

**Representative Rex P. Shipp** proposes the following substitute bill:

**ADOPTION TAX CREDIT**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rex P. Shipp**

Senate Sponsor: Deidre M. Henderson

---

---

**LONG TITLE**

**General Description:**

This bill enacts an individual income tax credit for adoption expenses.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
  - ▶ enacts a nonrefundable and a refundable individual income tax credit for adoption expenses for which eligibility depends on the individual's income;
  - ▶ provides for apportionment of the tax credit for adoption expenses;
  - ▶ requires the Department of Workforce Services to certify certain information about an individual's qualification for an adoption expense tax credit and to share that information with the State Tax Commission;
  - ▶ repeals an individual income tax credit for adoption of a child with special needs;
- and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides retrospective operation.



26 **Utah Code Sections Affected:**

27 AMENDS:

28 [59-10-137](#), as last amended by Laws of Utah 2019, Chapters 247 and 465

29 [59-10-1002.2](#), as last amended by Laws of Utah 2016, Chapter 263

30 [62A-4a-607](#), as last amended by Laws of Utah 2017, Chapter 148

31 ENACTS:

32 [35A-1-111](#), Utah Code Annotated 1953

33 [59-10-1041](#), Utah Code Annotated 1953

34 [59-10-1102.1](#), Utah Code Annotated 1953

35 [59-10-1113](#), Utah Code Annotated 1953

36 REPEALS:

37 [59-10-1104](#), as last amended by Laws of Utah 2013, Chapter 414



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

40 Section 1. Section [35A-1-111](#) is enacted to read:

41 **[35A-1-111](#). Certification for adoption tax credit.**

42 (1) An individual who seeks to claim a tax credit under Section [59-10-1041](#) or  
43 [59-10-1113](#) shall apply to the department for a certification that the individual did not receive  
44 any state or federal assistance described in Subsections [59-10-1041](#)(1)(e)(ii)(A), (B), (C), or  
45 (D) during the taxable year in which the adoption is finalized.

46 (2) An individual who applies for a certification under this section shall sign an  
47 information release authorizing the department to disclose the individual's name and  
48 identifying information to the State Tax Commission in accordance with Subsection (5).

49 (3) The department shall issue the certification on a form prescribed by the State Tax  
50 Commission.

51 (4) An individual who receives a certification under this section shall retain the  
52 certification for the same time period a person is required to keep books and records under  
53 Section [59-1-1406](#).

54 (5) The department shall provide the State Tax Commission with an electronic report  
55 stating the name and identifying information of each individual to whom the department issued  
56 a certification under Subsection (1).

57 Section 2. Section **59-10-137** is amended to read:

58 **59-10-137. Review of credits allowed under this chapter.**

59 (1) As used in this section, "committee" means the Revenue and Taxation Interim  
60 Committee.

61 (2) (a) The committee shall review the tax credits described in this chapter as provided  
62 in Subsection (3) and make recommendations concerning whether the tax credits should be  
63 continued, modified, or repealed.

64 (b) In conducting the review required under Subsection (2)(a), the committee shall:

65 (i) schedule time on at least one committee agenda to conduct the review;

66 (ii) invite state agencies, individuals, and organizations concerned with the tax credit  
67 under review to provide testimony;

68 (iii) (A) invite the Governor's Office of Economic Development to present a summary  
69 and analysis of the information for each tax credit regarding which the Governor's Office of  
70 Economic Development is required to make a report under this chapter; and

71 (B) invite the Office of the Legislative Fiscal Analyst to present a summary and  
72 analysis of the information for each tax credit regarding which the Office of the Legislative  
73 Fiscal Analyst is required to make a report under this chapter;

74 (iv) ensure that the committee's recommendations described in this section include an  
75 evaluation of:

76 (A) the cost of the tax credit to the state;

77 (B) the purpose and effectiveness of the tax credit; and

78 (C) the extent to which the state benefits from the tax credit; and

79 (v) undertake other review efforts as determined by the committee chairs or as  
80 otherwise required by law.

