

1 **UTAH RURAL JOBS ACT AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill modifies the Utah Rural Jobs Act.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ requires each eligible small business that receives a growth investment to submit a
- 11 document that directs and authorizes the State Tax Commission to disclose to the
- 12 GO Utah office the eligible small business's returns;
- 13 ▶ addresses the method for allocating new annual jobs at an eligible small business
- 14 that receives a growth investment from more than one rural investment company;
- 15 ▶ establishes a deadline for each rural investment company to exit the program; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **63N-4-302**, as last amended by Laws of Utah 2020, Chapter 354

24 **63N-4-305**, as enacted by Laws of Utah 2017, Chapter 274

25 **63N-4-307**, as enacted by Laws of Utah 2017, Chapter 274

26 **63N-4-309**, as enacted by Laws of Utah 2017, Chapter 274

27

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

29 Section 1. Section **63N-4-302** is amended to read:

30 **63N-4-302. Definitions.**

31 As used in this part:

32 (1) (a) "Affiliate" means a person that directly, or indirectly through one or more

33 intermediaries, controls, is controlled by, or is under common control with another person.

34 (b) For the purposes of this part, a person controls another person if the person holds,
35 directly or indirectly, the majority voting or ownership interest in the controlled person or has
36 control over the day-to-day operations of the controlled person by contract or by law.

37 (2) "Claimant" means a resident or nonresident person that has state taxable income.

38 (3) "Closing date" means the date on which a rural investment company has collected
39 all of the investments described in Subsection 63N-4-303(7).

40 (4) (a) "Credit-eligible contribution" means an investment of cash by a claimant in a
41 rural investment company that is or will be eligible for a tax credit as evidenced by notification
42 issued by the office under Subsection 63N-4-303(5)(c).

43 (b) The investment shall purchase an equity interest in the rural investment company or
44 purchase, at par value or premium, a debt instrument issued by the rural investment company
45 that has a maturity date at least five years after the closing date.

46 (5) "Eligible small business" means a business that at the time of an initial growth
47 investment in the business by a rural investment company:

48 (a) has fewer than 150 employees;

49 (b) has less than \$10,000,000 in net income for the preceding taxable year;

50 (c) maintains the business's principal business operations in the state; and

51 (d) is engaged in an industry related to:

52 (i) aerospace;

53 (ii) defense;

54 (iii) energy and natural resources;

55 (iv) financial services;

56 (v) life sciences;

57 (vi) outdoor products;

58 (vii) software development;

59 (viii) information technology;

60 (ix) manufacturing; or

61 (x) agribusiness.

62 (6) (a) "Excess return" means the difference between:

63 (i) the present value of all growth investments made by a rural investment company on

64 the day the rural investment company applies to exit the program under Section 63N-4-309,
65 including the present value of all distributions and gains from the growth investments; and

66 (ii) the sum of the amount of the original growth investment and an amount equal to
67 any projected increase in the equity holder's federal or state tax liability, including penalties and
68 interest, related to the equity holder's ownership, management, or operation of the rural
69 investment company.

70 (b) If the amount calculated in Subsection (6)(a) is less than zero, the excess return is
71 equal to zero.

72 (7) "Federally licensed rural business investment company" means a person licensed as
73 a rural business investment company under 7 U.S.C. Sec. 2009cc.

74 (8) "Federally licensed small business investment company" means a person licensed
75 as a small business investment company under 15 U.S.C. Sec. 681.

76 (9) (a) "Full-time employee" means an employee that throughout the year works at
77 least 30 hours per week or meets the customary practices accepted by that industry as full time.

78 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
79 office may make rules that establish additional hour or other criteria to determine what
80 constitutes a full-time employee.

81 (10) "Growth investment" means any capital or equity investment in an eligible small
82 business or any loan made from the investment authority to an eligible small business with a
83 stated maturity at least one year after the date of issuance.

84 (11) (a) "High wage" means a wage that is at least 100% of the county average wage.

