

INCOME TAX AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Deidre M. Henderson

House Sponsor: Daniel McCay

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

This bill repeals and amends provisions related to income taxes.

Highlighted Provisions:

This bill:

- ▶ repeals provisions related to corporate and individual income tax credits;
- ▶ exempts a tax credit for a combat related death from certain provisions that require the State Tax Commission to remove a tax credit from a tax return and prohibit a taxpayer from claiming or carrying forward a tax credit;
- ▶ repeals provisions related to individual income tax contributions; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides for retrospective operation.

Utah Code Sections Affected:

AMENDS:

23-14-13, as last amended by Laws of Utah 2010, Chapter 278



28 [59-7-105](#), as last amended by Laws of Utah 2010, Chapters 6 and 198
 29 [59-7-106](#), as last amended by Laws of Utah 2014, Chapter 273
 30 [59-7-614](#), as last amended by Laws of Utah 2014, Chapter 407
 31 [59-10-1002.1](#), as renumbered and amended by Laws of Utah 2008, Chapter 389
 32 [59-10-1304](#), as last amended by Laws of Utah 2013, Chapters 235 and 338
 33 [63M-1-1102](#), as renumbered and amended by Laws of Utah 2008, Chapter 382

34 REPEALS:

35 [59-7-602](#), as last amended by Laws of Utah 2011, Chapter 366
 36 [59-7-603](#), as enacted by Laws of Utah 1993, Chapter 169
 37 [59-7-608](#), as last amended by Laws of Utah 2003, Chapter 198
 38 ~~§ → [[59-7-609](#), as enacted by Laws of Utah 1995, Chapter 42] ← §~~
 39 [59-7-614.3](#), as last amended by Laws of Utah 2011, Chapter 384
 40 [59-10-1011](#), as last amended by Laws of Utah 2011, Chapter 366
 41 [59-10-1305](#), as renumbered and amended by Laws of Utah 2008, Chapter 389

42

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

44 Section 1. Section **23-14-13** is amended to read:

45 **23-14-13. Wildlife Resources Account.**

46 (1) There is created a restricted account within the General Fund known as the
 47 "Wildlife Resources Account."

48 (2) The following money shall be deposited into the Wildlife Resources Account:

49 (a) revenue from the sale of licenses, permits, tags, and certificates of registration
 50 issued under this title or a rule or proclamation of the Wildlife Board, except as otherwise
 51 provided by this title;

52 (b) revenue from the sale, lease, rental, or other granting of rights of real or personal
 53 property acquired with revenue specified in Subsection (2)(a);

54 (c) revenue from fines and forfeitures for violations of this title or any rule,
 55 proclamation, or order of the Wildlife Board, minus court costs not to exceed the schedule
 56 adopted by the Judicial Council;

57 (d) funds appropriated from the General Fund by the Legislature pursuant to Section
 58 [23-19-39](#);

59 (e) other money received by the division under any provision of this title, except as
60 otherwise provided by this title; and

61 [~~(f) contributions made in accordance with Section 59-10-1305; and~~]

62 [~~(g)~~] (f) interest, dividends, or other income earned on account money.

63 (3) Money in the Wildlife Resources Account shall be used for the administration of
64 this title.

65 Section 2. Section 59-7-105 is amended to read:

66 **59-7-105. Additions to unadjusted income.**

67 In computing adjusted income the following amounts shall be added to unadjusted
68 income:

69 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state
70 of the United States, including any agency and instrumentality of a state of the United States;

71 (2) the amount of any deduction taken on a corporation's federal return for taxes paid
72 by a corporation:

73 (a) to Utah for taxes imposed by this chapter; and

74 (b) to another state of the United States, a foreign country, a United States possession,
75 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
76 exercising its corporate franchise, including income, franchise, corporate stock and business
77 and occupation taxes;

78 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and
79 (2)(a);

80 (4) capital losses that have been deducted on a Utah corporate return in previous years;

81 (5) any deduction on the federal return that has been previously deducted on the Utah
82 return;

83 [~~(6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;~~]

84 [~~(7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated
85 technological equipment;~~]

86 [~~(8)~~] (6) charitable contributions, to the extent deducted on the federal return when
87 determining federal taxable income;

88 [~~(9)~~] (7) the amount of gain or loss determined under Section 59-7-114 relating to a
89 target corporation under Section 338, Internal Revenue Code, unless such gain or loss has

