

ADOPTION TAX CREDIT

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rex P. Shipp

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill enacts individual income tax credits for adoption expenses.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ enacts a nonrefundable and a refundable individual income tax credit for expenses related to the adoption of a child, for which eligibility depends on the individual's income;
 - ▶ provides for apportionment of the tax credit;
 - ▶ requires the Department of Workforce Services to certify certain information regarding an individual's eligibility 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.

Utah Code Sections Affected:

AMENDS:

29 [59-10-137](#), as last amended by Laws of Utah 2022, Chapter 264

30 [59-10-1002.2](#), as last amended by Laws of Utah 2022, Chapter 12

31 ENACTS:

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

33 [59-10-1046](#), Utah Code Annotated 1953

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

35 [59-10-1114](#), Utah Code Annotated 1953

36 REPEALS:

37 [59-10-1104](#), as last amended by Laws of Utah 2022, Chapter 335

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 [59-10-1046](#) or

43 [59-10-1114](#) shall apply to the department for a certification that:

44 (a) the individual did not receive any state or federal assistance described in Subsection

45 [59-10-1046\(1\)\(e\)\(ii\)\(A\), \(B\), \(C\), or \(D\)](#) during the taxable year in which the adoption is

46 finalized; and

47 (b) the individual finalized an adoption during the taxable year for which the individual

48 applies for a certification.

49 (2) An individual who applies for a certification under this section shall sign an

50 information release authorizing the department to disclose the individual's name and

51 identifying information to the State Tax Commission in accordance with Subsection (5).

52 (3) The department shall issue the certification on a form approved by the State Tax

53 Commission.

54 (4) An individual who receives a certification under this section shall retain the

55 certification for the same time period a person is required to keep books and records under

56 Section 59-1-1406.

57 (5) (a) The department shall provide the State Tax Commission with an electronic
58 report stating the name and identifying information of each individual to whom the department
59 issued a certification under this section for the taxable year.

60 (b) The department shall provide the report described in Subsection (5)(a) on or before
61 January 31 of the year following the year in which the department issued the certifications.

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

63 **59-10-137. Review of credits allowed under this chapter.**

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

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

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

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

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

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

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

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

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

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

83 (C) the extent to which the state benefits from the tax credit; and
84 (v) undertake other review efforts as determined by the committee chairs or as
85 otherwise required by law.

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

- 89 (i) Section 59-10-1004;
- 90 (ii) Section 59-10-1010;
- 91 (iii) Section 59-10-1015;
- 92 (iv) Section 59-10-1025;
- 93 (v) Section 59-10-1027;
- 94 (vi) Section 59-10-1031;
- 95 (vii) Section 59-10-1032;
- 96 (viii) Section 59-10-1035;
- 97 [~~(ix)~~ Section ~~59-10-1104~~];
- 98 [~~(x)~~ (ix) Section 59-10-1105; and
- 99 [~~(xi)~~ (x) Section 59-10-1108.

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

- 103 (i) Section 59-10-1005;
- 104 (ii) Section 59-10-1006;
- 105 (iii) Section 59-10-1012;
- 106 (iv) Section 59-10-1022;
- 107 (v) Section 59-10-1023;
- 108 (vi) Section 59-10-1028;
- 109 (vii) Section 59-10-1034;

110 (viii) Section 59-10-1037; and

111 (ix) Section 59-10-1107.

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

115 (i) Section 59-10-1007;

116 (ii) Section 59-10-1014;

117 (iii) Section 59-10-1017;

118 (iv) Section 59-10-1018;

119 (v) Section 59-10-1019;

120 (vi) Section 59-10-1024;

121 (vii) Section 59-10-1029;

122 (viii) Section 59-10-1036;

123 (ix) Section 59-10-1106; and

124 (x) Section 59-10-1111.

125 (d) (i) In addition to the reviews described in this Subsection (3), the committee shall
126 conduct a review of a tax credit described in this chapter that is enacted on or after January 1,
127 2017.

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

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

131 **59-10-1002.2. Apportionment of tax credits.**

132 (1) A nonresident individual or a part-year resident individual that claims a tax credit
133 in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1022, 59-10-1023,
134 59-10-1024, 59-10-1028, 59-10-1042, 59-10-1043, [~~or~~] 59-10-1044, or 59-10-1046 may only
135 claim an apportioned amount of the tax credit equal to:

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

- 137 (i) the state income tax percentage for the nonresident individual; and
- 138 (ii) the amount of the tax credit that the nonresident individual would have been
- 139 allowed to claim but for the apportionment requirements of this section; or
- 140 (b) for a part-year resident individual, the product of:
- 141 (i) the state income tax percentage for the part-year resident individual; and
- 142 (ii) the amount of the tax credit that the part-year resident individual would have been
- 143 allowed to claim but for the apportionment requirements of this section.

