

Representative Douglas V. Sagers proposes the following substitute bill:

ENTERPRISE ZONE TAX CREDIT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas V. Sagers

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the enterprise zone income tax credits.

Highlighted Provisions:

This bill:

- ▶ authorizes enterprise zone income tax credits for:
 - the creation of certain full-time jobs in a business that produces, processes, distributes, or dispenses hydrogen fuel; and
 - certain investments in plant, equipment, or other depreciable property used to produce, process, distribute, or dispense hydrogen fuel;
- ▶ allows a taxpayer to claim enterprise zone income tax credits against taxes owed under the Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:



AMENDS:

59-7-614.10, as last amended by Laws of Utah 2019, Chapter 247

59-10-1037, as last amended by Laws of Utah 2019, Chapter 247

63N-2-213, as last amended by Laws of Utah 2019, Chapter 247

ENACTS:

59-8-301, Utah Code Annotated 1953

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

Section 1. Section **59-7-614.10** is amended to read:

59-7-614.10. Nonrefundable enterprise zone tax credit.

(1) As used in this section:

(a) "Business entity" means a corporation that meets the definition of "business entity" as that term is defined in Section **63N-2-202**.

(b) "Office" means the Governor's Office of Economic Development created in Section **63N-1-201**.

(2) Subject to the provisions of this section, a business entity may claim a nonrefundable enterprise zone tax credit as described in Section **63N-2-213**.

(3) The enterprise zone tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to the business entity for the taxable year.

(4) A business entity may carry forward a tax credit under this section for a period that does not exceed the next three taxable years, if the amount of the tax credit exceeds the business entity's tax liability under this chapter for that taxable year.

(5) A business entity may not claim or carry forward a tax credit [~~available~~] under this [~~part~~] section for a taxable year during which the business entity has claimed the targeted business income tax credit [~~available~~] under Section **59-7-624**.

(6) (a) In accordance with Section **59-7-159**, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations concerning whether the tax credit should be continued, modified, or repealed.

(b) (i) Except as provided in Subsection (6)(b)(ii), for purposes of the study required by this Subsection (6), the office shall provide by electronic means the following information for

each calendar year to the Office of the Legislative Fiscal Analyst:

(A) the amount of tax credits provided in each development zone;

(B) the number of new full-time employee positions reported to obtain tax credits in each development zone;

(C) the amount of tax credits awarded for rehabilitating a building in each development zone;

(D) the amount of tax credits awarded for investing in a plant, equipment, or other depreciable property in each development zone;

(E) the information related to the tax credit contained in the office's latest report under Section 63N-1-301; and

(F) any other information that the Office of the Legislative Fiscal Analyst requests.

(ii) (A) In providing the information described in Subsection (6)(b)(i), the office shall redact information that identifies a recipient of a tax credit under this section.

(B) If, notwithstanding the redactions made under Subsection (6)(b)(ii)(A), reporting the information described in Subsection (6)(b)(i) might disclose the identity of a recipient of a tax credit, the office may file a request with the Revenue and Taxation Interim Committee to provide the information described in Subsection (6)(b)(i) in the aggregate for all development zones that receive the tax credit under this section.

(c) As part of the study required by this Subsection (6), the Office of the Legislative Fiscal Analyst shall report to the Revenue and Taxation Interim Committee a summary and analysis of the information provided to the Office of the Legislative Fiscal Analyst by the office under Subsection (6)(b).

(d) The Revenue and Taxation Interim Committee shall ensure that the recommendations described in Subsection (6)(a) include an evaluation of:

(i) the cost of the tax credit to the state;

(ii) the purpose and effectiveness of the tax credit; and

(iii) the extent to which the state benefits from the tax credit.

Section 2. Section 59-8-201 is enacted to read:

Part 3. Tax Credits

59-8-301. Nonrefundable enterprise zone tax credit.

