

## SB0023S02 compared with SB0023S01

~~text~~ shows text that was in SB0023S01 but was deleted in SB0023S02.

inserted text shows text that was not in SB0023S01 but was inserted into SB0023S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

**Representative Patrick Painter** proposes the following substitute bill:

### **LIFE SCIENCE AND TECHNOLOGY TAX CREDIT**

#### **AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Patrick Painter

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#### **LONG TITLE**

##### **General Description:**

This bill makes changes to certain tax credits.

##### **Highlighted Provisions:**

This bill:

- ▶ makes changes to life science and technology tax credits and related provisions; and
- ▶ makes technical changes.

##### **Money Appropriated in this Bill:**

None

##### **Other Special Clauses:**

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

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2012.

### Utah Code Sections Affected:

#### AMENDS:

**59-7-614.6**, as enacted by Laws of Utah 2011, Chapter 306

**59-10-1025**, as enacted by Laws of Utah 2011, Chapter 306

**59-10-1109**, as enacted by Laws of Utah 2011, Chapter 306

**63M-1-2902**, as enacted by Laws of Utah 2011, Chapter 306

**63M-1-2903**, as enacted by Laws of Utah 2011, Chapter 306

**63M-1-2905**, as enacted by Laws of Utah 2011, Chapter 306

**63M-1-2908**, as enacted by Laws of Utah 2011, Chapter 306

**63M-1-2909**, as enacted by Laws of Utah 2011, Chapter 306

**63M-1-2910**, as enacted by Laws of Utah 2011, Chapter 306

#### REPEALS:

**59-10-1026**, as enacted by Laws of Utah 2011, Chapter 306

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

Section 1. Section **59-7-614.6** is amended to read:

**59-7-614.6. Refundable tax credit for certain business entities generating state tax revenue increases.**

(1) As used in this section:

(a) "Eligible business entity" is as defined in Section 63M-1-2902.

(b) "Eligible new state tax revenues" is as defined in Section 63M-1-2902.

~~[(b)]~~ (c) "Office" means the Governor's Office of Economic Development.

~~[(c)]~~ (d) "Pass-through entity" is as defined in Section 59-10-1402.

~~[(d)]~~ (e) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(f) "Qualifying agreement" means an agreement under Subsection 63M-1-2908 that includes a provision for an eligible business entity to make new capital expenditures of at least ~~{\$750 million}~~ \$1,000,000,000 in the state.

(2) Subject to the other provisions of this section, an eligible business entity may:

(a) claim a refundable tax credit as provided in Subsection (3); or

(b) if the eligible business entity is a pass-through entity, pass through to one or more

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pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a refundable tax credit that the eligible business entity could otherwise claim under this section.

(3) (a) Except as provided in Subsection (3)(b), the amount of the tax credit an eligible business entity may claim or pass through is the amount listed on the tax credit certificate that the office issues to the eligible business entity for a taxable year in accordance with Section 63M-1-2908.

(b) ~~[A]~~ Subject to Subsection (3)(c), a tax credit under this section may not exceed the amount of eligible new state tax revenues generated by an eligible business entity for the taxable year for which the eligible business entity claims a tax credit under this section.

(c) A tax credit under this section for an eligible business entity that enters into a qualifying agreement may not exceed:

(i) for the taxable year in which the eligible business entity first generates eligible new state tax revenues and the two following years, 100% of the amount of eligible new state tax revenues generated by the eligible business entity; and

(ii) for the seven taxable years following the last of the three taxable years described in Subsection (3)(c)(i), 75% of the amount of eligible new state tax revenues generated by the eligible business entity.

(4) An eligible business entity may only claim or pass through a tax credit under this section~~[(a)]~~ for a taxable year for which the eligible business entity holds a tax credit certificate issued in accordance with Section 63M-1-2908~~[, and]~~.

~~[(b) subject to obtaining a tax credit certificate for each taxable year as required by Subsection (4)(a):]~~

~~[(i) for the taxable year in which the eligible business entity first generates eligible new state tax revenues; and]~~

~~[(ii) for two taxable years immediately following the year described in Subsection (4)(b)(i).]~~

(5) An eligible business entity may not:

(a) carry forward or carry back a tax credit under this section; or

(b) claim or pass through a tax credit in an amount greater than the amount listed on a tax credit certificate issued in accordance with Section 63M-1-2908 for a taxable year.

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Section 2. Section **59-10-1025** is amended to read:

**59-10-1025. Nonrefundable tax credit for investment in certain life science establishments.**

(1) As used in this section:

(a) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.

