

TAX CREDIT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: Curtis S. Bramble

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LONG TITLE

General Description:

This bill addresses provisions related to tax credits.

Highlighted Provisions:

This bill:

- ▶ enacts tax credits for the employment of persons who are homeless;
- ▶ repeals provisions related to tax credits and enacts the Tax Credit Administration

Act; and

- ▶ enacts the Tax Credit for Employment of Persons Who Are Homeless Act,

including:

- defining terms;
- addressing the procedures and requirements for the Department of Workforce

Services to authorize, and a person to claim, a tax credit; and

29 • requires the Department of Workforce Services to make certain reports to the
30 Legislature.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill provides effective dates.

35 **Utah Code Sections Affected:**

36 ENACTS:

37 **35A-5-301**, Utah Code Annotated 1953

38 **35A-5-302**, Utah Code Annotated 1953

39 **35A-5-303**, Utah Code Annotated 1953

40 **35A-5-304**, Utah Code Annotated 1953

41 **35A-5-305**, Utah Code Annotated 1953

42 **35A-5-306**, Utah Code Annotated 1953

43 **59-7-616**, Utah Code Annotated 1953

44 **59-7-901**, Utah Code Annotated 1953

45 **59-7-902**, Utah Code Annotated 1953

46 **59-7-903**, Utah Code Annotated 1953

47 **59-10-1032**, Utah Code Annotated 1953

48 REPEALS:

49 **59-7-615**, as enacted by Laws of Utah 2002, Chapter 62



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

52 Section 1. Section **35A-5-301** is enacted to read:

53 **Part 3. Tax Credit for Employment of Persons Who Are Homeless Act**

54 **35A-5-301. Title.**

55 This part is known as the "Tax Credit for Employment of Persons Who Are Homeless

56 Act."

57 Section 2. Section 35A-5-302 is enacted to read:

58 **35A-5-302. Definitions.**

59 As used in this part:

60 (1) "Date of hire" means the date a person who is homeless first performs labor or
61 services for compensation for an employer.

62 (2) "Governmental entity" is as defined in Section 59-2-511.

63 (3) "Permanent housing, permanent supportive, or transitional facility" means a
64 facility:

65 (a) located within the state;

66 (b) that provides supervision of residents of the facility; and

67 (c) that is:

68 (i) a publicly or privately operated shelter:

69 (A) designed to provide temporary living accommodations, including a welfare hotel,
70 congregate shelter, or transitional housing for the mentally ill; and

71 (B) that receives federal homeless assistance funding distributed by the United States
72 Department of Housing and Urban Development; or

73 (ii) an emergency shelter that receives homeless assistance funding from a county, city,
74 or town.

75 (4) "Person who is homeless" means an individual whose primary nighttime residence
76 is a permanent housing, permanent supportive, or transitional facility.

77 (5) "Wage requirement" means that an employer pays a person who is homeless \$4,000
78 or more in wages during a time period that:

79 (a) begins on the date of hire; and

80 (b) ends no later than two calendar quarters after the calendar quarter in which the date
81 of hire occurs.

82 Section 3. Section 35A-5-303 is enacted to read:

83 **35A-5-303. Application for tax credit certificate.**

84 (1) An employer who employs a person who is homeless and seeks to receive a tax

85 credit certificate under this part shall file an application with the department with respect to
86 each person who is homeless that the employer employs.

87 (2) The application shall be on a form the department provides to the employer.

88 (3) The application shall require the employer to certify that:

89 (a) the person who is homeless who the employer employs:

90 (i) on the date of hire, has a primary nighttime residence at a permanent housing,
91 permanent supportive, or transitional facility;

92 (ii) is an employee, and not an independent contractor, of the employer;

93 (iii) is legally eligible to work in the United States; and

94 (iv) has not worked for the employer for more than 40 hours during the 60-day period
95 immediately preceding the date of hire; and

96 (b) the employer:

97 (i) complies with all state, federal, or local requirements related to the employment of
98 the person who is homeless; and

99 (ii) is not a governmental entity.

100 (4) The application:

101 (a) shall list, for each person who is homeless that the employer employs:

102 (i) the person's name;

103 (ii) the person's Social Security number; and

104 (iii) the person's current address;

105 (b) shall list the employer's federal employer identification number; and

106 (c) may require additional information as determined by the department.

107 (5) An employer shall provide documentation to the department to support the
108 certifications and other information the employer provides in the application described in this
109 section.

110 (6) If the department determines that, on the basis of the documentation and other
111 information the employer provides, the employer has satisfied the certification requirements of
112 Subsection (3) and provided the information described in Subsection (4), the department shall

113 enter into a participation agreement with the employer as provided in Section [35A-5-304](#) for
114 each person who is homeless who the employer employs.

115 (7) If the department determines that, on the basis of the documentation and other
116 information the employer provides, the employer has not satisfied the certification
117 requirements of Subsection (3) or provided the information described in Subsection (4), the
118 department:

119 (a) shall deny the application; or

120 (b) inform the employer that the documentation the employer provided is inadequate
121 and request the employer to submit new or additional documentation.