90 already been included in the unadjusted income of the target corporation;

91 ~~[(10)]~~ (8) the amount of gain or loss determined under Section 59-7-115 relating to
92 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
93 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
94 income of the target corporation;

95 ~~[(11)]~~ (9) adjustments to gains, losses, depreciation expense, amortization expense, and
96 similar items due to a difference between basis for federal purposes and basis as computed
97 under Section 59-7-107;

98 ~~[(12)]~~ (10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational
99 Savings Plan, from the account of a corporation that is an account owner as defined in Section
100 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn
101 from the account of the corporation that is the account owner:

102 (a) is not expended for:

103 (i) higher education costs as defined in Section 53B-8a-102; or

104 (ii) a payment or distribution that qualifies as an exception to the additional tax for
105 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
106 Internal Revenue Code; and

107 (b) is subtracted by the corporation:

108 (i) that is the account owner; and

109 (ii) in accordance with Subsection 59-7-106 (1)(r); and

110 ~~[(13)]~~ (11) the amount of the deduction for dividends paid, as defined in Section 561,
111 Internal Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in
112 computing the taxable income of a captive real estate investment trust, if that captive real estate
113 investment trust is subject to federal income taxation.

114 Section 3. Section 59-7-106 is amended to read:

115 **59-7-106. Subtractions from unadjusted income.**

116 (1) In computing adjusted income the following amounts shall be subtracted from
117 unadjusted income:

118 (a) the foreign dividend gross-up included in gross income for federal income tax
119 purposes under Section 78, Internal Revenue Code;

120 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the

121 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the
122 taxable year for which the net capital loss is incurred;

123 (c) the decrease in salary expense deduction for federal income tax purposes due to
124 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

125 (d) the decrease in qualified research and basic research expense deduction for federal
126 income tax purposes due to claiming the federal credit for increasing research activities under
127 Section 41, Internal Revenue Code;

128 (e) the decrease in qualified clinical testing expense deduction for federal income tax
129 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for
130 rare diseases or conditions under Section 45C, Internal Revenue Code;

131 (f) any decrease in any expense deduction for federal income tax purposes due to
132 claiming any other federal credit;

133 (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and
134 (2)(b);

135 (h) any income on the federal corporation income tax return that has been previously
136 taxed by Utah;

137 (i) an amount included in federal taxable income that is due to a refund of a tax,
138 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation
139 tax:

140 (i) if that tax is imposed for the privilege of:

141 (A) doing business; or

142 (B) exercising a corporate franchise;

143 (ii) if that tax is paid by the corporation to:

144 (A) Utah;

145 (B) another state of the United States;

146 (C) a foreign country;

147 (D) a United States possession; or

148 (E) the Commonwealth of Puerto Rico; and

149 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

150 (j) a charitable contribution, to the extent the charitable contribution is allowed as a
151 subtraction under Section 59-7-109;

152 (k) subject to Subsection (3), 50% of a dividend considered to be received or received
153 from a subsidiary that:

154 (i) is a member of the unitary group;

155 (ii) is organized or incorporated outside of the United States; and

156 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

157 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
158 foreign operating company;

159 (m) the amount of gain or loss that is included in unadjusted income but not recognized
160 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
161 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
162 with Section 338(h)(10), Internal Revenue Code;

163 (n) the amount of gain or loss that is included in unadjusted income but not recognized
164 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance
165 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
166 Revenue Code, has been made for federal purposes;

167 (o) subject to Subsection (5), an adjustment to the following due to a difference
168 between basis for federal purposes and basis as computed under Section 59-7-107:

169 (i) an amortization expense;

170 (ii) a depreciation expense;

171 (iii) a gain;

172 (iv) a loss; or

173 (v) an item similar to Subsections (1)(o)(i) through (iv);

174 (p) an interest expense that is not deducted on a federal corporation income tax return
175 under Section 265(b) or 291(e), Internal Revenue Code;

176 (q) 100% of dividends received from a subsidiary that is an insurance company if that
177 subsidiary that is an insurance company is:

178 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and

179 (ii) under common ownership;

180 (r) subject to Subsection 59-7-105[(12)](10), the amount of a qualified investment as
181 defined in Section 53B-8a-102 that:

182 (i) a corporation that is an account owner as defined in Section 53B-8a-102 makes

183 during the taxable year;

184 (ii) the corporation described in Subsection (1)(r)(i) does not deduct on a federal
185 corporation income tax return; and

186 (iii) does not exceed the maximum amount of the qualified investment that may be
187 subtracted from unadjusted income for a taxable year in accordance with Subsection
188 [53B-8a-106\(1\)](#);

189 (s) for purposes of income included in a combined report under Part 4, Combined
190 Reporting, the entire amount of the dividends a member of a unitary group receives or is
191 considered to receive from a captive real estate investment trust; and

192 (t) the increase in income for federal income tax purposes due to claiming a:

193 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or
194 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code.

