

**ECONOMIC DEVELOPMENT TAX CREDITS AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Robert M. Spendlove

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**LONG TITLE**

**General Description:**

This bill addresses economic development tax credits.

**Highlighted Provisions:**

This bill:

- ▶ repeals refundable corporate and individual income tax credits for certain business entities generating state tax revenue increases;
- ▶ provides that the Governor's Office of Economic Development may issue additional income tax credit certificates for investment in certain life science establishments;
- ▶ changes the criteria for tax credits; 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:

**59-10-1025**, as last amended by Laws of Utah 2015, Chapter 283

**63N-2-802**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-2-803**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-2-806**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-2-808**, as renumbered and amended by Laws of Utah 2015, Chapter 283

**63N-2-810**, as renumbered and amended by Laws of Utah 2015, Chapter 283

30 REPEALS:

31 **59-7-614.6**, as last amended by Laws of Utah 2015, Chapter 283

32 **59-10-1109**, as last amended by Laws of Utah 2015, Chapter 283

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

35 Section 1. Section **59-10-1025** is amended to read:

36 **59-10-1025. Nonrefundable tax credit for investment in certain life science**  
37 **establishments.**

38 (1) As used in this section:

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

41 (b) "Eligible claimant, estate, or trust" [~~is as~~] means the same as that term is defined in  
42 Section **63N-2-802**.

43 [~~(c) "Life science establishment" means an establishment described in one of the~~  
44 ~~following NAICS codes of the 2007 North American Industry Classification System of the~~  
45 ~~federal Executive Office of the President, Office of Management and Budget:]~~

46 [~~(i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;~~

47 [~~(ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus~~  
48 ~~Manufacturing; or]~~

49 [~~(iii) NAICS Code 334517, Irradiation Apparatus Manufacturing.]~~

50 (c) "Life science establishment" means an establishment primarily engaged in the  
51 development or manufacture of products in one or more of the following categories:

52 (i) biotechnologies;

53 (ii) medical devices;

54 (iii) medical diagnostics; and

55 (iv) pharmaceuticals.

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

57 (e) "Pass-through entity" [~~is as~~] means the same as that term is defined in Section

58 59-10-1402.

59 (f) "Pass-through entity taxpayer" [~~is as~~] means the same as that term is defined in  
60 Section 59-10-1402.

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

62 (i) (A) common stock;

63 (B) preferred stock; or

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

65 (ii) originally issued to:

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

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

72 (iii) issued:

73 (A) by a Utah small business corporation;

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

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

76 (h) (i) Except as provided in Subsection (1)(h)(ii), "Utah small business corporation"  
77 [~~is as~~] means the same as that term is defined in Section 59-10-1022.

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

80 (2) Subject to the other provisions of this section, for a taxable year beginning on or  
81 after January 1, 2011, an eligible claimant, estate, or trust that holds a tax credit certificate  
82 issued to the eligible claimant, estate, or trust in accordance with Section 63N-2-808 for that  
83 taxable year may claim a nonrefundable tax credit in an amount up to 35% of the purchase  
84 price of a qualifying ownership interest in a Utah small business corporation by the claimant,  
85 estate, or trust if:

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

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

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

93 (d) on each day of the taxable year ~~[of]~~ in which the purchase of the qualifying  
94 ownership interest was made, the Utah small business corporation described in Subsection  
95 (2)(a) has at least 50% of its employees in the state.

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

97 (a) may only be claimed by ~~[the]~~ an eligible claimant, estate, or trust:

98 (i) for a taxable year for which the eligible claimant, estate, or trust holds a tax credit  
99 certificate issued in accordance with Section 63N-2-808; and

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

102 (A) the tax credit in the taxable year ~~[of]~~ in which the purchase of the qualifying  
103 ownership interest was made may not exceed 10% of the purchase price of the qualifying  
104 ownership interest;

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

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

111 (b) may not exceed the lesser of:

112 (i) the amount listed on the tax credit certificate issued in accordance with Section  
113 63N-2-808; or

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

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

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

118 (b) does not hold a tax credit certificate for that taxable year that is issued to the  
119 eligible claimant, estate, or trust by the office in accordance with Section 63N-2-808.

