

Senator Howard A. Stephenson proposes the following substitute bill:

RESEARCH ACTIVITIES TAX CREDIT

AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: John Dougall

7	Cosponsors:	Dan R. Eastman	Wayne L. Niederhauser
8	Gregory S. Bell	Scott K. Jenkins	Darin G. Peterson
9	Curtis S. Bramble	Patricia W. Jones	John L. Valentine
10	D. Chris Buttars	Sheldon L. Killpack	Kevin T. VanTassell
11	Margaret Dayton	Peter C. Knudson	Carlene M. Walker
12	Mike Dmitrich	Mark B. Madsen	

LONG TITLE

General Description:

This bill amends the Corporate Franchise and Income Taxes chapter and the Individual Income Tax Act to modify tax credits for research activities in the state.

Highlighted Provisions:

This bill:

- ▶ repeals a repeal date for tax credits for research activities in the state;
- ▶ increases the percentage of expenses or payments that serve as the basis for calculating tax credits for research activities in the state;
- ▶ provides a nonrefundable tax credit equal to 5% of a taxpayer's qualified research expenses for the current taxable year in addition to other tax credits for research activities in the state allowed under current statute;
- ▶ provides that the tax credit for qualified research expenses may not be carried



27 forward;

28 ▶ requires a review of the tax credits by the Utah Tax Review Commission; and

29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill has retrospective operation for taxable years beginning on or after January 1,
34 2007.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **59-7-612**, as last amended by Chapter 9, Laws of Utah 2001

38 **59-10-1012**, as renumbered and amended by Chapter 223, Laws of Utah 2006



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

41 Section 1. Section **59-7-612** is amended to read:

42 **59-7-612. Tax credits for research activities conducted in the state -- Carry**
43 **forward -- Commission to report modification or repeal of certain federal provisions --**
44 **Utah Tax Review Commission study.**

45 (1) (a) [~~For taxable years beginning on or after January 1, 1999, but beginning before~~
46 ~~December 31, 2010, a~~] A taxpayer meeting the requirements of this section [~~shall qualify for~~]
47 may claim the following nonrefundable tax credits [~~for increasing research activities in this~~
48 ~~state~~]:

49 (i) a research tax credit of [~~6%~~] 8% of the taxpayer's qualified research expenses for
50 the current taxable year that exceed the base amount provided for under Subsection (4); [~~and~~]

51 (ii) a tax credit for payments to qualified organizations for basic research as provided
52 in Section 41(e), Internal Revenue Code, of [~~6%~~] 8% for the current taxable year that exceed
53 the base amount provided for under Subsection (4)[~~]; and~~

54 (iii) a tax credit equal to 5% of the taxpayer's qualified research expenses for the
55 current taxable year.

56 [~~(b) If a taxpayer qualifying for a credit under Subsection (1)(a) seeks to claim the~~
57 ~~credit, the taxpayer shall:~~]

58 **(b) (i) Except as provided in Subsection (1)(b)(ii), a taxpayer may:**
59 **[(†)] (A) claim the tax credit or a portion of the tax credit for the taxable year**
60 **immediately following the taxable year for which the taxpayer qualifies for the tax credit;**
61 **[(††)] (B) carry forward the tax credit or a portion of the tax credit [forward] as**
62 **provided in Subsection [~~(4)(f)] (5); or~~**
63 **[(†††)] (C) claim a portion of the tax credit and carry forward a portion of the tax credit**
64 **as provided in Subsections (1)(b)(i)(A) and [(††)] (B).**
65 **(ii) A taxpayer may not carry forward the tax credit allowed by Subsection (1)(a)(iii).**
66 (c) The tax credits provided for in this section do not include the alternative
67 incremental credit provided for in Section 41(c)(4), Internal Revenue Code.
68 (2) For purposes of claiming a tax credit under this section, a unitary group as defined
69 in Section 59-7-101 is considered to be one taxpayer.
70 (3) Except as specifically provided for in this section:
71 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in
72 Section 41, Internal Revenue Code; and
73 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
74 the tax credits authorized under Subsection (1).
75 (4) For purposes of this section:
76 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h),
77 Internal Revenue Code, except that:
78 (i) the base amount does not include the calculation of the alternative incremental
79 credit provided for in Section 41(c)(4), Internal Revenue Code;
80 (ii) a taxpayer's gross receipts include only those gross receipts attributable to sources
81 within this state as provided in Part 3, Allocation and Apportionment of Income -- Utah
82 UDITPA Provisions; and
83 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
84 the base amount, a taxpayer:
85 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
86 regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II);
87 and
88 (B) may not revoke an election to be treated as a start-up company under Subsection

89 (4)(a)(iii)(A);

90 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
91 that the term includes only basic research conducted in this state;

92 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
93 that the term includes only qualified research conducted in this state;

94 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal
95 Revenue Code, except that the term includes only ~~[those expenses incurred in conducting~~
96 ~~qualified research in this state;]~~;

97 (i) in-house research expenses incurred in this state; and

98 (ii) contract research expenses incurred in this state; and

99 (e) ~~[notwithstanding the provisions of Section 41(h), Internal Revenue Code, the~~
100 ~~credits] a tax credit~~ provided for in this section ~~[shall] is not [terminate] terminated~~ if ~~[the~~
101 ~~credits terminate] a credit terminates~~ under Section 41, Internal Revenue Code~~[-; and]~~.

