

SMALL BUSINESS JOB CREATION TAX CREDIT ACT

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Small Business and Rural Job Creation Tax Credit Act.

Highlighted Provisions:

This bill:

- defines terms;
- provides a state nonrefundable tax credit for investments by small business funds in eligible businesses;
- authorizes the state to approve tax credits on up to \$30,000,000 invested in eligible businesses in the state;
- provides the requirements for receiving a tax credit certificate from the Governor's Office of Economic Development related to a contribution to a small business fund investing in eligible businesses;
- provides the reporting requirements for a small business fund investing in eligible businesses; and
- provides the requirements for a small business fund exiting the program.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:



ENACTS:

[59-9-109](#), Utah Code Annotated 1953
[63N-2-901](#), Utah Code Annotated 1953
[63N-2-902](#), Utah Code Annotated 1953
[63N-2-903](#), Utah Code Annotated 1953
[63N-2-904](#), Utah Code Annotated 1953
[63N-2-905](#), Utah Code Annotated 1953
[63N-2-906](#), Utah Code Annotated 1953
[63N-2-907](#), Utah Code Annotated 1953
[63N-2-908](#), Utah Code Annotated 1953
[63N-2-909](#), Utah Code Annotated 1953

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

Section 1. Section **59-9-109** is enacted to read:

59-9-109. Nonrefundable small business and rural job creation tax credit.

(1) As used in this section:

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

(b) "Tax credit certificate" means the same as that term is defined in Section

[63N-2-902](#).

(2) An entity may claim a nonrefundable tax credit against a tax liability under this chapter in accordance with this section if the entity is issued a tax credit certificate by the office under Section [63N-2-904](#).

(3) The tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate issued to the entity for the calendar year.

(4) A taxpayer may carry forward a tax credit under this section for the next seven taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this chapter for the taxable year in which the taxpayer claims the tax credit.

(5) A taxpayer required to pay a retaliatory tax levied under this chapter for a reason other than claiming the tax credit may claim the tax credit after the retaliatory tax amount is calculated, and the tax credit may be used to offset retaliatory tax liability.

(6) Notwithstanding the other provisions of this section, this section does not apply to

an admitted insurer to the extent that the admitted insurer writes worker's compensation insurance in this state and has premiums taxed under Subsection [59-9-101\(2\)](#).

Section 2. Section **63N-2-901** is enacted to read:

Part 9. Small Business and Rural Job Creation Tax Credit Act

63N-2-901. Title.

This part is known as the "Small Business and Rural Job Creation Tax Credit Act."

Section 3. Section **63N-2-902** is enacted to read:

63N-2-902. Definitions.

As used in this part:

(1) (a) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(b) For the purposes of this part, a person controls another person if the person holds, directly or indirectly, the majority voting or ownership interest in the controlled person or has control over the day-to-day operations of the controlled person by contract or by law.

(2) "Claimant" means an entity that has insurance premium income in the state.

(3) "Closing date" means the date on which a small business fund has collected all of the investments described in Subsection [63N-2-903\(7\)](#).

(4) "Credit-eligible contribution" means an investment of cash by a claimant in a small business fund that:

(a) is or will be eligible for a tax credit as evidenced by notification issued by the office under Subsection [63N-2-903\(5\)\(c\)](#); and

(b) shall purchase an equity interest in the small business fund or purchase, at par value or premium, a debt instrument issued by the small business fund that has a maturity date of at least six years after the closing date.

(5) "Eligible business" means a business that at the time of an initial small business investment in the business by a small business fund:

(a) has fewer than 99 employees;

(b) has less than \$10,000,000 in net income for the preceding taxable year;

(c) maintains the business's principal business operations in the state; and

(d) (i) is engaged in one or more industries related to aerospace, defense, education, energy and natural resources, financial services, food, life sciences, outdoor products, software

development, information technology, manufacturing, or agribusiness; or

(ii) is determined by the office to be highly beneficial to the economic growth of the state.

(6) (a) "Full-time employee" means an employee that throughout the year works at least 30 hours per week or meets the customary practices accepted as full time by the industry in which the employee works.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules that establish additional hour or other criteria to determine what constitutes a full-time employee.

(7) "High wage business" means an eligible business whose average company wage in a county is at least 150% of the average county wage.

(8) "High wage job" means a wage that is at least 100% of the wage of the county in which the job exists.

(9) "Impact business" means an eligible business that is:

(a) minority-owned, woman-owned, veteran-owned, a high wage business, a rural business, or a start-up business; and

(b) is verified by the small business fund through:

(i) an affidavit from the chief executive of the eligible business attesting to the eligible business's eligibility; and

(ii) supporting documentation as required by the office.

