

1 **TECHNOLOGY AND LIFE SCIENCE ECONOMIC**
2 **DEVELOPMENT ACT**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David Clark**

6 Senate Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill provides for tax credits related to certain life science companies.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ enacts a nonrefundable income tax credit related to the purchase of an ownership
14 interest in certain business entities;

15 ▶ amends a nonrefundable income tax credit related to certain capital gain
16 transactions; and

17 ▶ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides for retrospective operation for a taxable year beginning on or after
22 January 1, 2011.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **59-10-1022**, as enacted by Laws of Utah 2008, Chapter 389

26 ENACTS:

27 **59-10-1025**, Utah Code Annotated 1953



28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

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

Section 1. Section **59-10-1022** is amended to read:

59-10-1022. Nonrefundable tax credit for capital gain transactions.

(1) As used in this section:

(a) (i) "Capital gain transaction" means a transaction that results in a:

(A) short-term capital gain; or

(B) long-term capital gain.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "transaction."

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

(c) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(d) "Qualifying ~~[stock]~~ ownership interest" means ~~[stock that is]~~ an ownership interest that is:

(i) (A) common stock; ~~[or]~~

(B) preferred stock; or

(C) an ownership interest in a limited liability company or a limited liability partnership;

(ii) ~~[as defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,]~~ originally issued to:

(A) a claimant, estate, or trust; ~~[or]~~

(B) a partnership if the claimant, estate, or trust that claims a tax credit under this section ~~[-(B)]~~ was a partner on the day on which the ~~[stock]~~ qualifying ownership interest was issued~~[-];~~ and ~~[(H)]~~ remains a partner until the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section; ~~[and]~~ or

(C) a limited liability company or a limited liability partnership if the claimant, estate, or trust that claims a tax credit under this section was an owner on the day on which the qualifying ownership interest was issued and remains an owner until the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section; and

(iii) issued:

- 59 (A) by a Utah small business corporation;
- 60 (B) on or after January 1, 2008; and
- 61 (C) for~~[-(F)]~~ money~~[:]~~ or ~~[(H)]~~ other property, except for stock or securities.
- 62 (e) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.
- 63 (f) (i) "Utah small business corporation" means a corporation that:
- 64 (A) except as provided in Subsection (1)(f)(ii), is a small business corporation as
- 65 defined in Section 1244(c)(3), Internal Revenue Code;
- 66 (B) except as provided in Subsection (1)(f)(iii), meets the requirements of Section
- 67 1244(c)(1)(C), Internal Revenue Code; and
- 68 (C) has its commercial domicile in this state.
- 69 (ii) For purposes of this section:
- 70 ~~[(ii) The]~~ (A) the dollar amount listed in Section 1244(c)(3)(A), Internal Revenue
- 71 Code, is considered to be \$2,500,000~~[-];~~ and
- 72 (B) a corporation under Section 1244(c)(3)(A), Internal Revenue Code, is considered to
- 73 include a limited liability company and a limited liability partnership.
- 74 (iii) The phrase "the date the loss on such stock was sustained" in Sections
- 75 1244(c)(1)(C) and 1244(c)(2), Internal Revenue Code, is considered to be "the last day of the
- 76 taxable year for which the claimant, estate, or trust claims a tax credit under this section."
- 77 (2) For a taxable [years] year beginning on or after January 1, [2008] 2011, a claimant,
- 78 estate, or trust that, except as provided in Subsection (4), meets the requirements of Subsection
- 79 (3) may claim a nonrefundable tax credit equal to the product of:
- 80 (a) the total amount of the claimant's, estate's, or trust's short-term capital gain or
- 81 long-term capital gain on a capital gain transaction that occurs on or after January 1, ~~[2008]~~
- 82 2011; and
- 83 (b) ~~[5%]~~ the tax rate imposed under Section 59-10-104(2)(b).
- 84 (3) ~~[For]~~ Except as provided in Subsection (4), for purposes of Subsection (2), a
- 85 claimant, estate, or trust may claim the nonrefundable tax credit allowed by Subsection (2) if:
- 86 (a) 70% or more of the gross proceeds of the capital gain transaction are expended:
- 87 (i) to purchase a qualifying [stock] ownership interest in a Utah small business
- 88 corporation; and
- 89 (ii) within a 12-month period after the day on which the capital gain transaction occurs;

90 and

91 (b) prior to the purchase of the qualifying ~~[stock]~~ ownership interest described in
92 Subsection (3)(a)(i), the claimant, estate, or trust did not have an ownership interest in the Utah
93 small business corporation that issued the qualifying ~~[stock]~~ ownership interest.

94 (4) Notwithstanding Subsection (3), a claimant, estate, or trust may claim the
95 nonrefundable tax credit allowed by Subsection (2) if:

96 (a) the gross proceeds of the capital gain transaction result from the sale of qualifying
97 ownership interest:

98 (i) held for at least two years prior to the sale of the qualifying ownership interest; and

99 (ii) in a Utah small business corporation described in one of the following NAICS
100 codes of the 2007 North American Industry Classification System of the federal Executive
101 Office of the President, Office of Management and Budget:

102 (A) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

103 (B) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
104 Manufacturing; or

105 (C) NAICS Code 334517, Irradiation Apparatus Manufacturing; and

106 (b) on the last day of the taxable year of the capital gain transaction, the Utah small
107 business corporation has at least 50% of its employees in the state.

