

ECONOMIC DEVELOPMENT INCENTIVE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Patrick Painter

LONG TITLE

General Description:

This bill amends the Corporate Franchise and Income Taxes chapter, the Individual Income Tax Act, and the Economic Development Incentives Act relating to economic development incentives including tax credits.

Highlighted Provisions:

This bill:

- ▶ enacts and modifies definitions;
- ▶ provides that a local government entity or community development and renewal agency may claim a refundable economic development tax credit under certain circumstances;
- ▶ addresses the procedures, requirements, and administration related to the refundable economic development tax credit and the creation of economic development zones;
- ▶ addresses reporting requirements by the Governor's Office of Economic Development;
- ▶ addresses the expenditure of amounts received as a tax credit by a local government entity or community development and renewal agency;
- ▶ addresses the commingling of tax credit amounts with certain other amounts; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 This bill has retrospective operation for a taxable year beginning on or after January 1,
30 2010.

30a **§→ This bill coordinates with H.B. 24, Economic Development Incentives Act Amendments,**
30b **by merging substantive amendments. ←§**

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **59-7-614.2**, as last amended by Laws of Utah 2009, Chapter 19834 **59-10-1107**, as last amended by Laws of Utah 2009, Chapter 19835 **63M-1-2403**, as enacted by Laws of Utah 2008, Chapter 37236 **63M-1-2404**, as enacted by Laws of Utah 2008, Chapter 37237 **63M-1-2405**, as enacted by Laws of Utah 2008, Chapter 37238 **63M-1-2407**, as enacted by Laws of Utah 2008, Chapter 37239 **63M-1-2408**, as last amended by Laws of Utah 2009, Chapter 183

40 ENACTS:

41 **63M-1-2409**, Utah Code Annotated 195341a **§→ Utah Code Sections Affected by Coordination Clause:**41b **63M-1-2405, as enacted by Laws of Utah 2008, Chapter 372 ←§**42

43 *Be it enacted by the Legislature of the state of Utah:*44 Section 1. Section **59-7-614.2** is amended to read:45 **59-7-614.2. Refundable economic development tax credit.**

46 (1) As used in this section:

47 (a) "Business entity" means a taxpayer that meets the definition of "business entity" as
48 defined in Section 63M-1-2403 or 63M-1-2803.49 (b) "Community development and renewal agency" is as defined in Section 17C-1-102.

50 (c) "Local government entity" is as defined in Section 63M-1-2403.

51 ~~(b)~~ (d) "Office" means the Governor's Office of Economic Development.52 (2) ~~[A]~~ Subject to the other provisions of this section, a business entity, local
53 government entity, or community development and renewal agency may claim a refundable tax
54 credit for economic development.55 (3) The tax credit under this section is the amount listed as the tax credit amount on the
56 tax credit certificate that the office issues to the business entity, local government entity, or
57 community development and renewal agency for the taxable year.58 (4) A community development and renewal agency may claim a tax credit under this

59 section only if a local government entity assigns the tax credit to the community development
60 and renewal agency in accordance with Section 63M-1-2404.

61 [~~4~~] (5) (a) In accordance with any rules prescribed by the commission under
62 Subsection [~~4~~] (5)(b), the commission shall make a refund to the following that claim a tax
63 credit under this section:

64 (i) a local government entity;

65 (ii) a community development and renewal agency; or

66 (iii) a business entity [~~that claims a tax credit under this section~~] if the amount of the
67 tax credit exceeds the business entity's tax liability for a taxable year.

68 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
69 commission may make rules providing procedures for making a refund to a business entity,
70 local government entity, or community development and renewal agency as required by
71 Subsection [~~4~~] (5)(a).

72 [~~5~~] (6) (a) On or before October 1, 2013, and every five years after October 1, 2013,
73 the Utah Tax Review Commission shall study the tax credit allowed by this section and make
74 recommendations to the Revenue and Taxation Interim Committee and the Workforce Services
75 and Community and Economic Development Interim Committee concerning whether the tax
76 credit should be continued, modified, or repealed.

