

Effective 5/12/2015

Part 1
Economic Development Tax Increment Financing

63N-2-101 Title.

- (1) This chapter is known as "Tax Credit Incentives for Economic Development."
- (2) This part is known as "Economic Development Tax Increment Financing."

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-102 Purpose.

This part is enacted to:

- (1) foster and develop targeted industries in the state, to stimulate community-focused economic growth, and to diversify and catalyze the state's economy;
- (2) create high paying employment opportunities in the state;
- (3) provide tax credits to attract new commercial projects and new jobs in economic development zones in the state; and
- (4) provide a cooperative and unified working relationship between state and local economic development efforts.

Amended by Chapter 200, 2022 General Session

63N-2-103 Definitions.

As used in this part:

- (1)
 - (a) "Business entity" means a person that enters into a written agreement with the office to initiate a new commercial project in Utah that will qualify the person to receive a tax credit under Section 59-7-614.2 or 59-10-1107.
 - (b) With respect to a tax credit authorized by the office in accordance with Subsection 63N-2-104.3(2), "business entity" includes a nonprofit entity.
- (2) "Commercial or industrial zone" means an area zoned agricultural, commercial, industrial, manufacturing, business park, research park, or other appropriate business related use in a general plan that contemplates future growth.
- (3) "Development zone" means an economic development zone created under Section 63N-2-104.
- (4) "Local government entity" means a county, city, town, or metro township.
- (5) "New commercial project" means an economic development opportunity that:
 - (a) involves a targeted industry;
 - (b) is located within:
 - (i) a county of the third, fourth, fifth, or sixth class; or
 - (ii) a municipality that has a population of 10,000 or less and the municipality is located within a county of the second class; or
 - (c) involves an economic development opportunity that the commission determines to be eligible for a tax credit under this part.
- (6) "Remote work opportunity" means a new commercial project that:
 - (a) does not require a physical office in the state where employees associated with the new commercial project are required to work; and
 - (b) requires employees associated with the new commercial project to:

- (i) work remotely from a location within the state; and
 - (ii) maintain residency in the state.
- (7) "Significant capital investment" means an investment in capital or fixed assets, which may include real property, personal property, and other fixtures related to a new commercial project that represents an expansion of existing operations in the state or that increases the business entity's existing workforce in the state.
- (8) "Tax credit" means an economic development tax credit created by Section 59-7-614.2 or 59-10-1107.
- (9) "Tax credit amount" means the amount the office lists as a tax credit on a tax credit certificate for a taxable year.
- (10) "Tax credit certificate" means a certificate issued by the office that:
- (a) lists the name of the business entity to which the office authorizes a tax credit;
 - (b) lists the business entity's taxpayer identification number;
 - (c) lists the amount of tax credit that the office authorizes the business entity for the taxable year; and
 - (d) may include other information as determined by the office.
- (11) "Written agreement" means a written agreement entered into between the office and a business entity under Section 63N-2-104.2.

Amended by Chapter 200, 2022 General Session

63N-2-104 Creation of economic development zones -- Tax credits -- Assignment of tax credit.

- (1) The office may create an economic development zone in the state if the following requirements are satisfied:
- (a) the area is located within a commercial or industrial zone;
 - (b) the local government entity having jurisdiction over the area supports the creation of the development zone; and
 - (c) the local government entity described in Subsection (1)(b) provides or commits to provide local incentives within the area in accordance with the local government entity's approved incentive policy.
- (2) A local government entity may, for the purpose of incentivizing new commercial projects within the local government entity's boundaries, create an economic development zone if the following requirements are satisfied:
- (a) the area is located:
 - (i) within a commercial or industrial zone; and
 - (ii) within the geographic boundaries of the local government entity;
 - (b) the local government entity adopts a long-term plan that addresses the following planning elements within the area:
 - (i) transportation and infrastructure;
 - (ii) workforce development; and
 - (iii) housing needs; and
 - (c) the office approves the local government entity's request to create the development zone.

