

**RESEARCH ACTIVITIES TAX CREDITS  
AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John Dougall**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**Committee Note:**

The Revenue and Taxation Interim Committee recommended this bill.

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ addresses the taxable year for which certain tax credits for research activities may be claimed;
- ▶ addresses Utah Tax Review Commission study requirements for the tax credits; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill has retrospective operation for taxable years beginning on or after January 1, 2008.

**Utah Code Sections Affected:**

AMENDS:

**59-7-612**, as last amended by Laws of Utah 2007, Chapter 288



28           **59-7-613**, as last amended by Laws of Utah 1999, Chapter 59  
 29           **59-10-1012**, as last amended by Laws of Utah 2007, Chapter 288  
 30           **59-10-1013**, as renumbered and amended by Laws of Utah 2006, Chapter 223

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

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

34           **59-7-612. Tax credits for research activities conducted in the state -- Carry**  
 35 **forward -- Commission to report modification or repeal of certain federal provisions --**  
 36 **Utah Tax Review Commission study.**

37           (1) (a) A taxpayer meeting the requirements of this section may claim the following  
 38 nonrefundable tax credits:

39           (i) a research tax credit of ~~Ĥ→~~ [7%] 5% ~~←Ĥ~~ of the taxpayer's qualified research  
 39a expenses for the

40 current taxable year that exceed the base amount provided for under Subsection (4);

41           (ii) a tax credit for [~~payments~~] a payment to a qualified [organizations] organization for  
 42 basic research as provided in Section 41(e), Internal Revenue Code, of ~~Ĥ→~~ [7%] 5% ~~←Ĥ~~  
 42a for the current

43 taxable year that exceed the base amount provided for under Subsection (4); and

44           (iii) a tax credit equal to ~~Ĥ→~~ :

44a           (A) for the taxable year beginning on or after January 1, 2008, but beginning on or  
 44b before December 31, 2008, ←Ĥ 5% of the taxpayer's qualified research expenses for the  
 45 current taxable year ~~Ĥ→~~ [-] ;

45a           (B) for the taxable year beginning on or after January 1, 2009, but beginning on or  
 45b before December 31, 2009, 6.3% of the taxpayer's qualified research expenses for the current  
 45c taxable year; or

45d           (C) for taxable years beginning on or after January 1, 2010, 9.2% of the taxpayer's  
 45e qualified research expenses for the current taxable year. ←Ĥ

46           ~~[(b) (i) Except as provided in Subsection (1)(b)(ii), a taxpayer may:]~~

47           ~~[(A) claim the tax credit or a portion of the tax credit for the taxable year immediately~~  
 48 ~~following the taxable year for which the taxpayer qualifies for the tax credit;]~~

49           ~~[(B) carry forward the tax credit or a portion of the tax credit as provided in Subsection~~  
 50 ~~(5); or]~~

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

53           ~~[(ii) A taxpayer may not carry forward the tax credit allowed by Subsection (1)(a)(iii).]~~  
54           (b) Subject to Subsection (5), a taxpayer may claim a tax credit under:  
55           (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the taxpayer incurs  
56 the qualified research expenses; or  
57           (ii) Subsection (1)(a)(ii), for the taxable year for which the taxpayer makes the payment  
58 to the qualified organization.

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

61 (2) For purposes of claiming a tax credit under this section, a unitary group as defined  
62 in Section 59-7-101 is considered to be one taxpayer.

63 (3) Except as specifically provided for in this section:

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

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

68 (4) For purposes of this section:

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

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

73 (ii) a taxpayer's gross receipts include only those gross receipts attributable to sources  
74 within this state as provided in Part 3, Allocation and Apportionment of Income -- Utah  
75 UDITPA Provisions; and

76 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating  
77 the base amount, a taxpayer:

78 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)  
79 regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II);  
80 and

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

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

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

87 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal  
88 Revenue Code, except that the term includes only:

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

90 (ii) contract research expenses incurred in this state; and  
91 (e) a tax credit provided for in this section is not terminated if a credit terminates under  
92 Section 41, Internal Revenue Code.