77 (b) For purposes of the study required by this Subsection [~~5~~] (6), the office shall
78 provide the following information to the Utah Tax Review Commission:

79 (i) the amount of tax credit that the office grants to each business entity, local
80 government entity, or community development and renewal agency for each calendar year;

81 (ii) the criteria that the office uses in granting a tax credit;

82 (iii) (A) for a business entity, the new state revenues generated by [~~each~~] the business
83 entity for [~~each~~] the calendar year; or

84 (B) for a local government entity, regardless of whether the local government entity
85 assigns the tax credit in accordance with Section 63M-1-2404, the new state revenues
86 generated as a result of a new commercial project within the local government entity for each
87 calendar year;

88 (iv) the information contained in the office's latest report to the Legislature under
89 Section 63M-1-2406 or 63M-1-2806; and

90 (v) any other information that the Utah Tax Review Commission requests.

91 (c) The Utah Tax Review Commission shall ensure that its recommendations under
92 Subsection [~~(5)~~] (6)(a) include an evaluation of:

- 93 (i) the cost of the tax credit to the state;
- 94 (ii) the purpose and effectiveness of the tax credit; and
- 95 (iii) the extent to which the state benefits from the tax credit.

96 Section 2. Section **59-10-1107** is amended to read:

97 **59-10-1107. Refundable economic development tax credit.**

98 (1) As used in this section:

99 (a) "Business entity" means a claimant, estate, or trust that meets the definition of
100 "business entity" as defined in Section 63M-1-2403 or 63M-1-2803.

101 (b) "Office" means the Governor's Office of Economic Development.

102 (2) [~~A~~] Subject to the other provisions of this section, a business entity may claim a
103 refundable tax credit for economic development.

104 (3) The tax credit under this section is the amount listed as the tax credit amount on the
105 tax credit certificate that the office issues to the business entity for the taxable year.

106 (4) (a) In accordance with any rules prescribed by the commission under Subsection
107 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under
108 this section if the amount of the tax credit exceeds the business entity's tax liability for a
109 taxable year.

110 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
111 commission may make rules providing procedures for making a refund to a business entity as
112 required by Subsection (4)(a).

113 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
114 Utah Tax Review Commission shall study the tax credit allowed by this section and make
115 recommendations to the Revenue and Taxation Interim Committee and the Workforce Services
116 and Community and Economic Development Interim Committee concerning whether the tax
117 credit should be continued, modified, or repealed.

118 (b) For purposes of the study required by this Subsection (5), the office shall provide
119 the following information to the Utah Tax Review Commission:

120 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;

- 121 (ii) the criteria the office uses in granting a tax credit;
- 122 (iii) the new state revenues generated by each taxpayer for each calendar year;
- 123 (iv) the information contained in the office's latest report to the Legislature under
- 124 Section 63M-1-2406 or 63M-1-2806; and
- 125 (v) any other information that the Utah Tax Review Commission requests.

126 (c) The Utah Tax Review Commission shall ensure that its recommendations under
 127 Subsection (5)(a) include an evaluation of:

- 128 (i) the cost of the tax credit to the state;
- 129 (ii) the purpose and effectiveness of the tax credit; and
- 130 (iii) the extent to which the state benefits from the tax credit.

131 Section 3. Section **63M-1-2403** is amended to read:

132 **63M-1-2403. Definitions.**

133 As used in this part:

134 (1) "Business entity" means a person that enters into an agreement with the office to
 135 initiate a new commercial project in Utah that will qualify the person to receive a tax credit
 136 under Section 59-7-614.2 or 59-10-1107.

137 (2) "Community development and renewal agency" is as defined in Section 17C-1-102.

138 [~~2~~] (3) "Development zone" means an economic development zone created under
 139 Section 63M-1-2404.

140 [~~3~~] (4) "High paying jobs" means:

141 (a) with respect to a business entity, the annual wages of employment positions in a
 142 business entity that compare favorably against the average wage of a community in which the
 143 employment positions will exist[-];

144 (b) with respect to a county, the annual wages of employment positions in a new
 145 commercial project within the county that compare favorably against the average wage of the
 146 county in which the employment positions will exist; or

147 (c) with respect to a city or town, the annual wages of employment positions in a new
 148 commercial project within the city or town that compare favorably against the average wages of
 149 the city or town in which the employment positions will exist.

150 (5) "Local government entity" means a county, city, or town that enters into an
 151 agreement with the office to have a new commercial project that:

152 (a) is initiated within the county's, city's, or town's boundaries; and
153 (b) qualifies the county, city, or town to receive a tax credit under Section 59-7-614.2.

154 [~~4~~] (6) (a) "New commercial project" means an economic development opportunity
155 that involves new or expanded industrial, manufacturing, distribution, or business services in
156 Utah.

