

**ECONOMIC DEVELOPMENT TAX CREDITS AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Robert M. Spendlove

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**LONG TITLE**

**General Description:**

This bill addresses economic development tax credits.

**Highlighted Provisions:**

This bill:

- ▶ repeals refundable corporate and individual income tax credits for certain business entities generating state tax revenue increases;
  - ▶ provides that the Governor's Office of Economic Development may issue additional income tax credit certificates for investment in certain life science establishments;
- and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-10-1025**, as last amended by Laws of Utah 2015, Chapter 283

**63N-2-802**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-2-803**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-2-808**, as renumbered and amended by Laws of Utah 2015, Chapter 283



28 **63N-2-810**, as renumbered and amended by Laws of Utah 2015, Chapter 283

29 REPEALS:

30 **59-7-614.6**, as last amended by Laws of Utah 2015, Chapter 283

31 **59-10-1109**, as last amended by Laws of Utah 2015, Chapter 283



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

34 Section 1. Section **59-10-1025** is amended to read:

35 **59-10-1025. Nonrefundable tax credit for investment in certain life science**  
36 **establishments.**

37 (1) As used in this section:

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

40 (b) "Eligible claimant, estate, or trust" [~~is as~~] means the same as that term is defined in  
41 Section **63N-2-802**.

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

45 [~~(i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;~~]

46 [~~(ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus~~  
47 ~~Manufacturing; or]~~

48 [~~(iii) NAICS Code 334517, Irradiation Apparatus Manufacturing.]~~

49 (c) "Life science establishment" means an establishment primarily engaged in the  
50 development or manufacture of products in one or more of the following categories:

51 (i) biotechnologies;

52 (ii) medical devices;

53 (iii) medical diagnostics; and

54 (iv) pharmaceuticals.

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

56 (e) "Pass-through entity" [~~is as~~] means the same as that term is defined in Section  
57 **59-10-1402**.

58 (f) "Pass-through entity taxpayer" [~~is as~~] means the same as that term is defined in

59 Section 59-10-1402.

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

61 (i) (A) common stock;

62 (B) preferred stock; or

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

64 (ii) originally issued to:

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

66 (B) a pass-through entity if the eligible claimant, estate, or trust that claims a tax credit

67 under this section was a pass-through entity taxpayer of the pass-through entity on the day on

68 which the qualifying ownership interest was issued and remains a pass-through entity taxpayer

69 of the pass-through entity until the last day of the taxable year for which the eligible claimant,

70 estate, or trust claims a tax credit under this section; and

71 (iii) issued:

72 (A) by a Utah small business corporation;

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

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

75 (h) (i) Except as provided in Subsection (1)(h)(ii), "Utah small business corporation"

76 ~~[is as]~~ means the same as that term is defined in Section 59-10-1022.

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

79 (2) Subject to the other provisions of this section, for a taxable year beginning on or  
80 after January 1, 2011, an eligible claimant, estate, or trust that holds a tax credit certificate  
81 issued to the eligible claimant, estate, or trust in accordance with Section 63N-2-808 for that  
82 taxable year may claim a nonrefundable tax credit in an amount up to 35% of the purchase  
83 price of a qualifying ownership interest in a Utah small business corporation by the claimant,  
84 estate, or trust if:

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

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

89 (c) the eligible claimant, estate, or trust owned less than 30% of the qualifying

90 ownership interest of the Utah small business corporation at the time of the purchase of the  
91 qualifying ownership interest; and

92 (d) on each day of the taxable year [~~of~~] in which the purchase of the qualifying  
93 ownership interest was made, the Utah small business corporation described in Subsection  
94 (2)(a) has at least 50% of its employees in the state.

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

96 (a) may only be claimed by [~~the~~] an eligible claimant, estate, or trust:

97 (i) for a taxable year for which the eligible claimant, estate, or trust holds a tax credit  
98 certificate issued in accordance with Section [63N-2-808](#); and

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

101 (A) the tax credit in the taxable year [~~of~~] in which the purchase of the qualifying  
102 ownership interest was made may not exceed 10% of the purchase price of the qualifying  
103 ownership interest;

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

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

110 (b) may not exceed the lesser of:

111 (i) the amount listed on the tax credit certificate issued in accordance with Section  
112 [63N-2-808](#); or

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

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

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

117 (b) does not hold a tax credit certificate for that taxable year that is issued to the  
118 eligible claimant, estate, or trust by the office in accordance with Section [63N-2-808](#).

