

Effective 5/1/2024

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;
 - (xv) whether the proposed new commercial project might reasonably be expected to occur in the foreseeable future without the tax credit; and
 - (xvi) 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 GOEO board.

- (3) In determining the amount of tax credit that a business entity may be authorized to receive under a written agreement, the office may:
 - (a) 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
 - (b) 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.
- (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.

Amended by Chapter 159, 2024 General Session

Amended by Chapter 316, 2024 General Session