157 (b) "New commercial project" does not include retail business.

158 [~~5~~] (7) "New incremental jobs" means employment positions that are:

159 (a) not shifted from one jurisdiction in the state to another jurisdiction in the state; and

160 (b) (i) with respect to a business entity, created in addition to the baseline count of
161 employment positions that existed within the business entity before the new commercial
162 project[-];

163 (ii) with respect to a county, created as a result of a new commercial project with
164 respect to which the county or a community development and renewal agency seeks to claim a
165 tax credit under Section 59-7-614.2; or

166 (iii) with respect to a city or town, created as a result of a new commercial project with
167 respect to which the city, town, or a community development and renewal agency seeks to
168 claim a tax credit under Section 59-7-614.2.

169 [~~6~~] (8) "New state revenues" means:

170 (a) with respect to a business entity:

171 [~~a~~] (i) incremental new state sales and use tax revenues that a business entity pays
172 under Title 59, Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in a
173 development zone;

174 [~~b~~] (ii) incremental new state tax revenues, if any, that a business entity pays as a
175 result of a new commercial project in a development zone under:

176 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

177 [~~i~~] (B) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
178 Information;

179 [~~ii~~] (C) Title 59, Chapter 10, Part 2, Trusts and Estates;

180 [~~iii~~] (D) Title 59, Chapter 10, Part 4, Withholding of Tax; or

181 [~~iv~~] Title 59, Chapter 7, Corporate Franchise and Income Taxes; or]

182 [~~v~~] (E) a combination of Subsections [~~(6)(b)(i) through (iv)] (8)(a)(ii)(A) through~~

183 (D);

184 ~~[(e)]~~ (iii) incremental new state tax revenues paid as individual income taxes under

185 Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by

186 employees of ~~[the]~~ a new or expanded industrial, manufacturing, distribution, or business

187 service within a new commercial project as evidenced by payroll records that indicate the

188 amount of employee income taxes withheld and transmitted to the State Tax Commission by

189 the [business entity] new or expanded industrial, manufacturing, distribution, or business

190 service within the new commercial project; or

191 ~~[(d)]~~ (iv) a combination of Subsections ~~[(6)(a) through (c)]~~ (8)(a)(i) through (iii); or

192 (b) with respect to a local government entity:

193 (i) incremental new state sales and use tax revenues that are collected under Title 59,

194 Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in a development

195 zone;

196 (ii) incremental new state tax revenues, if any, that are collected as a result of a new

197 commercial project in a development zone under:

198 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

199 (B) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and

200 Information;

201 (C) Title 59, Chapter 10, Part 2, Trusts and Estates;

202 (D) Title 59, Chapter 10, Part 4, Withholding of Tax; or

203 (E) a combination of Subsections (8)(b)(ii)(A) through (D);

204 (iii) incremental new state tax revenues paid as individual income taxes under Title 59,

205 Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by

206 employees of a new or expanded industrial, manufacturing, distribution, or business service

207 within a new commercial project as evidenced by payroll records that indicate the amount of

208 employee income taxes withheld and transmitted to the State Tax Commission by the new or

209 expanded industrial, manufacturing, distribution, or business service within the new

210 commercial project; or

211 (iv) a combination of Subsections (8)(b)(i) through (iii).

212 ~~[(7)]~~ (9) "Office" means the Governor's Office of Economic Development.

213 ~~[(8)]~~ (10) "Tax credit" means an economic development tax credit created by Section

214 59-7-614.2 or 59-10-1107.

215 ~~[(9)]~~ (11) "Tax credit amount" means the amount the office lists as a tax credit on a tax
216 credit certificate for a taxable year.

217 ~~[(10)]~~ (12) "Tax credit certificate" means a certificate issued by the office that:

218 (a) lists the name of the [applicant] business entity, local government entity, or
219 community development and renewal agency to which the office authorizes a tax credit;

220 (b) lists the [applicant's] business entity's, local government entity's, or community
221 development and renewal agency's taxpayer identification number;

222 (c) lists the amount of tax credit that the office ~~[awards the applicant]~~ authorizes the
223 business entity, local government entity, or community development and renewal agency for
224 the taxable year; and

225 (d) may include other information as determined by the office.