144 (2) A nonresident estate or trust that claims a tax credit in accordance with Section

145 [59-10-1017](#), [59-10-1020](#), [59-10-1022](#), [59-10-1024](#), or [59-10-1028](#) may only claim an

146 apportioned amount of the tax credit equal to the product of:

- 147 (a) the state income tax percentage for the nonresident estate or trust; and
- 148 (b) the amount of the tax credit that the nonresident estate or trust would have been
- 149 allowed to claim but for the apportionment requirements of this section.

150 Section 4. Section **59-10-1046** is enacted to read:

151 **59-10-1046. Nonrefundable adoption expense tax credit.**

152 (1) As used in this section:

153 (a) "Adoption expense" means a reasonable and necessary adoption fee, court cost,

154 attorney fee, or other expense that is:

155 (i) directly related to, and for the primary purpose of, adoption of a qualifying child

156 through a domestic adoption;

157 (ii) not incurred in violation of federal or state law or in carrying out any surrogate

158 parenting arrangement; and

159 (iii) not paid or reimbursed by any employer or state assistance program.

160 (b) "Domestic adoption" means an adoption of a child who is a United States citizen or

161 a resident of the United States or its possessions before the adoption effort begins.

162 (c) (i) "Qualifying child" means an individual who is under 18 years old.

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

164 spouse.

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

166 (i) whose adjusted gross income on a federal tax return is:

167 (A) for a claimant who files the federal tax return jointly with the claimant's spouse,
168 \$55,000 or more but less than \$110,000; or

169 (B) for a claimant who files the federal tax return other than jointly, \$27,500 or more
170 but less than \$55,000;

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

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

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

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

178 (B) means tested; and

179 (C) provided by a state or the federal government.

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

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

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

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

186 (D) the Supplemental Nutrition Assistance Program established in 7 U.S.C. Chapter
187 51, Supplemental Nutrition Assistance Program;

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

189 (F) the federal Social Security Act; and

190 (G) housing assistance.

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

193 (2) Subject to Section 59-10-1002.2, a qualifying claimant may claim, in the taxable
194 year in which the adoption is finalized, a nonrefundable tax credit equal to the lesser of:

195 (a) \$3,500; or

196 (b) the amount of the qualifying claimant's adoption expenses.

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

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

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

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

206 **59-10-1102.1. Apportionment of tax credit.**

207 A nonresident individual or a part-year resident individual who claims a tax credit in
208 accordance with Section 59-10-1114 may claim only an apportioned amount of the tax credit
209 equal to the product of:

210 (1) the state income tax percentage for the nonresident individual or the state income
211 tax percentage for the part-year resident individual; and

212 (2) the amount of the tax credit that the nonresident individual or the part-year resident
213 individual would have been allowed to claim but for the apportionment requirement of this
214 section.

215 Section 6. Section **59-10-1114** is enacted to read:

216 **59-10-1114. Refundable adoption expense tax credit.**

217 (1) As used in this section:

- 218 (a) "Adoption expense" means the same as that term is defined in Section 59-10-1046.
219 (b) "Domestic adoption" means the same as that term is defined in Section 59-10-1046.
220 (c) "Qualifying child" means the same as that term is defined in Section 59-10-1046.
221 (d) "Qualifying claimant" means a claimant:
222 (i) whose adjusted gross income is:
223 (A) for a claimant who files a federal income tax return jointly with the claimant's
224 spouse, less than \$55,000; and
225 (B) for a claimant who files a federal income tax return other than jointly, less than
226 \$27,500;
227 (ii) who did not, and if the claimant is married, whose spouse did not, receive state or
228 federal assistance during the taxable year in which the adoption is finalized; and
229 (iii) who applies for and receives a certification described in Section 35A-1-111 from
230 the Department of Workforce Services.
231 (e) "State or federal assistance" means the same as that term is defined in Section
232 59-10-1046.
233 (2) (a) Subject to Section 59-10-1102.1 and other provisions of this Subsection (2), a
234 qualifying claimant is eligible to claim a refundable tax credit equal to the lesser of:
235 (i) \$3,500; or
236 (ii) the amount of the qualifying claimant's adoption expenses.
237 (b) A qualifying claimant who claims the tax credit described in Subsection (2)(a) shall
238 claim the tax credit for the taxable year in which the adoption is finalized.
239 (3) A qualifying claimant may not claim a credit under this section to the extent that
240 the qualifying claimant claims a federal tax credit under 26 U.S.C. Sec. 23 for the same
241 adoption expense.
242 (4) A qualifying claimant who is married may claim a tax credit under this section only
243 if the qualifying claimant and the qualifying claimant's spouse file a joint federal income tax
244 return.

245 Section 7. **Repealer.**

246 This bill repeals:

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

248 Section 8. **Retrospective operation.**

249 (1) Except as provided in Subsection (2), this bill has retrospective operation for a
250 taxable year beginning on or after January 1, 2023.

251 (2) Section **35A-1-111** has retrospective operation to January 1, 2023.