

TAX CREDIT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill addresses provisions related to tax credits.

Highlighted Provisions:

This bill:

- ▶ enacts tax credits for the employment of persons who are homeless;
- ▶ repeals provisions related to tax credits and enacts the Tax Credit Administration

Act; and

- ▶ enacts the Tax Credit for Employment of Persons Who Are Homeless Act,

including:

- defining terms;
- addressing the procedures and requirements for the Department of Workforce

Services to authorize, and a person to claim, a tax credit; and

- requires the Department of Workforce Services to make certain reports to the

Legislature.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides effective dates.

Utah Code Sections Affected:

ENACTS:



- 28 [35A-5-301](#), Utah Code Annotated 1953
- 29 [35A-5-302](#), Utah Code Annotated 1953
- 30 [35A-5-303](#), Utah Code Annotated 1953
- 31 [35A-5-304](#), Utah Code Annotated 1953
- 32 [35A-5-305](#), Utah Code Annotated 1953
- 33 [35A-5-306](#), Utah Code Annotated 1953
- 34 [59-7-616](#), Utah Code Annotated 1953
- 35 [59-7-901](#), Utah Code Annotated 1953
- 36 [59-7-902](#), Utah Code Annotated 1953
- 37 [59-7-903](#), Utah Code Annotated 1953
- 38 [59-10-1032](#), Utah Code Annotated 1953

39 REPEALS:

40 [59-7-615](#), as enacted by Laws of Utah 2002, Chapter 62



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

43 Section 1. Section [35A-5-301](#) is enacted to read:

44 **Part 3. Tax Credit for Employment of Persons Who Are Homeless Act**

45 **[35A-5-301](#). Title.**

46 This part is known as the "Tax Credit for Employment of Persons Who Are Homeless

47 Act."

48 Section 2. Section [35A-5-302](#) is enacted to read:

49 **[35A-5-302](#). Definitions.**

50 As used in this part:

51 (1) "Date of hire" means the date a person who is homeless first performs labor or
52 services for compensation for an employer.

53 (2) "Governmental entity" is as defined in Section [59-2-511](#).

54 (3) "Permanent housing, permanent supportive, or transitional facility" means a
55 facility:

56 (a) located within the state;

57 (b) that provides supervision of residents of the facility; and

58 (c) that is:

- 59 (i) a publicly or privately operated shelter:
60 (A) designed to provide temporary living accommodations, including a welfare hotel,
61 congregate shelter, or transitional housing for the mentally ill; and
62 (B) that receives federal homeless assistance funding distributed by the United States
63 Department of Housing and Urban Development; or
64 (ii) an emergency shelter that receives homeless assistance funding from a county, city,
65 or town.
66 (4) "Person who is homeless" means an individual whose primary nighttime residence
67 is a permanent housing, permanent supportive, or transitional facility.
68 (5) "Wage requirement" means that an employer pays a person who is homeless \$4,000
69 or more in wages during a time period that:
70 (a) begins on the date of hire; and
71 (b) ends no later than the last day of a three-calendar-quarter period, the first day of
72 which is the first day of the first calendar quarter that begins on or after the date of hire.
73 Section 3. Section **35A-5-303** is enacted to read:
74 **35A-5-303. Application for tax credit certificate.**
75 (1) An employer who employs a person who is homeless and seeks to receive a tax
76 credit certificate under this part shall file an application with the department with respect to
77 each person who is homeless that the employer employs.
78 (2) The application shall be on a form the department provides to the employer.
79 (3) The application shall require the employer to certify that:
80 (a) the person who is homeless who the employer employs:
81 (i) on the date of hire, has a primary nighttime residence at a permanent housing,
82 permanent supportive, or transitional facility;
83 (ii) is an employee, and not an independent contractor, of the employer;
84 (iii) is legally eligible to work in the United States; and
85 (iv) has not worked for the employer for more than 40 hours during the 60-day period
86 immediately preceding the date of hire; and
87 (b) the employer:
88 (i) complies with all state, federal, or local requirements related to the employment of
89 the person who is homeless; and

90 (ii) is not a governmental entity.

91 (4) The application:

92 (a) shall list, for each person who is homeless that the employer employs:

93 (i) the person's name;

94 (ii) the person's taxpayer identification number; and

95 (iii) the person's current address;

96 (b) shall list the employer's taxpayer identification number; and

97 (c) may require additional information as determined by the department.

98 (5) An employer shall provide documentation to the department to support the
99 certifications and other information the employer provides in the application described in this
100 section.

101 (6) If the department determines that, on the basis of the documentation and other
102 information the employer provides, the employer has satisfied the certification requirements of
103 Subsection (3) and provided the information described in Subsection (4), the department shall
104 enter into a participation agreement with the employer as provided in Section [35A-5-304](#) for
105 each person who is homeless who the employer employs.

