

# SB0071S01 compared with SB0071

~~text~~ shows text that was in SB0071 but was deleted in SB0071S01.

inserted text shows text that was not in SB0071 but was inserted into SB0071S01.

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Senator Evan J. Vickers proposes the following substitute bill:

## CANNABIS BUSINESS TAX CREDIT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:** ~~{}Evan J. Vickers~~

**House Sponsor:** ~~{}\_\_\_\_\_~~

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### LONG TITLE

#### General Description:

This bill enacts a cannabis business expenses income tax credit.

#### Highlighted Provisions:

This bill:

- ▶ enacts a nonrefundable income tax credit for business expenses related to cultivating, processing, or selling medical cannabis within the state~~.~~

~~.~~

- ▶ requires the Department of Agriculture and Food to collect and report tax identification numbers for persons that apply for a license to cultivate, process, or sell medical cannabis to the State Tax Commission; and
- ▶ makes technical and conforming changes.

#### Money Appropriated in this Bill:

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None

### Other Special Clauses:

This bill provides retrospective operation.

### Utah Code Sections Affected:

#### AMENDS:

4-41a-201, as last amended by Laws of Utah 2023, Chapters 273, 313 and 327 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 327

4-41a-1001, as last amended by Laws of Utah 2023, Chapter 317 and renumbered and amended by Laws of Utah 2023, Chapters 273, 307 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 307

### ENACTS:

59-7-627, Utah Code Annotated 1953

59-10-1048, Utah Code Annotated 1953

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

#### Section 1. Section 4-41a-201 is amended to read:

##### **4-41a-201. Cannabis production establishment -- License.**

(1) Except as provided in Subsection (14), a person may not operate a cannabis production establishment without a license that the department issues under this chapter.

(2) (a) (i) Subject to Subsections (6), (7), (8), and (13) and to Section 4-41a-205, for a licensing process that the department initiates after March 17, 2021, the department, through the licensing board, shall issue licenses in accordance with Section 4-41a-201.1.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to specify a transparent and efficient process to:

- (A) solicit applications for a license under this section;
- (B) allow for comments and questions in the development of applications;
- (C) timely and objectively evaluate applications;
- (D) hold public hearings that the department deems appropriate; and
- (E) select applicants to receive a license.

(iii) The department may not issue a license to operate a cannabis production establishment to an applicant who is not eligible for a license under this section.

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(b) An applicant is eligible for a license under this section if the applicant submits to the licensing board:

(i) subject to Subsection (2)(c), a proposed name and address or, for a cannabis cultivation facility, addresses of no more than two facility locations, located in a zone described in Subsection 4-41a-406(2)(a) or (b), where the applicant will operate the cannabis production establishment;

~~[(ii) the name and address]~~ [(ii) the applicant's federal tax identification number for the cannabis production establishment;

[(iii) (iii) the name [and], address, and federal tax identification number of any individual who has:

(A) for a publicly traded company, a financial or voting interest of 2% or greater in the proposed cannabis production establishment;

(B) for a privately held company, a financial or voting interest in the proposed cannabis production establishment; or

(C) the power to direct or cause the management or control of a proposed cannabis production establishment;

[(iii)] [(iv)] an operating plan that:

(A) complies with Section 4-41a-204;

(B) includes operating procedures that comply with this chapter and any law the municipality or county in which the person is located adopts that is consistent with Section 4-41a-406; and

(C) the department or licensing board approves;

[(iv)] [(v)] a statement that the applicant will obtain and maintain a liquid cash account with a financial institution or a performance bond that a surety authorized to transact surety business in the state issues in an amount of at least:

(A) \$100,000 for each cannabis cultivation facility for which the applicant applies; or

(B) \$50,000 for each cannabis processing facility or independent cannabis testing laboratory for which the applicant applies;

[(v)] [(vi)] an application fee in an amount that, subject to Subsection 4-41a-104(5), the department sets in accordance with Section 63J-1-504; and

[(vi)] [(vii)] a description of any investigation or adverse action taken by any licensing

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jurisdiction, government agency, law enforcement agency, or court in any state for any violation or detrimental conduct in relation to any of the applicant's cannabis-related operations or businesses.

