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ADOPTION TAX CREDIT

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rex P. Shipp

Senate Sponsor: _____

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:



28 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 the individual did not receive
44 any state or federal assistance described in Subsection [59-10-1046\(1\)\(e\)\(ii\)\(A\), \(B\), \(C\), or \(D\)](#)
45 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 approved 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) (a) The department shall provide the State Tax Commission with an electronic
55 report stating the name and identifying information of each individual to whom the department
56 issued a certification under this section for the taxable year.

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

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

60 **59-10-137. Review of credits allowed under this chapter.**

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

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65 continued, modified, or repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 112 (i) Section 59-10-1007;
- 113 (ii) Section 59-10-1014;
- 114 (iii) Section 59-10-1017;
- 115 (iv) Section 59-10-1018;
- 116 (v) Section 59-10-1019;
- 117 (vi) Section 59-10-1024;
- 118 (vii) Section 59-10-1029;
- 119 (viii) Section 59-10-1036;
- 120 (ix) Section 59-10-1106; and

121 (x) 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 claims a tax credit
130 in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1022, 59-10-1023,
131 59-10-1024, 59-10-1028, 59-10-1042, 59-10-1043, [or] 59-10-1044, or 59-10-1046 may only
132 claim an apportioned 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 59-10-1046 is enacted to read:

148 **59-10-1046. Nonrefundable adoption expense 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 any 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 under 18 years old.

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

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

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

164 (A) for a claimant who files the federal tax return jointly with the claimant's spouse,
165 \$50,000 or more but less than \$100,000; or

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

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

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

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

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

175 (B) means tested; and

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

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

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

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

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

183 (D) the Supplemental Nutrition Assistance Program established in 7 U.S.C. Chapter
184 51, Supplemental Nutrition Assistance Program;

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

186 (F) the federal Social Security Act; and

187 (G) housing assistance.

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

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

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

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

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

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

202 **59-10-1102.1. Apportionment of tax credit.**

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

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

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

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

212 **59-10-1114. Refundable adoption expense tax credit.**

213 (1) As used in this section:

- 214 (a) "Adoption expense" means the same as that term is defined in Section 59-10-1046.
- 215 (b) "Domestic adoption" means the same as that term is defined in Section 59-10-1046.
- 216 (c) "Qualifying child" means the same as that term is defined in Section 59-10-1046.
- 217 (d) "Qualifying claimant" means a claimant:
- 218 (i) whose adjusted gross income is:
- 219 (A) for a claimant who files a federal income tax return jointly with the claimant's
- 220 spouse, less than \$50,000; and
- 221 (B) for a claimant who files a federal income tax return other than jointly, less than
- 222 \$25,000;
- 223 (ii) who did not, and if the claimant is married, whose spouse did not, receive state or
- 224 federal assistance during the taxable year in which the adoption is finalized; and
- 225 (iii) who applies for and receives a certification described in Section 35A-1-111 from
- 226 the Department of Workforce Services.
- 227 (e) "State or federal assistance" means the same as that term is defined in Section
- 228 59-10-1046.
- 229 (2) (a) Subject to Section 59-10-1102.1 and other provisions of this Subsection (2), a
- 230 qualifying claimant is eligible to claim a refundable tax credit equal to the amount of the
- 231 qualifying claimant's adoption expenses.
- 232 (b) (i) A qualifying claimant who claims the tax credit described in Subsection (2)(a)
- 233 shall claim the tax credit for the taxable year in which the adoption is finalized.
- 234 (ii) The amount of the tax credit for the taxable year in which the adoption is finalized
- 235 is limited to \$10,000.
- 236 (c) A qualifying claimant may claim an additional \$10,000 tax credit each taxable year
- 237 after the taxable year in which the adoption is finalized until the earlier of:
- 238 (i) the qualifying claimant has claimed the amount of the tax credit described in
- 239 Subsection (2)(a); or
- 240 (ii) the fourth taxable year after the qualifying claimant first claimed the tax credit
- 241 described in Subsection (2)(a).
- 242 (3) A qualifying claimant may not claim a credit under this section to the extent that
- 243 the qualifying claimant claims a federal tax credit under 26 U.S.C. Sec. 23 for the same
- 244 adoption expense.

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

248 Section 7. **Repealer.**

249 This bill repeals:

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

251 Section 8. **Retrospective operation.**

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

254 (2) Section [35A-1-111](#) has retrospective operation to January 1, 2023.