195 (2) For purposes of Subsection (1)(b):

196 (a) the subtraction shall be made by claiming the subtraction on a return filed:

197 (i) under this chapter for the taxable year for which the net capital loss is incurred; and
198 (ii) by the due date of the return, including extensions; and

199 (b) a net capital loss for a taxable year shall be:

200 (i) subtracted for the taxable year for which the net capital loss is incurred; or
201 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
202 Code.

203 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a
204 taxpayer shall first subtract from a dividend considered to be received or received an expense
205 directly attributable to that dividend.

206 (b) For purposes of Subsection (3)(a), the amount of an interest expense that is
207 considered to be directly attributable to a dividend is calculated by multiplying the interest
208 expense by a fraction:

209 (i) the numerator of which is the taxpayer's average investment in the dividend paying
210 subsidiaries; and

211 (ii) the denominator of which is the taxpayer's average total investment in assets.

212 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in
213 determining income apportionable to this state, a portion of the factors of a foreign subsidiary

214 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the
215 combined report factors as provided in this Subsection (3)(c).

216 (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign
217 subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be
218 included in the combined report factors is calculated by multiplying each factor of the foreign
219 subsidiary by a fraction:

220 (A) not to exceed 100%; and

221 (B) (I) the numerator of which is the amount of the dividend paid by the foreign
222 subsidiary that is included in adjusted income; and

223 (II) the denominator of which is the current year earnings and profits of the foreign
224 subsidiary as determined under the Internal Revenue Code.

225 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under
226 Subsection (1)(l):

227 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
228 [59-7-403](#); or

229 (ii) for the following:

230 (A) income generated from intangible property; or

231 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is
232 generated from an asset held for investment and not from a regular business trading activity.

233 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating
234 company:

235 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

236 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a
237 transaction that occurs between members of a unitary group.

238 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining
239 income apportionable to this state, the factors for a foreign operating company shall be
240 included in the combined report factors in the same percentages as the foreign operating
241 company's adjusted income is included in the combined adjusted income.

242 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
243 commission may by rule define what constitutes:

244 (i) income generated from intangible property; or

245 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is
246 generated from an asset held for investment and not from a regular business trading activity.

247 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of
248 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax
249 credit is claimed if:

250 (i) there is a reduction in federal basis for a federal tax credit; and

251 (ii) there is no corresponding tax credit allowed in this state.

252 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
253 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)
254 through (iv).

255 Section 4. Section **59-7-614** is amended to read:

256 **59-7-614. Renewable energy systems tax credit -- Definitions -- Limitations --**

257 **Certification -- Rulemaking authority.**

258 (1) As used in this section:

259 (a) "Active solar system":

260 (i) means a system of equipment capable of collecting and converting incident solar
261 radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy
262 by a separate apparatus to storage or to the point of use; and

263 (ii) includes water heating, space heating or cooling, and electrical or mechanical
264 energy generation.

265 (b) "Biomass system" means any system of apparatus and equipment for use in
266 converting material into biomass energy, as defined in Section [59-12-102](#), and transporting that
267 energy by separate apparatus to the point of use or storage.

268 (c) "Business entity" means any sole proprietorship, estate, trust, partnership,
269 association, corporation, cooperative, or other entity under which business is conducted or
270 transacted.

271 (d) "Commercial energy system" means any active solar, passive solar, geothermal
272 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
273 biomass system used to supply energy to a commercial unit or as a commercial enterprise.

274 (e) "Commercial enterprise" means a business entity whose purpose is to produce
275 electrical, mechanical, or thermal energy for sale from a commercial energy system.

276 (f) (i) "Commercial unit" means any building or structure that a business entity uses to
277 transact its business.

278 (ii) Notwithstanding Subsection (1)(f)(i):

279 (A) in the case of an active solar system used for agricultural water pumping or a wind
280 system, each individual energy generating device shall be a commercial unit; and

281 (B) if an energy system is the building or structure that a business entity uses to
282 transact its business, a commercial unit is the complete energy system itself.