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

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

128 (7) A claimant, estate, or trust may not carry forward or carry back a tax credit under  
129 this section.

130 Section 2. Section 63N-2-802 is amended to read:

131 **63N-2-802. Definitions.**

132 As used in this part:

133 (1) "Claimant" [~~has the same meaning as~~] means the same as that term is defined in  
134 Section 59-10-1002.

135 [~~(2) "Eligible business entity" means a person that:~~]

136 [~~(a) enters into an agreement with the office in accordance with this part to receive a~~  
137 ~~tax credit certificate for a tax credit under Section 59-7-614.6 or 59-10-1109;~~]

138 [~~(b) is:~~]

139 [~~(i) a life science establishment; or~~]

140 [~~(ii) described in NAICS Code 334413, Semiconductor and Related Device~~

141 ~~Manufacturing, of the 2007 North American Industry Classification System of the federal~~

142 Executive Office of the President, Office of Management and Budget;]

143 [~~(c) has at least 50% of its employees in the state for each day of a taxable year the~~  
144 ~~eligible business entity claims a tax credit under Section 59-7-614.6 or 59-10-1109; and]~~

145 [~~(d) receives a tax credit certificate from the office in accordance with this part.]~~

146 [~~(3)~~] (2) "Eligible claimant, estate, or trust" means a claimant, estate, or trust that:

147 (a) enters into an agreement with the office in accordance with this part to receive a tax  
148 credit certificate for a tax credit under Section 59-10-1025; and

149 (b) receives a tax credit certificate from the office in accordance with this part.

150 [~~(4) "Eligible new state tax revenues" means an increased amount of tax revenues~~  
151 ~~generated as a result of an eligible product or project by an eligible business entity or a new~~  
152 ~~incremental job within the state under the following:]~~

153 [~~(a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;]~~

154 [~~(b) Title 59, Chapter 10, Individual Income Tax Act; and]~~

155 [~~(c) Title 59, Chapter 12, Sales and Use Tax Act.]~~

156 [~~(5) "Eligible product or project" means any product or project produced by an eligible~~  
157 ~~business entity that was not produced prior to the date of an agreement with the office under~~  
158 ~~Section 63N-2-808:]~~

159 [~~(a) by the eligible business entity; and]~~

160 [~~(b) within the state.]~~

161 [~~(6)~~] (3) "Life science establishment" [~~has the same meaning as~~] means the same as  
162 that term is defined in Section 59-10-1025.

163 [~~(7) "New incremental job within the state" means, with respect to an eligible business~~  
164 ~~entity, an employment position that:]~~

165 [~~(a) did not exist within the state before:]~~

166 [~~(i) the eligible business entity entered into an agreement with the office in accordance~~  
167 ~~with this part; and]~~

168 [~~(ii) the eligible product was produced or the eligible project began;]~~

169 [~~(b) is not shifted from one location in the state to another location in the state; and]~~

170 ~~[(c) is established to the satisfaction of the office, including by amounts paid or~~  
 171 ~~withheld by the eligible business entity under Title 59, Chapter 10, Individual Income Tax~~  
 172 ~~Act.]~~

173 ~~[(8)]~~ (4) "Tax credit" means a tax credit under~~[:]~~ Section 59-10-1025.

174 ~~[(a) Section 59-7-614.6;~~

175 ~~[(b) Section 59-10-1025; or]~~

176 ~~[(c) Section 59-10-1109.]~~

177 ~~[(9)]~~ (5) "Tax credit applicant" means a person that applies to the office to receive a tax  
 178 credit certificate under this part.

179 ~~[(10)]~~ (6) "Tax credit certificate" means a certificate issued by the office that:

180 (a) lists the name of the tax credit certificate recipient;

181 (b) lists the tax credit certificate recipient's taxpayer identification number;

182 (c) lists the amount of the tax credit certificate recipient's tax credits authorized under  
 183 this part for a taxable year; and

184 (d) includes other information as determined by the office.