(b) "Eligible claimant, estate, or trust" is as defined in Section 63M-1-2902.

(c) "Life science establishment" means an establishment described in one of the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

(ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or

(iii) NAICS Code 334517, Irradiation Apparatus Manufacturing.

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

(e) "Pass-through entity" is as defined in Section 59-10-1402.

(f) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(g) "Qualifying ownership interest" means an ownership interest that is:

(i) (A) common stock;

(B) preferred stock; or

(C) an ownership interest in a pass-through entity;

(ii) originally issued to:

(A) an eligible claimant, estate, or trust; or

(B) a pass-through entity if the eligible claimant, estate, or trust that claims a tax credit under this section was a pass-through entity taxpayer of the pass-through entity on the day on which the qualifying ownership interest was issued and remains a pass-through entity taxpayer of the pass-through entity until the last day of the taxable year for which the eligible claimant, estate, or trust claims a tax credit under this section; and

(iii) issued:

(A) by a Utah small business corporation;

(B) on or after January 1, 2011; and

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(C) for money or other property, except for stock or securities.

(h) (i) Except as provided in Subsection (1)(h)(ii), "Utah small business corporation" is as defined in Section 59-10-1022.

(ii) For purposes of this section, a corporation under Section 1244(c)(3)(A), Internal Revenue Code, is considered to include a pass-through entity.

(2) Subject to the other provisions of this section, for a taxable year beginning on or after January 1, 2011, an eligible claimant, estate, or trust that holds a tax credit certificate issued to the eligible claimant, estate, or trust in accordance with Section 63M-1-2908 for that taxable year may claim a nonrefundable tax credit in an amount up to 35% of the purchase price of a qualifying ownership interest in a Utah small business corporation by the claimant, estate, or trust if:

(a) the qualifying ownership interest is issued by a Utah small business corporation that is a life science establishment;

(b) the qualifying ownership interest in the Utah small business corporation is purchased for at least \$25,000;

(c) the eligible claimant, estate, or trust owned less than 30% of the qualifying ownership interest of the Utah small business corporation at the time of the purchase of the qualifying ownership interest; and

(d) on each day of the taxable year of the purchase of the qualifying ownership interest, the Utah small business corporation described in Subsection (2)(a) has at least 50% of its employees in the state.

(3) Subject to Subsection (4), the tax credit under Subsection (2):

(a) may only be claimed by the eligible claimant, estate, or trust:

(i) for a taxable year for which the eligible claimant, estate, or trust holds a tax credit certificate issued in accordance with Section 63M-1-2908; and

(ii) subject to obtaining a tax credit certificate for each taxable year as required by Subsection (3)(a)(i), for a period of three taxable years as follows:

(A) the tax credit in the taxable year of the purchase of the qualifying ownership interest may not exceed 10% of the purchase price of the qualifying ownership interest;

(B) the tax credit in the taxable year after the taxable year described in Subsection (3)(a)(ii)(A) may not exceed 10% of the purchase price of the qualifying ownership interest;

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and

(C) the tax credit in the taxable year two years after the taxable year described in Subsection (3)(a)(ii)(A) may not exceed 15% of the purchase price of the qualifying ownership interest; and

(b) may not exceed the lesser of:

(i) the amount listed on the tax credit certificate issued in accordance with Section 63M-1-2908; or

(ii) \$350,000 in a taxable year.

(4) An eligible claimant, estate, or trust may not claim a tax credit under this section for a taxable year if the eligible claimant, estate, or trust:

(a) has sold any of the qualifying ownership interest during the taxable year; or

(b) does not hold a tax credit certificate for that taxable year that is issued to the eligible claimant, estate, or trust by the office in accordance with Section 63M-1-2908.

(5) If a Utah small business corporation in which an eligible claimant, estate, or trust purchases a qualifying ownership interest fails, dissolves, or otherwise goes out of business, the eligible claimant, estate, or trust may not claim both the tax credit provided in this section and a capital loss on the qualifying ownership interest.

(6) If an eligible claimant is a pass-through entity taxpayer that files a return under Chapter 7, Corporate Franchise and Income Taxes, the eligible claimant may claim the tax credit under this section on the return filed under Chapter 7, Corporate Franchise and Income Taxes.

~~(6)~~ (7) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

Section 3. Section **59-10-1109** is amended to read:

**59-10-1109. Refundable tax credit for certain business entities generating state tax revenue increases.**

(1) As used in this section:

(a) "Eligible business entity" is as defined in Section 63M-1-2902.

