

1 **LIFE SCIENCE AND TECHNOLOGY TAX CREDIT**

2 **AMENDMENTS**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: Patrick Painter

7
8 **LONG TITLE**

9 **Committee Note:**

10 The Revenue and Taxation Interim Committee recommended this bill.

11 **General Description:**

12 This bill makes changes to certain tax credits.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ makes changes to life science and technology tax credits; and
- 16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill has retrospective operation for a taxable year beginning on or after January 1,
21 2012.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **59-7-614.6**, as enacted by Laws of Utah 2011, Chapter 306

25 **59-10-1025**, as enacted by Laws of Utah 2011, Chapter 306

26 **59-10-1026**, as enacted by Laws of Utah 2011, Chapter 306



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

29 Section 1. Section **59-7-614.6** is amended to read:

30 **59-7-614.6. Refundable tax credit for certain business entities generating state tax**
31 **revenue increases.**

32 (1) As used in this section:

33 (a) "Eligible business entity" is as defined in Section 63M-1-2902.

34 (b) "Eligible new state tax revenues" is as defined in Section 63M-1-2902.

35 [~~(b)~~] (c) "Office" means the Governor's Office of Economic Development.

36 [~~(c)~~] (d) "Pass-through entity" is as defined in Section 59-10-1402.

37 [~~(d)~~] (e) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

38 (2) Subject to the other provisions of this section, an eligible business entity may:

39 (a) claim a refundable tax credit as provided in Subsection (3); or

40 (b) if the eligible business entity is a pass-through entity, pass through to one or more
41 pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part
42 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a refundable tax credit that
43 the eligible business entity could otherwise claim under this section.

44 (3) (a) Except as provided in Subsection (3)(b), the amount of the tax credit an eligible
45 business entity may claim or pass through is the amount listed on the tax credit certificate that
46 the office issues to the eligible business entity for a taxable year in accordance with Section
47 63M-1-2908.

48 (b) A tax credit under this section may not exceed the eligible new state tax revenues
49 generated by an eligible business entity for the taxable year for which the eligible business
50 entity claims a tax credit under this section.

51 (4) An eligible business entity may only claim or pass through a tax credit under this
52 section:

53 (a) for a taxable year for which the eligible business entity holds a tax credit certificate
54 issued in accordance with Section 63M-1-2908; and

55 (b) subject to obtaining a tax credit certificate for each taxable year as required by
56 Subsection (4)(a):

57 (i) for the taxable year in which the eligible business entity first generates eligible new
58 state tax revenues; and

59 (ii) for two taxable years immediately following the year described in Subsection
60 (4)(b)(i).

61 (5) An eligible business entity may not:

62 (a) carry forward or carry back a tax credit under this section; or

63 (b) claim or pass through a tax credit in an amount greater than the amount listed on a
64 tax credit certificate issued in accordance with Section 63M-1-2908 for a taxable year.

65 Section 2. Section **59-10-1025** is amended to read:

66 **59-10-1025. Nonrefundable tax credit for investment in certain life science**
67 **establishments.**

68 (1) As used in this section:

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

71 (b) "Eligible claimant, estate, or trust" is as defined in Section 63M-1-2902.

72 (c) "Life science establishment" means an establishment described in one of the
73 following NAICS codes of the 2007 North American Industry Classification System of the
74 federal Executive Office of the President, Office of Management and Budget:

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

76 (ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus

77 Manufacturing; or

78 (iii) NAICS Code 334517, Irradiation Apparatus Manufacturing.

79 (d) "Office" means the Governor's Office of Economic Development.

80 (e) "Pass-through entity" is as defined in Section 59-10-1402.

81 (f) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

82 (g) "Qualifying ownership interest" means an ownership interest that is:

83 (i) (A) common stock;

84 (B) preferred stock; or

85 (C) an ownership interest in a pass-through entity;

86 (ii) originally issued to:

87 (A) an eligible claimant, estate, or trust; or

88 (B) a pass-through entity if the eligible claimant, estate, or trust that claims a tax credit

89 under this section was a pass-through entity taxpayer of the pass-through entity on the day on

90 which the qualifying ownership interest was issued and remains a pass-through entity taxpayer
91 of the pass-through entity until the last day of the taxable year for which the eligible claimant,
92 estate, or trust claims a tax credit under this section; and

93 (iii) issued:

94 (A) by a Utah small business corporation;

95 (B) on or after January 1, 2011; and

96 (C) for money or other property, except for stock or securities.