81 (3) (a) On or before November 30, 2017, and every three years after 2017, the  
82 committee shall conduct the review required under Subsection (2) of the tax credits allowed  
83 under the following sections:

84 (i) Section **59-10-1004**;

85 (ii) Section **59-10-1010**;

86 (iii) Section **59-10-1015**;

87 (iv) Section **59-10-1025**;

- 88 (v) Section 59-10-1027;
- 89 (vi) Section 59-10-1031;
- 90 (vii) Section 59-10-1032;
- 91 (viii) Section 59-10-1035;
- 92 [~~(ix)~~ Section 59-10-1104;]
- 93 [~~(x)~~ (ix) Section 59-10-1105; and
- 94 [~~(xi)~~ (x) Section 59-10-1108.

95 (b) On or before November 30, 2018, and every three years after 2018, the committee  
96 shall conduct the review required under Subsection (2) of the tax credits allowed under the  
97 following sections:

- 98 (i) Section 59-10-1005;
- 99 (ii) Section 59-10-1006;
- 100 (iii) Section 59-10-1012;
- 101 (iv) Section 59-10-1022;
- 102 (v) Section 59-10-1023;
- 103 (vi) Section 59-10-1028;
- 104 (vii) Section 59-10-1034;
- 105 (viii) Section 59-10-1037;
- 106 (ix) Section 59-10-1107; and
- 107 (x) Section 59-10-1112.

108 (c) On or before November 30, 2019, and every three years after 2019, the committee  
109 shall conduct the review required under Subsection (2) of the tax credits allowed under the  
110 following sections:

- 111 (i) Section 59-10-1007;
- 112 (ii) Section 59-10-1014;
- 113 (iii) Section 59-10-1017;
- 114 (iv) Section 59-10-1018;
- 115 (v) Section 59-10-1019;
- 116 (vi) Section 59-10-1024;
- 117 (vii) Section 59-10-1029;
- 118 (viii) Section 59-10-1033;

- 119 (ix) Section 59-10-1036;
- 120 (x) Section 59-10-1106; and
- 121 (xi) Section 59-10-1111.

122 (d) (i) In addition to the reviews described in this Subsection (3), the committee shall  
123 conduct a review of a tax credit described in this chapter that is enacted on or after January 1,  
124 2017.

125 (ii) The committee shall complete a review described in this Subsection (3)(d) three  
126 years after the effective date of the tax credit and every three years after the initial review date.

127 Section 3. Section 59-10-1002.2 is amended to read:

128 **59-10-1002.2. Apportionment of tax credits.**

129 (1) A nonresident individual or a part-year resident individual [~~that~~] who claims a tax  
130 credit in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1022,  
131 59-10-1023, 59-10-1024, [~~or~~] 59-10-1028, or 59-10-1041 may only claim an apportioned  
132 amount of the tax credit equal to:

133 (a) for a nonresident individual, the product of:

134 (i) the state income tax percentage for the nonresident individual; and

135 (ii) the amount of the tax credit that the nonresident individual would have been  
136 allowed to claim but for the apportionment requirements of this section; or

137 (b) for a part-year resident individual, the product of:

138 (i) the state income tax percentage for the part-year resident individual; and

139 (ii) the amount of the tax credit that the part-year resident individual would have been  
140 allowed to claim but for the apportionment requirements of this section.

141 (2) A nonresident estate or trust that claims a tax credit in accordance with Section  
142 59-10-1017, 59-10-1020, 59-10-1022, 59-10-1024, or 59-10-1028 may only claim an  
143 apportioned amount of the tax credit equal to the product of:

144 (a) the state income tax percentage for the nonresident estate or trust; and

145 (b) the amount of the tax credit that the nonresident estate or trust would have been  
146 allowed to claim but for the apportionment requirements of this section.

147 Section 4. Section 59-10-1041 is enacted to read:

148 **59-10-1041. Nonrefundable adoption tax credit.**

149 (1) As used in this section:

150 (a) "Adoption expense" means a reasonable and necessary adoption fee, court cost,  
151 attorney fee, or other expense that is:

152 (i) directly related to, and for the primary purpose of, adoption of a qualifying child  
153 through a domestic adoption;

154 (ii) not incurred in violation of federal or state law or in carrying out any surrogate  
155 parenting arrangement; and

156 (iii) not paid or reimbursed by an employer or state assistance program.

157 (b) "Domestic adoption" means an adoption of a child who is a United States citizen or  
158 a resident of the United States or its possessions before the adoption effort begins.

159 (c) (i) "Qualifying child" means an individual who is:

160 (A) under the age of 18; or

161 (B) physically or mentally incapable of caring for himself or herself.

162 (ii) "Qualifying child" does not include an individual who is a child of the claimant's  
163 spouse.