283 (g) "Direct-use geothermal system" means a system of apparatus and equipment
284 enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit,
285 that is contained in the earth to meet energy needs, including heating a building, an industrial
286 process, and aquaculture.

287 (h) "Geothermal electricity" means energy contained in heat that continuously flows
288 outward from the earth that is used as a sole source of energy to produce electricity.

289 (i) "Geothermal heat-pump system" means a system of apparatus and equipment
290 enabling the use of thermal properties contained in the earth at temperatures well below 100
291 degrees Fahrenheit to help meet heating and cooling needs of a structure.

292 (j) "Hydroenergy system" means a system of apparatus and equipment capable of
293 intercepting and converting kinetic water energy into electrical or mechanical energy and
294 transferring this form of energy by separate apparatus to the point of use or storage.

295 (k) "Individual taxpayer" means any person who is a taxpayer as defined in Section
296 [59-10-103](#) and an individual as defined in Section [59-10-103](#).

297 (l) "Office" means the Office of Energy Development created in Section [63M-4-401](#).

298 (m) "Passive solar system":

299 (i) means a direct thermal system that utilizes the structure of a building and its
300 operable components to provide for collection, storage, and distribution of heating or cooling
301 during the appropriate times of the year by utilizing the climate resources available at the site;
302 and

303 (ii) includes those portions and components of a building that are expressly designed
304 and required for the collection, storage, and distribution of solar energy.

305 (n) "Residential energy system" means any active solar, passive solar, biomass,
306 direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to

307 supply energy to or for any residential unit.

308 (o) "Residential unit" means any house, condominium, apartment, or similar dwelling
309 unit that serves as a dwelling for a person, group of persons, or a family but does not include
310 property subject to a fee under:

311 (i) Section 59-2-404;

312 (ii) Section 59-2-405;

313 (iii) Section 59-2-405.1;

314 (iv) Section 59-2-405.2; or

315 (v) Section 59-2-405.3.

316 (p) "Wind system" means a system of apparatus and equipment capable of intercepting
317 and converting wind energy into mechanical or electrical energy and transferring these forms of
318 energy by a separate apparatus to the point of use, sale, or storage.

319 (2) (a) (i) A business entity that purchases and completes or participates in the
320 financing of a residential energy system to supply all or part of the energy required for a
321 residential unit owned or used by the business entity and located in the state may claim a
322 nonrefundable tax credit as provided in this Subsection (2)(a).

323 (ii) (A) The tax credit is equal to 25% of the reasonable costs of each residential energy
324 system installed with respect to each residential unit the business entity owns or uses, including
325 installation costs, against any tax due under this chapter for the taxable year in which the
326 energy system is completed and placed in service.

327 (B) The total amount of each tax credit under this Subsection (2)(a) may not exceed
328 \$2,000 per residential unit.

329 (C) The tax credit under this Subsection (2)(a) is allowed for any residential energy
330 system completed and placed in service on or after January 1, 2007.

331 (iii) If a business entity sells a residential unit to an individual taxpayer before making
332 a claim for the tax credit under this Subsection (2)(a), the business entity may:

333 (A) assign its right to this tax credit to the individual taxpayer; and

334 (B) if the business entity assigns its right to the tax credit to an individual taxpayer
335 under Subsection (2)(a)(iii)(A), the individual taxpayer may claim the tax credit as if the
336 individual taxpayer had completed or participated in the costs of the residential energy system
337 under Section 59-10-1014.

338 (b) (i) A business entity that purchases or participates in the financing of a commercial
339 energy system situated in Utah may claim a refundable tax credit as provided in this Subsection
340 (2)(b) if the commercial energy system does not use wind, geothermal electricity, solar, or
341 biomass equipment capable of producing a total of 660 or more kilowatts of electricity or if the
342 commercial energy system does not use solar equipment capable of producing 2,000 or more
343 kilowatts of electricity, and:

344 (A) the commercial energy system supplies all or part of the energy required by
345 commercial units owned or used by the business entity; or

346 (B) the business entity sells all or part of the energy produced by the commercial
347 energy system as a commercial enterprise.

348 (ii) (A) A business entity is entitled to a tax credit of up to 10% of the reasonable costs
349 of any commercial energy system installed, including installation costs, against any tax due
350 under this chapter for the taxable year in which the commercial energy system is completed and
351 placed in service.

