

SB0171S02 compared with SB0171S01

~~{deleted text}~~ shows text that was in SB0171S01 but was deleted in SB0171S02.

inserted text shows text that was not in SB0171S01 but was inserted into SB0171S02.

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~~{Senator Curtis S. Bramble}~~ Representative Daniel McCay proposes the following substitute bill:

ECONOMIC DEVELOPMENT TAX CREDITS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Robert M. Spendlove

LONG TITLE

General Description:

This bill addresses economic development tax credits.

Highlighted Provisions:

This bill:

- ▶ repeals refundable corporate and individual income tax credits for certain business entities generating state tax revenue increases;
- ▶ provides that the Governor's Office of Economic Development may issue additional income tax credit certificates for investment in certain life science establishments;
- ▶ changes the criteria for tax credits; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

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None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-10-1025, as last amended by Laws of Utah 2015, Chapter 283

63N-2-802, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-803, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-806, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-808, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-810, as renumbered and amended by Laws of Utah 2015, Chapter 283

REPEALS:

59-7-614.6, as last amended by Laws of Utah 2015, Chapter 283

59-10-1109, as last amended by Laws of Utah 2015, Chapter 283

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

Section 1. Section **59-10-1025** is amended to read:

59-10-1025. Nonrefundable tax credit for investment in certain life science establishments.

(1) As used in this section:

(a) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.

(b) "Eligible claimant, estate, or trust" [~~is as~~] means the same as that term is defined in Section 63N-2-802.

~~[(c) "Life science establishment" means an establishment described in one of the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:]~~

~~[(i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;]~~

~~[(ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or]~~

~~[(iii) NAICS Code 334517, Irradiation Apparatus Manufacturing.]~~

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(c) "Life science establishment" means an establishment primarily engaged in the development or manufacture of products in one or more of the following categories:

- (i) biotechnologies;
- (ii) medical devices;
- (iii) medical diagnostics; and
- (iv) pharmaceuticals.

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

(e) "Pass-through entity" [~~is as~~] means the same as that term is defined in Section 59-10-1402.

(f) "Pass-through entity taxpayer" [~~is as~~] means the same as that term is defined in Section 59-10-1402.

(g) "Qualifying ownership interest" means an ownership interest that is:

- (i) (A) common stock;
- (B) preferred stock; or
- (C) an ownership interest in a pass-through entity;

(ii) originally issued to:

(A) an eligible claimant, estate, or trust; or

(B) a pass-through entity if the eligible claimant, estate, or trust that claims a tax credit under this section was a pass-through entity taxpayer of the pass-through entity on the day on which the qualifying ownership interest was issued and remains a pass-through entity taxpayer of the pass-through entity until the last day of the taxable year for which the eligible claimant, estate, or trust claims a tax credit under this section; and

(iii) issued:

(A) by a Utah small business corporation;

(B) on or after January 1, 2011; and

(C) for money or other property, except for stock or securities.

(h) (i) Except as provided in Subsection (1)(h)(ii), "Utah small business corporation" [~~is as~~] means the same as that term is defined in Section 59-10-1022.

(ii) For purposes of this section, a corporation under Section 1244(c)(3)(A), Internal Revenue Code, is considered to include a pass-through entity.

(2) Subject to the other provisions of this section, for a taxable year beginning on or

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after January 1, 2011, an eligible claimant, estate, or trust that holds a tax credit certificate issued to the eligible claimant, estate, or trust in accordance with Section 63N-2-808 for that taxable year may claim a nonrefundable tax credit in an amount up to 35% of the purchase price of a qualifying ownership interest in a Utah small business corporation by the claimant, estate, or trust if:

(a) the qualifying ownership interest is issued by a Utah small business corporation that is a life science establishment;

(b) the qualifying ownership interest in the Utah small business corporation is purchased for at least \$25,000;

(c) the eligible claimant, estate, or trust owned less than 30% of the qualifying ownership interest of the Utah small business corporation at the time of the purchase of the qualifying ownership interest; and

(d) on each day of the taxable year [~~of~~ in which the purchase of the qualifying ownership interest was made, the Utah small business corporation described in Subsection (2)(a) has at least 50% of its employees in the state.