226 Section 4. Section **63M-1-2404** is amended to read:

227 **63M-1-2404. Creation of economic development zones -- Tax credits --**
228 **Assignment of tax credit.**

229 (1) The office, with advice from the board, may create an economic development zone
230 in the state that satisfies all of the following requirements:

231 (a) the area is zoned commercial, industrial, manufacturing, business park, research
232 park, or other appropriate use in a community-approved master plan; ~~[and]~~

233 (b) the request to create a development zone has been forwarded to the office after first
234 being approved by an appropriate local government entity ~~[that has committed or will commit~~
235 ~~to provide local incentives.]; and~~

236 (c) local incentives have been committed or will be committed to be provided within
237 the area.

238 (2) (a) By following the procedures and requirements of Title 63G, Chapter 3, Utah
239 Administrative Rulemaking Act, the office shall make rules establishing the conditions that a
240 business entity ~~[must]~~ or local government entity shall meet to qualify for a tax credit under
241 this part.

242 (b) The office shall ensure that ~~[those]~~ the conditions described in Subsection (2)(a)
243 include the following requirements:

244 (i) the new commercial project must be within the development zone;

- 245 (ii) the new commercial project includes direct investment within the geographic
246 boundaries of the development zone;
- 247 (iii) the new commercial project brings new incremental jobs to Utah;
- 248 (iv) the new commercial project includes significant capital investment, the creation of
249 high paying jobs, or significant purchases from Utah vendors and providers, or any
250 combination of these three economic factors;
- 251 (v) the new commercial project generates new state revenues; and
- 252 (vi) ~~the~~ (A) a business entity or local government entity qualifying for the tax credit
253 meets the requirements of Section 63M-1-2405~~[-];~~ or
- 254 (B) a community development and renewal agency to which a local government entity
255 assigns a tax credit under this section meets the requirements of Section 63M-1-2405.
- 256 (3) (a) ~~The~~ Subject to the other provisions of this Subsection (3), the office, with
257 advice from the board, may enter into an agreement with a business entity or local government
258 entity authorizing a tax credit to [a] the business entity [that] or local government entity if the
259 business entity or local government entity meets the standards established under Subsection
260 (2).
- 261 (b) (i) With respect to one new commercial project, the office may authorize a tax
262 credit to a business entity or a local government entity, but not both.
- 263 (ii) In determining whether to authorize a tax credit with respect to one new
264 commercial project to a business entity or a local government entity, the office shall authorize
265 the tax credit in a manner that the office determines will result in providing the most effective
266 incentive for the new commercial project.
- 267 ~~(b)~~ (c) The office may not authorize or commit to authorize a tax credit ~~[to a business~~
268 ~~entity]~~ if that tax credit exceeds:
- 269 (i) 50% of the new state revenues from the ~~[business entity's]~~ new commercial project
270 in any given year; or
- 271 (ii) 30% of the new state revenues from the ~~[business entity's]~~ new commercial project
272 over the life of a new commercial project or 20 years, whichever is less.
- 273 (d) (i) A local government entity may by resolution assign a tax credit that the office
274 authorizes to the local government entity to a community development and renewal agency.
- 275 (ii) The local government entity shall provide a copy of the resolution described in

276 Subsection (3)(d)(i) to the office.

277 (iii) If a local government entity assigns a tax credit to a community development and
278 renewal agency:

279 (A) the agreement described in this section shall:

280 (I) be among the office, the local government entity, and the community development
281 and renewal agency; and

282 (II) establish:

283 (Aa) the obligations of the local government entity and the community development
284 and renewal agency; and

285 (Bb) the extent to which any of the local government entity's obligations are transferred
286 to the community development and renewal agency;

287 (B) the community development and renewal agency shall retain records as described
288 in Subsection (4)(d); and

289 (C) a tax credit certificate issued in accordance with Section 63M-1-2406 shall list the
290 community development and renewal agency as the name of the applicant.

291 (4) ~~[The]~~ Subject to Subsection (3), the office shall ensure that the agreement [with the
292 business entity that is] described in Subsection (3):

293 (a) details the requirements that the business entity ~~[must]~~ or local government entity
294 shall meet to qualify for a tax credit under this part;

295 (b) specifies the maximum amount of tax credit that the business entity ~~[may earn]~~ or
296 local government entity may be authorized for a taxable year and over the life of the new
297 commercial project;

298 (c) establishes the length of time the business entity or local government entity may
299 claim a tax credit;

300 (d) requires the business entity or local government entity to retain records supporting
301 ~~[its]~~ a claim for a tax credit for at least four years after the business entity or local government
302 entity claims a tax credit under this part; and

303 (e) requires the business entity or local government entity to submit to audits for
304 verification of the tax credit claimed.

305 Section 5. Section **63M-1-2405** is amended to read:

306 **63M-1-2405. Qualifications for tax credit -- Procedure.**

307 (1) The office shall certify a business entity's or local government entity's eligibility for
308 a tax credit as provided in this section.

309 (2) A business entity or local government entity seeking to receive a tax credit shall
310 provide the office with:

311 (a) an application for a tax credit certificate;

312 (b) (i) for a business entity, documentation of the new state revenues from the business
313 entity's new commercial project that were paid during the preceding calendar year; [~~and~~] or

314 (ii) for a local government entity, documentation of the new state revenues from the
315 new commercial project within the local government entity that were paid during the preceding
316 calendar year;

317 (c) if a local government entity seeks to assign the tax credit to a community
318 development and renewal agency in accordance with Section 63M-1-2404, a statement
319 providing the name and taxpayer identification number of the community development and
320 renewal agency to which the local government entity seeks to assign the tax credit; and

321 ~~[(c)]~~ (d) (i) with respect to a business entity, a document that expressly directs and
322 authorizes the State Tax Commission to disclose the business entity's returns and other
323 information [~~concerning the business entity~~] that would otherwise be subject to confidentiality
324 under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office[-];

325 (ii) with respect to a local government entity that seeks to claim the tax credit:

326 (A) a document that expressly directs and authorizes the State Tax Commission to
327 disclose the local government entity's returns and other information that would otherwise be
328 subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to
329 the office; and

330 (B) if the new state revenues collected as a result of a new commercial project are
331 attributable in whole or in part to a new or expanded industrial, manufacturing, distribution, or
332 business service within a new commercial project within the local government, a document
333 signed by an authorized representative of the new or expanded industrial, manufacturing,
334 distribution, or business service that:

335 (I) expressly directs and authorizes the State Tax Commission to disclose the returns of
336 that new or expanded industrial, manufacturing, distribution, or business service and other
337 information that would otherwise be subject to confidentiality under Section 59-1-403 or

338 Section 6103, Internal Revenue Code, to the office; and

339 (II) lists the taxpayer identification number of that new or expanded industrial,
340 manufacturing, distribution, or business service; or

341 (iii) with respect to a local government entity that seeks to assign the tax credit to a
342 community development and renewal agency:

343 (A) a document signed by the members of the governing body of the community
344 development and renewal agency that expressly directs and authorizes the State Tax
345 Commission to disclose the returns of the community development and renewal agency and
346 other information that would otherwise be subject to confidentiality under Section 59-1-403 or
347 Section 6103, Internal Revenue Code, to the office; and

348 (B) if the new state revenues collected as a result of a new commercial project are
349 attributable in whole or in part to a new or expanded industrial, manufacturing, distribution, or
350 business service within a new commercial project within the community development and
351 renewal agency, a document signed by an authorized representative of the new or expanded
352 industrial, manufacturing, distribution, or business service that:

353 (I) expressly directs and authorizes the State Tax Commission to disclose the returns of
354 that new or expanded industrial, manufacturing, distribution, or business service and other
355 information that would otherwise be subject to confidentiality under Section 59-1-403 or
356 Section 6103, Internal Revenue Code, to the office; and

357 (II) lists the taxpayer identification number of that new or expanded industrial,
358 manufacturing, distribution, or business service.

359 (3) (a) The office shall submit the ~~[document]~~ documents described in Subsection
360 (2)~~(c)~~(d) to the State Tax Commission.

361 (b) Upon receipt of ~~[the]~~ a document described in Subsection (2)~~(c)~~(d), the State Tax
362 Commission shall provide the office with the returns and other information requested by the
363 office that ~~[the business entity directed or authorized]~~ the State Tax Commission is directed or
364 authorized to provide to the office in ~~[the document described in]~~ accordance with Subsection
365 (2)~~(c)~~(d).

366 (4) If, after review of the returns and other information provided by the State Tax
367 Commission, the office determines that the ~~[documentation provided by the business entity is]~~
368 returns and other information are inadequate to provide a reasonable justification for

369 authorizing a tax credit, the office shall either:

370 (a) deny the tax credit; or

371 (b) inform the business entity or local government entity that the [~~documentation was~~]
372 returns or other information were inadequate and ask the business entity or local government
373 entity to submit new documentation.

374 (5) If after review of the returns and other information provided by the State Tax
375 Commission, the office determines that the [~~documentation~~] returns and other information
376 provided by the business entity [~~provides~~] or local government entity provide reasonable
377 justification for authorizing a tax credit, the office shall, based upon the [~~documentation~~]
378 returns and other information:

379 (a) determine the amount of the tax credit to be granted to the business entity, local
380 government entity, or if the local government entity assigns the tax credit in accordance with
381 Section 63M-1-2404, to the community development and renewal agency to which the local
382 government entity assigns the tax credit;

383 (b) issue a tax credit certificate to the business entity, local government entity, or if the
384 local government entity assigns the tax credit in accordance with Section 63M-1-2404, to the
385 community development and renewal agency to which the local government entity assigns the
386 tax credit; and

387 (c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

388 (6) A business entity, local government entity, or community development and renewal
389 agency may not claim a tax credit unless the business entity, local government entity, or
390 community development and renewal agency has a tax credit certificate issued by the office.

391 (7) (a) A business entity, local government entity, or community development and
392 renewal agency may claim a tax credit in the amount listed on the tax credit certificate on its
393 tax return.

394 (b) A business entity, local government entity, or community development and renewal
395 agency that claims a tax credit under this section shall retain the tax credit certificate in
396 accordance with Section 59-7-614.2 or 59-10-1107.

397 Section 6. Section **63M-1-2407** is amended to read:

398 **63M-1-2407. Reports of new state revenues, partial rebates, and tax credits.**

399 (1) Before December 1 of each year, the office shall submit a report to the Governor's

400 Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the Division of
401 Finance identifying:

402 (a) (i) the total estimated amount of new state revenues created from new commercial
403 projects in the development zones; and

404 (ii) the estimated amount of new state revenues from new commercial projects in the
405 development zones that will be generated from:

406 (A) sales tax;

407 (B) income tax; and

408 (C) corporate franchise and income tax;

409 (b) (i) the total estimated amount of partial rebates as defined in Section 63M-1-2408
410 that the office projects will be required to be paid in the next fiscal year; and

411 (ii) the estimated amount of partial rebates as defined in Section 63M-1-2408 that are
412 attributable to:

413 (A) sales tax;

414 (B) income tax; and

415 (C) corporate franchise and income tax; and

416 (c) the total estimated amount of tax credits that the office projects that business
417 entities, local government entities, or community development and renewal agencies will
418 qualify to claim under this part.

419 (2) By the first business day of each month, the office shall submit a report to the
420 Governor's Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the
421 Division of Finance identifying:

422 (a) each new agreement entered into by the office since the last report;

423 (b) the estimated amount of new state revenues that will be generated under each
424 agreement; and

425 (c) the estimated amount of tax credits that a business entity, local government entity,
426 or community development and renewal agency could qualify for under each agreement.

427 Section 7. Section **63M-1-2408** is amended to read:

428 **63M-1-2408. Transition clause -- Renegotiation of agreements -- Payment of**
429 **partial rebates.**

430 (1) As used in this section, "partial rebate" means an agreement between the office and

431 a business entity under which the state agrees to pay back to the business entity a portion of
432 new state revenues generated by a business entity's new commercial project.

433 (2) (a) Unless modified or renegotiated as provided in Subsection (2)(b), the Division
434 of Finance shall make partial rebate payments due under agreements entered into by the office
435 before May 5, 2008 as provided in this section.

436 (b) By January 1, 2009, the office shall:

437 (i) contact each business entity with whom the office entered into an agreement under
438 former Section 63M-1-1304 or 63M-1-1704; and

439 (ii) subject to the limits established in Subsection 63M-1-2404(3)(~~b~~)(c), seek to
440 modify those agreements for the sole purpose of providing the incentives in the form of tax
441 credits under this part rather than partial rebates.

442 (c) The office shall:

443 (i) for each modified agreement granting tax credits, follow the procedures and
444 requirements of Section 63M-1-2405;

445 (ii) for each agreement that still requires the state to pay partial rebates to the business
446 entity, follow the procedures and requirements of this section; and

447 (iii) provide a report to the Executive Appropriations Committee and the Legislative
448 Fiscal Analyst by December 1, 2008, about the progress of its efforts to modify agreements
449 reached before May 5, 2008.

450 (3) (a) There is created a restricted account in the General Fund known as the
451 Economic Incentive Restricted Account.

452 (b) The account shall consist of monies transferred into the account by the Division of
453 Finance from the General Fund as provided in this section.

454 (c) The Division of Finance shall make payments from the account as required by this
455 section.

456 (4) (a) Each business entity seeking a partial rebate shall follow the procedures and
457 requirements of this Subsection (4) to obtain a partial rebate.

458 (b) Within 90 days of the end of each calendar year, a business entity seeking a partial
459 rebate shall:

460 (i) provide the office with documentation of the new state revenues that the business
461 entity generated during the preceding calendar year; and

- 462 (ii) ensure that the documentation includes:
- 463 (A) the types of taxes and corresponding amounts of taxes paid directly to the State
- 464 Tax Commission; and
- 465 (B) the sales taxes paid to Utah vendors and suppliers that were indirectly paid to the
- 466 State Tax Commission.
- 467 (c) The office shall:
- 468 (i) audit or review the documentation for accuracy;
- 469 (ii) based upon its analysis of the documentation, determine the amount of partial
- 470 rebates that the business entity earned under the agreement; and
- 471 (iii) submit to the Division of Finance:
- 472 (A) a request for payment of partial rebates to the business entity;
- 473 (B) the name and address of the payee; and
- 474 (C) any other information requested by the Division of Finance.
- 475 (5) Upon receipt of a request for payment of partial rebates from the office, the
- 476 Division of Finance shall:
- 477 (a) transfer from the General Fund to the restricted account the amount contained in the
- 478 request for payment of partial rebates after reducing the amount transferred by any
- 479 unencumbered balances in the restricted account; and
- 480 (b) notwithstanding Subsections 51-5-3(23)(b) and 63J-1-104(3)(b), after receiving a
- 481 request for payment of partial rebates and making the transfer required by Subsection (5)(a),
- 482 the Division of Finance shall pay the partial rebates from the account.

483 Section 8. Section **63M-1-2409** is enacted to read:

484 **63M-1-2409. Expenditure of amounts received by a local government entity or**
485 **community development and renewal agency as a tax credit -- Commingling of tax credit**
486 **amounts with certain other amounts.**

487 (1) Subject to Subsections (2) and (3), a local government entity or community
488 development and renewal agency may expend amounts the local government entity or
489 community development and renewal agency receives as a tax credit under Section 59-7-614.2:

490 (a) for infrastructure, including real property or personal property, if that infrastructure
491 is related to the new commercial project with respect to which the local government entity or
492 community development and renewal agency claims the tax credit under Section 59-7-614.2; or

493 (b) for another economic development purpose related to the new commercial project
 494 with respect to which the local government entity or community development and renewal
 495 agency claims the tax credit under Section 59-7-614.2.

496 (2) A local government entity may:

497 (a) commingle amounts the local government entity receives as a tax credit under
 498 Section 59-7-614.2 with amounts the local government entity receives under Title 63M,
 499 Chapter 1, Part 9, Industrial Assistance Fund; and

500 (b) expend the commingled amounts described in Subsection (2)(a) for a purpose
 501 described in Title 63M, Chapter 1, Part 9, Industrial Assistance Fund, if that purpose is related
 502 to the new commercial project with respect to which the local government entity claims the tax
 503 credit under Section 59-7-614.2.

504 (3) A community development and renewal agency may:

505 (a) commingle amounts the community development and renewal agency receives as a
 506 tax credit under Section 59-7-614.2 with amounts the community development and renewal
 507 agency receives under Title 17C, Chapter 1, Part 4, Tax Increment and Sales Tax; and

508 (b) expend the commingled amounts described in Subsection (3)(a) for a purpose
 509 described in Title 17C, Chapter 1, Part 4, Tax Increment and Sales Tax, if that purpose is
 510 related to the new commercial project with respect to which the community development and
 511 renewal agency claims the tax credit under Section 59-7-614.2.

512 Section 9. **Retrospective operation.**

513 This bill has retrospective operation for a taxable year beginning on or after January 1,
 514 2010.

514a **§→ Section 10. Coordinating S.B. 198 with H.B. 24 -- Merging substantive amendments.**

514b **If this S.B. 198 and H.B. 24, Economic Development Incentives Act Amendments, both**
 514c **pass, it is the intent of the Legislature that the Office of Legislative Research and General**
 514d **Counsel, in preparing the Utah Code database for publication, modify Subsection**
 514e **63M-1-2405(2) to read:**

514f **"(2) A business entity or local government entity seeking to receive a tax credit shall**
 514g **provide the office with:**

514h **(a) an application for a tax credit certificate;**

514i **(b) (i) for a business entity, documentation of the new state revenues from the business**
 514j **entity's new commercial project that were paid during the preceding calendar year; [and] or**

514k **(ii) for a local government entity, documentation of the new state revenues from the**
 514l **new commercial project within the local government entity that were paid during the**
 514m **preceding calendar year;**

514n **(c) if a local government entity seeks to assign the tax credit to a community**
 514o **development and renewal agency in accordance with Section 63M-1-2404, a statement ←§**

514p **§→ providing the name and taxpayer identification number of the community development**
514q **and renewal agency to which the local government entity seeks to assign the tax credit;**
514r **[(c)] (d) (i) with respect to a business entity, a document that expressly directs and**
514s **authorizes the State Tax Commission to disclose the business entity's returns and other**
514t **information [concerning the business entity] that would otherwise be subject to confidentiality**
514u **under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office[.];**
514v **(ii) with respect to a local government entity that seeks to claim the tax credit:**
514w **(A) a document that expressly directs and authorizes the State Tax Commission to**
514x **disclose the local government entity's returns and other information that would otherwise be**
514y **subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to**
514z **the office; and**
514aa **(B) if the new state revenues collected as a result of a new commercial project are**
514ab **attributable in whole or in part to a new or expanded industrial, manufacturing, distribution,**
514ac **or business service within a new commercial project within the local government, a document**
514ad **signed by an authorized representative of the new or expanded industrial, manufacturing,**
514ae **distribution, or business service that:**
514af **(I) expressly directs and authorizes the State Tax Commission to disclose the returns of**
514ag **that new or expanded industrial, manufacturing, distribution, or business service and other**
514ah **information that would otherwise be subject to confidentiality under Section 59-1-403 or**
514ai **Section 6103, Internal Revenue Code, to the office; and**
514aj **(II) lists the taxpayer identification number of that new or expanded industrial,**
514ak **manufacturing, distribution, or business service; or**
514al **(iii) with respect to a local government entity that seeks to assign the tax credit to a**
514am **community development and renewal agency:**
514an **(A) a document signed by the members of the governing body of the community**
514ao **development and renewal agency that expressly directs and authorizes the State Tax**
514ap **Commission to disclose the returns of the community development and renewal agency and**
514aq **other information that would otherwise be subject to confidentiality under Section 59-1-403 or**
514ar **Section 6103, Internal Revenue Code, to the office; and**
514as **(B) if the new state revenues collected as a result of a new commercial project are**
514at **attributable in whole or in part to a new or expanded industrial, manufacturing, distribution,**
514au **or business service within a new commercial project within the community development and**
514av **renewal agency, a document signed by an authorized representative of the new or expanded**
514aw **industrial, manufacturing, distribution, or business service that:**
514ax **(I) expressly directs and authorizes the State Tax Commission to disclose the returns of**
514ay **that new or expanded industrial, manufacturing, distribution, or business service and ←§**

- 514az **§→other information that would otherwise be subject to confidentiality under Section 59-1-403 or**
- 514ba **Section 6103, Internal Revenue Code, to the office; and**
- 514bb **(II) lists the taxpayer identification number of that new or expanded industrial,**
- 514bc **manufacturing, distribution, or business service; and**
- 514bd **(e) for a business entity only, documentation that the business entity has satisfied the**
- 514be **performance benchmarks outlined in the agreement described in Subsection 63M-1-2404(3)(a),**
- 514bf **including:**
- 514bg **(i) significant capital investment;**
- 514bh **(ii) the creation of high paying jobs;**
- 514bi **(iii) significant purchases from Utah vendors and providers; or**
- 514bj **(iv) any combination of Subsections (2)(e)(i), (ii), and (iii)." ←§**

Legislative Review Note
 as of 2-19-10 11:29 AM

Office of Legislative Research and General Counsel

S.B. 198 - Economic Development Incentive Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enacting this bill allows the local governments or community development agencies to claim refundable tax credits. As a result, the state will forgo an estimated \$6 million per year in future tax collections if 2 projects a year are authorized under the legislation. The amount of the forgone revenue will depend upon agreements authorized by the Business Development Board in the Governor's Office of Economic Development.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. Local governments would see potential tax credits of approximately \$6 million annually.