97 (h) (i) Except as provided in Subsection (1)(h)(ii), "Utah small business corporation" is
98 as defined in Section 59-10-1022.

99 (ii) For purposes of this section, a corporation under Section 1244(c)(3)(A), Internal
100 Revenue Code, is considered to include a pass-through entity.

101 (2) Subject to the other provisions of this section, for a taxable year beginning on or
102 after January 1, 2011, an eligible claimant, estate, or trust that holds a tax credit certificate
103 issued to the eligible claimant, estate, or trust in accordance with Section 63M-1-2908 for that
104 taxable year may claim a nonrefundable tax credit in an amount up to 35% of the purchase
105 price of a qualifying ownership interest in a Utah small business corporation by the claimant,
106 estate, or trust if:

107 (a) the qualifying ownership interest is issued by a Utah small business corporation that
108 is a life science establishment;

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

111 (c) the eligible claimant, estate, or trust owned less than 30% of the qualifying
112 ownership interest of the Utah small business corporation at the time of the purchase of the
113 qualifying ownership interest; and

114 (d) on each day of the taxable year of the purchase of the qualifying ownership interest,
115 the Utah small business corporation described in Subsection (2)(a) has at least 50% of its
116 employees in the state.

117 (3) Subject to Subsection (4), the tax credit under Subsection (2):

118 (a) may only be claimed by the eligible claimant, estate, or trust:

119 (i) for a taxable year for which the eligible claimant, estate, or trust holds a tax credit
120 certificate issued in accordance with Section 63M-1-2908; and

121 (ii) subject to obtaining a tax credit certificate for each taxable year as required by
122 Subsection (3)(a)(i), for a period of three taxable years as follows:

123 (A) the tax credit in the taxable year of the purchase of the qualifying ownership
124 interest may not exceed 10% of the purchase price of the qualifying ownership interest;

125 (B) the tax credit in the taxable year after the taxable year described in Subsection
126 (3)(a)(ii)(A) may not exceed 10% of the purchase price of the qualifying ownership interest;
127 and

128 (C) the tax credit in the taxable year two years after the taxable year described in
129 Subsection (3)(a)(ii)(A) may not exceed 15% of the purchase price of the qualifying ownership
130 interest; and

131 (b) may not exceed the lesser of:

132 (i) the amount listed on the tax credit certificate issued in accordance with Section
133 63M-1-2908; or

134 (ii) \$350,000 in a taxable year.

135 (4) An eligible claimant, estate, or trust may not claim a tax credit under this section
136 for a taxable year if the eligible claimant, estate, or trust:

137 (a) has sold any of the qualifying ownership interest during the taxable year; or

138 (b) does not hold a tax credit certificate for that taxable year that is issued to the
139 eligible claimant, estate, or trust by the office in accordance with Section 63M-1-2908.

140 (5) If a Utah small business corporation in which an eligible claimant, estate, or trust
141 purchases a qualifying ownership interest fails, dissolves, or otherwise goes out of business, the
142 eligible claimant, estate, or trust may not claim both the tax credit provided in this section and
143 a capital loss on the qualifying ownership interest.

144 (6) If an eligible claimant is a pass-through entity taxpayer that files a return under
145 Chapter 7, Corporate Franchise and Income Taxes, the eligible claimant may claim the tax
146 credit under this section on the return filed under Chapter 7, Corporate Franchise and Income
147 Taxes.

148 [~~6~~] (7) A claimant, estate, or trust may not carry forward or carry back a tax credit
149 under this section.

150 Section 3. Section **59-10-1026** is amended to read:

151 **59-10-1026. Nonrefundable tax credit for capital gain transactions related to a**

152 **life science establishment.**

153 (1) As used in this section:

154 (a) (i) "Capital gain transaction" means a transaction that results in a short-term capital
155 gain or long-term capital gain.

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

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

160 (c) "Eligible claimant, estate, or trust" is as defined in Section 63M-1-2902.