185 ~~[(11)]~~ (7) "Tax credit certificate recipient" means~~[:(a) an eligible business entity that~~  
 186 ~~receives a tax credit certificate in accordance with this part for a tax credit under Section~~  
 187 ~~59-7-614.6 or 59-10-1109; or (b)]~~ an eligible claimant, estate, or trust that receives a tax credit  
 188 certificate in accordance with this part for a tax credit under Section 59-10-1025.

189 Section 3. Section **63N-2-803** is amended to read:

190 **63N-2-803. Tax credits issued by office.**

191 (1) ~~[(a)]~~ The office may issue tax credit certificates under this part only to the extent  
 192 that the Legislature, by statute, expressly authorizes the office to issue the tax credit certificates  
 193 under this part for a fiscal year.

194 ~~[(b) The Legislature intends that a statutory authorization under Subsection (1)(a)~~  
 195 ~~specify:]~~

196 ~~[(i) the total allocation to the tax credits under Sections 59-7-614.6 and 59-10-1109;~~  
 197 ~~and]~~

198 ~~[(ii) the allocation to the tax credit under Section 59-10-1025.]~~

199 (2) (a) For fiscal year 2011-12 only, the office may issue a total of \$1,300,000 in tax  
200 credit certificates in accordance with this part.

201 (b) For fiscal year 2016-17 only, the office may issue a total of \$150,000 in tax credit  
202 certificates in accordance with this part.

203 (c) For fiscal year 2017-18 only, the office may issue a total of \$150,000 in tax credit  
204 certificates in accordance with this part.

205 (3) ~~(a)~~ If the total amount of tax credit certificates the office issues in a fiscal year is  
206 less than the amount of tax credit certificates the office may issue under this part in a fiscal  
207 year, the office may issue the remaining amount of tax credit certificates in a fiscal year after  
208 the fiscal year for which there is a remaining amount of tax credit certificates.

209 ~~[(b) Except as provided in Subsection (3)(c), if the total amount of tax credit~~  
210 ~~certificates the office issues in a quarter of a fiscal year is less than the amount of tax credit~~  
211 ~~certificates the office may issue under this part in that quarter, the office may issue the~~  
212 ~~remaining amount of tax credit certificates in a quarter after the quarter for which there is a~~  
213 ~~remaining amount of tax credit certificates.]~~

214 ~~[(c) For fiscal year 2011-12 only, if the total amount of tax credit certificates the office~~  
215 ~~issues in fiscal year 2011-12 is less than the amount of tax credit certificates the office may~~  
216 ~~issue in tax credit certificates under Subsection (2), the office:]~~

217 ~~[(i) may issue the remaining amount of tax credit certificates in a fiscal year after fiscal~~  
218 ~~year 2011-12; and]~~

219 ~~[(ii) is not required to allocate the tax credit certificates to any particular quarter.]~~

220 Section 4. Section 63N-2-806 is amended to read:

221 **63N-2-806. Criteria for tax credits.**

222 (1) A tax credit applicant shall establish as part of the application required by Section  
223 63N-2-805 that the tax credit applicant:

224 (a) meets all of the criteria to receive the tax credit for which the tax credit applicant  
225 applies, except for the requirement to obtain a tax credit certificate; and



226 (b) will provide a long-term economic benefit to the state.

227 (2) The office may not issue a tax credit certificate to a tax credit applicant ~~[that]~~ if:

228 (a) the tax credit applicant fails to meet the requirements of Subsection (1)(a)[-]; and

229 (b) the life science establishment does not enter into an agreement described in Section

230 63N-2-808 with the office.

231 Section 5. Section **63N-2-808** is amended to read:

232 **63N-2-808. Agreements between office and tax credit applicant and life science**  
233 **establishment -- Tax credit certificate.**

234 ~~[(1)(a) Except as provided in Subsection 63N-2-803(3)(b), for each quarter of a fiscal~~  
235 ~~year after fiscal year 2011-12, the office shall allocate:]~~

236 ~~[(i) 25% of the total amounts made available for allocation in accordance with Section~~  
237 ~~63N-2-803 for the tax credits under Sections 59-7-614.6 and 59-10-1109; and]~~