(c) (i) A person may not locate a cannabis production establishment:

(A) within 1,000 feet of a community location; or

(B) in or within 600 feet of a district that the relevant municipality or county has zoned as primarily residential.

(ii) The proximity requirements described in Subsection (2)(c)(i) shall be measured from the nearest entrance to the cannabis production establishment by following the shortest route of ordinary pedestrian travel to the property boundary of the community location or residential area.

(iii) The licensing board may grant a waiver to reduce the proximity requirements in Subsection (2)(c)(i) by up to 20% if the licensing board determines that it is not reasonably feasible for the applicant to site the proposed cannabis production establishment without the waiver.

(iv) An applicant for a license under this section shall provide evidence of compliance with the proximity requirements described in Subsection (2)(c)(i).

(3) If the licensing board approves an application for a license under this section and Section 4-41a-201.1:

(a) the applicant shall pay the department:

(i) an initial license fee in an amount that, subject to Subsection 4-41a-104(5), the department sets in accordance with Section 63J-1-504; or

(ii) a fee for a 120-day limited license to operate as a cannabis processing facility described in Subsection (3)(b) that is equal to 33% of the initial license fee described in Subsection (3)(a)(i); and

(b) the department shall notify:

(i) the Department of Public Safety of the license approval and the names of each individual described in Subsection ~~[(2)(b)(ii)]~~ (2)(b)(iii); and

(ii) the State Tax Commission of the license approval and the name and federal tax identification numbers of each person described in Subsection (2)(b)(ii) or (iii).

(4) (a) Except as provided in Subsection (4)(b), a cannabis production establishment

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shall obtain a separate license for each type of cannabis production establishment and each location of a cannabis production establishment.

(b) The licensing board may issue a cannabis cultivation facility license and a cannabis processing facility license to a person to operate at the same physical location or at separate physical locations.

(5) If the licensing board receives more than one application for a cannabis production establishment within the same city or town, the licensing board shall consult with the local land use authority before approving any of the applications pertaining to that city or town.

(6) The licensing board may not issue a license to operate an independent cannabis testing laboratory to a person who:

(a) holds a license or has an ownership interest in a medical cannabis pharmacy, a cannabis processing facility, or a cannabis cultivation facility;

(b) has an owner, officer, director, or employee whose family member holds a license or has an ownership interest in a medical cannabis pharmacy, a cannabis processing facility, or a cannabis cultivation facility; or

(c) proposes to operate the independent cannabis testing laboratory at the same physical location as a medical cannabis pharmacy, a cannabis processing facility, or a cannabis cultivation facility.

(7) The licensing board may not issue a license to operate a cannabis production establishment to an applicant if any individual described in Subsection (2)(b)(ii):

(a) has been convicted under state or federal law of:

(i) a felony; or

(ii) after December 3, 2018, a misdemeanor for drug distribution;

(b) is younger than 21 years old; or

(c) after September 23, 2019, until January 1, 2023, is actively serving as a legislator.

(8) (a) If an applicant for a cannabis production establishment license under this section holds a license under Title 4, Chapter 41, Hemp and Cannabinoid Act, the licensing board may not give preference to the applicant based on the applicant's status as a holder of the license.

(b) If an applicant for a license to operate a cannabis cultivation facility under this section holds a license to operate a medical cannabis pharmacy under this title, the licensing

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board may give consideration to the applicant based on the applicant's status as a holder of a medical cannabis pharmacy license if:

(i) the applicant demonstrates that a decrease in costs to patients is more likely to result from the applicant's vertical integration than from a more competitive marketplace; and

(ii) the licensing board finds multiple other factors, in addition to the existing license, that support granting the new license.