85 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
86 office may make rules that establish additional criteria to determine what constitutes a high
87 wage.

88 (12) "Investment authority" means the minimum amount of investment a rural
89 investment company must make in eligible small businesses in order for credit-eligible
90 contributions to the rural investment company to qualify for a rural job creation tax credit
91 under Section 59-7-621 or 59-10-1038.

92 (13) (a) "New annual jobs" means the difference between:

93 (i) (A) the monthly average of full-time employees that are paid a high wage at an
94 eligible small business for the preceding calendar year; or

95 (B) if the preceding calendar year contains the initial growth investment, the monthly
96 average of full-time employees that are paid a high wage at an eligible small business for the
97 months including and after the initial growth investment and before the end of the preceding
98 calendar year; and

99 (ii) the number of full-time employees that are paid a high wage at the eligible small
100 business on the date of the initial growth investment.

101 (b) If the amount calculated in Subsection (13)(a) is less than zero, the new annual jobs
102 amount is equal to zero.

103 (14) (a) "Principal business operations" means the location where at least 60% of a
104 business's employees work or where employees that are paid at least 60% of a business's
105 payroll work.

106 (b) For the purposes of this part, an out-of-state business that agrees to relocate
107 employees to this state to establish the business's principal business operations in this state
108 using the proceeds of a growth investment is considered to have the business's principal
109 business operations in this state if the business satisfies the requirements of Subsection (14)(a)
110 within 180 days after receiving the growth investment, unless the office agrees to a later date.

111 (15) "Program" means the provisions of this part applicable to a rural investment
112 company.

113 (16) "Rural county" means any county in this state except Salt Lake, Utah, Davis,
114 Weber, Washington, Cache, Tooele, and Summit counties.

115 (17) "Rural investment company" means a person approved by the office under Section
116 63N-4-303.

117 (18) (a) "State reimbursement amount" means the difference between:

118 (i) 50% of the rural investment company's credit-eligible capital contributions; and

119 (ii) the product of:

120 (A) the total sum of new annual jobs reported to the [~~state in the rural investment~~
121 ~~company's exit report described in Section 63N-4-309~~] office; and

122 (B) \$20,000.

123 (b) If the amount calculated in Subsection (18)(a) is less than zero, the state
124 reimbursement amount is equal to zero.

125 (19) "Tax credit" means a rural job creation tax credit created by Section 59-7-621 or

126 59-10-1038.

127 (20) "Tax credit certificate" means a certificate issued by the office that:

128 (a) lists the name of the person to which the office authorizes a tax credit;

129 (b) lists the person's taxpayer identification number;

130 (c) lists the amount of tax credit that the office authorizes the person to claim for the

131 taxable year; and

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

133 Section 2. Section **63N-4-305** is amended to read:

134 **63N-4-305. Revocation of tax credit certificates and exit.**

135 (1) Except as provided in Subsection (2), the office shall revoke a tax credit certificate
136 issued under Section 63N-4-304 if the rural investment company in which the credit-eligible
137 capital contribution was made does any of the following before the rural investment company
138 exits the program in accordance with Section 63N-4-309:

139 (a) fails to invest 100% of the rural investment company's investment authority in
140 growth investments in this state within three years of the closing date;

141 (b) fails to maintain growth investments in this state equal to 100% of the rural
142 investment company's investment authority until the seventh anniversary of the closing date in
143 accordance with this section;

144 (c) makes a distribution or payment that results in the rural investment company having
145 less than 100% of the rural investment company's investment authority invested in growth
146 investments in this state or available for investment in growth investments and held in cash and
147 other marketable securities;

148 (d) fails to maintain growth investments equal to 70% of the rural investment
149 company's investment authority in eligible small businesses that maintain their principal
150 business operations in a rural county;

151 (e) invests more than \$5,000,000 from the investment authority in the same eligible
152 small business, including amounts invested in affiliates of the eligible small business, exclusive
153 of growth investments made with repaid or redeemed growth investments or interest or profits
154 realized on the repaid or redeemed growth investments; [or]

155 (f) makes a growth investment in an eligible small business that directly, or indirectly
156 through an affiliate:

157 (i) owns or has the right to acquire an ownership interest in the rural investment
158 company, an affiliate of the rural investment company, or an investor in the rural investment
159 company; or

160 (ii) makes a loan to or an investment in the rural investment company, an affiliate of
161 the rural investment company, or an investor in the rural investment company~~[-]; or~~

162 (g) fails to timely provide a document described in Subsection 63N-4-307(1)(d).