102 ~~[(f) notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code,~~
103 ~~governing the carry forward and carry back of federal tax credits, if]~~

104 (5) If the amount of a tax credit claimed by a taxpayer under ~~[this section]~~ Subsection
105 (1)(a)(i) or (ii) exceeds the taxpayer's tax liability under this chapter for a taxable year, the
106 amount of the tax credit exceeding the tax liability:

107 ~~[(i)] (a)~~ (a) may be carried forward for a period that does not exceed the next 14 taxable
108 years; and

109 ~~[(ii)] (b)~~ (b) may not be carried back to a taxable year preceding the current taxable year.

110 ~~[(5)] (6)~~ In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
111 Act, the commission may make rules for purposes of this section prescribing a certification
112 process for qualified organizations to ensure that amounts paid to the qualified organizations
113 are for basic research conducted in this state.

114 ~~[(6)] (7)~~ If a ~~[federal tax credit under] provision of~~ Section 41, Internal Revenue Code,
115 is modified or repealed, the commission shall report the modification or repeal to the Utah Tax
116 Review Commission within 60 days after the day on which the modification or repeal becomes
117 effective.

118 ~~[(7)] (8)~~ (a) ~~[Except as provided in Subsection (7)(b), the] The Utah~~ Tax Review
119 Commission shall review the tax credits provided for in this section on or before ~~[the earlier of:~~

120 (i) October 1 of the year after the year in which the commission reports under Subsection [(6)]
 121 (7) a modification or repeal of a [~~federal tax credit under~~] provision of Section 41, Internal
 122 Revenue Code[; or (ii) ~~October 1, 2004~~].

123 (b) Notwithstanding Subsection [(7)] (8)(a), the Utah Tax Review Commission is not
 124 required to review the tax credits provided for in this section if the only modification to a
 125 [~~federal tax credit under~~] provision of Section 41, Internal Revenue Code, is the extension of
 126 the termination date provided for in Section 41(h), Internal Revenue Code.

127 (c) The Utah Tax Review Commission shall address in a review under this section
 128 [the]:

129 (i) the cost of the [credit] tax credits provided for in this section;

130 (ii) the purpose and effectiveness of the [credit] tax credits provided for in this section;

131 (iii) whether the [credit benefits] tax credits provided for in this section benefit the
 132 state; and

133 (iv) whether the [credit] tax credits provided for in this section should be:

134 (A) continued;

135 (B) modified; or

136 (C) repealed.

137 (d) If the Utah Tax Review Commission reviews the tax credits provided for in this
 138 section, the Utah Tax Review Commission shall report its findings to the Revenue and
 139 Taxation Interim Committee on or before the November interim meeting of the year in which
 140 the Utah Tax Review Commission reviews the tax credits.

141 Section 2. Section **59-10-1012** is amended to read:

142 **59-10-1012. Tax credits for research activities conducted in the state -- Carry**
 143 **forward -- Commission to report modification or repeal of certain federal provisions --**
 144 **Utah Tax Review Commission study.**

145 (1) (a) [~~For taxable years beginning on or after January 1, 1999, but beginning before~~
 146 ~~December 31, 2010, a] A claimant, estate, or trust meeting the requirements of this section
 147 [~~shall qualify for] may claim the following nonrefundable tax credits [~~for increasing research~~
 148 ~~activities in this state]:~~~~~~

149 (i) a research tax credit of [~~6%~~] 8% of the claimant's, estate's, or trust's qualified
 150 research expenses for the current taxable year that exceed the base amount provided for under

151 Subsection ~~[(4)]~~ (3); ~~and~~

152 (ii) a tax credit for payments to qualified organizations for basic research as provided
153 in Section 41(e), Internal Revenue Code of ~~[6%]~~ 8% for the current taxable year that exceed
154 the base amount provided for under Subsection ~~[(4)]~~ (3); and

155 (iii) a tax credit equal to 5% of the taxpayer's qualified research expenses for the
156 current taxable year.

