RECYCLING MARKET DEVELOPMENT ZONE TAX CREDIT REPEAL

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jeremy A. Peterson

Senate Sponsor: ____________

LONG TITLE

General Description:

This bill modifies provisions relating to the recycling market development zone tax credits.

Highlighted Provisions:

This bill:

- provides that a person, claimant, estate, or trust may not claim a recycling market development zone individual income or corporate income tax credit beginning on a certain date;
- repeals the recycling market development zone individual income and corporate income tax credits on a certain date; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-7-159, as enacted by Laws of Utah 2016, Third Special Session, Chapter 1

59-7-610, as last amended by Laws of Utah 2015, Chapter 283

59-10-137, as enacted by Laws of Utah 2016, Third Special Session, Chapter 1

59-10-1007, as last amended by Laws of Utah 2015, Chapter 283

63I-1-263, as last amended by Laws of Utah 2016, Chapters 65, 136, 156, 322, and 408

63I-2-259, as last amended by Laws of Utah 2015, Chapter 139

63I-2-263, as last amended by Laws of Utah 2016, Third Special Session, Chapter 2

63N-2-402, as last amended by Laws of Utah 2015, Chapter 30 and renumbered and amended by Laws of Utah 2015, Chapter 283

REPEALS:

63N-2-410, as renumbered and amended by Laws of Utah 2015, Chapter 283

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

Section 1. Section **59-7-159** is amended to read:

59-7-159. Review of credits allowed under this chapter.

(1) As used in this section, "committee" means the Revenue and Taxation Interim Committee.

(2) (a) The committee shall review the tax credits described in this chapter as provided in Subsection (3) and make recommendations concerning whether the tax credits should be continued, modified, or repealed.

(b) In conducting the review required under Subsection (2)(a), the 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 tax credit under review to provide testimony;

(iii) (A) invite the Governor's Office of Economic Development to present a summary and analysis of the information for each tax credit regarding which the Governor's Office of Economic Development is required to make a report under this chapter; and

(B) invite the Office of the Legislative Fiscal Analyst to present a summary and analysis of the information for each tax credit regarding which the Office of the Legislative Fiscal Analyst is required to make a report under this chapter;

(iv) ensure that the committee's recommendations described in this section include an evaluation of:

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

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

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

(v) undertake other review efforts as determined by the committee chairs or as otherwise required by law.

(3) (a) On or before November 30, 2017, and every three years after 2017, the committee shall conduct the review required under Subsection (2) of the tax credits allowed under the following sections:

(i) Section 59-7-601;

(ii) Section 59-7-607;

(iii) Section 59-7-612;

(iv) Section 59-7-614.1; and

(v) Section 59-7-614.5.

(b) On or before November 30, 2018, and every three years after 2018, the committee shall conduct the review required under Subsection (2) of the tax credits allowed under the following sections:

(i) Section 59-7-609;

(ii) Section 59-7-614.2;

(iii) Section 59-7-614.10;

(iv) Section 59-7-617;

(v) Section 59-7-619; and

(vi) Section 59-7-620.

(c) On or before November 30, 2019, and every three years after 2019, the committee shall conduct the review required under Subsection (2) of the tax credits allowed under the following sections:

(i) Section 59-7-605;

[~~(ii) Section 59-7-610~~;]

[~~(iii)~~] (ii) Section 59-7-614;

[~~(iv)~~] (iii) Section 59-7-614.7;

[~~(v)~~] (iv) Section 59-7-614.8; and

[~~(vi)~~] (v) Section 59-7-618.

(d) (i) In addition to the reviews described in this Subsection (3), the committee shall conduct a review of a tax credit described in this chapter that is enacted on or after January 1, 2017.

(ii) The committee shall complete a review described in this Subsection (3)(d) three years after the effective date of the tax credit and every three years after the initial review date.

Section 2. Section **59-7-610** is amended to read:

59-7-610. Recycling market development zones tax credit.