122 Section 4. Section **35A-5-304** is enacted to read:

123 **35A-5-304. Participation agreements.**

124 (1) If the department enters into a participation agreement with an employer, the
125 participation agreement shall:

126 (a) be provided by the department; and

127 (b) establish the requirements the employer is required to meet to be eligible to receive
128 a tax credit certificate, including:

129 (i) requiring the employer to meet the certification requirements of Subsection
130 [35A-5-303\(3\)](#);

131 (ii) requiring the employer to provide written notice to the department within 10 days
132 after the date the employer meets the wage requirement; and

133 (iii) requiring the employer to provide documentation or other information the
134 department requests:

135 (A) to establish the hours and dates that the person who is homeless works for the
136 employer; and

137 (B) to support the employer's eligibility to receive a tax credit certificate under this
138 part.

139 (2) An agreement under this section does constitute a right to receive a tax credit
140 certificate under this part.

141 Section 5. Section **35A-5-305** is enacted to read:

142 **35A-5-305. Tax credit certificate.**

143 (1) An employer shall provide written notice to the department within 10 days after the
144 date the employer meets the wage requirement as provided in the participation agreement
145 described in Section [35A-5-304](#).

146 (2) The department shall determine whether an employer has met the requirements of
147 the participation agreement under Section [35A-5-304](#) to receive a tax credit certificate:

148 (a) after the employer provides the written notice described in Subsection (1) to the
149 department; and

150 (b) no later than 60 days after the date that the employer provides the department
151 unemployment insurance wage information:

152 (i) for the person who is homeless;

153 (ii) as required by Subsection [35A-4-305\(8\)](#); and

154 (iii) for each calendar quarter during which the employer pays wages to meet the wage
155 requirement.

156 (3) Subject to the other provisions of this section, if the department determines that an
157 employer has met the requirements of the participation agreement under Section [35A-5-304](#) to
158 receive a tax credit certificate, the department may issue a tax credit certificate to the employer.

159 (4) A tax credit certificate under this section:

160 (a) shall list the amount of tax credit allowable for the taxable year in an amount that
161 does not exceed \$2,000;

162 (b) shall list the name and federal employer number of the employer;

163 (c) shall list the name, Social Security identification number, and current address of the
164 person who is homeless with respect to whom the employer has met the wage requirement; and

165 (d) may include any other information required by the department.

166 (5) Subject to Subsections (6) and (7), the department shall issue tax credit certificates
167 under this section in the order that the department receives the written notice described in
168 Subsection (1).

169 (6) The department may not issue tax credit certificates that total more than \$100,000
170 in a fiscal year.

171 (7) (a) Subject to Subsection (7)(b), if the department would have issued tax credit
172 certificates that total more than \$100,000 in a fiscal year but for the limit provided in
173 Subsection (6), the department shall issue the tax credit certificates that exceed \$100,000 in the
174 next fiscal year.

175 (b) If the department issues tax credit certificates in accordance with Subsection (7)(a):

176 (i) the tax credit certificates may not total more than \$100,000; and

177 (ii) the department may not issue tax credit certificates for an amount that exceeds the
178 limit described in Subsection (7)(b)(i) in a future fiscal year.

179 (8) The department shall provide a copy of a tax credit certificate the department issues
180 under this section to the State Tax Commission.

181 Section 6. Section **35A-5-306** is enacted to read:

182 **35A-5-306. Report to the Legislature.**

183 Beginning with the 2016 interim, the department shall report annually to the Economic
184 Development and Workforce Services Interim Committee and the Revenue and Taxation
185 Interim Committee:

186 (1) on or before the November interim meeting; and

187 (2) on the amount of tax credits the department grants under this part.

188 Section 7. Section **59-7-616** is enacted to read:

189 **59-7-616. Nonrefundable tax credit for employment of a person who is homeless.**

190 (1) As used in this section:

191 (a) "Eligible employer" means a person who receives a tax credit certificate from the
192 Department of Workforce Services in accordance with Title 35A, Chapter 5, Part 3, Tax Credit
193 for Employment of Persons Who Are Homeless Act.

194 (b) "Person who is homeless" is as defined in Section [35A-5-302](#).

195 (2) Subject to the other provisions of this section, an eligible employer that is a
196 corporation may claim a nonrefundable tax credit as provided in this section against a tax under

197 this chapter.

198 (3) The tax credit under this section is the amount of tax credit listed on a tax credit
199 certificate that the Department of Workforce Services issues to an employer for a taxable year
200 under Title 35A, Chapter 5, Part 3, Tax Credit for Employment of Persons Who Are Homeless
201 Act.

202 (4) An eligible employer may carry forward a tax credit under this section for a period
203 that does not exceed the next five taxable years if:

- 204 (a) the eligible employer is allowed to claim a tax credit under this section; and
- 205 (b) the amount of the tax credit exceeds the eligible employer's tax liability under this
206 chapter for that taxable year.