352 (B) Notwithstanding Subsection (2)(b)(ii)(A), the total amount of the tax credit under
353 this Subsection (2)(b) may not exceed \$50,000 per commercial unit.

354 (C) The tax credit under this Subsection (2)(b) is allowed for any commercial energy
355 system completed and placed in service on or after January 1, 2007.

356 (iii) A business entity that leases a commercial energy system installed on a
357 commercial unit is eligible for the tax credit under this Subsection (2)(b) if the lessee can
358 confirm that the lessor irrevocably elects not to claim the tax credit.

359 (iv) Only the principal recovery portion of the lease payments, which is the cost
360 incurred by a business entity in acquiring a commercial energy system, excluding interest
361 charges and maintenance expenses, is eligible for the tax credit under this Subsection (2)(b).

362 (v) A business entity that leases a commercial energy system is eligible to use the tax
363 credit under this Subsection (2)(b) for a period no greater than seven years from the initiation
364 of the lease.

365 (vi) A tax credit allowed by this Subsection (2)(b) may not be carried forward or
366 carried back.

367 (c) (i) A business entity that owns a commercial energy system located in the state
368 using wind, geothermal electricity, or biomass equipment capable of producing a total of 660 or

369 more kilowatts of electricity may claim a refundable tax credit as provided in this Subsection
370 (2)(c) if:

371 (A) the commercial energy system supplies all or part of the energy required by
372 commercial units owned or used by the business entity; or

373 (B) the business entity sells all or part of the energy produced by the commercial
374 energy system as a commercial enterprise.

375 (ii) (A) A business entity may claim a tax credit under this section equal to the product
376 of:

377 (I) 0.35 cents; and

378 (II) the kilowatt hours of electricity produced and either used or sold during the taxable
379 year.

380 (B) (I) The tax credit calculated under Subsection (2)(c)(ii)(A) may be claimed for
381 production occurring during a period of 48 months beginning with the month in which the
382 commercial energy system is placed in commercial service.

383 (II) The tax credit allowed by this Subsection (2)(c) for each year may not be carried
384 forward or carried back.

385 (C) The tax credit under this Subsection (2)(c) is allowed for any commercial energy
386 system completed and placed in service on or after January 1, 2007.

387 (iii) A business entity that leases a commercial energy system installed on a
388 commercial unit is eligible for the tax credit under this Subsection (2)(c) if the lessee can
389 confirm that the lessor irrevocably elects not to claim the tax credit.

390 (d) (i) A tax credit under Subsection (2)(a) or (b) may be claimed for the taxable year
391 in which the energy system is completed and placed in service.

392 (ii) Additional energy systems or parts of energy systems may be claimed for
393 subsequent years.

394 (iii) If the amount of a tax credit under Subsection (2)(a) exceeds a business entity's tax
395 liability under this chapter for a taxable year, the amount of the tax credit exceeding the
396 liability may be carried forward for a period that does not exceed the next four taxable years.

397 (3) (a) A business entity that owns a commercial energy system located in the state that
398 uses solar equipment capable of producing a total of 660 or more kilowatts of electricity may
399 claim a refundable tax credit as provided in this Subsection (3) if:

400 (i) (A) the commercial energy system supplies all or part of the energy required by
401 commercial units owned or used by the business entity; or

402 (B) the business entity sells all or part of the energy produced by the commercial
403 energy system as a commercial enterprise; and

404 (ii) the business entity does not claim a tax credit under Subsection (2)(b).

405 (b) A business entity may claim a tax credit under this section equal to the product of:

406 (i) 0.35 cents; and

407 (ii) the kilowatt hours of electricity produced and either used or sold during the taxable
408 year.

409 (c) The tax credit under this Subsection (3) may be claimed for production occurring
410 during a period of 48 months beginning with the month in which the commercial energy
411 system is placed in commercial service.

412 (d) The tax credit under this Subsection (3) may not be carried forward or carried back.

413 (e) The tax credit under this Subsection (3) is allowed for a commercial energy system
414 completed and placed in service on or after January 1, 2015.

415 (f) A business entity that leases a commercial energy system installed on a commercial
416 unit may claim a tax credit under this Subsection (3) if the business entity that is the lessee can
417 confirm that the lessor irrevocably elects not to claim the tax credit.

418 (4) (a) [~~Except as provided in Subsection (4)(b), the~~] The tax credits provided for
419 under Subsection (2) or (3) are in addition to any tax credits provided under the laws or rules
420 and regulations of the United States.