163 (2) (a) (i) For the purposes of Subsection (1), an investment is maintained even if the
164 investment is sold or repaid if the rural investment company reinvests an amount equal to the
165 capital returned or recovered by the fund from the original investment, exclusive of any profits
166 realized, in other growth investments in this state within 12 months of the receipt of such
167 capital.

168 (ii) Amounts received periodically by a rural investment company are treated as
169 continually invested in growth investments if the amounts are reinvested in one or more growth
170 investments by the end of the following calendar year.

171 (iii) A rural investment company is not required to reinvest capital returned from
172 growth investments after the sixth anniversary of the closing date and such growth investments
173 are considered as being held continuously by the rural investment company through the seventh
174 anniversary of the closing date.

175 (b) (i) Subsection (1)(f) does not apply to investments in publicly traded securities by
176 an eligible small business or an owner or affiliate of an eligible small business.

177 (ii) Under Subsection (1)(f), a rural investment company is not considered an affiliate
178 of a business concern solely as a result of the rural investment company's growth investment.

179 (c) A growth investment in an eligible small business that is not located in a rural
180 county may count toward the requirements of Subsection (1)(d) if the office determines that the
181 eligible small business is located in an economically disadvantaged rural area as defined by
182 rules made by the office in accordance with Title 63G, Chapter 3, Utah Administrative
183 Rulemaking Act.

184 (3) (a) Before revoking one or more tax credit certificates under this section, the office
185 shall notify the rural investment company of the reasons for the pending revocation.

186 (b) If the rural investment company corrects any violation outlined in the notice to the
187 satisfaction of the office within 90 days after the day on which the notice was sent, the office

188 may not revoke the tax credit certificate.

189 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
190 office may make rules that establish criteria to determine what constitutes a correction under
191 Subsection (3)(b).

192 (4) If tax credit certificates are revoked under this section:

193 (a) (i) the rural investment company shall make a cash distribution to the office in an
194 amount equal to the sum of all tax credits awarded to persons that have made credit-eligible
195 contributions to the rural investment company; and

196 (ii) if the rural investment company is able to provide documentation to the office that
197 proves that a tax credit described in Subsection (4)(a)(i) has not been claimed, the amount
198 owed under Subsection (4)(a)(i) shall be reduced by the amount of the unclaimed tax credit;

199 (b) the rural investment company's investment authority and credit-eligible capital
200 contributions will not count toward the limits on the program size described in Subsection
201 63N-4-303(6);

202 (c) if the office awards lapsed investment authority to a rural investment company, the
203 office shall first award lapsed investment authority pro rata to each rural investment company
204 that was awarded less than the requested investment authority under Subsection
205 63N-4-303(6)(d), which a rural investment company may allocate to the rural investment
206 company's investors at the rural investment company's discretion; and

207 (d) the office may award any remaining investment authority to new applicants.

208 (5) The office may not revoke a tax credit certificate after a rural investment company
209 has exited the program in accordance with Section 63N-4-309.