(10) "Investment authority" means the minimum amount of investment a small business fund must make in eligible businesses in order for credit-eligible contributions to the fund to qualify for a small business and rural job creation tax credit under Section 59-9-108.

(11) "Minority-owned, woman-owned, or veteran-owned business" means a business that:

(a) maintains the business's principal business operations in the state; and

(b) meets one of the following criteria:

(i) is at least 33% owned by one or more minority persons, women, or veterans; or

(ii) the management and daily business operations are controlled by one or more minority persons, one or more women, or one or more veterans.

(12) (a) "New annual jobs" means the difference between the number of full-time

employees at the eligible small business on the date of the initial growth investment, and:

(i) the monthly average of full-time employees that are paid a high wage at an eligible small business for the preceding calendar year; or

(ii) if the preceding calendar year contains the initial growth investment, the monthly average of full-time employees that are paid a high wage at an eligible small business for each month including and after the initial growth investment and before the end of the preceding calendar year.

(b) If the amount calculated in Subsection (12)(a) is less than zero, the new annual jobs amount is equal to zero.

(13) (a) "Principal business operations" means the location where at least 60% of a business's employees work or where employees that are paid at least 60% of a business's payroll work.

(b) An out-of-state business that agrees to relocate employees to this state to establish the business's principal business operations in the state using the proceeds of a small business investment is considered to have principal business operations in the state if the business satisfies the requirements of Subsection (13)(a) within 180 days after receiving the small business investment.

(14) "Program" means the provisions of this part applicable to a small business fund.

(15) "Rural business" means any eligible business with principal business operations in any county in the state except Salt Lake County, Utah County, or Davis County.

(16) "Secured loan" means any loan that is secured by a first mortgage on real estate with a loan to value ratio of less than 80%.

(17) "Small business fund" means a person or entity approved by the office under Section [63N-2-903](#).

(18) "Small business investment" means:

(a) a capital or equity investment in an eligible business, except that if the investment is an initial equity investment the investment shall have a non-controlling interest with less than 33% total ownership;

(b) a secured loan or revolving line of credit to an eligible business if the small business fund obtains an affidavit from the chief executive of the eligible business attesting that the eligible business applied for but was denied similar financing from a commercial bank; or

(c) any loan made from the investment authority to an eligible business with a stated maturity at least one year after the date of issuance.

(19) "Start-up business" means an eligible business whose chief executive certifies that the business has raised less than \$5,000,000 of equity from non-affiliates or has existed for less than three years.

(20) (a) "State reimbursement amount" means the difference between:

(i) 50% of the rural investment company's credit-eligible capital contributions; and

(ii) the product of:

(A) the total sum of new annual jobs reported to the state in the rural investment company's exit report described in Section [63N-4-309](#); and

(B) \$20,000.

(b) If the amount calculated in Subsection (20)(a) is less than zero, the state reimbursement amount is equal to zero.

(21) "Tax credit" means the tax credit described in Section [59-9-108](#).

(22) "Tax credit certificate" means a certificate issued by the office that:

(a) lists the name of the claimant to which the office authorizes a tax credit;

(b) lists the claimant's taxpayer identification number;

(c) lists the amount of tax credit that the office authorizes the claimant to claim for the taxable year; and

(d) may include other information as determined by the office.

Section 4. Section **63N-2-903** is enacted to read:

63N-2-903. Application, approval, and allocations.

(1) (a) A person or entity seeking approval as a small business fund shall submit an application to the office.

(b) The office shall begin accepting applications on July 1, 2021.

(2) An application submitted under Subsection (1) shall be in a form and in accordance with procedures prescribed by the office and shall include the following:

(a) the total investment authority sought by the applicant, which may not exceed \$50,000,000;

(b) a copy of the applicant's or an affiliate of the applicant's license as a federally licensed rural business investment company or as a federally licensed small business

investment company, provided that any affiliate used to meet this requirement must have been an affiliate of the applicant or the applicant's affiliates for at least four years;

(c) evidence of at least \$100 million in investments in nonpublic companies located in any county in the state or another state where the county has a population of less than 50,000 according to the 2010 decennial census of the United States;

(d) evidence of at least \$20 million in investments in nonpublic companies in the state, which may include the investment amounts required by Subsection (2)(c);

(e) a certification that the applicant and the applicant's affiliates are in good standing with any economic development programs in the state and, if applicable, have met the initial investment milestones described in Title 63N, Chapter 4, Part 3, Utah Rural Jobs Act;

(f) a signed certification from each claimant that commits to make a credit-eligible capital contribution to the applicant, stating the amount of that commitment;

(g) the sum of all credit-eligible capital contribution commitments described in Subsection (2)(f), which must equal at least 60% of the total investment authority sought by the applicant;

(h) a marketing and outreach plan to minority-owned, women-owned, and veteran-owned businesses; and

(i) a business plan and revenue impact assessment prepared using a nationally recognized economic development model that demonstrates that the small business fund's business plan will have a revenue positive impact on the state over 10 years when taking into account a 60% tax credit utilization over the same 10-year period.