108 [~~4~~] (5) A claimant, estate, or trust may not carry forward or carry back a tax credit
109 under this section.

110 [~~5~~] (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
111 Act, the commission may make rules:

112 (a) defining the term "gross proceeds"; and

113 (b) prescribing the circumstances under which a claimant, estate, or trust has an
114 ownership interest in a Utah small business corporation.

115 Section 2. Section **59-10-1025** is enacted to read:

116 **59-10-1025. Nonrefundable tax credit for investment in certain businesses.**

117 (1) As used in this section:

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

120 (b) "Qualifying ownership interest" means an ownership interest that is:

121 (i) (A) common stock;
122 (B) preferred stock; or
123 (C) an ownership interest in a limited liability company or a limited liability
124 partnership;
125 (ii) originally issued to:
126 (A) a claimant, estate, or trust;
127 (B) a partnership if the claimant, estate, or trust that claims a tax credit under this
128 section was a partner on the day on which the stock was issued and remains a partner until the
129 last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this
130 section; or
131 (C) a limited liability company or a limited liability partnership if the claimant, estate,
132 or trust that claims a tax credit under this section was an owner on the day on which the
133 qualifying ownership interest was issued and remains an owner until the last day of the taxable
134 year for which the claimant, estate, or trust claims a tax credit under this section; and
135 (iii) issued:
136 (A) by a Utah small business corporation;
137 (B) on or after January 1, 2011; and
138 (C) for money or other property, except for stock or securities.
139 (c) (i) "Utah small business corporation" means a corporation that:
140 (A) except as provided in Subsection (1)(c)(ii), is a small business corporation as
141 defined in Section 1244(c)(3), Internal Revenue Code;
142 (B) except as provided in Subsection (1)(c)(iii), meets the requirements of Section
143 1244(c)(1)(C), Internal Revenue Code; and
144 (C) has its commercial domicile in this state.
145 (ii) For purposes of this section:
146 (A) the dollar amount listed in Section 1244(c)(3)(A), Internal Revenue Code, is
147 considered to be \$2,500,000; and
148 (B) a corporation under Section 1244(c)(3)(A), Internal Revenue Code, is considered to
149 include a limited liability company and a limited liability partnership.
150 (iii) The phrase "the date the loss on such stock was sustained" in Sections
151 1244(c)(1)(C) and 1244(c)(2), Internal Revenue Code, is considered to be "the last day of the

152 taxable year for which the claimant, estate, or trust claims a tax credit under this section."

153 (2) Except as provided in Subsection (3), for a taxable year beginning on or after
154 January 1, 2011, a claimant, estate, or trust may claim a nonrefundable tax credit in an amount
155 equal to 35% of the purchase price of a qualifying ownership interest if:

156 (a) the qualifying ownership interest is issued by a Utah small business corporation
157 described in one of the following NAICS codes of the 2007 North American Industry
158 Classification System of the federal Executive Office of the President, Office of Management
159 and Budget:

160 (i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

161 (ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
162 Manufacturing; or

163 (iii) NAICS Code 334517, Irradiation Apparatus Manufacturing;

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

166 (c) the claimant, estate, or trust owned less than 30% of the qualifying ownership
167 interest of the Utah small business corporation at the time of the purchase of the qualifying
168 ownership interest; and

169 (d) on the last day of the taxable year of the purchase of the qualifying ownership
170 interest, the Utah small business corporation has at least 50% of its employees in the state.

171 (3) Except as provided in Subsection (4), the tax credit under Subsection (2):

172 (a) may be carried forward for two years from the year of the purchase of the qualifying
173 ownership interest;

174 (b) (i) may not exceed 10% of the purchase price of the qualifying ownership interest
175 in:

176 (A) the year of the purchase of the qualifying ownership interest; and

177 (B) the year after the year described in Subsection (3)(b)(i)(A); and

178 (ii) may not exceed 15% of the purchase price of the qualifying ownership interest in
179 the year two years after the year described in Subsection (3)(b)(i)(A); and

180 (c) may not exceed \$350,000 in a year.

181 (4) A claimant, estate, or trust may not claim a tax credit under this section for a

182 taxable year if the claimant, estate, or trust has sold any of the qualifying ownership interest

183 during the taxable year.

184 (5) If a Utah small business corporation from which a claimant, estate, or trust
185 purchases qualifying ownership interest fails, dissolves, or otherwise goes out of business, the
186 claimant, estate, or trust may not claim both the credit provided in Subsection (2) and a capital
187 loss on the qualifying ownership interest.

188 (6) A claimant, estate, or trust may not carry back a credit under this section.

189 **Section 3. Retrospective operation.**

190 This bill provides for retrospective operation for a taxable year beginning on or after
191 January 1, 2011.

Legislative Review Note
as of 3-1-11 4:25 PM

Office of Legislative Research and General Counsel