

RESEARCH TAX CREDIT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Merlynn T. Newbold

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

This bill repeals provisions related to the expiration of research tax credits.

Highlighted Provisions:

This bill:

- ▶ repeals provisions related to the expiration of nonrefundable research income tax credits; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-613, as last amended by Laws of Utah 2011, Chapter 384

59-10-1013, as last amended by Laws of Utah 2011, Chapter 384

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



28 Section 1. Section **59-7-613** is amended to read:

29 **59-7-613. Tax credits for machinery, equipment, or both primarily used for**
30 **conducting qualified research or basic research -- Carry forward -- Commission to report**
31 **modification or repeal of certain federal provisions -- Revenue and Taxation Interim**
32 **Committee study.**

33 (1) As used in this section:

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

36 (b) "Equipment" includes:

37 (i) a computer;

38 (ii) computer equipment; and

39 (iii) computer software.

40 (c) "Purchase price":

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

42 (ii) does not include a tax imposed under Chapter 12, Sales and Use Tax Act, on an
43 item of machinery or equipment.

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

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

47 (2) (a) Except as provided in Subsection (2)(c), [~~for taxable years beginning on or after~~
48 ~~January 1, 1999, but beginning before December 31, 2010,~~] a taxpayer meeting the
49 requirements of this section may claim the following nonrefundable tax credits:

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

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

52 (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act; and

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

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

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

56 (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act;

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

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

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

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

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

67 (4) Notwithstanding Section 41(h), Internal Revenue Code, a tax credit provided for in
68 this section is not terminated if a credit terminates under Section 41, Internal Revenue Code.

69 (5) If the amount of a tax credit claimed by a taxpayer under this section exceeds the
70 taxpayer's tax liability under this chapter for a taxable year, the amount of the tax credit
71 exceeding the tax liability:

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

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

75 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
76 commission may make rules for purposes of this section prescribing a certification process for
77 qualified organizations to ensure that machinery, equipment, or both provided to the qualified
78 organization is to be primarily used to conduct basic research in this state.

79 (7) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
80 commission shall report the modification or repeal to the Revenue and Taxation Interim
81 Committee within 60 days after the day on which the modification or repeal becomes effective.

82 (8) (a) The Revenue and Taxation Interim Committee shall review the tax credits
83 provided for in this section on or before October 1 of the year after the year in which the
84 commission reports under Subsection (7) a modification or repeal of a provision of Section 41,
85 Internal Revenue Code.

86 (b) Notwithstanding Subsection (8)(a), the Revenue and Taxation Interim Committee is
87 not required to review the tax credits provided for in this section if the only modification to a
88 provision of Section 41, Internal Revenue Code, is the extension of the termination date
89 provided for in Section 41(h), Internal Revenue Code.

90 (c) The Revenue and Taxation Interim Committee shall address in a review under this
91 section the:

- 92 (i) cost of the tax credits provided for in this section;
- 93 (ii) purpose and effectiveness of the tax credits provided for in this section;
- 94 (iii) whether the tax credits provided for in this section benefit the state; and
- 95 (iv) whether the tax credits provided for in this section should be:
 - 96 (A) continued;
 - 97 (B) modified; or
 - 98 (C) repealed.

99 (d) If the Revenue and Taxation Interim Committee reviews the tax credits provided
100 for in this section, the committee shall report its findings to the Legislative Management
101 Committee on or before the November interim meeting of the year in which the Revenue and
102 Taxation Interim Committee reviews the tax credits.

103 Section 2. Section **59-10-1013** is amended to read:

104 **59-10-1013. Tax credits for machinery, equipment, or both primarily used for**
105 **conducting qualified research or basic research -- Carry forward -- Commission to report**
106 **modification or repeal of certain federal provisions -- Revenue and Taxation Interim**
107 **Committee study.**

108 (1) As used in this section:

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

111 (b) "Equipment" includes:

- 112 (i) a computer;
- 113 (ii) computer equipment; and
- 114 (iii) computer software.

115 (c) "Purchase price":

- 116 (i) includes the cost of installing an item of machinery or equipment; and
- 117 (ii) does not include a tax imposed under Chapter 12, Sales and Use Tax Act, on an
118 item of machinery or equipment.

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

120 (e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except

121 that the term includes only qualified research conducted in this state.

122 (2) (a) Except as provided in Subsection (2)(c), [~~for taxable years beginning on or after~~
123 ~~January 1, 1999, but beginning before December 31, 2010,~~] a claimant, estate, or trust meeting
124 the requirements of this section may claim the following nonrefundable tax credits:

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

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

127 (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act; and

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

129 (ii) a tax credit of 6% of the purchase price paid by the claimant, estate, or trust for
130 machinery, equipment, or both:

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

132 (B) that is subject to a tax under Chapter 12, Sales and Use Tax Act;

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

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

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

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

142 (3) Notwithstanding Section 41(h), Internal Revenue Code, a tax credit provided for in
143 this section is not terminated if a credit terminates under Section 41, Internal Revenue Code.

144 (4) If the amount of a tax credit claimed by a claimant, estate, or trust under this section
145 exceeds a claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the
146 amount of the tax credit exceeding the tax liability:

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

148 and

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

150 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
151 commission may make rules for purposes of this section prescribing a certification process for

152 qualified organizations to ensure that machinery, equipment, or both provided to the qualified
153 organization is to be primarily used to conduct basic research in this state.

154 (6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
155 commission shall report the modification or repeal to the Revenue and Taxation Interim
156 Committee within 60 days after the day on which the modification or repeal becomes effective.

157 (7) (a) The Revenue and Taxation Interim Committee shall review the tax credits
158 provided for in this section on or before October 1 of the year after the year in which the
159 commission reports under Subsection (6) a modification or repeal of a provision of Section 41,
160 Internal Revenue Code.

161 (b) Notwithstanding Subsection (7)(a), the Revenue and Taxation Interim Committee is
162 not required to review the tax credits provided for in this section if the only modification to a
163 provision of Section 41, Internal Revenue Code, is the extension of the termination date
164 provided for in Section 41(h), Internal Revenue Code.

165 (c) The Revenue and Taxation Interim Committee shall address in a review under this
166 section the:

- 167 (i) cost of the tax credits provided for in this section;
168 (ii) purpose and effectiveness of the tax credits provided for in this section;
169 (iii) whether the tax credits provided for in this section benefit the state; and
170 (iv) whether the tax credits provided for in this section should be:
171 (A) continued;
172 (B) modified; or
173 (C) repealed.

174 (d) If the Revenue and Taxation Interim Committee reviews the tax credits provided
175 for in this section, the committee shall report its findings to the Legislative Management
176 Committee on or before the November interim meeting of the year in which the Revenue and
177 Taxation Interim Committee reviews the tax credits.

178 Section 3. **Effective date.**

179 (1) Subject to Subsection (2), if approved by two-thirds of all the members elected to
180 each house, this bill takes effect upon approval by the governor, or the day following the
181 constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's
182 signature, or in the case of a veto, the date of veto override.

183 (2) This bill has retrospective operation for a taxable year beginning on or after January
184 1, 2011.

Legislative Review Note
as of 11-17-11 2:03 PM

Office of Legislative Research and General Counsel