(3) The office shall:

(a) review and evaluate each application submitted under this section within 30 days after the day on which the office receives the application in the order in which each application is received; and

(b) consider applications received on the same day to have been received simultaneously.

(4) (a) If, after review and evaluation of an application, the office determines that the application does not meet the requirements of Subsection (2), the office shall:

(i) deny the application; or

(ii) if the applicant complied with Subsection (2)(f):

214 (A) notify the applicant that the application was inadequate and allow the applicant to
215 provide additional information to the office to complete, clarify, or cure defects identified by
216 the office in the application; and

217 (B) inform the applicant that the additional information described in Subsection
218 (4)(a)(ii)(A) shall be received by the office within five days after the day on which notice was
219 provided by the applicant in order to be considered for the program.

220 (b) If an applicant submits additional information to the office in accordance with
221 Subsection (4)(a)(ii), the office shall:

222 (i) consider the application to have been received on the date the application was
223 originally received by the office; and

224 (ii) review and evaluate the additional information within 10 days after the day on
225 which the office receives the additional information.

226 (5) If the office determines that an application meets the requirements of Subsection
227 (2) after reviewing and evaluating an application submitted under this section, including any
228 additional information submitted in accordance with Subsection (4)(a)(ii), the office shall:

229 (a) determine the amount of investment authority to award an applicant;

230 (b) provide to the applicant a written notice of approval as a small business fund,
231 specifying the amount of the applicant's investment authority; and

232 (c) notify each claimant whose certification was included in the application under
233 Subsection (2)(e) that the claimant qualifies for a tax credit that will be issued in accordance
234 with Section [63N-2-904](#).

235 (6) (a) The office may not approve more than \$50,000,000 in total investment authority
236 and not more than \$30,000,000 in total credit-eligible contributions under this part.

237 (b) Subject to Subsections (6)(a) and (d), if an application is approved under
238 Subsection (5), the office shall approve the amount of investment authority requested on the
239 application.

240 (c) The office may continue to accept applications for this program until the amount of
241 approved investment authority reaches \$50,000,000.

242 (d) If the office approves multiple applications received simultaneously under
243 Subsection (3)(b) and the total amount of investment authority requested on those applications
244 is more than the amount of investment authority remaining, the office shall proportionally

245 reduce the investment authority and credit-eligible capital contributions for each of these
246 applications as necessary to avoid exceeding the amount of investment authority and
247 credit-eligible capital contributions remaining.

248 (7) Within 65 days after the day on which a small business fund receives approval
249 under Subsection (5)(b), the small business fund shall:

250 (a) collect the total amount of committed credit-eligible capital contributions from each
251 claimant whose affidavit was included in the application under Subsection (2)(e);

252 (b) collect one or more cash equity investments contributed directly or indirectly by
253 affiliates of the small business fund, including employees, officers, and directors of such
254 affiliates, that equal at least 10% of the small business fund's investment authority;

255 (c) collect one or more cash investments that, when added to the amounts collected
256 under Subsections (7)(a) and (b), equal the small business fund's investment authority; and

257 (d) provide sufficient documentation to the office to show that the amounts described
258 in Subsections (7)(a) through (c) have been collected.

259 (8) If the small business fund fails to fully comply with Subsection (7):

260 (a) the small business fund's approval lapses and the corresponding investment
261 authority and credit-eligible capital contributions do not count toward the limits on the program
262 size described in Subsection (6)(a); and

263 (b) the office:

264 (i) shall first award lapsed investment authority pro rata to each small business fund
265 that was awarded less than the requested investment authority under Subsection (6)(d), which a
266 small business fund may allocate to the small business fund's investors at the fund's discretion;
267 and

268 (ii) may award any remaining investment authority to one or more new applicants.

269 Section 5. Section **63N-2-904** is enacted to read:

270 **63N-2-904. Tax credit.**

271 (1) On the closing date, a claimant whose affidavit was included in an approved
272 application submitted under Section [63N-2-903](#) shall earn a vested tax credit equal to the
273 amount of the claimant's credit-eligible capital contribution to the small business fund.

274 (2) In each of the taxable years that includes the third through sixth anniversaries of the
275 closing date, the office shall:

(a) issue a tax credit certificate to each approved claimant, specifying a tax credit amount for the taxable year equal to one-fourth of the claimant's total credit-eligible capital contribution; and

(b) provide a report to the State Tax Commission listing each claimant that received a tax credit certificate under Subsection (2)(a) and the tax credit amount listed on the certificate.

(3) (a) A claimant may not claim a tax credit under this section unless the claimant has a tax credit certificate issued by the office.

(b) A claimant claiming a credit under this section shall retain a tax credit certificate the claimant receives from the office for the same time period a person is required to keep books and records under Section [59-1-1406](#).

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with the provisions of this part, the office shall make rules describing:

(a) the documentation requirements for a claimant to receive a tax credit certificate under this section; and

(b) administration of the program, including relevant timelines and deadlines.

(5) A tax credit earned under this section is not transferable or refundable and may only be assigned to an affiliate having premium tax liability in the state.

Section 6. Section **63N-2-905** is enacted to read:

63N-2-905. Revocation and recapture of tax credit certificates.

(1) Except as provided in Subsection (2), the office shall revoke or recapture a tax credit certificate issued under Section [63N-2-904](#) if the small business fund in which the credit-eligible capital contribution was made does any of the following before the small business fund exits the program in accordance with Section [63N-2-909](#):

(a) fails to invest:

(i) 60% of the small business fund's investment authority in small business investments in rural businesses within two years of the closing date; and

(ii) 100% of the small business fund's investment authority in small business investments in rural businesses within three years of the closing date;

(b) fails to maintain small business investments in this state equal to 100% of the small business fund's investment authority in small business investments prior to exiting the program in accordance with Section [63N-2-909](#);

(c) makes a distribution or payment that results in the small business fund having less than 100% of the small business fund's investment authority invested in small business investments in the state or available for investment in small business investments and held in cash and other marketable securities; or

(d) makes a small business investment in an eligible business that directly or indirectly through an affiliate:

(i) owns or has the right to acquire an ownership interest in the small business fund, an affiliate of the small business fund, or an investor in the small business fund; or

(ii) makes a loan to or an investment in the small business fund, an affiliate of the small business fund, or an investor in the small business fund.

(2) (a) For the purposes of Subsection (1), an investment is maintained even if the investment is sold or repaid if the small business fund reinvests an amount equal to the capital returned or recovered by the small business fund from the original investment, excluding any profits realized, in other small business investments in impact businesses within 12 months of the receipt of such capital.

(b) Amounts received periodically by a small business fund are treated as continually invested in small business investments if the amounts are reinvested in one or more small business investments in impact businesses by the end of the following calendar year.

(c) A small business fund is not required to reinvest capital returned from small business investments after the sixth anniversary of the closing date and such small business investments are considered as being held continuously by the small business fund through the seventh anniversary of the closing date.

(3) (a) Before revoking or recapturing one or more tax credit certificates under this section, the office shall notify the small business fund of the reasons for the pending revocation.

(b) If the small business fund corrects any violation outlined in the notice to the satisfaction of the office within 90 days after the day on which the notice was sent, the office may not revoke or recapture the tax credit certificate.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules that establish criteria to determine what constitutes a correction under Subsection (3)(b).

(4) If a small business fund's tax credit certificates are revoked or recaptured under this section:

(a) if the small business fund is able to provide documentation to the office that demonstrates that a tax credit described in this Subsection (4) has not been claimed, unused credits shall be revoked and not available for use by any taxpayer;

(b) the small business fund's investment authority and credit-eligible capital contributions shall not count toward the limits on the program size described in Subsection 63N-4-903(6)(a); and

(c) (i) the office shall, if the office awards lapsed investment authority to a small business fund, first award lapsed investment authority pro rata to each small business fund that was awarded less than the requested investment authority under Subsection 63N-4-903(6)(d), which a small business fund may allocate to the small business fund's investors at the small business fund's discretion; and

(ii) the office may award any remaining investment authority to one or more new applicants.

(5) Small business fund investments in an amount over \$5,000,000 in the same eligible business, including amounts invested in affiliates of the eligible business, do not count towards the investment requirements described in Subsections (1)(a) and (b), except that small business investments made with repaid or redeemed small business investments, or interest or profits realized on the repaid or redeemed small business investments, do not count towards the \$5,000,000 limit in this Subsection (5).

(6) The office may not revoke or recapture a tax credit certificate after a small business fund has exited the program in accordance with Section 63N-2-909.

Section 7. Section 63N-2-906 is enacted to read:

63N-2-906. Request for determination.

