

1 **INCOME TAX CREDIT OR REFUND**

2 **AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: Wayne A. Harper

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Corporate Franchise and Income Taxes chapter and the Individual
11 Income Tax Act to repeal limits on the amount of an income tax credit or refund.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ repeals limits on the amount of an income tax credit or refund; and
- 15 ▶ makes technical and conforming changes.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **59-7-522**, as last amended by Laws of Utah 2009, Chapter 212

23 **59-10-529**, as last amended by Laws of Utah 2009, Chapter 212

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

26 Section 1. Section **59-7-522** is amended to read:

27 **59-7-522. Overpayments.**

28 (1) (a) Subject to Subsection (1)(b), a claim for credit or refund of an overpayment
29 that is attributable to a Utah net loss carry back or carry forward shall be filed within three

30 years from the due date of the return for the taxable year of the Utah net loss.

31 (b) The three-year period described in Subsection (1)(a) shall be extended by any
32 extension of time provided in statute for filing the return described in Subsection (1)(a).

33 (2) If an overpayment relates to a change in or correction of federal taxable income
34 described in Section 59-7-519, a credit may be allowed or a refund paid any time before the
35 expiration of the period within which a deficiency may be assessed.

36 [~~(3) The amount of the credit or refund described in Subsection (2) may not exceed:~~]

37 [~~(a) if a taxpayer files a claim for a credit or refund, the portion of the tax paid during
38 the three years immediately preceding the filing of the claim; or]~~

39 [~~(b) if a taxpayer does not file a claim for a credit or refund, the portion of the tax paid
40 during the two years immediately preceding the allowance of the credit or refund.]~~

41 [~~(4)~~] (3) The commission shall make a credit or refund within a 30-day period after the
42 day on which a court's decision to require the commission to credit or refund the amount of an
43 overpayment to a taxpayer is final.

44 Section 2. Section **59-10-529** is amended to read:

45 **59-10-529. Overpayment of tax -- Credits -- Refunds.**

46 (1) If there has been an overpayment of any tax imposed by this chapter, the amount of
47 overpayment is credited as follows:

48 (a) against [~~any~~] an income tax [~~then~~] due from [~~the~~] a taxpayer;

49 (b) against:

50 (i) the amount of [~~any~~] a judgment against [~~the~~] a taxpayer, including [~~one~~] a
51 judgment ordering the payment of a fine or of restitution to a victim under Title 77, Chapter
52 38a, Crime Victims Restitution Act, obtained through due process of law by [~~any~~] an entity of
53 state government; or

54 (ii) subject to Subsection (3), [~~any~~] a child support obligation that is due or past due,
55 as determined by the Office of Recovery Services in the Department of Human Services and
56 after notice and an opportunity for an adjudicative proceeding, as provided in Subsection (2);
57 or

58 (c) subject to Subsection (3), (5), (6), or (7), as bail, to ensure the appearance of [~~the~~]
59 a taxpayer before the appropriate authority to resolve an outstanding warrant against the
60 taxpayer for which bail is due, if a court of competent jurisdiction has not approved an
61 alternative form of payment.

62 (2) If a balance remains after an overpayment is credited in accordance with
63 Subsection (1), the balance shall be refunded to the taxpayer.

64 (3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:

65 (a) that is due and related to a warrant that is outstanding on or after February 16,
66 1984; and

67 (b) in accordance with Subsections (5) and (6).

68 (4) (a) The amount of an overpayment may be credited against an obligation described
69 in Subsection (1)(b)(ii) if the Office of Recovery Services has sent written notice to the
70 taxpayer's last-known address or the address on file under Section 62A-11-304.4, stating:

71 (i) the amount of child support that is due or past due as of the date of the notice or
72 other specified date;

73 (ii) that any overpayment shall be applied to reduce the amount of due or past-due
74 child support specified in the notice; and

75 (iii) that the taxpayer may contest the amount of past-due child support specified in
76 the notice by filing a written request for an adjudicative proceeding with the office within 15
77 days of the notice being sent.

78 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
79 the Office of Recovery Services shall establish rules to implement this Subsection (4),
80 including procedures, in accordance with the other provisions of this section, to ensure:

81 (i) prompt reimbursement to [~~the~~] a taxpayer of any amount of an overpayment that
82 was credited against a child support obligation in error; and

83 (ii) prompt distribution of properly credited funds to the obligee parent.

84 (5) The amount of an overpayment may be credited against bail described in
85 Subsection (1)(c) if:

86 (a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail,
87 appear, or otherwise satisfy the terms of a citation, summons, or court order; and

88 (b) a notice of intent to apply the overpayment as bail on the issued warrant has been
89 sent to the ~~person's~~ taxpayer's current address on file with the commission.

90 (6) (a) (i) The commission shall deliver an overpayment applied as bail to the court
91 that issued the warrant of arrest.

92 (ii) The clerk of the court is authorized to endorse the check or commission warrant of
93 payment on behalf of the payees and deposit the monies in the court treasury.

94 (b) (i) The court receiving an overpayment applied as bail shall order withdrawal of
95 the warrant for arrest of the taxpayer if:

96 (A) the case is a case for which a personal appearance of the taxpayer is not required;
97 and

98 (B) the dollar amount of the overpayment represents the full dollar amount of bail.

99 (ii) In a case except for a case described in Subsection (6)(b)(i):

100 (A) the court receiving the overpayment applied as bail is not required to order the
101 withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

102 (B) the taxpayer may be arrested on the warrant.

103 (c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to
104 resolve the warrant within 40 days after the notice is sent under Subsection (5)(b):

105 (A) the overpayment applied as bail is forfeited; and

106 (B) notice of the forfeiture shall be mailed to the taxpayer at the current address on file
107 with the commission.

108 (ii) A court may issue another warrant or allow the original warrant to remain in force
109 if:

110 (A) the taxpayer has not complied with an order of the court;

111 (B) the taxpayer has failed to appear and respond to a criminal charge for which a
112 personal appearance is required; or

113 (C) the taxpayer has paid partial but not full bail in a case for which a personal

114 appearance is not required.

115 (d) If the alleged violations named in a warrant are later resolved in favor of the
116 taxpayer, the bail amount shall be remitted to the taxpayer.

117 (7) The fine and bail forfeiture provisions of this section apply to all warrants and
118 fines issued in cases charging a taxpayer with a felony, a misdemeanor, or an infraction
119 described in this section, which are outstanding on or after February 16, 1984.

120 (8) If the amount allowable as a credit for tax withheld from a taxpayer exceeds the tax
121 to which the credit relates, the excess is considered an overpayment.

122 (9) (a) Subject to Subsection (9)(b), a claim for credit or refund of an overpayment
123 that is attributable to a net operating loss carry back or carry forward shall be filed within three
124 years from the due date of the return for the taxable year of the net operating loss.

125 (b) The three-year period described in Subsection (9)(a) shall be extended by any
126 extension of time provided in statute for filing the return described in Subsection (9)(a).

127 [~~(10) If there has been an overpayment of a tax that is required to be deducted and
128 withheld under Section 59-10-402, a refund shall be made to the employer only to the extent
129 that the amount of overpayment is not deducted and withheld by the employer.~~]

130 [~~(11)~~] (10) If there is no tax liability for a period in which an amount is paid under this
131 chapter, the amount is an overpayment.

132 [~~(12)~~] (11) If a tax under this chapter is assessed or collected after the expiration of the
133 applicable period of limitation, that amount is an overpayment.

134 [~~(13)~~] (12) (a) A taxpayer may file a claim for a credit or refund of an overpayment
135 within two years from the date a notice of change, notice of correction, or amended return is
136 required to be filed with the commission if the taxpayer is required to:

137 (i) report a change or correction in income reported on the taxpayer's federal income
138 tax return;

139 (ii) report a change or correction that is treated in the same manner as if the change or
140 correction were an overpayment for federal income tax purposes; or

141 (iii) file an amended return with the commission.

142 (b) If a report or amended return is not filed within 90 days, interest on any resulting
143 refund or credit ceases to accrue after the 90-day period.

144 (c) The amount of the credit or refund may not exceed the amount of the reduction in
145 tax attributable to the federal change, correction, or items amended on the taxpayer's amended
146 federal income tax return.

147 (d) Except as provided in Subsection ~~[(13)]~~ (12)(a), this Subsection ~~[(13)]~~ (12) does
148 not affect the amount or the time within which a claim for credit or refund may be filed.

149 ~~[(14)]~~ (13) A credit or refund may not be allowed or made if an overpayment is less
150 than \$1.

151 ~~[(15) The amount of a credit or refund may not exceed the tax paid during the three
152 years immediately preceding the filing of the claim, or if no claim is filed, then during the
153 three years immediately preceding the allowance of the credit or refund.]~~

154 ~~[(16)]~~ (14) In the case of an overpayment of tax by an employer under Part 4,
155 Withholding of Tax, a refund or credit shall be made to the employer only to the extent that the
156 amount of the overpayment is not deducted and withheld from wages under this chapter.

157 ~~[(17)]~~ (15) (a) If a taxpayer that is allowed a refund under this chapter dies, the
158 commission may make payment to the personal representative of the taxpayer's estate.

159 (b) If there is no personal representative of the taxpayer's estate, payment may be made
160 to those persons who establish entitlement to inherit the property of the decedent in the
161 proportions established in Title 75, Utah Uniform Probate Code.

162 ~~[(18)]~~ (16) If an overpayment relates to a change in net income described in
163 Subsection 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the
164 expiration of the period within which a deficiency may be assessed.

165 ~~[(19)]~~ (17) An overpayment of a tax imposed by this chapter shall accrue interest at
166 the rate and in the manner prescribed in Section 59-1-402.