

1 **RESEARCH ACTIVITIES TAX CREDITS**

2 **AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: John Dougall**

6 Senate Sponsor: Wayne L. Niederhauser

7	Cosponsors:	Brad King	Merlynn T. Newbold
8	Roger E. Barrus	Todd E. Kiser	Michael E. Noel
9	Greg J. Curtis	Bradley G. Last	Curtis Oda
10	Craig A. Frank	Michael T. Morley	Aaron Tilton
11	Kevin S. Garn	Carol Spackman Moss	Carl Wimmer
12	Wayne A. Harper		

13

14 **LONG TITLE**

15 **General Description:**

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

18 **Highlighted Provisions:**

19 This bill:

- 20 ▶ modifies tax credit percentages;
- 21 ▶ addresses the taxable year for which certain tax credits for research activities may be
22 claimed;
- 23 ▶ addresses Utah Tax Review Commission study requirements for the tax credits; and
- 24 ▶ makes technical changes.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill has retrospective operation for taxable years beginning on or after January 1,
29 2008.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **59-7-612**, as last amended by Laws of Utah 2007, Chapter 288

33 **59-7-613**, as last amended by Laws of Utah 1999, Chapter 59

34 **59-10-1012**, as last amended by Laws of Utah 2007, Chapter 288

35 **59-10-1013**, as renumbered and amended by Laws of Utah 2006, Chapter 223



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

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

39 **59-7-612. Tax credits for research activities conducted in the state -- Carry**
40 **forward -- Commission to report modification or repeal of certain federal provisions --**
41 **Utah Tax Review Commission study.**

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

44 (i) a research tax credit of [~~7%~~] 5% of the taxpayer's qualified research expenses for the
45 current taxable year that exceed the base amount provided for under Subsection (4);

46 (ii) a tax credit for [~~payments~~] a payment to a qualified [~~organizations~~] organization for
47 basic research as provided in Section 41(e), Internal Revenue Code, of [~~7%~~] 5% for the current
48 taxable year that exceed the base amount provided for under Subsection (4); and

49 (iii) a tax credit equal to:

50 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
51 before December 31, 2008, 5% of the taxpayer's qualified research expenses for the current
52 taxable year[-];

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

56 (C) for taxable years beginning on or after January 1, 2010, 9.2% of the taxpayer's
57 qualified research expenses for the current taxable year.

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 immediately~~
60 ~~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 as provided in Subsection~~
62 ~~(5); or]~~

63 ~~[(C) claim a portion of the tax credit and carry forward a portion of the tax credit as~~
64 ~~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 (b) Subject to Subsection (5), a taxpayer may claim a tax credit under:

67 (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the taxpayer incurs
68 the qualified research expenses; or

69 (ii) Subsection (1)(a)(ii), for the taxable year for which the taxpayer makes the payment
70 to the qualified organization.

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

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

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

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

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

80 (4) For purposes of this section:

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

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

85 (ii) a taxpayer's gross receipts include only those gross receipts attributable to sources
86 within this state as provided in Part 3, Allocation and Apportionment of Income -- Utah

87 UDITPA Provisions; and

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

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

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

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

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

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

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

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

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

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

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

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

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

112 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
113 commission may make rules for purposes of this section prescribing a certification process for
114 qualified organizations to ensure that amounts paid to the qualified organizations are for basic

115 research conducted in this state.

116 (7) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
117 commission shall report the modification or repeal to the Utah Tax Review Commission within
118 60 days after the day on which the modification or repeal becomes effective.

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

123 (b) Notwithstanding Subsection (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 provision of Section 41, Internal Revenue Code, is the extension of the termination date
126 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 (i) the cost of the tax credits provided for in this section;
- 129 (ii) the purpose and effectiveness of the tax credits provided for in this section;
- 130 (iii) whether the tax credits provided for in this section benefit the state; and
- 131 (iv) whether the tax credits provided for in this section should be:
 - 132 (A) continued;
 - 133 (B) modified; or
 - 134 (C) repealed.

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

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

140 **59-7-613. Tax credits for machinery, equipment, or both primarily used for**
141 **conducting qualified research or basic research -- Carry forward -- Commission to report**
142 **modification or repeal of certain federal provisions -- Utah Tax Review Commission**

143 study.

144 (1) As used in this section:

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

147 (b) "Equipment" includes:

- 148 (i) ~~computers~~ a computer;
- 149 (ii) computer equipment; and
- 150 (iii) computer software.

151 (c) "Purchase price":

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

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

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

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

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

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

164 (A) purchased by the taxpayer during the taxable year;

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

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

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

169 (A) purchased by the taxpayer during the taxable year;

170 (B) that is ~~[not exempt from sales or use taxes]~~ subject to a tax under Chapter 12, Sales

171 and Use Tax Act;

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

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

174 ~~[(b) If a taxpayer qualifying for a credit under Subsection (2)(a) seeks to claim the~~
175 ~~credit, the taxpayer shall:]~~

176 ~~[(i) claim the credit or a portion of the credit for the taxable year immediately following~~
177 ~~the taxable year for which the taxpayer qualifies for the credit;]~~

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

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

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

182 (b) Subject to Subsection (5), a taxpayer may claim a tax credit under this section for
183 the taxable year for which the taxpayer purchases the machinery, equipment, or both.

184 (c) If a taxpayer qualifies for a tax credit under Subsection (2)(a) for a purchase of
185 machinery, equipment, or both, the taxpayer may not claim the tax credit or carry the tax credit
186 forward if the machinery, equipment, or both, is primarily used to conduct qualified research in
187 the state for a time period that is less than 12 consecutive months.