93 (5) (a) If the amount of a tax credit claimed by a taxpayer under Subsection (1)(a)(i) or  
94 (ii) exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the  
95 tax credit exceeding the tax liability:

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

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

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

100 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
101 commission may make rules for purposes of this section prescribing a certification process for  
102 qualified organizations to ensure that amounts paid to the qualified organizations are for basic  
103 research conducted in this state.

104 (7) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the  
105 commission shall report the modification or repeal to the Utah Tax Review Commission within  
106 60 days after the day on which the modification or repeal becomes effective.

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

111 (b) Notwithstanding Subsection (8)(a), the Utah Tax Review Commission is not  
112 required to review the tax credits provided for in this section if the only modification to a  
113 provision of Section 41, Internal Revenue Code, is the extension of the termination date  
114 provided for in Section 41(h), Internal Revenue Code.

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

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

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

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

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

120 (A) continued;

121 (B) modified; or  
122 (C) repealed.

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

127 Section 2. Section **59-7-613** is amended to read:

128 **59-7-613. Tax credits for machinery, equipment, or both primarily used for**  
129 **conducting qualified research or basic research -- Carry forward -- Commission to report**  
130 **modification or repeal of certain federal provisions -- Utah Tax Review Commission**  
131 **study.**

132 (1) As used in this section:

133 (a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except  
134 that the term includes only basic research conducted in this state.

135 (b) "Equipment" includes:

- 136 (i) ~~computers~~ a computer;
- 137 (ii) computer equipment; and
- 138 (iii) computer software.

139 (c) "Purchase price":

- 140 (i) includes the cost of installing an item of machinery or equipment; and
- 141 (ii) does not include ~~sales or use taxes~~ a tax imposed under Chapter 12, Sales and Use  
142 Tax Act, on an item of machinery or equipment.

143 (d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.

144 (e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except  
145 that the term includes only qualified research conducted in this state.

146 (2) (a) Except as provided in Subsection (2)(c), for taxable years beginning on or after  
147 January 1, 1999, but beginning before December 31, 2010, a taxpayer ~~shall qualify for~~  
148 meeting the requirements of this section may claim the following nonrefundable tax credits ~~for~~  
149 ~~the taxable year in which the machinery, equipment, or both, meets the requirements of either~~  
150 Subsection (2)(a)(i) or (2)(a)(ii)]:

151 (i) a tax credit of 6% of the purchase price of ~~either~~ machinery, equipment, or both:

- 152 (A) purchased by the taxpayer during the taxable year;
- 153 (B) that is [~~not exempt from sales or use taxes~~] subject to a tax under Chapter 12, Sales  
 154 and Use Tax Act; and
- 155 (C) that is primarily used to conduct qualified research in this state; and
- 156 (ii) a tax credit of 6% of the purchase price of [~~either~~] machinery, equipment, or both:
- 157 (A) purchased by the taxpayer during the taxable year;
- 158 (B) that is [~~not exempt from sales or use taxes~~] subject to a tax under Chapter 12, Sales  
 159 and Use Tax Act;
- 160 (C) that is donated to a qualified organization; and
- 161 (D) that is primarily used to conduct basic research in this state.
- 162 [~~(b) If a taxpayer qualifying for a credit under Subsection (2)(a) seeks to claim the~~  
 163 ~~credit, the taxpayer shall:~~]
- 164 [~~(i) claim the credit or a portion of the credit for the taxable year immediately~~  
 165 ~~following the taxable year for which the taxpayer qualifies for the credit;~~]
- 166 [~~(ii) carry the credit or a portion of the credit forward as provided in Subsection (5); or]~~
- 167 [~~(iii) claim a portion of the credit and carry forward a portion of the credit as provided~~  
 168 ~~in Subsections (2)(b)(i) and (ii).]~~
- 169 [~~(c) Notwithstanding Subsection (2)(a), if]~~
- 170 (b) Subject to Subsection (5), a taxpayer may claim a tax credit under this section for  
 171 the taxable year for which the taxpayer purchases the machinery, equipment, or both.
- 172 (c) If a taxpayer qualifies for a tax credit under Subsection (2)(a) for a purchase of  
 173 machinery, equipment, or both, the taxpayer may not claim the tax credit or carry the tax credit  
 174 forward if the machinery, equipment, or both, is primarily used to conduct qualified research in  
 175 the state for a time period that is less than 12 consecutive months.
- 176 (3) For purposes of claiming a tax credit under this section, a unitary group as defined  
 177 in Section 59-7-101 is considered to be one taxpayer.
- 178 (4) Notwithstanding [~~the provisions of~~] Section 41(h), Internal Revenue Code, [~~the~~  
 179 ~~credits]~~ a tax credit provided for in this section [~~shall not terminate if the credits terminate]~~ is  
 180 not terminated if a credit terminates under Section 41, Internal Revenue Code.
- 181 (5) [~~Notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code,~~  
 182 ~~governing the carry forward and carry back of federal tax credits, if]~~ If the amount of a tax

