provide the office with the tax returns and other information requested
188 by the office that the tax credit applicant or other person directed or authorized the State Tax
189 Commission to provide to the office, including information necessary to determine eligibility
190 for the amount of a tax credit.

191 (b) Subsections 63G-2-206(3), (4), and (6) apply to the tax returns and other
192 information that the State Tax Commission provides to the office under Subsection (5)(a).

193 (6) If the office determines that the information a tax credit applicant provides is
194 inadequate to provide a reasonable justification for authorizing a tax credit, the office shall:

195 (a) deny the tax credit; or

196 (b) inform the tax credit applicant that the information is inadequate and ask the tax
197 credit applicant to submit new or additional documentation.

198 Section 6. Section **63M-1-3204** is enacted to read:

199 **63M-1-3204. Agreement between tax credit applicant and office -- Requirements.**

200 (1) The office shall enter into an agreement to grant a tax credit certificate to a tax
201 credit applicant, if the tax credit applicant meets the requirements and criteria established in the
202 agreement and under this part.

203 (2) An agreement described in Subsection (1) shall:

204 (a) detail the requirements that the tax credit applicant is required to meet prior to
205 receiving a tax credit certificate, as provided in this part;

206 (b) require the tax credit certificate recipient to retain records supporting a claim for a
207 tax credit for at least four years after the tax credit certificate recipient claims a tax credit under
208 this part; and

209 (c) require the tax credit certificate recipient to submit to audits for verification of the
210 tax credit claimed, including audits by the office and by the State Tax Commission.

211 (3) Any costs the office incurs administering the provisions of this part shall be paid by
212 funds from the local match.

213 Section 7. Section **63M-1-3205** is enacted to read:

214 **63M-1-3205. Issuance of tax credit certificate -- Duplicate to State Tax**

215 **Commission.**

216 (1) (a) A tax credit applicant shall establish as part of the application required by
217 Section 63M-1-3203 that:

218 (i) the tax credit applicant meets all of the requirements and criteria to receive the tax
219 credit for which the tax credit applicant applies; and

220 (ii) a local match is in place.

221 (b) The office may not issue a tax credit certificate to a tax credit applicant that fails to
222 meet the requirements of Subsection (1)(a).

223 (2) The office shall issue a tax certificate to a tax credit applicant that has established
224 that the tax credit applicant meets all of the requirements and criteria to receive the tax credit
225 for which the tax credit applicant applies.

226 (3) The office shall provide to the State Tax Commission a duplicate of each tax credit
227 certificate the office issues.

228 Section 8. Section **63M-1-3206** is enacted to read:

229 **63M-1-3206. No claim or pass through of a tax credit without tax credit**
230 **certificate.**

231 A person may not claim or pass through a tax credit unless the person has received a tax
232 credit certificate from the office for the taxable year for which the person claims or passes
233 through the tax credit.

234 Section 9. Section **63M-1-3207** is enacted to read:

235 **63M-1-3207. Limitation on use of money from tax credit.**

236 Money derived through a tax credit may be used only for:

237 (1) the acquisition of real property underlying a qualified hotel;

238 (2) the construction of convention and meeting space as part of a qualified hotel;

239 (3) the acquisition or construction of amenities, fixtures, or other improvements related
240 to any of the uses described in Subsections (1), (2), and (3);

241 (4) the reimbursement of expenses for any of the uses listed in Subsections (1) through
242 (3); and

243 (5) costs described in Subsection 63M-1-3204(3).

Legislative Review Note
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Office of Legislative Research and General Counsel