106 (7) If the department determines that, on the basis of the documentation and other
107 information the employer provides, the employer has not satisfied the certification
108 requirements of Subsection (3) or provided the information described in Subsection (4), the
109 department:

110 (a) shall deny the application; or

111 (b) inform the employer that the documentation the employer provided is inadequate
112 and request the employer to submit new or additional documentation.

113 Section 4. Section **35A-5-304** is enacted to read:

114 **35A-5-304. Participation agreements.**

115 (1) If the department enters into a participation agreement with an employer, the
116 participation agreement shall:

117 (a) be provided by the department; and

118 (b) establish the requirements the employer is required to meet to be eligible to receive
119 a tax credit certificate, including:

120 (i) requiring the employer to meet the certification requirements of Subsection

121 [35A-5-303\(3\)](#);

122 (ii) requiring the employer to provide written notice to the department within 10 days
123 after the date the employer meets the wage requirement; and

124 (iii) requiring the employer to provide documentation or other information the
125 department requests:

126 (A) to establish the hours and dates that the person who is homeless works for the
127 employer; and

128 (B) to support the employer's eligibility to receive a tax credit certificate under this
129 part.

130 (2) An agreement under this section does constitute a right to receive a tax credit
131 certificate under this part.

132 Section 5. Section **35A-5-305** is enacted to read:

133 **35A-5-305. Tax credit certificate.**

134 (1) An employer shall provide written notice to the department within 10 days after the
135 date the employer meets the wage requirement as provided in the participation agreement
136 described in Section [35A-5-304](#).

137 (2) No later than 90 days after the date that an employer provides the written notice
138 described in Subsection (1) to the department, the department shall determine whether the
139 employer has met the requirements of the participation agreement under Section [53A-5-304](#) to
140 receive a tax credit certificate.

141 (3) Subject to the other provisions of this section, if the department determines that an
142 employer has met the requirements of the participation agreement under Section [53A-5-304](#) to
143 receive a tax credit certificate, the department may issue a tax credit certificate to the employer.

144 (4) A tax credit certificate under this section:

145 (a) shall list the amount of tax credit allowable for the taxable year in an amount that
146 does not exceed \$2,000;

147 (b) shall list the name and taxpayer identification number of the employer;

148 (c) shall list the name, taxpayer identification number, and current address of the

149 person who is homeless with respect to whom the employer has met the wage requirement; and

150 (d) may include any other information required by the department.

151 (5) Subject to Subsections (6) and (7), the department shall issue tax credit certificates

152 under this section in the order that the department receives the written notice described in
153 Subsection (1).

154 (6) The department may not issue tax credit certificates that total more than \$100,000
155 in a fiscal year.

156 (7) (a) Subject to Subsection (7)(b), if the department would have issued tax credit
157 certificates that total more than \$100,000 in a fiscal year but for the limit provided in
158 Subsection (6), the department shall issue the tax credit certificates that exceed \$100,000 in the
159 next fiscal year.

160 (b) If the department issues tax credit certificates in accordance with Subsection (7)(a):
161 (i) the tax credit certificates may not total more than \$100,000; and
162 (ii) the department may not issue tax credit certificates for an amount that exceeds the
163 limit described in Subsection (7)(b)(i) in a future fiscal year.

164 (8) The department shall provide a copy of a tax credit certificate the department issues
165 under this section to the State Tax Commission.

166 Section 6. Section **35A-5-306** is enacted to read:

167 **35A-5-306. Report to the Legislature.**

168 Beginning with the 2016 interim, the department shall report annually to the Economic
169 Development and Workforce Services Interim Committee and the Revenue and Taxation
170 Interim Committee:

171 (1) on or before the November interim meeting; and
172 (2) on the amount of tax credits the department grants under this part.

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

174 **59-7-616. Nonrefundable tax credit for employment of a person who is homeless.**

175 (1) As used in this section:

176 (a) "Eligible employer" means a person who receives a tax credit certificate from the
177 Department of Workforce Services in accordance with Title 35A, Chapter 5, Part 3, Tax Credit
178 for Employment of Persons Who Are Homeless Act.

179 (b) "Person who is homeless" is as defined in Section [35A-5-302](#).

180 (2) Subject to the other provisions of this section, an eligible employer that is a
181 corporation may claim a nonrefundable tax credit as provided in this section against a tax under
182 this chapter.

183 (3) The tax credit under this section is the amount of tax credit listed on a tax credit
 184 certificate that the Department of Workforce Services issues to an employer for a taxable year
 185 under Title 35A, Chapter 5, Part 3, Tax Credit for Employment of Persons Who Are Homeless
 186 Act.

187 (4) An eligible employer may carry forward a tax credit under this section for a period
 188 that does not exceed the next five taxable years if:

189 (a) the eligible employer is allowed to claim a tax credit under this section; and

190 (b) the amount of the tax credit exceeds the eligible employer's tax liability under this
 191 chapter for that taxable year.