(1) Before making a small business investment, a small business fund may request from the office a written determination as to whether the business in which a small business fund proposes to invest is an eligible business and an impact business.

(2) The office shall notify the small business fund of the office's determination within 30 days after the day on which the office receives the request.

(3) If the office fails to notify the small business fund of the office's determination in

accordance with Subsection (2), the business in which the small business fund proposes to invest shall be considered, as applicable, an eligible business or impact business.

Section 8. Section **63N-2-907** is enacted to read:

63N-2-907. Reporting obligations.

(1) Until the small business fund has exited the program in accordance with Section 63N-2-909, a small business fund shall annually submit to the office on or before the last day of March a written report for the previous calendar year.

(2) (a) The annual report shall include documentation of the small business fund's small business investments, including:

(i) a bank statement evidencing each small business investment;

(ii) the name, location, and industry of each business receiving a small business investment, including a determination letter provided under Section 63N-2-906 or evidence that the business qualified as an eligible business at the time the investment was made;

(iii) the number of new annual jobs at each eligible small business for the preceding year, accompanied by a report from a third-party accounting firm attesting that the number of new annual jobs was calculated in accordance with procedures approved by the office;

(iv) the amount of small business investments made in rural businesses and impact businesses;

(v) the number of new jobs at each eligible small business for the preceding year; and

(vi) any other information required by the office.

(3) By the fifth business day after the second and third anniversaries of the closing date, a small business fund shall submit a written report to the office providing evidence that the small business fund is in compliance with the investment requirements of Subsection 63N-2-905(1)(a).

Section 9. Section **63N-2-908** is enacted to read:

63N-2-908. Annual fee.

(1) The office shall calculate an annual fee to be paid by each small business fund by dividing \$50,000 by the number of small business funds approved under this part and notify each small business fund of the amount of the annual fee.

(2) (a) The initial annual fee shall be due and payable to the office along with the evidence of receipt of the cash investment in the small business fund as described in

Subsection [63N-2-903\(7\)\(d\)](#).

(b) After the initial annual fee, an annual fee shall be due and payable to the office on or before the last day of February of each year.

(c) An annual fee shall not be required once a small business fund has exited the program under Section [63N-2-909](#).

(3) To maintain an aggregate annual fee the office shall recalculate the annual fee as needed upon the lapse of any approval under Subsection [63N-2-903\(8\)](#), the revocation or recapture of tax credit certificates under Section [63N-2-905](#), or a small business fund's exit from the program under Section [63N-2-909](#).

(4) The annual fee collected under this section shall be deposited into the General Fund as a dedicated credit for use by the office to implement this part.

Section 10. Section **63N-2-909** is enacted to read:

[63N-2-909](#). Exit.

(1) A small business fund may not apply to exit the program until the small business fund demonstrates by the annual reports submitted pursuant to Section [63N-2-907](#) and any supplemental report that the small business fund has invested an additional 50% of the small business fund's initial investment authority in excess of the requirements of Subsection [63N-2-905\(1\)\(a\)](#) in impact businesses.

(2) (a) On or after the seventh anniversary of the closing date and upon compliance with Subsection (1), a small business fund may apply to the office to exit the program and no longer be subject to this part.

(b) The application described in Subsection (2)(a) shall include an updated revenue impact assessment prepared using a nationally recognized economic development model as described in Subsection [63N-2-903\(2\)\(g\)](#) that analyzes the economic impact of the small business fund's small business investments and shall include a calculation of the state reimbursement amount.

(3) An application submitted under Subsection (2) shall be in a form and in accordance with procedures prescribed by the office.

(4) In evaluating the exit application, if no tax credit certificates have been revoked or recaptured and the small business fund has not received a notice of revocation that has remained uncorrected under Subsection [63N-2-905\(3\)\(b\)](#), the small business fund is eligible for

431 exit.

432 (5) (a) The office shall respond to the application within 30 days after the day on which
433 the office receives the application and shall include confirmation of the state reimbursement
434 amount.

435 (b) If the office denies the application, the office shall provide the reasons for the
436 determination to the small business fund.

437 (6) Within 60 days after the day on which the confirmation of the state reimbursement
438 amount is received by the rural investment company, the rural investment company shall make
439 a cash distribution to the state in an amount equal to the state reimbursement amount.

440 (7) The office shall notify the rural investment company once payments equal to the
441 amount described in Subsection (6) have been received.

442 (8) Any amounts collected under this section shall be deposited into the General Fund.

443 Section 11. **Retrospective operation.**

444 This bill has retrospective operation for a taxable year beginning on or after January 1,
445 2021.