(3) Subject to Subsection (4), the tax credit under Subsection (2):

(a) may only be claimed by [~~the~~ an eligible claimant, estate, or trust:

(i) for a taxable year for which the eligible claimant, estate, or trust holds a tax credit certificate issued in accordance with Section 63N-2-808; and

(ii) subject to obtaining a tax credit certificate for each taxable year as required by Subsection (3)(a)(i), for a period of three taxable years as follows:

(A) the tax credit in the taxable year [~~of~~ in which the purchase of the qualifying ownership interest was made may not exceed 10% of the purchase price of the qualifying ownership interest;

(B) the tax credit in the taxable year after the taxable year described in Subsection (3)(a)(ii)(A) may not exceed 10% of the purchase price of the qualifying ownership interest; and

(C) the tax credit in the taxable year two years after the taxable year described in Subsection (3)(a)(ii)(A) may not exceed 15% of the purchase price of the qualifying ownership interest; and

(b) may not exceed the lesser of:

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(i) the amount listed on the tax credit certificate issued in accordance with Section 63N-2-808; or

(ii) \$350,000 in a taxable year.

(4) An eligible claimant, estate, or trust may not claim a tax credit under this section for a taxable year if the eligible claimant, estate, or trust:

(a) has sold any of the qualifying ownership interest during the taxable year; or

(b) does not hold a tax credit certificate for that taxable year that is issued to the eligible claimant, estate, or trust by the office in accordance with Section 63N-2-808.

(5) If a Utah small business corporation in which an eligible claimant, estate, or trust purchases a qualifying ownership interest fails, dissolves, or otherwise goes out of business, the eligible claimant, estate, or trust may not claim both the tax credit provided in this section and a capital loss on the qualifying ownership interest.

(6) If an eligible claimant is a pass-through entity taxpayer that files a return under Chapter 7, Corporate Franchise and Income Taxes, the eligible claimant may claim the tax credit under this section on the return filed under Chapter 7, Corporate Franchise and Income Taxes.

(7) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

Section 2. Section **63N-2-802** is amended to read:

63N-2-802. Definitions.

As used in this part:

(1) "Claimant" [~~has the same meaning as~~] means the same as that term is defined in Section 59-10-1002.

~~[(2) "Eligible business entity" means a person that:]~~

~~[(a) enters into an agreement with the office in accordance with this part to receive a tax credit certificate for a tax credit under Section 59-7-614.6 or 59-10-1109;]~~

~~[(b) is:]~~

~~[(i) a life science establishment; or]~~

~~[(ii) described in NAICS Code 334413, Semiconductor and Related Device Manufacturing, of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;]~~

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~~[(c) has at least 50% of its employees in the state for each day of a taxable year the eligible business entity claims a tax credit under Section 59-7-614.6 or 59-10-1109; and]~~

~~[(d) receives a tax credit certificate from the office in accordance with this part.]~~

~~[(3)] (2) "Eligible claimant, estate, or trust" means a claimant, estate, or trust that:~~

~~(a) enters into an agreement with the office in accordance with this part to receive a tax credit certificate for a tax credit under Section 59-10-1025; and~~

~~(b) receives a tax credit certificate from the office in accordance with this part.~~

~~[(4) "Eligible new state tax revenues" means an increased amount of tax revenues generated as a result of an eligible product or project by an eligible business entity or a new incremental job within the state under the following:]~~

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

~~[(b) Title 59, Chapter 10, Individual Income Tax Act; and]~~

~~[(c) Title 59, Chapter 12, Sales and Use Tax Act.]~~

~~[(5) "Eligible product or project" means any product or project produced by an eligible business entity that was not produced prior to the date of an agreement with the office under Section 63N-2-808:]~~

~~[(a) by the eligible business entity; and]~~

~~[(b) within the state.]~~

~~[(6)] (3) "Life science establishment" [has the same meaning as] means the same as that term is defined in Section 59-10-1025.~~