192 (5) An eligible employer shall retain a tax credit certificate the eligible employer
 193 receives from the Department of Workforce Services for the same time period a person is
 194 required to keep books and records under Section [59-1-1406](#).

195 Section 8. Section **59-7-901** is enacted to read:

196 **Part 9. Tax Credit Administration Act**

197 **59-7-901. Title.**

198 This part is known as the "Tax Credit Administration Act."

199 Section 9. Section **59-7-902** is enacted to read:

200 **59-7-902. Definitions.**

201 As used in this part:

202 (1) "Tax credit" means a nonrefundable tax credit listed on a tax return.

203 (2) "Tax return" means:

204 (i) a corporate return as defined in Section [59-7-101](#) filed in accordance with this
 205 chapter; or

206 (ii) a tax return filed in accordance with Chapter 8, Gross Receipts Tax on Certain
 207 Corporations Not Required to Pay Corporate Franchise or Income Tax Act.

208 Section 10. Section **59-7-903** is enacted to read:

209 **59-7-903. Removal of tax credit from tax return -- Prohibition on claiming or**
 210 **carrying forward a tax credit -- Commission reporting requirements.**

211 (1) Subject to Subsection (2), the commission shall remove a tax credit from a tax
 212 return and a person filing a tax return may not claim or carry forward the tax credit if:

213 (a) the total amount of tax credit claimed or carried forward by all persons who file a

214 tax return is less than \$10,000 per taxable year for three consecutive taxable years; and

215 (b) less than 10 persons per year for the three consecutive taxable years described in

216 Subsection (1)(a) file a tax return claiming or carrying forward the tax credit.

217 (2) If the commission determines the requirements of Subsection (1) are met, the

218 commission shall remove a tax credit from a tax return and a person filing a tax return may not

219 claim or carry forward the tax credit beginning two taxable years after the January 1

220 immediately following the date the commission determines the requirements of Subsection (1)

221 are met.

222 (3) The commission shall, on or before the November interim meeting of the year after

223 the taxable year in which the commission determines the requirements of Subsection (1) are

224 met:

225 (a) report to the Revenue and Taxation Interim Committee that, in accordance with this

226 section:

227 (i) the commission is required to remove a tax credit from a return on which the tax

228 credit appears; and

229 (ii) a person filing a tax return may not claim or carry forward the tax credit; and

230 (b) notify each state agency required by statute to assist in the administration of the tax

231 credit that, in accordance with this section:

232 (i) the commission is required to remove a tax credit from a return on which the tax

233 credit appears; and

234 (ii) a person filing a tax return may not claim or carry forward the tax credit.

235 Section 11. Section **59-10-1032** is enacted to read:

236 **59-10-1032. Nonrefundable tax credit for employment of a person who is**

237 **homeless.**

238 (1) As used in this section:

239 (a) "Eligible employer" means a person who receives a tax credit certificate from the

240 Department of Workforce Services in accordance with Title 35A, Chapter 5, Part 3, Tax Credit

241 for Employment of Persons Who Are Homeless Act.

242 (b) "Person who is homeless" is as defined in Section [35A-5-302](#).

243 (2) Subject to the other provisions of this section, an eligible employer that is a

244 claimant, estate, or trust may claim a nonrefundable tax credit as provided in this section

245 against a tax under this chapter.

246 (3) The tax credit under this section is the amount of tax credit listed on a tax credit
247 certificate that the Department of Workforce Services issues to an employer for a taxable year
248 under Title 35A, Chapter 5, Part 3, Tax Credit for Employment of Persons Who Are Homeless
249 Act.

250 (4) An eligible employer may carry forward a tax credit under this section for a period
251 that does not exceed the next five taxable years if:

252 (a) the eligible employer is allowed to claim a tax credit under this section; and

253 (b) the amount of the tax credit exceeds the eligible employer's tax liability under this
254 chapter for that taxable year.

255 (5) An eligible employer shall retain a tax credit certificate the eligible employer
256 receives from the Department of Workforce Services for the same time period a person is
257 required to keep books and records under Section [59-1-1406](#).

258 Section 12. **Effective dates.**

259 (1) Except as provided in Subsection (2), this bill takes effect on May 13, 2014.

260 (2) The actions affecting the following sections take effect for a taxable year beginning
261 on or after January 1, 2015:

262 (a) Section [59-7-616](#);

263 (b) Section [59-7-901](#);

264 (c) Section [59-7-902](#);

265 (d) Section [59-7-903](#); and

266 (e) Section [59-10-1032](#).

267 Section 13. **Repealer.**

268 This bill repeals:

269 Section [59-7-615](#), **Removal of tax credit from tax form and prohibition on claiming**
270 **or carrying forward a tax credit -- Conditions for removal and prohibition on claiming or**
271 **carrying forward a tax credit -- Commission reporting requirements.**

Legislative Review Note
as of 2-14-14 5:18 PM

Office of Legislative Research and General Counsel