119 (5) If a Utah small business corporation in which an eligible claimant, estate, or trust  
120 purchases a qualifying ownership interest fails, dissolves, or otherwise goes out of business, the

121 eligible claimant, estate, or trust may not claim both the tax credit provided in this section and  
 122 a capital loss on the qualifying ownership interest.

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

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

129 Section 2. Section **63N-2-802** is amended to read:

130 **63N-2-802. Definitions.**

131 As used in this part:

132 (1) "Claimant" ~~[has the same meaning as]~~ means the same as that term is defined in  
 133 Section [59-10-1002](#).

134 ~~[(2) "Eligible business entity" means a person that:]~~

135 ~~[(a) enters into an agreement with the office in accordance with this part to receive a~~  
 136 ~~tax credit certificate for a tax credit under Section [59-7-614.6](#) or [59-10-1109](#)];~~

137 ~~[(b) is:]~~

138 ~~[(i) a life science establishment; or]~~

139 ~~[(ii) described in NAICS Code 334413, Semiconductor and Related Device~~  
 140 ~~Manufacturing, of the 2007 North American Industry Classification System of the federal~~  
 141 ~~Executive Office of the President, Office of Management and Budget;]~~

142 ~~[(c) has at least 50% of its employees in the state for each day of a taxable year the~~  
 143 ~~eligible business entity claims a tax credit under Section [59-7-614.6](#) or [59-10-1109](#); and]~~

144 ~~[(d) receives a tax credit certificate from the office in accordance with this part.]~~

145 ~~[(3)]~~ (2) "Eligible claimant, estate, or trust" means a claimant, estate, or trust that:

146 (a) enters into an agreement with the office in accordance with this part to receive a tax  
 147 credit certificate for a tax credit under Section [59-10-1025](#); and

148 (b) receives a tax credit certificate from the office in accordance with this part.

149 ~~[(4) "Eligible new state tax revenues" means an increased amount of tax revenues~~  
 150 ~~generated as a result of an eligible product or project by an eligible business entity or a new~~  
 151 ~~incremental job within the state under the following:]~~

152 ~~[(a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;]~~  
153 ~~[(b) Title 59, Chapter 10, Individual Income Tax Act; and]~~  
154 ~~[(c) Title 59, Chapter 12, Sales and Use Tax Act.]~~  
155 ~~[(5) "Eligible product or project" means any product or project produced by an eligible~~  
156 ~~business entity that was not produced prior to the date of an agreement with the office under~~  
157 ~~Section [63N-2-808](#);~~  
158 ~~[(a) by the eligible business entity; and]~~  
159 ~~[(b) within the state.]~~  
160 ~~[(6) "Life science establishment" has the same meaning as defined in Section~~  
161 ~~[59-10-1025](#).]~~  
162 ~~[(7) "New incremental job within the state" means, with respect to an eligible business~~  
163 ~~entity, an employment position that:]~~  
164 ~~[(a) did not exist within the state before:]~~  
165 ~~[(i) the eligible business entity entered into an agreement with the office in accordance~~  
166 ~~with this part; and]~~  
167 ~~[(ii) the eligible product was produced or the eligible project began;]~~  
168 ~~[(b) is not shifted from one location in the state to another location in the state; and]~~  
169 ~~[(c) is established to the satisfaction of the office, including by amounts paid or~~  
170 ~~withheld by the eligible business entity under Title 59, Chapter 10, Individual Income Tax~~  
171 ~~Act.]~~  
172 ~~[(8)] (3) "Tax credit" means a tax credit under[:] [Section 59-10-1025](#).~~  
173 ~~[(a) Section [59-7-614.6](#);~~  
174 ~~[(b) Section [59-10-1025](#); or]~~  
175 ~~[(c) Section [59-10-1109](#).]~~  
176 ~~[(9)] (4) "Tax credit applicant" means a person that applies to the office to receive a tax~~  
177 ~~credit certificate under this part.~~  
178 ~~[(10)] (5) "Tax credit certificate" means a certificate issued by the office that:~~  
179 (a) lists the name of the tax credit certificate recipient;  
180 (b) lists the tax credit certificate recipient's taxpayer identification number;  
181 (c) lists the amount of the tax credit certificate recipient's tax credits authorized under  
182 this part for a taxable year; and

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

184 [(H)] (6) "Tax credit certificate recipient" means~~[(a) an eligible business entity that~~  
185 ~~receives a tax credit certificate in accordance with this part for a tax credit under Section~~  
186 ~~59-7-614.6 or 59-10-1109; or (b)]~~ an eligible claimant, estate, or trust that receives a tax credit  
187 certificate in accordance with this part for a tax credit under Section 59-10-1025.