164 (d) "Qualifying claimant" means a claimant:

165 (i) whose adjusted gross income is:

166 (A) for a claimant who files a federal income tax return jointly with the claimant's  
167 spouse, \$50,000 or more but less than \$100,000; or

168 (B) for a claimant who files a federal income tax return other than jointly, \$25,000 or  
169 more but less than \$50,000;

170 (ii) who did not, and if the claimant is married, whose spouse did not, receive state or  
171 federal assistance during the taxable year in which the adoption is finalized; and

172 (iii) who applies for and receives a certification described in Section [35A-1-111](#) from  
173 the Department of Workforce Services.

174 (e) (i) "State or federal assistance" means public funds that are:

175 (A) expended for the benefit of an individual in need of financial, medical, food,  
176 housing, or related assistance;

177 (B) means-tested; and

178 (C) provided by a state or federal government.

179 (ii) "State or federal assistance" includes:

180 (A) the Medicaid program, as defined in Section [26-18-2](#);

181 (B) the Employment Support Act described in Title 35A, Chapter 3, Employment  
182 Support Act;

183 (C) the Children's Health Insurance Program created in Title 26, Chapter 40, Utah  
184 Children's Health Insurance Act;

185 (D) the Supplemental Nutrition Assistance Program established in 7 U.S.C. Chapter  
186 51;

187 (E) the Women, Infants, and Children Program established in 42 U.S.C. Sec. 1786;

188 (F) the federal Social Security Act; and

189 (G) housing assistance.

190 (iii) "State or federal assistance" does not include an income tax credit, subtraction, or  
191 deduction.

192 (2) Except as provided in Section 59-10-1002.2, a qualifying claimant may claim, in  
193 the taxable year in which the adoption is finalized, a nonrefundable tax credit equal to the  
194 amount of the qualifying claimant's adoption expenses.

195 (3) A qualifying claimant may carry forward, to the next five taxable years, the amount  
196 of any tax credit that exceeds the qualifying claimant's tax liability for the taxable year.

197 (4) A qualifying claimant may not claim a credit under this section to the extent that  
198 the qualifying claimant claims a federal tax credit under 26 U.S.C. Sec. 23 for the same  
199 adoption expense.

200 (5) A qualifying claimant who is married may claim a tax credit under this section only  
201 if the qualifying claimant and the qualifying claimant's spouse file a joint federal income tax  
202 return.

203 Section 5. Section **59-10-1102.1** is enacted to read:

204 **59-10-1102.1. Apportionment of tax credit.**

205 (1) A nonresident individual or a part-year resident individual who claims the tax credit  
206 described in Section 59-10-1113 may only claim an apportioned amount of the tax credit equal  
207 to the product of:

208 (a) the state income tax percentage for the nonresident individual or the state income  
209 tax percentage for the part-year resident individual; and

210 (b) the amount of the tax credit that the nonresident individual or the part-year resident  
211 individual would have been allowed to claim but for the apportionment requirement of this

212 section.

213 Section 6. Section **59-10-1113** is enacted to read:

214 **59-10-1113. Refundable adoption income tax credit.**

215 (1) As used in this section:

216 (a) "Adoption expense" means a reasonable and necessary adoption fee, court cost,  
217 attorney fee, or other expense that is:

218 (i) directly related to, and for the primary purpose of, adoption of a qualifying child  
219 through a domestic adoption;

220 (ii) not incurred in violation of federal or state law or in carrying out a surrogate  
221 parenting arrangement; and

222 (iii) not paid or reimbursed by an employer or state assistance program.

223 (b) "Domestic adoption" means an adoption of a child who is a United States citizen or  
224 a resident of the United States or its possessions before the adoption effort begins.

225 (c) (i) "Qualifying child" means an individual who is:

226 (A) under the age of 18; or

227 (B) physically or mentally incapable of caring for himself or herself.

228 (ii) "Qualifying child" does not include an individual who is a child of the claimant's  
229 spouse.

230 (d) "Qualifying claimant" means a claimant:

231 (i) whose adjusted gross income is:

232 (A) for a claimant who files a federal income tax return jointly with the claimant's  
233 spouse, less than \$50,000; or

234 (B) for a claimant who files a federal income tax return other than jointly, less than  
235 \$25,000;

236 (ii) who did not, and if the claimant is married, whose spouse did not, receive state or  
237 federal assistance during the taxable year in which the adoption is finalized; and

238 (iii) who applies for and receives a certification described in Section [35A-1-111](#) from  
239 the Department of Workforce Services.

