

**INCOME TAX CREDIT OR REFUND  
AMENDMENTS**

2010 GENERAL SESSION  
STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Wayne A. Harper

---

---

**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

---

---

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

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

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



28 (1) (a) Subject to Subsection (1)(b), a claim for credit or refund of an overpayment that  
29 is attributable to a Utah net loss carry back or carry forward shall be filed within three years  
30 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 judgment  
51 ordering the payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime  
52 Victims Restitution Act, obtained through due process of law by [~~any~~] an entity of state  
53 government; or

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

57 (c) subject to Subsection (3), (5), (6), or (7), as bail, to ensure the appearance of [~~the~~] a  
58 taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer

59 for which bail is due, if a court of competent jurisdiction has not approved an alternative form  
60 of payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that

90 issued the warrant of arrest.

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

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

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

96 and

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

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

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

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

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

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

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

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

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

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

112 (C) the taxpayer has paid partial but not full bail in a case for which a personal  
113 appearance is not required.

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

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

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

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

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

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

129 ~~[(11)]~~ (10) If there is no tax liability for a period in which an amount is paid under this  
130 chapter, the amount is an overpayment.

131 ~~[(12)]~~ (11) If a tax under this chapter is assessed or collected after the expiration of the  
132 applicable period of limitation, that amount is an overpayment.

133 ~~[(13)]~~ (12) (a) A taxpayer may file a claim for a credit or refund of an overpayment  
134 within two years from the date a notice of change, notice of correction, or amended return is  
135 required to be filed with the commission if the taxpayer is required to:

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

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

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

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

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

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

148 ~~[(14)]~~ (13) A credit or refund may not be allowed or made if an overpayment is less  
149 than \$1.

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

152 years immediately preceding the allowance of the credit or refund.]

153           ~~[(16)]~~ (14) In the case of an overpayment of tax by an employer under Part 4,  
154 Withholding of Tax, a refund or credit shall be made to the employer only to the extent that the  
155 amount of the overpayment is not deducted and withheld from wages under this chapter.

156           ~~[(17)]~~ (15) (a) If a taxpayer that is allowed a refund under this chapter dies, the  
157 commission may make payment to the personal representative of the taxpayer's estate.

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

161           ~~[(18)]~~ (16) If an overpayment relates to a change in net income described in Subsection  
162 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the expiration of the  
163 period within which a deficiency may be assessed.

164           ~~[(19)]~~ (17) An overpayment of a tax imposed by this chapter shall accrue interest at the  
165 rate and in the manner prescribed in Section 59-1-402.

---

---

**Legislative Review Note**  
**as of 1-21-10 10:08 AM**

**Office of Legislative Research and General Counsel**

---

---

**S.B. 100 - Income Tax Credit or Refund Amendments**

**Fiscal Note**

2010 General Session

State of Utah

---

---

**State Impact**

Enactment of this bill will permanently forgo an estimated \$35,000,000 per year in potential Education Fund revenue. The Tax Commission is not currently enforcing provisions of statute as written and thus elimination of those provisions will not result in real revenue loss.

---

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

Individuals and businesses may benefit from refunds allowed under this bill. Local governments are unaffected.

---