Amended by Chapter 200, 2022 General Session

Amended by Chapter 362, 2022 General Session

63N-2-104.1 Eligibility for tax credit -- Economic impact study.

- (1) The office shall certify a business entity's eligibility for a tax credit as provided in this section.
- (2) A business entity is eligible to receive a tax credit for a new commercial project if:
 - (a) the new commercial project:
 - (i)
 - (A) is located and provides direct investment within the geographic boundaries of a development zone; or
 - (B) creates a remote work opportunity;
 - (ii) includes the creation of high paying jobs in the state, significant capital investment in the state, or significant purchases from vendors, contractors, or service providers in the state, or a combination of these three economic factors; and
 - (iii) generates new state revenues; and
 - (b) the business entity has not claimed a High Cost Infrastructure Development Tax Credit under Section 79-6-603 for the same new commercial project, if the new commercial project is located within a county of the first or second class.
- (3) The office shall conduct a study of the economic impacts associated with a new commercial project to determine whether a business entity meets the requirements of Subsection (2).
- (4) In determining whether a new commercial project meets the requirements of Subsection (2)(a)(ii), the office may attribute an incremental job or a high paying job to a new commercial project regardless of whether the job is performed in person, within a development zone, or remotely from elsewhere in the state.

Enacted by Chapter 200, 2022 General Session

Amended by Chapter 362, 2022 General Session, (Coordination Clause)

63N-2-104.2 Written agreement -- Contents -- Grounds for amendment or termination.

- (1) If the office determines that a business entity is eligible for a tax credit under Section 63N-2-104.1, the office may enter into a written agreement with the business entity that:
 - (a) establishes performance benchmarks for the business entity to claim a tax credit, including any minimum wage requirements;
 - (b) specifies the maximum amount of tax credit that the business entity may be authorized for a taxable year and over the life of the new commercial project, subject to the limitations in Section 63N-2-104.3;
 - (c) establishes the length of time the business entity may claim a tax credit;
 - (d) requires the business entity to retain records supporting a claim for a tax credit for at least four years after the business entity claims the tax credit;
 - (e) requires the business entity to submit to audits for verification of any tax credit claimed; and
 - (f) requires the business entity, in order to claim a tax credit, to meet the requirements of Section 63N-2-105.
- (2) In establishing the terms of a written agreement, including the duration and amount of tax credit that the business entity may be authorized to receive, the office shall:
 - (a) authorize the tax credit in a manner that provides the most effective incentive for the new commercial project;
 - (b) consider the following factors:
 - (i) whether the new commercial project provides vital or specialized support to supply chains;
 - (ii) whether the new commercial project provides an innovative product, technology, or service;
 - (iii) the number and wages of new incremental jobs associated with the new commercial project;