238 ~~[(ii) 25% of the amounts made available for allocation in accordance with Section~~  
239 ~~63N-2-803 for the tax credit under Section 59-10-1025.]~~

240 ~~[(b) Subject to the other provisions of this part, the office, with advice from the board,~~  
241 ~~shall determine quarterly:]~~

242 ~~[(i) the tax credit applicant or applicants to which a tax credit certificate may be~~  
243 ~~provided; and]~~

244 ~~[(ii) the amount of tax credit a tax credit applicant may receive:]~~

245 ~~[(2)]~~ (1) (a) The office, with advice from the board, may enter into an agreement to  
246 grant a tax credit certificate to a tax credit applicant selected in accordance with this part, if the  
247 tax credit applicant meets the conditions established in the agreement and under this part.

248 ~~[(3)]~~ (b) The agreement described in Subsection ~~[(2)]~~ (1)(a) shall:

249 ~~[(a)]~~ (i) detail the requirements that the tax credit applicant shall meet prior to  
250 receiving a tax credit certificate;

251 ~~[(b)]~~ (ii) require the tax credit certificate recipient to retain records supporting a claim  
252 for a tax credit for at least four years after the tax credit certificate recipient claims a tax credit  
253 under this part; and

254 ~~(c)~~ (iii) require the tax credit certificate recipient to submit to audits for verification  
255 of the tax credit claimed, including audits by the office and by the State Tax Commission.

256 (2) (a) The office, with advice from the board, shall enter into an agreement with the  
257 life science establishment in which the tax credit applicant invested for purposes of claiming a  
258 tax credit.

259 (b) The agreement described in Subsection (2)(a):

260 (i) shall provide the office with a document that expressly and directly authorizes the  
261 State Tax Commission to disclose to the office the life science establishment's tax returns and  
262 other information that would otherwise be subject to confidentiality under Section 59-1-403 or  
263 Section 6103, Internal Revenue Code;

264 (ii) shall authorize the Department of Workforce Services to disclose to the office the  
265 employment data that the life science establishment submits to the Department of Workforce  
266 Services;

267 (iii) shall require the life science establishment to provide the office with the life  
268 science establishment's current capitalization tables; and

269 (iv) may require the life science establishment to provide the office with other data  
270 that:

271 (A) ensure compliance with the requirements of this chapter; and

272 (B) demonstrate the economic impact of the tax credit applicant's investment in the life  
273 science establishment.

274 Section 6. Section **63N-2-810** is amended to read:

275 **63N-2-810. Reports on tax credit certificates -- Study by legislative committees.**

276 (1) The office shall include the following information in the annual written report  
277 described in Section **63N-1-301**:

278 (a) the total amount listed on tax credit certificates the office issues under this part;

279 (b) the criteria that the office uses in prioritizing the issuance of tax credits amongst tax  
280 credit applicants under this part; and

281 (c) the economic impact on the state related to providing tax credits under this part.

282 (2) (a) On or before November 1, 2016, and every five years after November 1, 2016,  
283 the Revenue and Taxation Interim Committee shall:

284 (i) study the tax [~~credits~~] credit allowed under [~~Sections 59-7-614.6;~~] Section  
285 59-10-1025[~~, and 59-10-1109~~]; and

286 (ii) make recommendations concerning whether the tax [~~credits~~] credit should be  
287 continued, modified, or repealed.

288 (b) The study under Subsection (2)(a) shall include an evaluation of:

289 (i) the cost of the tax [~~credits~~] credit under [~~Sections 59-7-614.6;~~] Section 59-10-1025[;  
290 ~~and 59-10-1109~~];

291 (ii) the purposes and effectiveness of the tax [~~credits~~] credit; and

292 (iii) the extent to which the state benefits from the tax [~~credits~~] credit.

293 **Section 7. Repealer.**

294 This bill repeals:

295 Section **59-7-614.6, Refundable tax credit for certain business entities generating**  
296 **state tax revenue increases.**

297 Section **59-10-1109, Refundable tax credit for certain business entities generating**  
298 **state tax revenue increases.**

299 **Section 8. Retrospective operation.**

300 This bill has retrospective operation for a taxable year beginning on or after January 1,  
301 2016.