(1) [~~For taxable years~~] (a) Until Subsection (1)(b) applies and for a taxable year beginning on or after January 1, 1996, a business operating in a recycling market development zone as defined in Section 63N-2-402 may claim a tax credit as provided in this section.

(b) Subject to Subsection (8), for a taxable year beginning on or after January 1, 2018, a person may not claim a tax credit under this section.

[~~(a)~~] (c) (i) There shall be allowed a nonrefundable tax credit of 5% of the purchase price paid for machinery and equipment used directly in:

(A) commercial composting; or

(B) manufacturing facilities or plant units that:

(I) manufacture, process, compound, or produce recycled items of tangible personal property for sale; or

(II) reduce or reuse postconsumer waste material.

(ii) The Governor's Office of Economic Development shall certify that the machinery and equipment described in Subsection [~~(1)(a)(i)~~] (1)(c)(i) are integral to the composting or recycling process:

(A) on a form provided by the commission; and

(B) before a taxpayer is allowed a tax credit under this section.

(iii) The Governor's Office of Economic Development shall provide a taxpayer seeking to claim a tax credit under this section with a copy of the form described in Subsection [~~(1)(a)(ii)~~] (1)(c)(ii).

(iv) The taxpayer described in Subsection [~~(1)(a)(iii)~~] (1)(c)(iii) shall retain a copy of the form received under Subsection [~~(1)(a)(iii)~~] (1)(c)(iii).

[~~(b)~~] (d) There shall be allowed a nonrefundable tax credit equal to 20% of net expenditures up to $10,000 to third parties for rent, wages, supplies, tools, test inventory, and utilities made by the taxpayer for establishing and operating recycling or composting technology in Utah, with an annual maximum tax credit of $2,000.

(2) The total nonrefundable tax credit allowed under this section may not exceed 40% of the Utah income tax liability of the taxpayer prior to any tax credits in the taxable year of purchase prior to claiming the tax credit authorized by this section.

(3) (a) Any tax credit not used for the taxable year in which the purchase price on composting or recycling machinery and equipment was paid may be carried over for credit against the business' income taxes in the three succeeding taxable years until the total tax credit amount is used.

(b) Tax credits not claimed by a business on the business' state income tax return within three years are forfeited.

(4) The commission shall make rules governing what information shall be filed with the commission to verify the entitlement to and amount of a tax credit.

(5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim or carry forward a tax credit described in Subsection (1)(a) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 63N-2-213.

(b) For a taxable year other than a taxable year during which the taxpayer may not claim or carry forward a tax credit in accordance with Subsection (5)(a), a taxpayer may claim or carry forward a tax credit described in Subsection (1)(a):

(i) if the taxpayer may claim or carry forward the tax credit in accordance with Subsections (1) and (2); and

(ii) subject to Subsections (3) and (4).

(6) Notwithstanding Subsection [~~(1)(b)~~] (1)(d), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim a tax credit described in Subsection [~~(1)(b)~~] (1)(d) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 63N-2-213.

(7) A taxpayer may not claim or carry forward a tax credit available under this section for a taxable year during which the taxpayer has claimed the targeted business income tax credit available under Section 63N-2-305.

(8) (a) A person may not claim a tax credit under this section:

(i) for the purchase price of machinery or equipment described in Subsection (1)(c), if the machinery or equipment is purchased on or after January 1, 2018; or

(ii) for an expenditure described in Subsection (1)(d), if the expenditure is made on or after January 1, 2018.

(b) Notwithstanding Subsection (1)(b), a person may carry forward a tax credit in accordance with this section if:

(i) the person is entitled to a tax credit under this section; and

(ii) (A) for the purchase price of machinery or equipment described in Subsection (1)(c), the machinery or equipment is purchased on or before December 31, 2017; or

(B) for an expenditure described in Subsection (1)(d), the expenditure is made on or before December 31, 2017.

Section 3. Section **59-10-137** is amended to read:

59-10-137. Review of credits allowed under this chapter.