183 credit claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this  
184 chapter for a taxable year, the amount of the tax credit exceeding the tax liability:

185 (a) may be carried forward for a period that does not exceed the next 14 taxable years;  
186 and

187 (b) may not be carried back to a taxable year preceding the current taxable year.

188 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
189 commission may make rules for purposes of this section prescribing a certification process for  
190 qualified organizations to ensure that ~~either~~ machinery, equipment, or both provided to the  
191 qualified organization is to be primarily used to conduct basic research in this state.

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

196 (8) (a) ~~[Except as provided in Subsection (8)(b), the]~~ The Utah Tax Review  
197 Commission shall review the tax credits provided for in this section on or before ~~[the earlier of:~~  
198 ~~(i)]~~ October 1 of the year after the year in which the commission reports under Subsection (7) a  
199 modification or repeal of a ~~[federal tax credit under]~~ provision of Section 41, Internal Revenue  
200 Code~~[-or]~~.

201 ~~[(ii) October 1, 2004.]~~

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

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

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

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

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

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

212 (A) continued;

213 (B) modified; or



214 (C) repealed.

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

219 Section 3. Section **59-10-1012** is amended to read:

220 **59-10-1012. Tax credits for research activities conducted in the state -- Carry**  
221 **forward -- Commission to report modification or repeal of certain federal provisions --**  
222 **Utah Tax Review Commission study.**

223 (1) (a) A claimant, estate, or trust meeting the requirements of this section may claim  
224 the following nonrefundable tax credits:

225 (i) a research tax credit of ~~H→~~ [7%] 5% ~~←H~~ of the claimant's, estate's, or trust's  
225a qualified research

226 expenses for the current taxable year that exceed the base amount provided for under  
227 Subsection (3);

228 (ii) a tax credit for [~~payments~~] a payment to a qualified [~~organizations~~] organization for  
229 basic research as provided in Section 41(e), Internal Revenue Code of ~~H→~~ [7%] 5% ~~←H~~ for  
229a the current

230 taxable year that exceed the base amount provided for under Subsection (3); and

231 (iii) a tax credit equal to ~~H→~~ :

231a (A) for the taxable year beginning on or after January 1, 2008, but beginning on or  
231b before December 31, 2008, ←H 5% of the claimant's, estate's, or trust's qualified research  
232 expenses for the current taxable year H→ [:] :

232a (B) for the taxable year beginning on or after January 1, 2009, but beginning on or  
232b before December 31, 2009, 6.3% of the claimant's, estate's, or trust's qualified research  
232c expenses for the current taxable year; or

232d (C) for taxable years beginning on or after January 1, 2010, 9.2% of the claimant's,  
232e estate's, or trust's qualified research expenses for the current taxable year. ←H

233 [~~(b) (i) Except as provided in Subsection (1)(b)(ii), a claimant, estate, or trust may:]~~

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

236 [~~(B) carry forward the tax credit or a portion of the tax credit as provided in Subsection~~  
237 ~~(4); or]~~

238 [~~(C) claim a portion of the tax credit and carry forward a portion of the tax credit as~~

239 ~~provided in Subsections (1)(b)(i)(A) and (B):]~~

240 ~~[(ii) A claimant, estate, or trust may not carry forward the tax credit allowed by~~

241 ~~Subsection (1)(a)(iii):]~~

242 (b) Subject to Subsection (4), a claimant, estate, or trust may claim a tax credit under:

243 (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the claimant, estate,

244 or trust incurs the qualified research expenses; or

245           (ii) Subsection (1)(a)(ii), for the taxable year for which the claimant, estate, or trust  
246 makes the payment to the qualified organization.