421 [~~(b) A purchaser of one or more solar units that claims a tax credit under Section~~
422 [59-7-614.3](#) for the purchase of the one or more solar units may not claim a tax credit under this
423 section for that purchase.]

424 [(~~e~~)] (b) (i) The office may set standards for residential and commercial energy systems
425 claiming a tax credit under Subsections (2)(a) and (b) that cover the safety, reliability,
426 efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible
427 for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate
428 and economic manner.

429 (ii) The office may set standards for residential and commercial energy systems that
430 establish the reasonable costs of an energy system, as used in Subsections (2)(a)(ii)(A) and

431 (2)(b)(ii)(A), as an amount per unit of energy production.

432 (iii) A tax credit may not be taken under Subsection (2) or (3) until the office has
433 certified that the energy system has been completely installed and is a viable system for saving
434 or production of energy from renewable resources.

435 ~~[(d)]~~ (c) The office and the commission may make rules in accordance with Title 63G,
436 Chapter 3, Utah Administrative Rulemaking Act, that are necessary to implement this section.

437 (5) (a) On or before October 1, 2012, and every five years thereafter, the Revenue and
438 Taxation Interim Committee shall review each tax credit provided by this section and report its
439 recommendations to the Legislative Management Committee concerning whether the tax credit
440 should be continued, modified, or repealed.

441 (b) The Revenue and Taxation Interim Committee's report under Subsection (5)(a)
442 shall include information concerning the cost of the tax credit, the purpose and effectiveness of
443 the tax credit, and the state's benefit from the tax credit.

444 Section 5. Section **59-10-1002.1** is amended to read:

445 **59-10-1002.1. Removal of tax credit from tax return and prohibition on claiming**
446 **or carrying forward a tax credit -- Conditions for removal and prohibition on claiming or**
447 **carrying forward a tax credit -- Exception -- Commission reporting requirements.**

448 (1) As used in this section, "tax return" means a tax return filed in accordance with this
449 chapter.

450 (2) ~~[Beginning]~~ Except as provided in Subsection (4), beginning two taxable years
451 after the requirements of Subsection (3) are met:

452 (a) the commission shall remove a tax credit allowed under this part from each tax
453 return on which the tax credit appears; and

454 (b) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
455 credit.

456 (3) ~~[The]~~ Except as provided in Subsection (4), the commission shall remove a tax
457 credit allowed under this part from a tax return and a claimant, estate, or trust filing a tax return
458 may not claim or carry forward the tax credit as provided in Subsection (2) if:

459 (a) the total amount of the tax credit claimed or carried forward by all claimants,
460 estates, or trusts filing tax returns is less than \$10,000 per year for three consecutive taxable
461 years beginning on or after January 1, 2002; and

462 (b) less than 10 claimants, estates, and trusts per year for the three consecutive taxable
463 years described in Subsection (3)(a), file a tax return claiming or carrying forward the tax
464 credit.

465 (4) This section does not apply to a tax credit under Section 59-10-1027.

466 ~~[(4)]~~ (5) The commission shall, on or before the November interim meeting of the year
467 after the taxable year in which the requirements of Subsection (3) are met:

468 (a) report to the Revenue and Taxation Interim Committee that in accordance with this
469 section:

470 (i) the commission is required to remove a tax credit from each tax return on which the
471 tax credit appears; and

472 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
473 credit; and

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

476 (i) the commission is required to remove a tax credit from each tax return on which the
477 tax credit appears; and

478 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
479 credit.

480 Section 6. Section **59-10-1304** is amended to read:

481 **59-10-1304. Removal of designation and prohibitions on collection for certain**
482 **contributions on income tax return -- Conditions for removal and prohibitions on**
483 **collection -- Commission reporting requirements.**

484 (1) (a) If a contribution or combination of contributions described in Subsection (1)(b)
485 generate less than \$30,000 per year for three consecutive years, the commission shall remove
486 the designation for the contribution from the individual income tax return and may not collect
487 the contribution from a resident or nonresident individual beginning two taxable years after the
488 three-year period for which the contribution generates less than \$30,000 per year.