~~[(7) "New incremental job within the state" means, with respect to an eligible business entity, an employment position that:]~~

~~[(a) did not exist within the state before:]~~

~~[(i) the eligible business entity entered into an agreement with the office in accordance with this part; and]~~

~~[(ii) the eligible product was produced or the eligible project began;]~~

~~[(b) is not shifted from one location in the state to another location in the state; and]~~

~~[(c) is established to the satisfaction of the office, including by amounts paid or withheld by the eligible business entity under Title 59, Chapter 10, Individual Income Tax Act.]~~

~~[(8)] (4) "Tax credit" means a tax credit under[:] Section 59-10-1025.~~

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~~[(a) Section 59-7-614.6;]~~

~~[(b) Section 59-10-1025; or]~~

~~[(c) Section 59-10-1109;]~~

~~[(9)]~~ (5) "Tax credit applicant" means a person that applies to the office to receive a tax credit certificate under this part.

~~[(10)]~~ (6) "Tax credit certificate" means a certificate issued by the office that:

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

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

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

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

~~[(11)]~~ (7) "Tax credit certificate recipient" means~~[(a) an eligible business entity that receives a tax credit certificate in accordance with this part for a tax credit under Section 59-7-614.6 or 59-10-1109; or (b)]~~ an eligible claimant, estate, or trust that receives a tax credit certificate in accordance with this part for a tax credit under Section 59-10-1025.

Section 3. Section **63N-2-803** is amended to read:

63N-2-803. Tax credits issued by office.

(1) ~~[(a)]~~ The office may issue tax credit certificates under this part only to the extent that the Legislature, by statute, expressly authorizes the office to issue the tax credit certificates under this part for a fiscal year.

~~[(b) The Legislature intends that a statutory authorization under Subsection (1)(a) specify:]~~

~~[(i) the total allocation to the tax credits under Sections 59-7-614.6 and 59-10-1109; and]~~

~~[(ii) the allocation to the tax credit under Section 59-10-1025.]~~

(2) (a) For fiscal year 2011-12 only, the office may issue a total of \$1,300,000 in tax credit certificates in accordance with this part.

(b) For fiscal year 2016-17 only, the office may issue a total of ~~for \$1,000;~~ \$150,000 in tax credit certificates in accordance with this part.

(c) For fiscal year 2017-18 only, the office may issue a total of ~~for \$1,000;~~ \$150,000 in tax credit certificates in accordance with this part.

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(3) ~~[(a)]~~ If the total amount of tax credit certificates the office issues in a fiscal year is less than the amount of tax credit certificates the office may issue under this part in a fiscal year, the office may issue the remaining amount of tax credit certificates in a fiscal year after the fiscal year for which there is a remaining amount of tax credit certificates.

~~[(b) Except as provided in Subsection (3)(c), if the total amount of tax credit certificates the office issues in a quarter of a fiscal year is less than the amount of tax credit certificates the office may issue under this part in that quarter, the office may issue the remaining amount of tax credit certificates in a quarter after the quarter for which there is a remaining amount of tax credit certificates.]~~

~~[(c) For fiscal year 2011-12 only, if the total amount of tax credit certificates the office issues in fiscal year 2011-12 is less than the amount of tax credit certificates the office may issue in tax credit certificates under Subsection (2), the office:]~~

~~[(i) may issue the remaining amount of tax credit certificates in a fiscal year after fiscal year 2011-12; and]~~

~~[(ii) is not required to allocate the tax credit certificates to any particular quarter.]~~

Section 4. Section **63N-2-806** is amended to read:

63N-2-806. Criteria for tax credits.

(1) A tax credit applicant shall establish as part of the application required by Section 63N-2-805 that the tax credit applicant:

(a) meets all of the criteria to receive the tax credit for which the tax credit applicant applies, except for the requirement to obtain a tax credit certificate; and

(b) will provide a long-term economic benefit to the state.

(2) The office may not issue a tax credit certificate to a tax credit applicant ~~[that]~~ if:

(a) the tax credit applicant fails to meet the requirements of Subsection (1)(a)[-]; and

(b) the life science establishment does not enter into an agreement described in Section 63N-2-808 with the office.

