

Effective 7/17/2016

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" means the same as that term is defined in Section 63N-2-802.
- (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" means the same as that term is defined in Section 59-10-1402.
- (f) "Pass-through entity taxpayer" 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" 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 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 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 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 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:
 - (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.
- (8)
- (a) In accordance with Section 59-10-137, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations concerning whether the tax credit should be continued, modified, or repealed.
 - (b) Except as provided in Subsection (8)(c), for purposes of the study required by this Subsection (8), the office shall provide the following information, if available to the office, to the Office of the Legislative Fiscal Analyst by electronic means:
 - (i) the amount of tax credit that the office grants to each eligible business entity for each taxable year;
 - (ii) the amount of eligible new state tax revenues generated by each eligible product or project;
 - (iii) estimates for each of the next three calendar years of the following:
 - (A) the amount of tax credit that the office will grant;

- (B) the amount of eligible new state tax revenues that will be generated; and
 - (C) the number of new incremental jobs within the state that will be generated;
 - (iv) the information contained in the office's latest report under Section 63N-2-705; and
 - (v) any other information that the Office of the Legislative Fiscal Analyst requests.
- (c)
- (i) In providing the information described in Subsection (8)(b), the office shall redact information that identifies a recipient of a tax credit under this section.
 - (ii) If, notwithstanding the redactions made under Subsection (8)(c)(i), reporting the information described in Subsection (8)(b) might disclose the identity of a recipient of a tax credit, the office may file a request with the Revenue and Taxation Interim Committee to provide the information described in Subsection (8)(b) in the aggregate for all entities that receive the tax credit under this section.
- (d) As part of the study required by this Subsection (8), the Office of the Legislative Fiscal Analyst shall report to the Revenue and Taxation Interim Committee a summary and analysis of the information provided to the Office of the Legislative Fiscal Analyst by the office under Subsection (8)(b).
- (e) The Revenue and Taxation Interim Committee shall ensure that the recommendations described in Subsection (8)(a) include an evaluation of:
- (i) the cost of the tax credit under this section;
 - (ii) the purpose and effectiveness of the tax credit; and
 - (iii) the extent to which the state benefits from the tax credit.

Amended by Chapter 1, 2016 Special Session 3