489 (b) The following contributions apply to Subsection (1)(a):

490 ~~[(i) the contribution provided for in Section 59-10-1305;]~~

491 ~~[(ii)]~~ (i) the contribution provided for in Section 59-10-1306;

492 ~~[(iii)]~~ (ii) the sum of the contributions provided for in Subsection 59-10-1307(1);

493 [~~(iv)~~] (iii) the contribution provided for in Section 59-10-1308;

494 [~~(v)~~] (iv) the contribution provided for in Section 59-10-1310;

495 [~~(vi)~~] (v) the contribution provided for in Section 59-10-1315;

496 [~~(vii)~~] (vi) the sum of the contributions provided for in:

497 (A) Section 59-10-1316; and

498 (B) Section 59-10-1317; or

499 [~~(viii)~~] (vii) the contribution provided for in Section 59-10-1318.

500 (2) If the commission removes the designation for a contribution under Subsection (1),
501 the commission shall report to the Revenue and Taxation Interim Committee that the
502 commission removed the designation on or before the November interim meeting of the year in
503 which the commission determines to remove the designation.

504 Section 7. Section **63M-1-1102** is amended to read:

505 **63M-1-1102. Definitions.**

506 As used in this part:

507 (1) "Composting" means the controlled decay of landscape waste or sewage sludge and
508 organic industrial waste, or a mixture of these, by the action of bacteria, fungi, molds, and other
509 organisms.

510 (2) "Postconsumer waste material" means any product generated by a business or
511 consumer that has served its intended end use, and that has been separated from solid waste for
512 the purposes of collection, recycling, and disposition and that does not include secondary waste
513 material.

514 (3) (a) "Recovered materials" means waste materials and by-products that have been
515 recovered or diverted from solid waste.

516 (b) "Recovered materials" does not include those materials and by-products generated
517 from, and commonly reused within, an original manufacturing process.

518 (4) (a) "Recycling" means the diversion of materials from the solid waste stream and
519 the beneficial use of the materials and includes a series of activities by which materials that
520 would become or otherwise remain waste are diverted from the waste stream for collection,
521 separation, and processing, and are used as raw materials or feedstocks in lieu of or in addition
522 to virgin materials in the manufacture of goods sold or distributed in commerce or the reuse of
523 the materials as substitutes for goods made from virgin materials.

524 (b) "Recycling" does not include burning municipal solid waste for energy recovery.

525 (5) "Recycling market development zone" or "zone" means an area designated by the
526 office as meeting the requirements of this part.

527 (6) (a) "Secondary waste material" means industrial by-products that go to disposal
528 facilities and waste generated after completion of a manufacturing process.

529 (b) "Secondary waste material" does not include internally generated scrap commonly
530 returned to industrial or manufacturing processes, such as home scrap and mill broke.

531 (7) [~~"State tax incentives," "tax incentives," or "tax benefits"~~] "Tax incentive" means
532 [~~the~~] a nonrefundable tax [~~credits~~] credit available under [~~Sections 59-7-608 and~~] Section
533 59-7-610 or 59-10-1007.

534 Section 8. **Repealer.**

535 This bill repeals:

536 Section **59-7-602, Credit for cash contributions to sheltered workshops.**

537 Section **59-7-603, Credit for sophisticated technological equipment donated to**
538 **schools.**

539 Section **59-7-608, Targeted jobs tax credit.**

540 ~~§~~ → [~~Section 59-7-609, Historic preservation credit.~~] ← ~~§~~

541 Section **59-7-614.3, Nonrefundable tax credit for qualifying solar projects.**

542 Section **59-10-1011, Tutoring tax credits for dependents with a disability.**

543 Section **59-10-1305, Nongame wildlife contribution -- Credit to Wildlife Resources**

544 **Account.**

545 Section 9. **Effective date.**

546 (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2015.

547 (2) The actions affecting the following have retrospective operation for a taxable year
548 beginning on or after January 1, 2015:

549 (a) Section 59-7-105;

550 (b) Section 59-7-106;

551 (c) Section 59-7-602;

552 (d) Section 59-7-603;

553 (e) Section 59-7-608;

554 ~~§~~ → [~~(f) Section 59-7-609;~~] ← ~~§~~

- 555 (g) Section 59-7-614;
- 556 (h) Section 59-7-614.3;
- 557 (i) Section 59-10-1002.1;
- 558 (j) Section 59-10-1011;
- 559 (k) Section 59-10-1304;
- 560 (l) Section 59-10-1305; and
- 561 (m) Section 63M-1-1102.

Legislative Review Note
as of 11-20-14 2:34 PM

Office of Legislative Research and General Counsel