Section 5. Section **63N-2-808** is amended to read:

63N-2-808. Agreements between office and tax credit applicant and life science establishment -- Tax credit certificate.

~~[(1)(a) Except as provided in Subsection 63N-2-803(3)(b), for each quarter of a fiscal year after fiscal year 2011-12, the office shall allocate:]~~

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~~[(i) 25% of the total amounts made available for allocation in accordance with Section 63N-2-803 for the tax credits under Sections 59-7-614.6 and 59-10-1109, and]~~

~~[(ii) 25% of the amounts made available for allocation in accordance with Section 63N-2-803 for the tax credit under Section 59-10-1025.]~~

~~[(b) Subject to the other provisions of this part, the office, with advice from the board, shall determine quarterly:]~~

~~[(i) the tax credit applicant or applicants to which a tax credit certificate may be provided; and]~~

~~[(ii) the amount of tax credit a tax credit applicant may receive.]~~

~~[(2)] (1) (a)~~ The office, with advice from the board, may enter into an agreement to grant a tax credit certificate to a tax credit applicant selected in accordance with this part, if the tax credit applicant meets the conditions established in the agreement and under this part.

~~[(3)] (b)~~ The agreement described in Subsection ~~[(2)] (1)(a)~~ shall:

~~[(a)] (i)~~ detail the requirements that the tax credit applicant shall meet prior to receiving a tax credit certificate;

~~[(b)] (ii)~~ require the tax credit certificate recipient to retain records supporting a claim for a tax credit for at least four years after the tax credit certificate recipient claims a tax credit under this part; and

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

(2) (a) The office, with advice from the board, shall enter into an agreement with the life science establishment in which the tax credit applicant invested for purposes of claiming a tax credit.

(b) The agreement described in Subsection (2)(a):

(i) shall provide the office with a document that expressly and directly authorizes the State Tax Commission to disclose to the office the life science establishment's tax returns and other information that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code;

(ii) shall authorize the Department of Workforce Services to disclose to the office the employment data that the life science establishment submits to the Department of Workforce Services;

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(iii) shall require the life science establishment to provide the office with the life science establishment's current capitalization tables; and

(iv) may require the life science establishment to provide the office with other data that:

(A) ensure compliance with the requirements of this chapter; and

(B) demonstrate the economic impact of the tax credit applicant's investment in the life science establishment.

Section 6. Section **63N-2-810** is amended to read:

63N-2-810. Reports on tax credit certificates -- Study by legislative committees.

(1) The office shall include the following information in the annual written report described in Section 63N-1-301:

(a) the total amount listed on tax credit certificates the office issues under this part;

(b) the criteria that the office uses in prioritizing the issuance of tax credits amongst tax credit applicants under this part; and

(c) the economic impact on the state related to providing tax credits under this part.

(2) (a) On or before November 1, 2016, and every five years after November 1, 2016, the Revenue and Taxation Interim Committee shall:

(i) study the tax [~~credits~~] credit allowed under [~~Sections 59-7-614.6,~~] Section 59-10-1025[~~, and 59-10-1109~~]; and

(ii) make recommendations concerning whether the tax [~~credits~~] credit should be continued, modified, or repealed.

(b) The study under Subsection (2)(a) shall include an evaluation of:

(i) the cost of the tax [~~credits~~] credit under [~~Sections 59-7-614.6,~~] Section 59-10-1025[~~, and 59-10-1109~~];

(ii) the purposes and effectiveness of the tax [~~credits~~] credit; and

(iii) the extent to which the state benefits from the tax [~~credits~~] credit.

Section 7. **Repealer.**

This bill repeals:

Section **59-7-614.6, Refundable tax credit for certain business entities generating state tax revenue increases.**

Section **59-10-1109, Refundable tax credit for certain business entities generating**

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state tax revenue increases.

Section 8. **Retrospective operation.**

This bill has retrospective operation for a taxable year beginning on or after January 1, 2016.