157 (b) ~~(i) [If a claimant, estate, or trust qualifying for a tax credit under Subsection (1)(a)~~
158 ~~seeks to claim the tax credit, the] Except as provided in Subsection (1)(b)(ii), a claimant, estate,~~
159 ~~or trust [shall] may:~~

160 ~~[(i)]~~ (A) claim the tax credit or a portion of the tax credit for the taxable year
161 immediately following the taxable year for which the claimant, estate, or trust qualifies for the
162 tax credit;

163 ~~[(ii)]~~ (B) carry forward the tax credit or a portion of the tax credit ~~[forward]~~ as
164 provided in Subsection (4)~~[(f)]~~; or

165 ~~[(iii)]~~ (C) claim a portion of the tax credit and carry forward a portion of the tax credit
166 as provided in Subsections (1)(b)(i)(A) and ~~[(ii)]~~ (B).

167 (ii) A taxpayer may not carry forward the tax credit allowed by Subsection (1)(a)(iii).

168 (c) The tax credits provided for in this section do not include the alternative
169 incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

170 ~~[(2) For purposes of claiming a tax credit under this section, a unitary group as defined~~
171 ~~in Section 59-7-101 is considered to be one claimant.]~~

172 ~~[(3)]~~ (2) Except as specifically provided for in this section:

173 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in
174 Section 41, Internal Revenue Code; and

175 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
176 the tax credits authorized under Subsection (1).

177 ~~[(4)]~~ (3) For purposes of this section:

178 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h),
179 Internal Revenue Code, except that:

180 (i) the base amount does not include the calculation of the alternative incremental
181 credit provided for in Section 41(c)(4), Internal Revenue Code;

182 (ii) a claimant's, estate's, or trust's gross receipts include only those gross receipts
 183 attributable to sources within this state as provided in Section 59-10-118; and

184 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
 185 the base amount, a claimant, estate, or trust:

186 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
 187 regardless of whether the claimant, estate, or trust meets the requirements of Section
 188 41(c)(3)(B)(i)(I) or (II); and

189 (B) may not revoke an election to be treated as a start-up company under Subsection
 190 (4)(a)(iii)(A);

191 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
 192 that the term includes only basic research conducted in this state;

193 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
 194 that the term includes only qualified research conducted in this state;

195 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal
 196 Revenue Code, except that the term includes only ~~[those expenses incurred in conducting~~
 197 ~~qualified research in this state;];~~

198 (i) in-house research expenses incurred in this state; and

199 (ii) contract research expenses incurred in this state; and

200 (e) ~~[notwithstanding the provisions of Section 41(h), Internal Revenue Code, the tax~~
 201 ~~credits] a tax credit~~ provided for in this section ~~[shall] is not [terminate] terminated~~ if ~~[the~~
 202 ~~credits terminate] a credit terminates~~ under Section 41, Internal Revenue Code~~[-; and]~~.

203 ~~[(f) notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code,~~
 204 ~~governing the carry forward and carry back of federal tax credits, if]~~

205 (4) If the amount of a tax credit claimed by a claimant, estate, or trust under ~~[this~~
 206 ~~section] Subsection (1)(a)(i) or (ii)~~ exceeds the claimant's, estate's, or trust's tax liability under
 207 this chapter for a taxable year, the amount of the tax credit exceeding the tax liability:

208 ~~[(i)]~~ (a) may be carried forward for a period that does not exceed the next 14 taxable
 209 years; and

210 ~~[(ii)]~~ (b) may not be carried back to a taxable year preceding the current taxable year.

211 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 212 commission may make rules for purposes of this section prescribing a certification process for

213 qualified organizations to ensure that amounts paid to the qualified organizations are for basic
214 research conducted in this state.

215 (6) If a [~~federal credit under~~] provision of Section 41, Internal Revenue Code, is
216 modified or repealed, the commission shall report the modification or repeal to the Utah Tax
217 Review Commission within 60 days after the day on which the modification or repeal becomes
218 effective.

219 (7) (a) The Utah Tax Review Commission shall review the tax credits provided for in
220 this section on or before October 1 of the year after the year in which the commission reports
221 under Subsection (6) a modification or repeal of a provision of Section 41, Internal Revenue
222 Code.

223 (b) Notwithstanding Subsection (7)(a), the Utah Tax Review Commission is not
224 required to review the tax credits provided for in this section if the only modification to a
225 provision of Section 41, Internal Revenue Code, is the extension of the termination date
226 provided for in Section 41(h), Internal Revenue Code.

227 (c) The Utah Tax Review Commission shall address in a review under this section:

228 (i) the cost of the tax credits provided for in this section;

229 (ii) the purpose and effectiveness of the tax credits provided for in this section;

230 (iii) whether the tax credits provided for in this section benefit the state; and

231 (iv) whether the tax credits provided for in this section should be:

232 (A) continued;

233 (B) modified; or

234 (C) repealed.

235 (d) If the Utah Tax Review Commission reviews the tax credits provided for in this
236 section, the Utah Tax Review Commission shall report its findings to the Revenue and
237 Taxation Interim Committee on or before the November interim meeting of the year in which
238 the Utah Tax Review Commission reviews the tax credits.

239 **Section 3. Retrospective operation.**

240 This bill has retrospective operation for taxable years beginning on or after January 1,
241 2007.