188 Section 3. Section 63N-2-803 is amended to read:

189 **63N-2-803. Tax credits issued by office.**

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

193 [(b) The Legislature intends that a statutory authorization under Subsection (1)(a)  
194 specify:]

195 [(i) the total allocation to the tax credits under Sections 59-7-614.6 and 59-10-1109;  
196 and]

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

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

200 (b) For fiscal year 2016-17 only, the office may issue a total of \$1,000,000 in tax credit  
201 certificates in accordance with this part.

202 (c) For fiscal year 2017-18 only, the office may issue a total of \$1,000,000 in tax credit  
203 certificates in accordance with this part.

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

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

213 [(c) For fiscal year 2011-12 only, if the total amount of tax credit certificates the office

214 issues in fiscal year 2011-12 is less than the amount of tax credit certificates the office may  
215 issue in tax credit certificates under Subsection (2), the office:]

216 [(i) may issue the remaining amount of tax credit certificates in a fiscal year after fiscal  
217 year 2011-12; and]

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

219 Section 4. Section **63N-2-808** is amended to read:

220 **63N-2-808. Agreement between tax credit applicant and office -- Tax credit**  
221 **certificate.**

222 [(1)(a) Except as provided in Subsection ~~63N-2-803~~(3)(b), for each quarter of a fiscal  
223 year after fiscal year 2011-12, the office shall allocate:]

224 [(i) 25% of the total amounts made available for allocation in accordance with Section  
225 ~~63N-2-803~~ for the tax credits under Sections ~~59-7-614.6~~ and ~~59-10-1109~~; and]

226 [(ii) 25% of the amounts made available for allocation in accordance with Section  
227 ~~63N-2-803~~ for the tax credit under Section ~~59-10-1025~~.]

228 [(b) Subject to the other provisions of this part, the office, with advice from the board,  
229 shall determine quarterly:]

230 [(i) the tax credit applicant or applicants to which a tax credit certificate may be  
231 provided; and]

232 [(ii) the amount of tax credit a tax credit applicant may receive.]

233 [(2)] (1) The office, with advice from the board, may enter into an agreement to grant a  
234 tax credit certificate to a tax credit applicant selected in accordance with this part, if the tax  
235 credit applicant meets the conditions established in the agreement and under this part.

236 [(3)] (2) The agreement described in Subsection [(2)] (1) shall:

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

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

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

244 Section 5. Section **63N-2-810** is amended to read:

245 **63N-2-810. Reports on tax credit certificates -- Study by legislative committees.**

246 (1) The office shall include the following information in the annual written report  
247 described in Section 63N-1-301:

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

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

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

252 (2) (a) On or before November 1, 2016, and every five years after November 1, 2016,  
253 the Revenue and Taxation Interim Committee shall:

254 (i) study the tax [~~credits~~] credit allowed under [~~Sections 59-7-614.6;~~] Section  
255 59-10-1025 [~~, and 59-10-1109~~]; and

256 (ii) make recommendations concerning whether the tax [~~credits~~] credit should be  
257 continued, modified, or repealed.

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

259 (i) the cost of the tax [~~credits~~] credit under [~~Sections 59-7-614.6;~~] Section 59-10-1025 [~~;~~  
260 ~~and 59-10-1109~~];

261 (ii) the purposes and effectiveness of the tax [~~credits~~] credit; and

262 (iii) the extent to which the state benefits from the tax [~~credits~~] credit.

263 **Section 6. Repealer.**

264 This bill repeals:

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

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

269 **Section 7. Retrospective operation.**

270 This bill has retrospective operation for a taxable year beginning on or after January 1,  
271 2016.