240 (e) "State or federal assistance" means the same as that term is defined in Section  
241 [59-10-1041](#).

242 (2) (a) Subject to the other provisions of this Subsection (2), once an adoption is



243 finalized, a qualifying claimant is eligible to claim a refundable tax credit equal to the amount  
244 of the qualifying claimant's adoption expenses.

245 (b) (i) A qualifying claimant who claims the tax credit described in Subsection (2)(a)  
246 shall first claim the tax credit for the taxable year in which the adoption is finalized.

247 (ii) The amount of the tax credit for the taxable year in which the adoption is finalized  
248 is limited to \$10,000.

249 (c) A qualifying claimant may claim an additional \$10,000 tax credit each taxable year  
250 after the taxable year in which the adoption is finalized until the earlier of:

251 (i) the qualifying claimant has claimed the amount of the tax credit described in  
252 Subsection (2)(a); or

253 (ii) the fourth taxable year after the qualifying claimant first claimed the tax credit  
254 described in Subsection (2)(a).

255 (d) The provisions of Section [59-10-1102.1](#) apply to a nonresident individual or  
256 part-year resident individual.

257 (3) A qualifying claimant may not claim a credit under this section to the extent that  
258 the qualifying claimant claims a federal tax credit under 26 U.S.C. Sec. 23 for the same  
259 adoption expense.

260 (4) A qualifying claimant who is married may claim a tax credit under this section only  
261 if the qualifying claimant and the qualifying claimant's spouse file a joint federal income tax  
262 return.

263 Section 7. Section **62A-4a-607** is amended to read:

264 **62A-4a-607. Promotion of adoption -- Agency notice to potential adoptive**  
265 **parents.**

266 (1) (a) The division and all child-placing agencies licensed under this part shall  
267 promote adoption when that is a possible and appropriate alternative for a child. Specifically,  
268 in accordance with Section [62A-4a-205.6](#), the division shall actively promote the adoption of  
269 all children in ~~[its]~~ the division's custody who have a final plan for termination of parental  
270 rights pursuant to Section [78A-6-314](#) or a primary permanency plan of adoption.

271 (b) ~~[Beginning May 1, 2000, the]~~ The division may not place a child for adoption,  
272 either temporarily or permanently, with any individual or individuals who do not qualify for  
273 adoptive placement pursuant to the requirements of Sections [78B-6-117](#), [78B-6-102](#), and

274 78B-6-137.

275 (2) The division shall obtain or conduct research of prior adoptive families to  
276 determine what families may do to be successful with their adoptive children and shall make  
277 this research available to potential adoptive parents.

278 (3) (a) A child-placing agency licensed under this part shall inform each potential  
279 adoptive parent with whom [it] the child-placing agency is working that:

280 (i) children in the custody of the state are available for adoption;

281 (ii) Medicaid coverage for medical, dental, and mental health services may be available  
282 for these children;

283 (iii) tax benefits, including the tax credit provided for in Section [~~59-10-1104~~]  
284 59-10-1041 or 59-10-1113, and financial assistance may be available to defray the costs of  
285 adopting these children;

286 (iv) training and ongoing support may be available to the adoptive parents of these  
287 children; and

288 (v) information about individual children may be obtained by contacting the division's  
289 offices or [its] the division's Internet site as explained by the child-placing agency.

290 (b) A child-placing agency shall:

291 (i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity;  
292 and

293 (ii) simultaneously distribute a copy of the pamphlet prepared by the division in  
294 accordance with Subsection (3)(d).

295 (c) As a condition of licensure, the child-placing agency shall certify to the Office of  
296 Licensing at the time of license renewal that it has complied with the provisions of this section.

297 (d) [~~Before July 1, 2000, the~~] The division shall:

298 (i) prepare a pamphlet that explains the information that is required by Subsection  
299 (3)(a); and

300 (ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to  
301 child-placing agencies.

302 (e) The division shall respond to any inquiry made as a result of the notice provided in  
303 Subsection (3)(a).

304 Section 8. **Repealer.**

305 This bill repeals:

306 Section **59-10-1104**, Tax credit for adoption of a child who has a special need.

307 Section 9. **Retrospective operation.**

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

309 2020.