(1) As used in this section:

88 (a) "Business entity" means an organization subject to the tax imposed by this part that
89 is a business entity as defined in Section [63N-2-202](#).

90 (b) "Office" means the Governor's Office of Economic Development created in Section
91 [63N-1-201](#).

92 (2) Subject to the provisions of this section, a business entity may claim a
93 nonrefundable enterprise zone tax credit as described in Section [63N-2-213](#).

94 (3) The enterprise zone tax credit under this section is the amount listed as the tax
95 credit amount on the tax credit certificate that the office issues to the business entity for the
96 taxable year.

97 (4) A business entity may carry forward a tax credit under this section for a period that
98 does not exceed the next three taxable years, if the amount of the tax credit exceeds the
99 business entity's tax liability under this chapter for that taxable year.

100 (5) (a) The Revenue and Taxation Interim Committee shall study the tax credit allowed
101 by this section:

102 (i) as part of the Revenue and Taxation Interim Committee's study under Subsection
103 [59-7-164.10\(6\)](#); and

104 (ii) make recommendations concerning whether the tax credit should be continued,
105 modified, or repealed.

106 (b) Except as provided in Subsection (5)(c), for purposes of the study required by this
107 Subsection (5), the office shall provide by electronic means the following information for each
108 calendar year to the Office of the Legislative Fiscal Analyst:

109 (i) the amount of tax credits provided in each development zone;

110 (ii) the number of new full-time employee positions reported to obtain tax credits in
111 each development zone;

112 (iii) the amount of tax credits awarded for rehabilitating a building in each
113 development zone;

114 (iv) the amount of tax credits awarded for investing in a plant, equipment, or other
115 depreciable property in each development zone;

116 (v) the information related to the tax credit contained in the office's latest report under
117 Section [63N-1-301](#); and

118 (vi) any other information that the Office of the Legislative Fiscal Analyst requests.

(c) (i) In providing the information described in Subsection (5)(a), the office shall redact information that identifies a recipient of a tax credit under this section.

(ii) If, notwithstanding the redactions made under Subsection (5)(b)(i), reporting the information described in Subsection (5)(b)(i) might disclose the identity of a recipient of a tax credit, the office may file a request with the Revenue and Taxation Interim Committee to provide the information described in Subsection (5)(b)(i) in the aggregate for all development zones that receive the tax credit under this section.

(d) As part of the study required by this Subsection (5), the Office of the Legislative Fiscal Analyst shall report to the Revenue and Taxation Interim Committee a summary and analysis of the information provided to the Office of the Legislative Fiscal Analyst by the office under Subsection (5)(b).

(e) The Revenue and Taxation Interim Committee shall ensure that the recommendations described in Subsection (5)(a) include an evaluation of:

(i) the cost of the tax credit to the state;

(ii) the purpose and effectiveness of the tax credit; and

(iii) the extent to which the state benefits from the tax credit.

Section 3. Section **59-10-1037** is amended to read:

59-10-1037. Nonrefundable enterprise zone tax credit.

(1) As used in this section:

(a) "Business entity" means a claimant, estate, or trust that meets the definition of "business entity" as that term is defined in Section [63N-2-202](#).

(b) "Office" means the Governor's Office of Economic Development created in Section [63N-1-201](#).

(2) Subject to the provisions of this section, a business entity may claim a nonrefundable enterprise zone tax credit as described in Section [63N-2-213](#).

(3) The enterprise zone tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to the business entity for the taxable year.

(4) A business entity may carry forward a tax credit under this section for a period that does not exceed the next three taxable years, if the amount of the tax credit exceeds the business entity's tax liability under this chapter for that taxable year.

(5) A business entity may not claim or carry forward a tax credit [~~available~~] under this [~~part~~] section for a taxable year during which the business entity has claimed the targeted business income tax credit [~~available~~] under Section 59-10-1112.

(6) (a) In accordance with Section 59-10-137, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations concerning whether the tax credit should be continued, modified, or repealed.

(b) (i) Except as provided in Subsection (6)(b)(ii), for purposes of the study required by this Subsection (6), the office shall provide by electronic means the following information, if available to the office, for each calendar year to the Office of the Legislative Fiscal Analyst:

(A) the amount of tax credits provided in each development zone;

(B) the number of new full-time employee positions reported to obtain tax credits in each development zone;

(C) the amount of tax credits awarded for rehabilitating a building in each development zone;

(D) the amount of tax credits awarded for investing in a plant, equipment, or other depreciable property in each development zone;

(E) the information related to the tax credit contained in the office's latest report under Section 63N-1-301; and

(F) other information that the Office of the Legislative Fiscal Analyst requests.

(ii) (A) In providing the information described in Subsection (6)(b)(i), the office shall redact information that identifies a recipient of a tax credit under this section.

(B) If, notwithstanding the redactions made under Subsection (6)(b)(ii)(A), reporting the information described in Subsection (6)(b)(i) might disclose the identity of a recipient of a tax credit, the office may file a request with the Revenue and Taxation Interim Committee to provide the information described in Subsection (6)(b)(i) in the aggregate for all development zones that receive the tax credit under this section.

(c) As part of the study required by this Subsection (6), the Office of the Legislative Fiscal Analyst shall report to the Revenue and Taxation Interim Committee a summary and analysis of the information provided to the Office of the Legislative Fiscal Analyst by the office under Subsection (6)(b).

(d) The Revenue and Taxation Interim Committee shall ensure that the

recommendations described in Subsection (6)(a) include an evaluation of:

- (i) the cost of the tax credit to the state;
- (ii) the purpose and effectiveness of the tax credit; and
- (iii) the extent to which the state benefits from the tax credit.

Section 4. Section **63N-2-213** is amended to read:

63N-2-213. State tax credits.

(1) The office shall certify a business entity's eligibility for a tax credit described in this section.

(2) A business entity seeking to receive a tax credit as provided in this section shall provide the office with:

(a) an application for a tax credit certificate in a form approved by the office, including a certification, by an officer of the business entity, of a signature on the application; and

(b) documentation that demonstrates the business entity has met the requirements to receive the tax credit.

(3) If, after review of an application and documentation provided by a business entity as described in Subsection (2), the office determines that the application and documentation are inadequate to provide a reasonable justification for authorizing the tax credit, the office shall:

(a) deny the tax credit; or

(b) inform the business entity that the application or documentation was inadequate and ask the business entity to submit additional documentation.

(4) If, after review of an application and documentation provided by a business entity as described in Subsection (2), the office determines that the application and documentation provide reasonable justification for authorizing a tax credit, the office shall:

(a) determine the amount of the tax credit to be granted to the business entity;

(b) issue a tax credit certificate to the business entity; and

(c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

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

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules describing:

(a) the form and content of an application for a tax credit under this section;

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

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

(7) Subject to the limitations of Subsections (8) through (10), and if the requirements of this part are met, the following nonrefundable tax credits against a tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes, Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, or Title 59, Chapter 10, Individual Income Tax Act, are applicable in an enterprise zone:

(a) a tax credit of \$750 may be claimed by a business entity for each new full-time employee position created within the enterprise zone;

(b) an additional \$500 tax credit may be claimed if the new full-time employee position created within the enterprise zone pays at least 125% of:

(i) the county average monthly nonagricultural payroll wage for the respective industry as determined by the Department of Workforce Services; or

(ii) if the county average monthly nonagricultural payroll wage is not available for the respective industry, the total average monthly nonagricultural payroll wage in the respective county where the enterprise zone is located;

(c) an additional tax credit of \$750 may be claimed if the new full-time employee position created within the enterprise zone is in a business entity that adds value to agricultural commodities through manufacturing or processing;

(d) an additional tax credit of \$200 may be claimed for two consecutive years for each new full-time employee position created within the enterprise zone that is filled by an employee who is insured under an employer-sponsored health insurance program if the employer pays at least 50% of the premium cost for the year for which the credit is claimed;

(e) an additional tax credit of \$750 may be claimed if the new full-time employee position created within the enterprise zone is in a business entity that produces or processes hydrogen for use as a fuel;

(f) an additional tax credit of \$750 may be claimed if the new full-time employee position created within the enterprise zone is in a business entity that distributes or dispenses hydrogen fuel;

~~[(e)]~~ (g) a tax credit of 25% of the first \$200,000 spent on rehabilitating a building in

the enterprise zone that has been vacant for two years or more; ~~[and]~~

~~[(f)]~~ (h) an annual investment tax credit of 10% of the first \$250,000 in investment, and 5% of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable property~~[-]; and~~

(i) an additional annual investment tax credit of 10% of the first \$250,000 investment, 5% of the next \$1,000,000 investment, and 2.5% of the next \$2,000,000 investment, in plant, equipment, or other depreciable property used primarily:

(i) to produce or process hydrogen for use as a fuel; or

(ii) to distribute or dispense hydrogen fuel.

(8) (a) Subject to the limitations of Subsection (8)(b), a business entity claiming a tax credit under Subsections (7)(a) through ~~[(d)]~~ (f) may claim the tax credit for no more than 30 full-time employee positions in a taxable year.

(b) A business entity that received a tax credit for one or more new full-time employee positions under Subsections (7)(a) through ~~[(d)]~~ (f) in a prior taxable year may claim a tax credit for a new full-time employee position in a subsequent taxable year under Subsections (7)(a) through ~~[(d)]~~ (f) if:

(i) the business entity has created a new full-time position within the enterprise zone; and

(ii) the total number of full-time employee positions at the business entity at any point during the tax year for which the tax credit is being claimed is greater than the highest number of full-time employee positions that existed at the business entity in the previous three taxable years.

(c) Construction jobs are not eligible for the tax credits under Subsections (7)(a) through ~~[(d)]~~ (f).

(9) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the business entity may carry forward the amount of the tax credit exceeding the liability for a period that does not exceed the next three taxable years.

(10) Tax credits under ~~[Subsections (7)(a) through (f)]~~ Subsection (7) may not be claimed by a business entity primarily engaged in retail trade or by a public utilities business.

(11) A business entity that has no employees:

(a) may not claim tax credits under Subsections (7)(a) through ~~[(d)]~~ (f); and

(b) may claim tax credits under Subsections ~~[(7)(e)]~~ (7)(g) through ~~[(f)]~~ (i).

(12) (a) A business entity may not claim or carry forward a tax credit available under this part for a taxable year during which the business entity has claimed the targeted business income tax credit available under Section 63N-2-304.

(b) A business entity may not claim or carry forward a tax credit available under this section for a taxable year during which the business entity claims or carries forward a tax credit available under Section 59-7-610 or 59-10-1007.

(13) (a) On or before November 30, 2018, and every three years after 2018, the Revenue and Taxation Interim Committee shall review the tax credits provided by this section and make recommendations concerning whether the tax credits should be continued, modified, or repealed.

(b) In conducting the review required by Subsection (13)(a), the Revenue and Taxation Interim Committee shall:

(i) schedule time on at least one committee agenda to conduct the review;

(ii) invite state agencies, individuals, and organizations concerned with the credits under review to provide testimony;

(iii) ensure that the recommendations described in this section include an evaluation of:

(A) the cost of the tax credits to the state;

(B) the purpose and effectiveness of the tax credits; and

(C) the extent to which the state benefits from the tax credits; and

(iv) undertake other review efforts as determined by the chairs of the Revenue and Taxation Interim Committee.

Section 5. **Effective date.**

This bill takes effect for a taxable year beginning on or after January 1, 2021.