(b) "Eligible new state tax revenues" is as defined in Section 63M-1-2902.

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

(d) "Pass-through entity" is as defined in Section 59-10-1402.

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(e) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(f) "Qualifying agreement" is as defined in Section 59-7-614.6.

(2) Subject to the other provisions of this section, an eligible business entity may:

(a) claim a refundable tax credit as provided in Subsection (3); or

(b) if the eligible business entity is a pass-through entity, pass through to one or more pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a refundable tax credit that the eligible business entity could otherwise claim under this section.

(3) (a) Except as provided in Subsection (3)(b), the amount of the tax credit is:

(i) for an eligible business entity, an amount up to the amount listed on the tax credit certificate that the office issues to the eligible business entity for the taxable year in accordance with Section 63M-1-2908; or

(ii) for a pass-through entity taxpayer, an amount up to the amount of a tax credit that an eligible business entity passes through to the pass-through entity taxpayer of the pass-through entity in accordance with Subsection (2)(b) or Subsection 59-7-614.6(2)(b).

(b) ~~[A]~~ Subject to Subsection (3)(c), a tax credit under this section may not exceed the amount of eligible new state tax revenues generated by an eligible business entity for the taxable year for which the eligible business entity claims a tax credit under this section.

(c) A tax credit under this section for an eligible business entity that enters into a qualifying agreement may not exceed:

(i) for the taxable year in which the eligible business entity first generates eligible new state tax revenues and the two following years, 100% of the amount of eligible new state tax revenues generated by the eligible business entity; and

(ii) for the seven taxable years following the last of the three taxable years described in Subsection (3)(c)(i), 75% of the amount of eligible new state tax revenues generated by the eligible business entity.

(4) An eligible business entity or pass-through entity taxpayer to which an eligible business entity passes through a tax credit in accordance with Subsection (2)(b) or Subsection 59-7-614.6(2)(b) may only claim or pass through a tax credit under this section for ~~[(a)]~~ a taxable year for which the eligible business entity holds a tax credit certificate issued in accordance with Section 63M-1-2908 ~~[; and]~~.

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~~[(b) subject to obtaining a tax credit certificate for each taxable year as required by Subsection (4)(a):]~~

~~[(i) the taxable year in which the eligible business entity first generates eligible new state tax revenues; and]~~

~~[(ii) two taxable years following the year described in Subsection (4)(b)(i).]~~

(5) An eligible business entity or a pass-through entity taxpayer may not:

- (a) carry forward or carry back a tax credit under this section; or
- (b) claim a tax credit under both this section and Section 59-7-614.6.

Section 4. Section **63M-1-2902** is amended to read:

### **63M-1-2902. Definitions.**

As used in this part:

- (1) "Board" means the Governor's Office of Economic Development Board of Directors.
- (2) "Claimant" is as defined in Section 59-10-1002.
- (3) "Eligible business entity" means a person that:
  - (a) enters into an agreement with the office in accordance with this part to receive a tax credit certificate for a tax credit under Section 59-7-614.6 or 59-10-1109;
  - (b) is:
    - (i) a life science establishment; or
    - (ii) described in NAICS Code 334413, Semiconductor and Related Device Manufacturing, of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;
  - (c) has at least 50% of its employees in the state for each day of a taxable year the eligible business entity claims a tax credit under Section 59-7-614.6 or 59-10-1109; and
  - (d) receives a tax credit certificate from the office in accordance with this part.
- (4) "Eligible claimant, estate, or trust" means a claimant, estate, or trust that:
  - (a) enters into an agreement with the office in accordance with this part to receive a tax credit certificate for a tax credit under Section 59-10-1025 [~~or 59-10-1026~~]; and
  - (b) receives a tax credit certificate from the office in accordance with this part.
- (5) "Eligible new state tax revenues" means an increased amount of tax revenues generated as a result of an eligible product or project by an eligible business entity or a new



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incremental job within the state under the following:

- (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- (b) Title 59, Chapter 10, Individual Income Tax Act; and
- (c) Title 59, Chapter 12, Sales and Use Tax Act.

(6) "Eligible product or project" means any product or project produced by an eligible business entity that was not produced prior to the date of an agreement with the office under Section 63M-1-2908:

- (a) by the eligible business entity; and
- (b) within the state.

(7) "Life science establishment" is as defined in Section 59-10-1025.