161 (d) "Life science establishment" means an establishment described in one of the
162 following NAICS codes of the 2007 North American Industry Classification System of the
163 federal Executive Office of the President, Office of Management and Budget:

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

165 (ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
166 Manufacturing; or

167 (iii) NAICS Code 334517, Irradiation Apparatus Manufacturing.

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

169 (f) "Office" means the Governor's Office of Economic Development.

170 (g) "Pass-through entity" is as defined in Section 59-10-1402.

171 (h) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

172 (i) "Qualifying ownership interest" means an ownership interest that is:

173 (i) (A) common stock;

174 (B) preferred stock; or

175 (C) an ownership interest in a pass-through entity;

176 (ii) originally issued to:

177 (A) an eligible claimant, estate, or trust; or

178 (B) a pass-through entity if the eligible claimant, estate, or trust that claims a tax credit
179 under this section was a pass-through entity taxpayer of the pass-through entity on the day on
180 which the qualifying ownership interest was issued and remains a pass-through entity taxpayer
181 of the pass-through entity until the last day of the taxable year for which the eligible claimant,
182 estate, or trust claims a tax credit under this section; and

183 (iii) issued:
184 (A) by a Utah small business corporation;
185 (B) on or after January 1, 2011; and
186 (C) for money or other property, except for stock or securities.
187 (j) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.
188 (k) (i) Except as provided in Subsection (1)(k)(ii), "Utah small business corporation" is
189 as defined in Section 59-10-1022.
190 (ii) For purposes of this section, a corporation under Section 1244(c)(3)(A), Internal
191 Revenue Code, is considered to include a pass-through entity.
192 (2) Subject to the other provisions of this section, for a taxable year beginning on or
193 after January 1, 2011, an eligible claimant, estate, or trust that holds a tax credit certificate
194 issued to the eligible claimant, estate, or trust in accordance with Section 63M-1-2908 for that
195 taxable year and meets the requirements of Subsection (3) may claim a nonrefundable tax
196 credit equal to the lesser of:
197 (a) the amount shown on the tax credit certificate issued to the eligible claimant, estate,
198 or trust by the office in accordance with Section 63M-1-2908; or
199 (b) the product of:
200 (i) the total amount of the eligible claimant's, estate's, or trust's short-term capital gain
201 or long-term capital gain on a capital gain transaction that occurs on or after January 1, 2011;
202 and
203 (ii) the tax rate imposed under Subsection 59-10-104(2)(b).
204 (3) An eligible claimant, estate, or trust may claim the nonrefundable tax credit
205 allowed by Subsection (2) if:
206 (a) the gross proceeds of the capital gain transaction result from the sale of a qualifying
207 ownership interest:
208 (i) held for at least two taxable years before the sale of the qualifying ownership
209 interest; and
210 (ii) in a Utah small business corporation that is a life science establishment; and
211 (b) on each day of the taxable year of the capital gain transaction, the Utah small
212 business corporation described in Subsection (3)(a)(ii) has at least 50% of its employees in the
213 state.

214 (4) An eligible claimant, estate, or trust may not:
215 (a) carry forward or carry back a tax credit under this section; or
216 (b) claim a tax credit for a taxable year for which the eligible claimant, estate, or trust
217 does not hold a tax credit certificate issued to the eligible claimant, estate, or trust for that
218 taxable year by the office in accordance with Section 63M-1-2908.

219 (5) If an eligible claimant is a pass-through entity taxpayer that files a return under
220 Chapter 7, Corporate Franchise and Income Taxes, the eligible claimant may claim the tax
221 credit under this section on the return filed under Chapter 7, Corporate Franchise and Income
222 Taxes.

223 [~~5~~] (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
224 Act, the commission may make rules:

225 (a) defining the term "gross proceeds"; and
226 (b) prescribing the circumstances under which an eligible claimant, estate, or trust has
227 a qualifying ownership interest in a Utah small business corporation.

228 Section 4. **Retrospective operation.**

229 This bill has retrospective operation for a taxable year beginning on or after January 1,
230 2012.

Legislative Review Note
as of 11-17-11 2:07 PM

Office of Legislative Research and General Counsel