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

249           (2) Except as specifically provided for in this section:

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

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

254           (3) For purposes of this section:

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

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

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

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

263           (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)  
264 regardless of whether the claimant, estate, or trust meets the requirements of Section  
265 41(c)(3)(B)(i)(I) or (II); and

266           (B) may not revoke an election to be treated as a start-up company under Subsection  
267 (3)(a)(iii)(A);

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

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

272           (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal  
273 Revenue Code, except that the term includes only:

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

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

276 (e) a tax credit provided for in this section is not terminated if a credit terminates under  
277 Section 41, Internal Revenue Code.

278 (4) (a) If the amount of a tax credit claimed by a claimant, estate, or trust under  
279 Subsection (1)(a)(i) or (ii) exceeds the claimant's, estate's, or trust's tax liability under this  
280 chapter for a taxable year, the amount of the tax credit exceeding the tax liability:

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

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

284 (b) A claimant, estate, or trust may not carry forward the tax credit allowed by  
285 Subsection (1)(a)(iii).

286 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
287 commission may make rules for purposes of this section prescribing a certification process for  
288 qualified organizations to ensure that amounts paid to the qualified organizations are for basic  
289 research conducted in this state.

290 (6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the  
291 commission shall report the modification or repeal to the Utah Tax Review Commission within  
292 60 days after the day on which the modification or repeal becomes effective.

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

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

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

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

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

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

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

306 (A) continued;

307 (B) modified; or

308 (C) repealed.

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

313 Section 4. Section **59-10-1013** is amended to read:

314 **59-10-1013. Tax credits for machinery, equipment, or both primarily used for**  
315 **conducting qualified research or basic research -- Carry forward -- Commission to report**  
316 **modification or repeal of certain federal provisions -- Utah Tax Review Commission**  
317 **study.**

318 (1) As used in this section:

319 (a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except  
320 that the term includes only basic research conducted in this state.

321 (b) "Equipment" includes:

- 322 (i) ~~computers~~ a computer;
- 323 (ii) computer equipment; and
- 324 (iii) computer software.

325 (c) "Purchase price":

326 (i) includes the cost of installing an item of machinery or equipment; and

327 (ii) does not include ~~sales or use taxes~~ a tax imposed under Chapter 12, Sales and Use  
328 Tax Act, on an item of machinery or equipment.

329 (d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.

330 (e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except  
331 that the term includes only qualified research conducted in this state.

332 (2) (a) Except as provided in Subsection (2)(c), for taxable years beginning on or after  
333 January 1, 1999, but beginning before December 31, 2010, a claimant, estate, or trust ~~shall~~  
334 ~~qualify for~~ meeting the requirements of this section may claim the following nonrefundable  
335 tax credits ~~[for the taxable year in which the machinery, equipment, or both, meets the~~  
336 ~~requirements of either Subsection (2)(a)(i) or (2)(a)(ii)]~~:

337 (i) a tax credit of 6% of the purchase price of ~~either~~ machinery, equipment, or both:

338 (A) purchased by the claimant, estate, or trust during the taxable year;

339 (B) that is [~~not exempt from sales or use taxes~~] subject to a tax under Chapter 12, Sales  
340 and Use Tax Act; and

341 (C) that is primarily used to conduct qualified research in this state; and

342 (ii) a tax credit of 6% of the purchase price paid by the claimant, estate, or trust for  
343 [~~either~~] machinery, equipment, or both:

344 (A) purchased by the claimant, estate, or trust during the taxable year;

345 (B) that is [~~not exempt from sales or use taxes~~] subject to a tax under Chapter 12, Sales  
346 and Use Tax Act;

347 (C) that is donated to a qualified organization; and

348 (D) that is primarily used to conduct basic research in this state.

349 [~~(b) If a claimant, estate, or trust qualifying for a tax credit under Subsection (2)(a)~~  
350 ~~seeks to claim the tax credit, the claimant, estate, or trust shall:~~

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

353 [~~(ii) carry the tax credit or a portion of the tax credit forward as provided in Subsection~~  
354 ~~(5); or]~~

355 [~~(iii) claim a portion of the tax credit and carry forward a portion of the tax credit as~~  
356 ~~provided in Subsections (2)(b)(i) and (ii).]~~

357 [~~(c) Notwithstanding Subsection (2)(a), if]~~

358 (b) Subject to Subsection (4), a claimant, estate, or trust may claim a tax credit under  
359 this section for the taxable year for which the claimant, estate, or trust purchases the machinery,  
360 equipment, or both.

361 (c) If a claimant, estate, or trust qualifies for a tax credit under Subsection (2)(a) for a  
362 purchase of machinery, equipment, or both, the claimant, estate, or trust may not claim the tax  
363 credit or carry the tax credit forward if the machinery, equipment, or both, is primarily used to  
364 conduct qualified research in the state for a time period that is less than 12 consecutive months.

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

367 [~~(4)~~] (3) Notwithstanding [the provisions of] Section 41(h), Internal Revenue Code,  
368 [the tax credits] a tax credit provided for in this section [shall not terminate if the credits

369 ~~terminate]~~ is not terminated if a credit terminates under Section 41, Internal Revenue Code.

370 ~~[(5)] (4) [Notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue~~  
371 ~~Code, governing the carry forward and carry back of federal tax credits, if] If~~ the amount of a  
372 tax credit claimed by a claimant, estate, or trust under this section exceeds a claimant's, estate's,  
373 or trust's tax liability under this chapter for a taxable year, the amount of the tax credit  
374 exceeding the tax liability:

375 (a) may be carried forward for a period that does not exceed the next 14 taxable years;  
376 and

377 (b) may not be carried back to a taxable year preceding the current taxable year.

378 ~~[(6)] (5)~~ In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking  
379 Act, the commission may make rules for purposes of this section prescribing a certification  
380 process for qualified organizations to ensure that ~~[either]~~ machinery, equipment, or both  
381 provided to the qualified organization is to be primarily used to conduct basic research in this  
382 state.

383 ~~[(7)] (6)~~ If a ~~[federal credit under]~~ provision of Section 41, Internal Revenue Code, is  
384 modified or repealed, the commission shall report the modification or repeal to the Utah Tax  
385 Review Commission within 60 days after the day on which the modification or repeal becomes  
386 effective.

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

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

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

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

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

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

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

400           (A) continued;  
401           (B) modified; or  
402           (C) repealed.  
403           (d) If the Utah Tax Review Commission reviews the tax credits provided for in this  
404 section, the Utah Tax Review Commission shall report its findings to the Revenue and  
405 Taxation Interim Committee on or before the November interim meeting of the year in which  
406 the Utah Tax Review Commission reviews the tax credits.  
407           Section 5. **Retrospective operation.**  
408           This bill has retrospective operation for taxable years beginning on or after January 1,  
409 2008.

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**Legislative Review Note**  
**as of 11-15-07 4:18 PM**

**Office of Legislative Research and General Counsel**



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**H.B. 52 - Research Activities Tax Credits Amendments - As Amended**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill could result in an Education Fund loss of \$5,900,000 in FY 2008 and an Education Fund gain of \$5,900,000 in FY 2009. In FY 2010 the changes are revenue neutral.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
Education Fund	\$0	\$0	\$0	(\$5,900,000)	\$5,900,000	\$0
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$5,900,000)</b>	<b>\$5,900,000</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Companies eligible for the new research credit would see additional tax benefits those involved in incremental research would see a reduction in the tax credits authorized.