(1) As used in this section, "committee" means the Revenue and Taxation Interim Committee.

(2) (a) The committee shall review the tax credits described in this chapter as provided in Subsection (3) and make recommendations concerning whether the tax credits should be continued, modified, or repealed.

(b) In conducting the review required under Subsection (2)(a), the 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 tax credit under review to provide testimony;

(iii) (A) invite the Governor's Office of Economic Development to present a summary and analysis of the information for each tax credit regarding which the Governor's Office of Economic Development is required to make a report under this chapter; and

(B) invite the Office of the Legislative Fiscal Analyst to present a summary and analysis of the information for each tax credit regarding which the Office of the Legislative Fiscal Analyst is required to make a report under this chapter;

(iv) ensure that the committee's recommendations described in this section include an evaluation of:

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

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

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

(v) undertake other review efforts as determined by the committee chairs or as otherwise required by law.

(3) (a) On or before November 30, 2017, and every three years after 2017, the committee shall conduct the review required under Subsection (2) of the tax credits allowed under the following sections:

(i) Section 59-10-1004;

(ii) Section 59-10-1010;

(iii) Section 59-10-1015;

(iv) Section 59-10-1025;

(v) Section 59-10-1027;

(vi) Section 59-10-1031;

(vii) Section 59-10-1032;

(viii) Section 59-10-1035;

(ix) Section 59-10-1104;

(x) Section 59-10-1105; and

(xi) Section 59-10-1108.

(b) On or before November 30, 2018, and every three years after 2018, the committee shall conduct the review required under Subsection (2) of the tax credits allowed under the following sections:

(i) Section 59-10-1005;

(ii) Section 59-10-1006;

(iii) Section 59-10-1012;

(iv) Section 59-10-1013;

(v) Section 59-10-1022;

(vi) Section 59-10-1023;

(vii) Section 59-10-1028;

(viii) Section 59-10-1034;

(ix) Section 59-10-1037; and

(x) Section 59-10-1107.

(c) On or before November 30, 2019, and every three years after 2019, the committee shall conduct the review required under Subsection (2) of the tax credits allowed under the following sections:

[~~(i) Section 59-10-1007~~;]

[~~(ii)~~] (i) Section 59-10-1009;

[~~(iii)~~] (ii) Section 59-10-1014;

[~~(iv)~~] (iii) Section 59-10-1017;

[~~(v)~~] (iv) Section 59-10-1018;

[~~(vi)~~] (v) Section 59-10-1019;

[~~(vii)~~] (vi) Section 59-10-1024;

[~~(viii)~~] (vii) Section 59-10-1029;

[~~(ix)~~] (viii) Section 59-10-1030;

[~~(x)~~] (ix) Section 59-10-1033;

[~~(xi)~~] (x) Section 59-10-1036;

[~~(xii)~~] (xi) Section 59-10-1106; and

[~~(xiii)~~] (xii) Section 59-10-1111.

(d) (i) In addition to the reviews described in this Subsection (3), the committee shall conduct a review of a tax credit described in this chapter that is enacted on or after January 1, 2017.

(ii) The committee shall complete a review described in this Subsection (3)(d) three years after the effective date of the tax credit and every three years after the initial review date.

Section 4. Section **59-10-1007** is amended to read:

59-10-1007. Recycling market development zones tax credit.

(1) [~~For taxable years~~] (a) Except as provided in Subsection (1)(b) and for a taxable year beginning on or after January 1, 1996, a claimant, estate, or trust in a recycling market development zone as defined in Section 63N-2-402 may claim a nonrefundable tax credit as provided in this section.

(b) Subject to Subsection (8), for a taxable year beginning on or after January 1, 2018, a claimant, estate, or trust may not claim a tax credit under this section.

[~~(a)~~] (c) (i) There shall be allowed a tax credit of 5% of the purchase price paid for machinery and equipment used directly in:

(A) commercial composting; or

(B) manufacturing facilities or plant units that:

(I) manufacture, process, compound, or produce recycled items of tangible personal property for sale; or

(II) reduce or reuse postconsumer waste material.