- (iv) the amount of financial support provided by local government entities for the new commercial project;
 - (v) the amount of capital expenditures associated with the new commercial project;
 - (vi) whether the new commercial project returns jobs transferred overseas;
 - (vii) the rate of unemployment in the county in which the new commercial project is located;
 - (viii) whether the new commercial project creates a remote work opportunity;
 - (ix) whether the new commercial project is located in a development zone created by a local government entity as described in Subsection 63N-2-104(2);
 - (x) whether the business entity commits to hiring Utah workers for the new commercial project;
 - (xi) whether the business entity adopts a corporate citizenry plan or supports initiatives in the state that advance education, gender equality, diversity and inclusion, work-life balance, environmental or social good, or other similar causes;
 - (xii) whether the business entity's headquarters are located within the state;
 - (xiii) the likelihood of other business entities relocating to another state as a result of the new commercial project;
 - (xiv) the necessity of the tax credit for the business entity's expansion in the state or relocation from another state; and
 - (xv) the location and impact of the new commercial project on existing and planned transportation facilities, existing and planned housing, including affordable housing, and public infrastructure; and
- (c) consult with the GO Utah board.
- (3)
- (a) In determining the amount of tax credit that a business entity may be authorized to receive under a written agreement, the office may:
 - (i) authorize a higher or optimized amount of tax credit for a new commercial project located within a development zone created by a local government entity as described in Subsection 63N-2-104(2); and
 - (ii) establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a process by which the office closely approximates the amount of taxes the business entity paid under Title 59, Chapter 12, Sales and Use Tax Act, for a capital project.
 - (b) The office may apply a process described in Subsection (3)(a)(ii) to a business entity only with respect to a new or amended written agreement that takes effect on or after January 1, 2022.
- (4) If the office identifies any of the following events after entering into a written agreement with a business entity, the office and the business entity shall amend, or the office may terminate, the written agreement:
- (a) a change in the business entity's organization resulting from a merger with or acquisition of another entity located in the state;
 - (b) a material increase in the business entity's retail operations that results in new state revenue not subject to the incentive; or
 - (c) an increase in the business entity's operations that:
 - (i) is outside the scope of the written agreement or outside the boundaries of a development zone; and
 - (ii) results in new state revenue not subject to the incentive.

Enacted by Chapter 200, 2022 General Session

63N-2-104.3 Limitations on tax credit amount.

- (1) Except as provided in Subsection (2)(a), for a new commercial project that is located within the boundary of a county of the first or second class, the office may not authorize a tax credit that exceeds:
 - (a) 50% of the new state revenues from the new commercial project in any given year;
 - (b) 30% of the new state revenues from the new commercial project over a period of up to 20 years; or
 - (c) 35% of the new state revenues from the new commercial project over a period of up to 20 years, if:
 - (i) the new commercial project brings 2,500 or more new incremental jobs to the state;
 - (ii) the amount of capital expenditures associated with the new commercial project is \$1,000,000,000 or more; and
 - (iii) the commission approves the tax credit.
- (2) If the office authorizes a tax credit for a new commercial project located within the boundary of:
 - (a) a municipality with a population of 10,000 or less located within a county of the second class and that is experiencing economic hardship as determined by the office, the office may authorize a tax credit of up to 50% of new state revenues from the new commercial project over a period of up to 20 years;
 - (b) a county of the third class, the office may authorize a tax credit of up to 50% of new state revenues from the new commercial project over a period of up to 20 years; and
 - (c) a county of the fourth, fifth, or sixth class, the office may authorize a tax credit of 50% of new state revenues from the new commercial project over a period of up to 20 years.

Amended by Chapter 499, 2023 General Session

63N-2-105 Requirements for claiming tax credit -- Application for tax credit certificate -- Procedure.

- (1) A business entity may claim a tax credit under this part if the office:
 - (a) determines that the business entity is eligible for a tax credit under Section 63N-2-104.1;
 - (b) enters into a written agreement with the business entity in accordance with Section 63N-2-104.2; and
 - (c) issues a tax credit certificate to the business entity in accordance with this section.
- (2) A business entity seeking to receive a tax credit shall provide the office with:
 - (a) an application for a tax credit certificate, including a certification, by an officer of the business entity, of any signature on the application;
 - (b) documentation of the new state revenues from the business entity's new commercial project that were paid during a calendar year;
 - (c) known or expected detriments to the state or existing businesses in the state;
 - (d) a document that expressly directs and authorizes the State Tax Commission to disclose to the office the business entity's returns and other information that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code;
 - (e) a document that expressly directs and authorizes the Department of Workforce Services to disclose to the office the business entity's unemployment insurance contribution reports that would otherwise be subject to confidentiality under Section 35A-4-312; and
 - (f) documentation that the business entity has satisfied the performance benchmarks outlined in the written agreement.
- (3)
 - (a)

- (i) The office shall submit the document described in Subsection (2)(d) to the State Tax Commission.
- (ii) Upon receipt of the document described in Subsection (2)(d), the State Tax Commission shall provide the office with the returns and other information requested by the office that the State Tax Commission is directed or authorized to provide to the office in accordance with Subsection (2)(d).
- (b)
 - (i) The office shall submit the document described in Subsection (2)(e) to the Department of Workforce Services.
 - (ii) Upon receipt of the document described in Subsection (2)(e), the Department of Workforce Services shall provide the office with the information that the Department of Workforce Services is directed or authorized to provide to the office in accordance with Subsection (2)(e).
- (4) If the returns and other information provided under Subsections (2) and (3) provide the office with a reasonable justification for authorizing or continuing a tax credit, the office shall:
 - (a) determine the amount of the tax credit to be granted to the business entity, consistent with the terms of the written agreement;
 - (b) issue a tax credit certificate to the business entity; and
 - (c) provide a digital record of the tax credit certificate to the State Tax Commission.
- (5)
 - (a) A business entity may claim a tax credit in the amount listed on the tax credit certificate on its tax return.
 - (b) A business entity that claims a tax credit under this section shall retain the tax credit certificate in accordance with Section 59-7-614.2 or 59-10-1107.

Amended by Chapter 200, 2022 General Session

63N-2-106 Reports -- Posting monthly and annual reports -- Audit and study of tax credits.

- (1) The office shall include the following information in the annual written report described in Section 63N-1a-306:
 - (a) the office's success in attracting new commercial projects to development zones under this part and the corresponding increase in new incremental jobs;
 - (b) how many new incremental jobs and high paying jobs are employees of a company that received tax credits under this part, including the number of employees who work for a third-party rather than directly for a company, receiving the tax credits under this part;
 - (c) the estimated amount of tax credit commitments made by the office and the period of time over which tax credits will be paid;
 - (d) the economic impact on the state from new state revenues and the provision of tax credits under this part;
 - (e) the estimated costs and economic benefits of the tax credit commitments made by the office;
 - (f) the actual costs and economic benefits of the tax credit commitments made by the office; and
 - (g) tax credit commitments made by the office, with the associated calculation.
- (2) Each month, the office shall post on its website and on a state website:
 - (a) the new tax credit commitments made by the office during the previous month; and
 - (b) the estimated costs and economic benefits of those tax credit commitments.
- (3)
 - (a) On or before November 1, 2014, and every three years after November 1, 2014, the office shall:

- (i) conduct an audit of the tax credits allowed under Section 63N-2-105;
 - (ii) study the tax credits allowed under Section 63N-2-105; and
 - (iii) make recommendations concerning whether the tax credits should be continued, modified, or repealed.
- (b) The audit shall include an evaluation of:
- (i) the cost of the tax credits;
 - (ii) the purposes and effectiveness of the tax credits;
 - (iii) the extent to which the state benefits from the tax credits; and
 - (iv) the state's return on investment under this part measured by new state revenues, compared with the costs of tax credits provided and GOED's expenses in administering this part.
- (c) The office shall provide the results of the audit described in this Subsection (3):
- (i) in the written annual report described in Subsection (1); and
 - (ii) as part of the reviews described in Sections 59-7-159 and 59-10-137.

Amended by Chapter 282, 2021 General Session

63N-2-107 Reports of new state revenues, partial rebates, and tax credits.

- (1) Before October 1 of each year, the office shall submit a report to the Governor's Office of Planning and Budget, the Office of the Legislative Fiscal Analyst, and the Division of Finance identifying:
- (a)
- (i) the total estimated amount of new state revenues created from new commercial projects;
 - (ii) the estimated amount of new state revenues from new commercial projects that will be generated from:
 - (A) sales tax;
 - (B) income tax; and
 - (C) corporate franchise and income tax; and
 - (iii) the minimum number of new incremental jobs and high paying jobs that will be created before any tax credit is awarded; and
- (b) the total estimated amount of tax credits that the office projects that business entities will qualify to claim under this part.
- (2) By the first business day of each month, the office shall submit a report to the Governor's Office of Planning and Budget, the Office of the Legislative Fiscal Analyst, and the Division of Finance identifying:
- (a) each new written agreement that the office entered into since the last report;
 - (b) the estimated amount of new state revenues that will be generated under each written agreement described in Subsection (2)(a);
 - (c) the estimated maximum amount of tax credits that a business entity could qualify for under each written agreement described in Subsection (2)(a); and
 - (d) the minimum number of new incremental jobs and high paying jobs that will be created before any tax credit is awarded.
- (3) At the reasonable request of the Governor's Office of Planning and Budget, the Office of the Legislative Fiscal Analyst, or the Division of Finance, the office shall provide additional information about the tax credit, new incremental jobs and high paying jobs, costs, and economic benefits related to this part, if the information is part of a public record as defined in Section 63G-2-103.
- (4) By June 30, the office shall submit to the Economic Development and Workforce Services Interim Committee, the Business, Economic Development, and Labor Appropriations

Subcommittee, and the governor, a written report that provides an overview of the implementation and efficacy of the statewide economic development strategy, including an analysis of the extent to which the office's programs are aligned with the prevailing economic conditions expected in the next fiscal year.

Amended by Chapter 200, 2022 General Session

63N-2-109 Payment of partial rebates.

- (1) As used in this section:
 - (a) "Account" means the Economic Incentive Restricted Account created in Subsection (2).
 - (b) "Partial rebate" means an agreement between the office and a business entity under which the state agrees to pay back to the business entity a portion of new state revenue generated by a business entity's new commercial project.
- (2)
 - (a) There is created a restricted account in the General Fund known as the Economic Incentive Restricted Account.
 - (b) The account shall consist of money transferred into the account by the Division of Finance from the General Fund as provided in this section.
 - (c) The Division of Finance shall make payments from the account as required by this section.
- (3) The Division of Finance shall make partial rebate payments due under an agreement initially entered into by the office before May 5, 2008, as provided in this section.
- (4)
 - (a) Each business entity seeking a partial rebate shall follow the procedures and requirements of this Subsection (4) to obtain a partial rebate.
 - (b) Within 90 days of the end of each calendar year, a business entity seeking a partial rebate shall:
 - (i) provide the office with documentation of the new state revenue that the business entity generated during the preceding calendar year;
 - (ii) provide the office with a document that expressly directs and authorizes the State Tax Commission to disclose to the office the business entity's returns and other information that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code; and
 - (iii) ensure that the documentation includes:
 - (A) the types of taxes and corresponding amounts of taxes paid directly to the State Tax Commission; and
 - (B) the sales taxes paid to Utah vendors and suppliers that were indirectly paid to the State Tax Commission.
 - (c) The office shall:
 - (i) audit or review the documentation for accuracy;
 - (ii) based on the office's analysis of the documentation, determine the amount of a partial rebate that the business entity earned under the agreement; and
 - (iii) submit to the Division of Finance:
 - (A) a request for payment of a partial rebate to the business entity;
 - (B) the name and address of the payee; and
 - (C) any other information requested by the Division of Finance.
- (5) Upon receipt of a request for payment of a partial rebate from the office, the Division of Finance shall:

- (a) transfer from the General Fund to the restricted account the amount contained in the request for payment of a partial rebate after reducing the amount transferred by any unencumbered balances in the restricted account; and
- (b) notwithstanding Subsections 51-5-3(23)(b) and 63J-1-104(3)(c), after receiving a request for payment of a partial rebate and making the transfer required by Subsection (5)(a), pay the partial rebate from the account.

Enacted by Chapter 190, 2016 General Session

63N-2-110 Rulemaking authority.

The office may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this part.

Enacted by Chapter 200, 2022 General Session