210 Section 3. Section **63N-4-307** is amended to read:

211 **63N-4-307. Reporting obligations -- Authorization to disclose tax information --**
212 **Credit for new annual jobs.**

213 (1) A rural investment company shall submit an annual report to the office on or before
214 the last day of February for each [~~previous~~] preceding calendar year until the rural investment
215 company has exited the program in accordance with Section 63N-4-309. The annual report
216 shall provide documentation as to the rural investment company's growth investments and
217 include:

218 (a) a bank statement evidencing each growth investment;

219 (b) the name, location, and industry of each business concern receiving a growth
220 investment, including either the determination letter set forth in Section 63N-4-306 or evidence
221 that the business qualified as an eligible small business at the time the investment was made;

222 (c) the number of new annual jobs at each eligible small business for the preceding
223 calendar year, accompanied by a report from a third-party accounting firm attesting that the
224 number of new annual jobs was calculated in accordance with procedures approved by the
225 office; [and]

226 (d) unless provided in a previously submitted annual report, for each eligible small
227 business to which the rural investment company provided a growth investment during the
228 preceding calendar year, a document that expressly directs and authorizes the State Tax
229 Commission to disclose to the office the eligible small business's returns and other information
230 that would otherwise be subject to confidentiality under Section 59-1-403; and

231 ~~(d)~~ (e) any other information required by the office.

232 (2) For the annual report due in 2022, each rural investment company shall submit the
233 documents described in Subsection (1)(d) on or before July 1, 2022.

234 ~~(2)~~ (3) (a) Within 60 days of receipt of an annual report, the office shall provide
235 written confirmation to the rural investment company of the number of new annual jobs the
236 rural investment company has been credited with for the ~~previous~~ preceding calendar year.

237 (b) When granting credit for one or more new annual jobs at an eligible small business
238 that received or held a growth investment from more than one rural investment company during
239 the preceding calendar year, the office shall allocate credit for each new annual job between the
240 rural investment companies in proportion to each rural investment company's share of the total
241 growth investments the eligible small business received during the calendar year.

242 ~~(3)~~ (4) By the fifth business day after the third anniversary of the closing date, a rural
243 investment company shall submit a report to the office providing evidence that the rural
244 investment company is in compliance with the investment requirements of Section 63N-4-305.

245 (5) (a) The office shall submit the described in Subsection (1)(d) to the State Tax
246 Commission.

247 (b) Upon receipt of a document described in Subsection (1)(d), the State Tax
248 Commission shall provide the office with the returns and other information the office requests
249 and that the State Tax Commission is directed and authorized to provide.

250 Section 4. Section **63N-4-309** is amended to read:

251 **63N-4-309. Exit.**

252 (1) On or after the seventh anniversary of the closing date, ~~[a]~~ and on or before the
253 ninth anniversary of the closing date, each rural investment company ~~[may]~~ shall apply to the
254 office to exit the program and no longer be subject to this part.

255 (2) An application submitted under Subsection (1) shall be in a form and in accordance
256 with procedures prescribed by the office and shall include a calculation of the state
257 reimbursement amount.

258 ~~[(3) In evaluating the exit application, if no tax credit certificates have been revoked~~
259 ~~and the rural investment company has not received a notice of revocation that has remained~~
260 ~~uncorrected under Subsection 63N-4-305(3)(b), the rural investment company is eligible for~~
261 ~~exit.]~~

262 ~~[(4)]~~ (3) (a) The office shall respond to the application within 30 days of receipt and
263 include confirmation of the state reimbursement amount.

264 (b) The office shall not unreasonably deny an application submitted under this section.

265 (c) If the office denies the application, the office shall provide the reasons for the
266 determination to the rural investment company.

267 (4) If a rural investment company fails to submit an exit application in accordance with
268 Subsection (1), the office shall:

269 (a) calculate the state reimbursement amount using the best available information; and

270 (b) provide the confirmation described in Subsection (3)(a) within 30 days of the ninth
271 anniversary of the closing date.

272 (5) Within 60 days after the day on which the confirmation of the state reimbursement
273 amount is received by the rural investment company, the rural investment company shall make
274 a cash distribution to the state in an amount equal to the lesser of:

275 (a) the state reimbursement amount; and

276 (b) the excess return.

277 (6) The office shall notify the rural investment company once payments equal to the
278 amount described in Subsection ~~[(4)]~~ (3) have been received.

279 (7) Any amounts collected under this section shall be deposited into the General Fund.