207 (5) An eligible employer shall retain a tax credit certificate the eligible employer
208 receives from the Department of Workforce Services for the same time period a person is
209 required to keep books and records under Section [59-1-1406](#).

210 Section 8. Section **59-7-901** is enacted to read:

211 **Part 9. Tax Credit Administration Act**

212 **59-7-901. Title.**

213 This part is known as the "Tax Credit Administration Act."

214 Section 9. Section **59-7-902** is enacted to read:

215 **59-7-902. Definitions.**

216 As used in this part:

217 (1) "Tax credit" means a nonrefundable tax credit listed on a tax return.

218 (2) "Tax return" means:

219 (a) a corporate return as defined in Section [59-7-101](#) filed in accordance with this
220 chapter; or

221 (b) a tax return filed in accordance with Chapter 8, Gross Receipts Tax on Certain
222 Corporations Not Required to Pay Corporate Franchise or Income Tax Act.

223 Section 10. Section **59-7-903** is enacted to read:

224 **59-7-903. Removal of tax credit from tax return -- Prohibition on claiming or**

225 **carrying forward a tax credit -- Commission reporting requirements.**

226 (1) Subject to Subsection (2), the commission shall remove a tax credit from a tax
227 return and a person filing a tax return may not claim or carry forward the tax credit if:

228 (a) the total amount of tax credit claimed or carried forward by all persons who file a
229 tax return is less than \$10,000 per taxable year for three consecutive taxable years; and

230 (b) less than 10 persons per year for the three consecutive taxable years described in
231 Subsection (1)(a) file a tax return claiming or carrying forward the tax credit.

232 (2) If the commission determines the requirements of Subsection (1) are met, the
233 commission shall remove a tax credit from a tax return and a person filing a tax return may not
234 claim or carry forward the tax credit beginning two taxable years after the January 1
235 immediately following the date the commission determines the requirements of Subsection (1)
236 are met.

237 (3) The commission shall, on or before the November interim meeting of the year after
238 the taxable year in which the commission determines the requirements of Subsection (1) are
239 met:

240 (a) report to the Revenue and Taxation Interim Committee that, in accordance with this
241 section:

242 (i) the commission is required to remove a tax credit from a return on which the tax
243 credit appears; and

244 (ii) a person filing a tax return may not claim or carry forward the tax credit; and

245 (b) notify each state agency required by statute to assist in the administration of the tax
246 credit that, in accordance with this section:

247 (i) the commission is required to remove a tax credit from a return on which the tax
248 credit appears; and

249 (ii) a person filing a tax return may not claim or carry forward the tax credit.

250 Section 11. Section **59-10-1032** is enacted to read:

251 **59-10-1032. Nonrefundable tax credit for employment of a person who is**
252 **homeless.**

253 (1) As used in this section:

254 (a) "Eligible employer" means a person who receives a tax credit certificate from the
255 Department of Workforce Services in accordance with Title 35A, Chapter 5, Part 3, Tax Credit
256 for Employment of Persons Who Are Homeless Act.

257 (b) "Person who is homeless" is as defined in Section [35A-5-302](#).

258 (2) Subject to the other provisions of this section, an eligible employer that is a
259 claimant, estate, or trust may claim a nonrefundable tax credit as provided in this section
260 against a tax under this chapter.

261 (3) The tax credit under this section is the amount of tax credit listed on a tax credit
262 certificate that the Department of Workforce Services issues to an employer for a taxable year
263 under Title 35A, Chapter 5, Part 3, Tax Credit for Employment of Persons Who Are Homeless
264 Act.

265 (4) An eligible employer may carry forward a tax credit under this section for a period
266 that does not exceed the next five taxable years if:

267 (a) the eligible employer is allowed to claim a tax credit under this section; and

268 (b) the amount of the tax credit exceeds the eligible employer's tax liability under this
269 chapter for that taxable year.

270 (5) An eligible employer shall retain a tax credit certificate the eligible employer
271 receives from the Department of Workforce Services for the same time period a person is
272 required to keep books and records under Section [59-1-1406](#).

273 Section 12. **Effective dates.**

274 (1) Except as provided in Subsection (2), this bill takes effect on May 13, 2014.

275 (2) The actions affecting the following sections take effect for a taxable year beginning
276 on or after January 1, 2015:

277 (a) Section [59-7-616](#);

278 (b) Section [59-7-901](#);

279 (c) Section [59-7-902](#);

280 (d) Section [59-7-903](#); and

281 (e) Section [59-10-1032](#).

282 Section 13. **Repealer.**

283 This bill repeals:

284 Section **59-7-615, Removal of tax credit from tax form and prohibition on claiming**
285 **or carrying forward a tax credit -- Conditions for removal and prohibition on claiming or**
286 **carrying forward a tax credit -- Commission reporting requirements.**