(8) "New incremental job within the state" means, with respect to an eligible business entity, an employment position that:

(a) did not exist within the state before:

(i) the eligible business entity entered into an agreement with the office in accordance with this part; and

(ii) the eligible product was produced or the eligible project began;

(b) is not shifted from one location in the state to another location in the state; and

(c) is established to the satisfaction of the office, including by amounts paid or

withheld by the eligible business entity under Title 59, Chapter 10, Individual Income Tax Act.

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

(10) "Tax credit" means a tax credit under:

(a) Section 59-7-614.6;

(b) Section 59-10-1025; or

~~[(c) Section 59-10-1026; or]~~

~~[(d)]~~ (c) Section 59-10-1109.

(11) "Tax credit applicant" means a person that applies to the office to receive a tax credit certificate under this part.

(12) "Tax credit certificate" means a certificate issued by the office that:

(a) lists the name of the tax credit certificate recipient;

(b) lists the tax credit certificate recipient's taxpayer identification number;

(c) lists the amount of the tax credit certificate recipient's tax credits authorized under

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this part for a taxable year; and

(d) includes other information as determined by the office.

(13) "Tax credit certificate recipient" means:

(a) an eligible business entity that receives a tax credit certificate in accordance with this part for a tax credit under Section 59-7-614.6 or 59-10-1109; or

(b) an eligible claimant, estate, or trust that receives a tax credit certificate in accordance with this part for a tax credit under Section 59-10-1025 [~~or 59-10-1026~~].

Section 5. Section **63M-1-2903** is amended to read:

### **63M-1-2903. Tax credits issued by office.**

(1) (a) The office may issue tax credit certificates under this part only to the extent that the Legislature, by statute, expressly [~~sets aside money for~~] authorizes the office to issue the tax credit certificates under this part for a fiscal year.

(b) The Legislature intends that a statutory authorization under Subsection (1)(a) specify:

(i) the total allocation to the tax credits under Section 59-7-614.6 and 59-10-1109; and

(ii) the allocation to the tax credit under Section 59-10-1025.

(2) For fiscal year 2011-12 only, the office may issue a total of \$1,300,000 in tax credit certificates in accordance with this part.

(3) (a) If the total amount of tax credit certificates the office issues in a fiscal year is less than the amount of tax credit certificates the office may issue under this part in a fiscal year, the office may issue the remaining amount of tax credit certificates in a fiscal year after the fiscal year for which there is a remaining amount of tax credit certificates.

(b) ~~fff~~ Except as provided in Subsection (3)(c), if the total amount of tax credit certificates the office issues in a quarter of a fiscal year is less than the amount of tax credit certificates the office may issue under this part in that quarter, the office may issue the remaining amount of tax credit certificates in a quarter after the quarter for which there is a remaining amount of tax credit certificates.

(c) For fiscal year 2011-12 only, if the total amount of tax credit certificates the office issues in fiscal year 2011-12 is less than the amount of tax credit certificates the office may issue in tax credit certificates under Subsection (2), the office:

(i) may issue the remaining amount of tax credit certificates in a fiscal year after fiscal

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year 2011-12; and

(ii) is not required to allocate the tax credit certificates to any particular quarter.

Section 6. Section **63M-1-2905** is amended to read:

### **63M-1-2905. Application process.**

(1) A tax credit applicant may [~~annually~~] apply to the office to receive a tax credit certificate by filing an application with the office:

(a) [~~on or before July 1~~] on or before the quarterly deadline established by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) on a form and in the manner prescribed by the office.

(2) The application shall include:

(a) tax return information as required by the office that is necessary for the office to determine eligibility for and the amount of a tax credit; and

(b) other documentation as required by the office.

(3) As part of the application required by this section, a tax credit applicant shall sign a separate document that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit certificate recipient's tax returns and other information concerning the tax credit certificate that:

(a) would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code; and

(b) are necessary for the office to determine eligibility for and the amount of a tax credit under this part.

(4) Upon receipt of the document described in Subsection (3), the State Tax Commission shall provide the office with the tax returns and other information requested by the office that the tax credit applicant directed or authorized the State Tax Commission to provide to the office, including information necessary to determine eligibility for the amount of a tax credit.

(5) If the office determines that the information a tax credit applicant provides is inadequate to provide a reasonable justification for authorizing a tax credit, the office shall:

(a) deny the tax credit; or

(b) inform the tax credit applicant that the information is inadequate and ask the tax credit applicant to submit new or additional documentation.

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Section 7. Section **63M-1-2908** is amended to read:

**63M-1-2908. Agreement between tax credit applicant and office -- Tax credit certificate.**

(1) (a) Except as provided in Subsection 63M-1-2903(3)(b), for each quarter of a fiscal year ~~after fiscal year 2011-12~~, the office shall allocate:

(i) 25% of the total amounts made available for allocation in accordance with Section 63M-1-2903 for the tax credits under Sections 59-7-614.6 and 59-10-1109; and

(ii) 25% of the amounts made available for allocation in accordance with Section 63M-1-2903 for the tax credit under Section 59-10-1025.

~~[(1)] (b) (i)~~ Subject to the other provisions of this part, the office, with advice from the board, shall determine ~~[on or before the August 1 immediately following the July 1 described in Subsection 63M-1-2905(1)]~~ quarterly:

~~[(a)] (A)~~ the tax credit applicant or applicants to which a tax credit certificate may be provided; and

~~[(b)] (B)~~ the amount of tax credit a tax credit applicant may receive.

(ii) The office shall consider economic modeling, including the costs and benefits to the state and local governments, in determining the amount of tax credit an applicant may receive.

(2) The office, with advice from the board, may enter into an agreement to grant a tax credit certificate to a tax credit applicant selected in accordance with this part, if the tax credit applicant meets the conditions established in the agreement and under this part.

(3) The agreement described in Subsection (2) shall:

(a) detail the requirements that the tax credit applicant shall meet prior to receiving a tax credit certificate;

(b) require the tax credit certificate recipient to retain records supporting a claim for a tax credit for at least four years after the tax credit certificate recipient claims a tax credit under this part; and

(c) require the tax credit certificate recipient to submit to audits for verification of the tax credit claimed, including audits by the office and by the State Tax Commission.

Section 8. Section **63M-1-2909** is amended to read:

**63M-1-2909. Issuance of tax credit certificates.**

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(1) For a tax credit applicant that seeks to claim a tax credit [~~under Section 59-7-614.6, 59-10-1025, or 59-10-1109~~], the office may issue a tax credit certificate to the tax credit applicant:

(a) for the first taxable year for which the tax credit applicant qualifies for the tax credit and enters into an agreement with the office; [~~and~~]

(b) for two taxable years immediately following the taxable year described in Subsection (1)(a)[~~;~~]; and

~~[(2) For a tax credit applicant that seeks to claim a tax credit under Section 59-10-1026, the office may issue a tax credit certificate to the tax credit applicant only for the taxable year for which the tax credit applicant qualifies for the tax credit and enters into an agreement with the office.]~~

(c) for the seven taxable years immediately following the last of the two taxable years described in Subsection (1)(b) if:

(i) the agreement with the office described in Section 63M-1-2908 includes a provision that the tax credit applicant will make new capital expenditures of at least ~~+\$750 million~~ \$1,000,000,000 in the state; and

(ii) the tax credit applicant makes new capital expenditures of at least ~~+\$750 million~~ \$1,000,000,000 in the state in accordance with the agreement with the office described in Section 63M-1-2908.

~~[(3)]~~ (2) The office shall provide a duplicate copy of each tax credit certificate to the State Tax Commission.

Section 9. Section **63M-1-2910** is amended to read:

### **63M-1-2910. Report to the Legislature -- Study by legislative committees.**

(1) The office shall annually report to the Workforce Services and Community and Economic Development Interim Committee and Revenue and Taxation Interim Committee describing:

(a) the total amount listed on tax credit certificates the office issues under this part;

(b) the criteria that the office uses in prioritizing the issuance of tax credits amongst tax credit applicants under this part; and

(c) the economic impact on the state related to providing tax credits under this part.

(2) (a) On or before November 1, [~~2014~~] 2016, and every five years after November 1,

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[2011] 2016, the Workforce Services and Community and Economic Development Interim Committee and Revenue and Taxation Interim Committee shall:

(i) study the tax credits allowed under Sections 59-7-614.6, 59-10-1025, [~~59-10-1026,~~] and 59-10-1109; and

(ii) make recommendations concerning whether the tax credits should be continued, modified, or repealed.

(b) The study under Subsection (2)(a) shall include an evaluation of:

(i) the cost of the tax credits under Sections 59-7-614.6, 59-10-1025, [~~59-10-1026,~~] and 59-10-1109;

(ii) the purposes and effectiveness of the tax credits; and

(iii) the extent to which the state benefits from the tax credits.

### **Section 10. Repealer.**

This bill repeals:

Section **59-10-1026, Nonrefundable tax credit for capital gain transactions related to a life science establishment.**

### **Section 11. Retrospective operation.**

This bill has retrospective operation for a taxable year beginning on or after January 1, 2012.