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

190 (4) Notwithstanding ~~[the provisions of]~~ Section 41(h), Internal Revenue Code, ~~[the~~
191 ~~credits]~~ a tax credit provided for in this section ~~[shall not terminate if the credits terminate]~~ is
192 not terminated if a credit terminates under Section 41, Internal Revenue Code.

193 (5) ~~[Notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code,~~
194 ~~governing the carry forward and carry back of federal tax credits, if]~~ If the amount of a tax
195 credit claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this
196 chapter for a taxable year, the amount of the tax credit exceeding the tax liability:

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

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

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

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

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

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

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

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

- 219 (i) cost of the ~~[credit]~~ tax credits provided for in this section;
- 220 (ii) purpose and effectiveness of the ~~[credit]~~ tax credits provided for in this section;
- 221 (iii) whether the ~~[credit benefits]~~ tax credits provided for in this section benefit the state;

222 and

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

- 224 (A) continued;
- 225 (B) modified; or
- 226 (C) repealed.

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

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

232 **59-10-1012. Tax credits for research activities conducted in the state -- Carry**
 233 **forward -- Commission to report modification or repeal of certain federal provisions --**
 234 **Utah Tax Review Commission study.**

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

237 (i) a research tax credit of [~~7%~~] 5% of the claimant's, estate's, or trust's qualified
 238 research expenses for the current taxable year that exceed the base amount provided for under
 239 Subsection (3);

240 (ii) a tax credit for [~~payments~~] a payment to a qualified [organizations] organization for
 241 basic research as provided in Section 41(e), Internal Revenue Code of [~~7%~~] 5% for the current
 242 taxable year that exceed the base amount provided for under Subsection (3); and

243 (iii) a tax credit equal to:

244 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
 245 before December 31, 2008, 5% of the claimant's, estate's, or trust's qualified research expenses
 246 for the current taxable year[-];

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

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

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

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

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

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

259 ~~[(ii) A claimant, estate, or trust may not carry forward the tax credit allowed by~~
260 ~~Subsection (1)(a)(iii).]~~

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

262 (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the claimant, estate,
263 or trust incurs the qualified research expenses; or

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

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

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

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

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

273 (3) For purposes of this section:

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

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

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

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

282 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)

283 regardless of whether the claimant, estate, or trust meets the requirements of Section
284 41(c)(3)(B)(i)(I) or (II); and

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

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

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

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

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

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

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

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

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

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

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

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

309 (6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
310 commission shall report the modification or repeal to the Utah Tax Review Commission within

311 60 days after the day on which the modification or repeal becomes effective.

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

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

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

- 321 (i) the cost of the tax credits provided for in this section;
- 322 (ii) the purpose and effectiveness of the tax credits provided for in this section;
- 323 (iii) whether the tax credits provided for in this section benefit the state; and
- 324 (iv) whether the tax credits provided for in this section should be:
 - 325 (A) continued;
 - 326 (B) modified; or
 - 327 (C) repealed.

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

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

333 **59-10-1013. Tax credits for machinery, equipment, or both primarily used for**
334 **conducting qualified research or basic research -- Carry forward -- Commission to report**
335 **modification or repeal of certain federal provisions -- Utah Tax Review Commission**
336 **study.**

337 (1) As used in this section:

338 (a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except

339 that the term includes only basic research conducted in this state.

340 (b) "Equipment" includes:

341 (i) ~~[computers]~~ a computer;

342 (ii) computer equipment; and

343 (iii) computer software.

344 (c) "Purchase price":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

386 [~~(4)~~ (3) Notwithstanding [~~the provisions of~~] Section 41(h), Internal Revenue Code,
387 [~~the tax credits~~] a tax credit provided for in this section [~~shall not terminate if the credits~~
388 ~~terminate~~] is not terminated if a credit terminates under Section 41, Internal Revenue Code.

389 [~~(5)~~ (4) [~~Notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue~~
390 ~~Code, governing the carry forward and carry back of federal tax credits, if]~~ If the amount of a
391 tax credit claimed by a claimant, estate, or trust under this section exceeds a claimant's, estate's,
392 or trust's tax liability under this chapter for a taxable year, the amount of the tax credit
393 exceeding the tax liability:

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

395 and

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

397 ~~[(6)]~~ (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
398 Act, the commission may make rules for purposes of this section prescribing a certification
399 process for qualified organizations to ensure that ~~[either]~~ machinery, equipment, or both
400 provided to the qualified organization is to be primarily used to conduct basic research in this
401 state.

402 ~~[(7)]~~ (6) If a ~~[federal credit under]~~ provision of Section 41, Internal Revenue Code, is
403 modified or repealed, the commission shall report the modification or repeal to the Utah Tax
404 Review Commission within 60 days after the day on which the modification or repeal becomes
405 effective.

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

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

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

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

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

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

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

419 (A) continued;

420 (B) modified; or

421 (C) repealed.

422 (d) If the Utah Tax Review Commission reviews the tax credits provided for in this

423 section, the Utah Tax Review Commission shall report its findings to the Revenue and Taxation
424 Interim Committee on or before the November interim meeting of the year in which the Utah
425 Tax Review Commission reviews the tax credits.

426 Section 5. **Retrospective operation.**

427 This bill has retrospective operation for taxable years beginning on or after January 1,
428 2008.