(ii) The Governor's Office of Economic Development shall certify that the machinery and equipment described in Subsection [~~(1)(a)(i)~~] (1)(c)(i) are integral to the composting or recycling process:

(A) on a form provided by the commission; and

(B) before a claimant, estate, or trust is allowed a tax credit under this section.

(iii) The Governor's Office of Economic Development shall provide a claimant, estate, or trust seeking to claim a tax credit under this section with a copy of the form described in Subsection [~~(1)(a)(ii)~~] (1)(c)(ii).

(iv) The claimant, estate, or trust described in Subsection [~~(1)(a)(iii)~~] (1)(c)(iii) shall retain a copy of the form received under Subsection [~~(1)(a)(iii)~~] (1)(c)(iii).

[~~(b)~~] (d) There shall be allowed a tax credit equal to 20% of net expenditures up to $10,000 to third parties for rent, wages, supplies, tools, test inventory, and utilities made by the claimant, estate, or trust for establishing and operating recycling or composting technology in Utah, with an annual maximum tax credit of $2,000.

(2) The total tax credit allowed under this section may not exceed 40% of the Utah income tax liability of the claimant, estate, or trust prior to any tax credits in the taxable year of purchase prior to claiming the tax credit authorized by this section.

(3) (a) Any tax credit not used for the taxable year in which the purchase price on composting or recycling machinery and equipment was paid may be carried forward against the claimant's, estate's, or trusts's tax liability under this chapter in the three succeeding taxable years until the total tax credit amount is used.

(b) Tax credits not claimed by a claimant, estate, or trust on the claimant's, estate's, or trust's tax return under this chapter within three years are forfeited.

(4) The commission shall make rules governing what information shall be filed with the commission to verify the entitlement to and amount of a tax credit.

(5) (a) Notwithstanding Subsection [~~(1)(a)~~] (1)(c), for taxable years beginning on or after January 1, 2001, a claimant, estate, or trust may not claim or carry forward a tax credit

described in Subsection [~~(1)(a)~~] (1)(c) in a taxable year during which the claimant, estate, or trust claims or carries forward a tax credit under Section 63N-2-213.

(b) For a taxable year other than a taxable year during which the claimant, estate, or trust may not claim or carry forward a tax credit in accordance with Subsection (5)(a), a claimant, estate, or trust may claim or carry forward a tax credit described in Subsection [~~(1)(a)~~] (1)(c):

(i) if the claimant, estate, or trust may claim or carry forward the tax credit in accordance with Subsections (1) and (2); and

(ii) subject to Subsections (3) and (4).

(6) Notwithstanding Subsection [~~(1)(b)~~] (1)(d), for taxable years beginning on or after January 1, 2001, a claimant, estate, or trust may not claim a tax credit described in Subsection [~~(1)(b)~~] (1)(d) in a taxable year during which the claimant, estate, or trust claims or carries forward a tax credit under Section 63N-2-213.

(7) A claimant, estate, or trust may not claim or carry forward a tax credit available under this section for a taxable year during which the claimant, estate, or trust has claimed the targeted business income tax credit available under Section 63N-2-305.

(8) (a) A claimant, estate, or trust may not claim a tax credit under this section:

(i) for the purchase price of machinery or equipment described in Subsection (1)(c), if the machinery or equipment is purchased on or after January 1, 2018; or

(ii) for an expenditure described in Subsection (1)(d), if the expenditure is made on or after January 1, 2018.

(b) Notwithstanding Subsection (1)(b), a person may carry forward a tax credit in accordance with this section if:

(i) the person is entitled to a tax credit under this section; and

(ii) (A) for the purchase price of machinery or equipment described in Subsection (1)(c), the machinery or equipment is purchased on or before December 31, 2017; or

(B) for an expenditure described in Subsection (1)(d), the expenditure is made on or before December 31, 2017.

Section 5. Section **63I-1-263** is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63N.