(9) The licensing board may revoke a license under this part:

(a) if the cannabis production establishment does not begin cannabis production operations within one year after the day on which the licensing board issues the initial license;

(b) after the third of the same violation of this chapter in any of the licensee's licensed cannabis production establishments or medical cannabis pharmacies;

(c) if any individual described in Subsection (2)(b) is convicted, while the license is active, under state or federal law of:

(i) a felony; or

(ii) after December 3, 2018, a misdemeanor for drug distribution;

(d) if the licensee fails to provide the information described in Subsection ~~[(2)(b)(vi)]~~ (2)(b)(v) at the time of application, or fails to supplement the information described in Subsection ~~[(2)(b)(vi)]~~ (2)(b)(v) with any investigation or adverse action that occurs after the submission of the application within 14 calendar days after the licensee receives notice of the investigation or adverse action;

(e) if the cannabis production establishment demonstrates a willful or reckless disregard for the requirements of this chapter or the rules the department makes in accordance with this chapter;

(f) if, after a change of ownership described in Subsection (15)(b), the board determines that the cannabis production establishment no longer meets the minimum standards for licensure and operation of the cannabis production establishment described in this chapter; or

(g) for an independent cannabis testing laboratory, if the independent cannabis testing laboratory fails to substantially meet the performance standards described in Subsection (14)(b).

(10) (a) A person who receives a cannabis production establishment license under this

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chapter, if the municipality or county where the licensed cannabis production establishment will be located requires a local land use permit, shall submit to the licensing board a copy of the licensee's approved application for the land use permit within 120 days after the day on which the licensing board issues the license.

(b) If a licensee fails to submit to the licensing board a copy of the licensee's approved land use permit application in accordance with Subsection (10)(a), the licensing board may revoke the licensee's license.

(11) The department shall deposit the proceeds of a fee that the department imposes under this section into the Qualified Production Enterprise Fund.

(12) The department shall begin accepting applications under this part on or before January 1, 2020.

(13) (a) The department's authority, and consequently the licensing board's authority, to issue a license under this section is plenary and is not subject to review.

(b) Notwithstanding Subsection (2)(a)(ii)(A), the decision of the department to award a license to an applicant is not subject to:

(i) Title 63G, Chapter 6a, Part 16, Protests; or

(ii) Title 63G, Chapter 6a, Part 17, Procurement Appeals Board.

(14) (a) Notwithstanding this section, the department:

(i) may operate or partner with a research university to operate an independent cannabis testing laboratory;

(ii) if the department operates or partners with a research university to operate an independent cannabis testing laboratory, may not cease operating or partnering with a research university to operate the independent cannabis testing laboratory unless:

(A) the department issues at least two licenses to independent cannabis testing laboratories; and

(B) the department has ensured that the licensed independent cannabis testing laboratories have sufficient capacity to provide the testing necessary to support the state's medical cannabis market; and

(iii) after ceasing department or research university operations under Subsection (14)(a)(ii) shall resume independent cannabis testing laboratory operations at any time if:

(A) fewer than two licensed independent cannabis testing laboratories are operating; or

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(B) the licensed independent cannabis testing laboratories become, in the department's determination, unable to fully meet the market demand for testing.

(b) (i) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish performance standards for the operation of an independent cannabis testing laboratory, including deadlines for testing completion.

(ii) A license that the department issues to an independent cannabis testing laboratory is contingent upon substantial satisfaction of the performance standards described in Subsection (14)(b)(i), as determined by the board.

(15) (a) A cannabis production establishment license is not transferrable or assignable.

(b) If the ownership of a cannabis production establishment changes by 50% or more:

(i) the cannabis production establishment shall submit a new application described in Subsection (2)(b), subject to Subsection (2)(c);

(ii) within 30 days of the submission of the application, the board shall:

(A) conduct the application review described in Section 4-41a-201.1; and

(B) award a license to the cannabis production establishment for the remainder of the term of the cannabis production establishment's license before the ownership change if the cannabis production establishment meets the minimum standards for licensure and operation of the cannabis production establishment described in this chapter; and

(iii) if the board approves the license application, notwithstanding Subsection (3), the cannabis production establishment shall pay a license fee that the department sets in accordance with Section 63J-1-504 in an amount that covers the board's cost of conducting the application review.

### Section 2. Section 4-41a-1001 is amended to read:

#### **4-41a-1001. Medical cannabis pharmacy -- License -- Eligibility.**

(1) A person may not operate as a medical cannabis pharmacy without a license that the department issues under this part.

(2) (a) (i) Subject to Subsections (4) and (5) and to Section 4-41a-1005, the department shall issue a license to operate a medical cannabis pharmacy in accordance with Title 63G, Chapter 6a, Utah Procurement Code.

(ii) The department may not issue a license to operate a medical cannabis pharmacy to an applicant who is not eligible for a license under this section.



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(b) An applicant is eligible for a license under this section if the applicant submits to the department:

(i) subject to Subsection (2)(c), a proposed name and address where the applicant will operate the medical cannabis pharmacy;

~~[(ii) the name and address]~~ [(ii) the applicant's federal tax identification number for the medical cannabis pharmacy;

[(iii) (iii) the name [and], address, and federal tax identification number of an individual who:

(A) for a publicly traded company, has a financial or voting interest of 10% or greater in the proposed medical cannabis pharmacy;

(B) for a privately held company, a financial or voting interest in the proposed medical cannabis pharmacy; or

(C) has the power to direct or cause the management or control of a proposed medical cannabis pharmacy;

[(iii) (iv) for each application that the applicant submits to the department, a statement from the applicant that the applicant will obtain and maintain:

(A) a performance bond in the amount of \$100,000 issued by a surety authorized to transact surety business in the state; or

(B) a liquid cash account in the amount of \$100,000 with a financial institution;

[(iv) (v) an operating plan that:

(A) complies with Section 4-41a-1004;

(B) includes operating procedures to comply with the operating requirements for a medical cannabis pharmacy described in this part and with a relevant municipal or county law that is consistent with Section 4-41a-1106; and

(C) the department approves;

[(v) (vi) an application fee in an amount that, subject to Subsection 4-41a-104(5), the department sets in accordance with Section 63J-1-504; and

[(vi) (vii) a description of any investigation or adverse action taken by any licensing jurisdiction, government agency, law enforcement agency, or court in any state for any violation or detrimental conduct in relation to any of the applicant's cannabis-related operations or businesses.

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(c) (i) A person may not locate a medical cannabis pharmacy:

(A) within 200 feet of a community location; or

(B) in or within 600 feet of a district that the relevant municipality or county has zoned as primarily residential.

(ii) The proximity requirements described in Subsection (2)(c)(i) shall be measured from the nearest entrance to the medical cannabis pharmacy establishment by following the shortest route of ordinary pedestrian travel to the property boundary of the community location or residential area.

(iii) The department may grant a waiver to reduce the proximity requirements in Subsection (2)(c)(i) by up to 20% if the department determines that it is not reasonably feasible for the applicant to site the proposed medical cannabis pharmacy without the waiver.

(iv) An applicant for a license under this section shall provide evidence of compliance with the proximity requirements described in Subsection (2)(c)(i).

(d) The department may not issue a license to an eligible applicant that the department has selected to receive a license until the selected eligible applicant complies with the bond or liquid cash requirement described in Subsection ~~[(2)(b)(iii)] (2)(b)(iv)~~.

(e) If the department receives more than one application for a medical cannabis pharmacy within the same city or town, the department shall consult with the local land use authority before approving any of the applications pertaining to that city or town.

(3) If the department selects an applicant for a medical cannabis pharmacy license under this section, the department shall:

(a) charge the applicant an initial license fee in an amount that, subject to Subsection 4-41a-104(5), the department sets in accordance with Section 63J-1-504;

(b) notify:

(i) the Department of Public Safety of the license approval and the names of each individual described in Subsection ~~[(2)(b)(ii)] (2)(b)(iii)~~; and

(ii) the State Tax Commission of the license approval and the name and federal tax identification numbers of each person described in Subsection (2)(b)(ii) or (iii).

(c) charge the licensee a fee in an amount that, subject to Subsection 4-41a-104(5), the department sets in accordance with Section 63J-1-504, for any change in location, ownership, or company structure.

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(4) The department may not issue a license to operate a medical cannabis pharmacy to an applicant if an individual described in Subsection ~~[(2)(b)(ii)]~~ [(2)(b)(iii)]:

(a) has been convicted under state or federal law of:

(i) a felony; or

(ii) after December 3, 2018, a misdemeanor for drug distribution;

(b) is younger than 21 years old; or

(c) after September 23, 2019, until January 1, 2023, is actively serving as a legislator.

(5) (a) If an applicant for a medical cannabis pharmacy license under this section holds another license under this chapter, the department may not give preference to the applicant based on the applicant's status as a holder of the license.

(b) If an applicant for a medical cannabis pharmacy license under this section holds a license to operate a cannabis cultivation facility under this section, the department may give consideration to the applicant's status as a holder of the license if:

(i) the applicant demonstrates that a decrease in costs to patients is more likely to result from the applicant's vertical integration than from a more competitive marketplace; and

(ii) the department finds multiple other factors, in addition to the existing license, that support granting the new license.

(6) (a) The department may revoke a license under this part:

(i) if the medical cannabis pharmacy does not begin operations within one year after the day on which the department issues an announcement of the department's intent to award a license to the medical cannabis pharmacy;

(ii) after the third the same violation of this chapter in any of the licensee's licensed cannabis production establishments or medical cannabis pharmacies;

(iii) if an individual described in Subsection ~~[(2)(b)(ii)]~~ [(2)(b)(iii)] is convicted, while the license is active, under state or federal law of:

(A) a felony; or

(B) after December 3, 2018, a misdemeanor for drug distribution;

(iv) if the licensee fails to provide the information described in Subsection ~~[(2)(b)(vi)]~~ [(2)(b)(vii)] at the time of application, or fails to supplement the information described in Subsection (2)(b)(vi) with any investigation or adverse action that occurs after the submission of the application within 14 calendar days after the licensee receives notice of the investigation

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or adverse action;

(v) if the medical cannabis pharmacy demonstrates a willful or reckless disregard for the requirements of this chapter or the rules the department makes in accordance with this chapter; or

(vi) if, after a change of ownership described in Subsection (11)(c), the department determines that the medical cannabis pharmacy no longer meets the minimum standards for licensure and operation of the medical cannabis pharmacy described in this chapter.

(b) The department shall rescind a notice of an intent to issue a license under this part to an applicant or revoke a license issued under this part if the associated medical cannabis pharmacy does not begin operation on or before June 1, 2021.

(7) (a) A person who receives a medical cannabis pharmacy license under this chapter, if the municipality or county where the licensed medical cannabis pharmacy will be located requires a local land use permit, shall submit to the department a copy of the licensee's approved application for the land use permit within 120 days after the day on which the department issues the license.

(b) If a licensee fails to submit to the department a copy the licensee's approved land use permit application in accordance with Subsection (7)(a), the department may revoke the licensee's license.

(8) The department shall deposit the proceeds of a fee imposed by this section into the Qualified Production Enterprise Fund.

(9) The department shall begin accepting applications under this part on or before March 1, 2020.

(10) (a) The department's authority to issue a license under this section is plenary and is not subject to review.

(b) Notwithstanding Subsection (2), the decision of the department to award a license to an applicant is not subject to:

(i) Title 63G, Chapter 6a, Part 16, Protests; or

(ii) Title 63G, Chapter 6a, Part 17, Procurement Appeals Board.

(11) (a) A medical cannabis pharmacy license is not transferrable or assignable.

(b) A medical cannabis pharmacy shall report in writing to the department no later than 10 business days before the date of any change of ownership of the medical cannabis

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pharmacy.

(c) If the ownership of a medical cannabis pharmacy changes by 50% or more:

(i) concurrent with the report described in Subsection (11)(b), the medical cannabis pharmacy shall submit a new application described in Subsection (2)(b), subject to Subsection (2)(c);

(ii) within 30 days of the submission of the application, the department shall:

(A) conduct an application review; and

(B) award a license to the medical cannabis pharmacy for the remainder of the term of the medical cannabis pharmacy's license before the ownership change if the medical cannabis pharmacy meets the minimum standards for licensure and operation of the medical cannabis pharmacy described in this chapter; and

(iii) if the department approves the license application, notwithstanding Subsection (3), the medical cannabis pharmacy shall pay a license fee that the department sets in accordance with Section 63J-1-504 in an amount that covers the board's cost of conducting the application review.

Section ~~41~~3. Section **59-7-627** is enacted to read:

### **59-7-627. Nonrefundable cannabis business expenses credit.**

(1) As used in this section:

(a) "Medical cannabis" means the same as that term is defined in Section 26B-4-201.

(b) "Medical cannabis activity" means an activity related to cultivation, processing, or sale of medical cannabis that is permitted under Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, by a qualifying taxpayer.

(c) "Qualifying taxpayer" means a corporation that holds a license issued in accordance with Section 4-41a-201 to operate a cannabis production establishment or Section 4-41a-1001 to sell medical cannabis in the state during the taxable year.

(2) A qualifying taxpayer may claim a nonrefundable tax credit equal to 1.8% multiplied by Utah taxable income that is related to medical cannabis activity.

(3) (a) A qualifying taxpayer may carry forward the amount of the tax credit that exceeds the qualifying taxpayer's tax liability for a period of three years.

(b) A qualifying taxpayer may not carry back the amount of the tax credit that exceeds the qualifying taxpayer's tax liability.

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(4) A qualifying taxpayer may not claim a credit described in Subsection (2) to the extent the qualifying taxpayer claims a business expense for medical cannabis activity as an itemized deduction on the qualifying taxpayer's federal individual income tax return for that taxable year.

Section ~~{2}~~4. Section **59-10-1048** is enacted to read:

### **59-10-1048. Nonrefundable cannabis business expenses credit.**

(1) As used in this section:

(a) "Medical cannabis" means the same as that term is defined in Section 26B-4-201.

(b) "Medical cannabis activity" means the same as that term is defined in Section 59-7-627.

(c) "Pass-through entity income" means income that is derived from or connected with Utah sources related to medical cannabis activity equal to the sum of:

(i) business income as defined in Section 59-10-1402; and

(ii) nonbusiness income as defined in Section 59-10-1402.

(d) "Qualifying claimant" means a pass-through entity taxpayer of a pass-through entity that holds a license issued in accordance with Section 4-41a-201 to operate a cannabis production establishment or Section 4-41a-1001 to sell medical cannabis in the state during the taxable year.

(2) A qualifying claimant may claim a nonrefundable tax credit equal to 1.8% multiplied by pass-through entity income.

(3) (a) A qualifying claimant may carry forward the amount of the tax credit that exceeds the qualifying claimant's tax liability for a period of three years.

(b) A qualifying claimant may not carry back the amount of the tax credit that exceeds the qualifying claimant's tax liability.

(4) A qualifying claimant may not claim a credit described in Subsection (2) to the extent the qualifying claimant claims a business expense for medical cannabis activity as an itemized deduction on the qualifying claimant's federal individual income tax return for that taxable year.

Section ~~{3}~~5. **Effective date.**

This bill takes effect on May 1, 2024.

Section ~~{4}~~6. **Retrospective operation.**

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~~(This bill has)~~ The following sections have retrospective operation for a taxable year beginning on or after January 1, 2024~~(.):~~:

- (1) Section 59-7-627, effective May 1, 2024; and
- (2) Section 59-10-1048, effective May 1, 2024.