(1) Subsection 63A-5-104(4)(h) is repealed on July 1, 2024.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2018.

(4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is repealed November 30, 2019.

(5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.

(6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(7) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

(8) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(9) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states "the Resource Development Coordinating Committee," is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read "(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.";

(c) in Subsection 23-14-21(3), the language that states "and the Resource Development Coordinating Committee" is repealed;

(d) in Subsection 23-21-2.3(1), the language that states "the Resource Development Coordinating Committee created in Section 63J-4-501 and" is repealed;

(e) in Subsection 23-21-2.3(2), the language that states "the Resource Development Coordinating Committee and" is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word "and" is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed;

and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

(10) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

(11) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2017.

(12) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.

(13) [~~(a)~~] Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is repealed January 1, 2021.

[~~(b) Subject to Subsection (13)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.~~]

[~~(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:~~]

[~~(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or~~]

[~~(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.~~]

[~~(d) Notwithstanding Subsections (13)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:~~]

[~~(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and~~]

[~~(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or~~]

[~~(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.~~]

(14) Section 63N-2-512 is repealed on July 1, 2021.

(15) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection (15)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

(16) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed July 1, 2018.

Section 6. Section **63I-2-259** is amended to read:

63I-2-259. Repeal dates -- Title 59.

(1) Subsection 59-2-919(10) is repealed December 31, 2015.

(2) Subsection 59-2-919.1(4) is repealed December 31, 2015.

(3) Subsection 59-2-1007(14) is repealed on December 31, 2018.

(4) Section 59-7-610 is repealed on December 31, 2020.

(5) Section 59-10-1007 is repealed on December 31, 2020.

Section 7. Section **63I-2-263** is amended to read:

63I-2-263. Repeal dates, Title 63A to Title 63N.

(1) Section 63A-5-227 is repealed on January 1, 2018.

(2) On December 31, 2020, the language in Subsection 63N-2-304(1)(b) that states "59-7-610, 59-10-1007, or" is repealed.

[~~(2)~~] (3) Subsection 63N-3-109(2)(f)(i)(B) is repealed July 1, 2020.

[~~(3)~~] (4) Section 63N-3-110 is repealed July 1, 2020.

Section 8. Section **63N-2-402** is amended to read:

63N-2-402. Definitions.

As used in this part:

(1) "Composting" means the controlled decay of landscape waste or sewage sludge and organic industrial waste, or a mixture of these, by the action of bacteria, fungi, molds, and other organisms.

(2) "Postconsumer waste material" means any product generated by a business or consumer that has served its intended end use, and that has been separated from solid waste for the purposes of collection, recycling, and disposition and that does not include secondary waste material.

(3) (a) "Recovered materials" means waste materials and by-products that have been recovered or diverted from solid waste.

(b) "Recovered materials" does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(4) (a) "Recycling" means the diversion of materials from the solid waste stream and the beneficial use of the materials and includes a series of activities by which materials that would become or otherwise remain waste are diverted from the waste stream for collection, separation, and processing, and are used as raw materials or feedstocks in lieu of or in addition to virgin materials in the manufacture of goods sold or distributed in commerce or the reuse of the materials as substitutes for goods made from virgin materials.

(b) "Recycling" does not include burning municipal solid waste for energy recovery.

(5) "Recycling market development zone" or "zone" means an area designated by the office as meeting the requirements of this part.

(6) (a) "Secondary waste material" means industrial by-products that go to disposal facilities and waste generated after completion of a manufacturing process.

(b) "Secondary waste material" does not include internally generated scrap commonly returned to industrial or manufacturing processes, such as home scrap and mill broke.

[~~(7) "Tax incentive" means a nonrefundable tax credit available under Section 59-7-610 or 59-10-1007.~~]

Section 9. **Repealer.**

This bill repeals:

Section **63N-2-410, Recycling market development zone credit.**

Section 10. **Effective date.**

This bill takes effect for a taxable year beginning on or after January 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel