

ADOPTION TAX CREDIT

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rex P. Shipp

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill enacts individual income tax credits for adoption expenses.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ enacts a nonrefundable and a refundable individual income tax credit for expenses related to the adoption of a child for which eligibility depends on the individual's income;
 - ▶ provides for apportionment of a tax credit for adoption expenses;
 - ▶ requires the Department of Workforce Services to certify certain information about an individual's qualification for an adoption expense tax credit and to share that information with the State Tax Commission;
 - ▶ repeals an individual income tax credit for adoption of a child with special needs;
- 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:

[59-10-137](#), as last amended by Laws of Utah 2019, Chapters 247 and 465

[59-10-1002.2](#), as last amended by Laws of Utah 2016, Chapter 263

[62A-4a-607](#), as last amended by Laws of Utah 2017, Chapter 148

ENACTS:

[35A-1-111](#), Utah Code Annotated 1953

[59-10-1042](#), Utah Code Annotated 1953

[59-10-1102.1](#), Utah Code Annotated 1953

[59-10-1113](#), Utah Code Annotated 1953

REPEALS:

[59-10-1104](#), as last amended by Laws of Utah 2013, Chapter 414

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

Section 1. Section [35A-1-111](#) is enacted to read:

35A-1-111. Certification for adoption tax credit.

(1) An individual who seeks to claim a tax credit under Section [59-10-1042](#) or [59-10-1113](#) shall apply to the department for a certification that the individual did not receive any state or federal assistance described in Subsection [59-10-1042](#)(1)(e)(ii)(A), (B), (C), or (D) during the taxable year in which the adoption is finalized.

(2) An individual who applies for a certification under this section shall sign an information release authorizing the department to disclose the individual's name and identifying information to the State Tax Commission in accordance with Subsection (5).

(3) The department shall issue the certification on a form approved by the State Tax Commission.

(4) An individual who receives a certification under this section shall retain the certification for the same time period a person is required to keep books and records under Section [59-1-1406](#).

(5) The department shall provide the State Tax Commission with an electronic report stating the name and identifying information of each individual to whom the department issued a certification under this section.

Section 2. 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)]~~ (ix) Section 59-10-1105; and
~~[(xi)]~~ (x) 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 59-10-1022;
(v) Section 59-10-1023;
(vi) Section 59-10-1028;
(vii) Section 59-10-1034;
(viii) Section 59-10-1037;
(ix) Section 59-10-1107; and
(x) Section 59-10-1112.

(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) Section 59-10-1014;
(iii) Section 59-10-1017;
(iv) Section 59-10-1018;
(v) Section 59-10-1019;
(vi) Section 59-10-1024;
(vii) Section 59-10-1029;
(viii) Section 59-10-1033;
(ix) Section 59-10-1036;

(x) Section 59-10-1106; and

(xi) 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 3. Section 59-10-1002.2 is amended to read:

59-10-1002.2. Apportionment of tax credits.

(1) A nonresident individual or a part-year resident individual ~~[that]~~ who claims a tax credit in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1022, 59-10-1023, 59-10-1024, ~~[or]~~ 59-10-1028, or 59-10-1042 may only claim an apportioned amount of the tax credit equal to:

(a) for a nonresident individual, the product of:

(i) the state income tax percentage for the nonresident individual; and

(ii) the amount of the tax credit that the nonresident individual would have been allowed to claim but for the apportionment requirements of this section; or

(b) for a part-year resident individual, the product of:

(i) the state income tax percentage for the part-year resident individual; and

(ii) the amount of the tax credit that the part-year resident individual would have been allowed to claim but for the apportionment requirements of this section.

(2) A nonresident estate or trust that claims a tax credit in accordance with Section 59-10-1017, 59-10-1020, 59-10-1022, 59-10-1024, or 59-10-1028 may only claim an apportioned amount of the tax credit equal to the product of:

(a) the state income tax percentage for the nonresident estate or trust; and

(b) the amount of the tax credit that the nonresident estate or trust would have been allowed to claim but for the apportionment requirements of this section.

Section 4. Section 59-10-1042 is enacted to read:

59-10-1042. Nonrefundable adoption tax credit.

(1) As used in this section:

(a) "Adoption expense" means a reasonable and necessary adoption fee, court cost,

attorney fee, or other expense that is:

(i) directly related to, and for the primary purpose of, adoption of a qualifying child through a domestic adoption;

(ii) not incurred in violation of federal or state law or in carrying out any surrogate parenting arrangement; and

(iii) not paid or reimbursed by an employer or state assistance program.

(b) "Domestic adoption" means an adoption of a child who is a United States citizen or a resident of the United States or its possessions before the adoption effort begins.

(c) (i) "Qualifying child" means an individual who is under the age of 18.

(ii) "Qualifying child" does not include an individual who is a child of the claimant's spouse.

(d) "Qualifying claimant" means a claimant:

(i) whose adjusted gross income is:

(A) for a claimant who files a federal income tax return jointly with the claimant's spouse, \$50,000 or more but less than \$100,000; or

(B) for a claimant who files a federal income tax return other than jointly, \$25,000 or more but less than \$50,000;

(ii) who did not, and if the claimant is married, whose spouse did not, receive state or federal assistance during the taxable year in which the adoption is finalized; and

(iii) who applies for and receives a certification described in Section 35A-1-111 from the Department of Workforce Services.

(e) (i) "State or federal assistance" means public funds that are:

(A) expended for the benefit of an individual in need of financial, medical, food, housing, or related assistance;

(B) means-tested; and

(C) provided by a state or federal government.

(ii) "State or federal assistance" includes:

(A) the Medicaid program, as defined in Section 26-18-2;

(B) the Employment Support Act described in Title 35A, Chapter 3, Employment Support Act;

(C) the Children's Health Insurance Program created in Title 26, Chapter 40, Utah

Children's Health Insurance Act;

(D) the Supplemental Nutrition Assistance Program established in 7 U.S.C. Chapter 51;

(E) the Women, Infants, and Children Program established in 42 U.S.C. Sec. 1786;

(F) the federal Social Security Act; and

(G) housing assistance.

(iii) "State or federal assistance" does not include an income tax credit, subtraction, or deduction.

(2) Except as provided in Section 59-10-1002.2, a qualifying claimant may claim, in the taxable year in which the adoption is finalized, a nonrefundable tax credit equal to the amount of the qualifying claimant's adoption expenses.

(3) A qualifying claimant may carry forward, to the next five taxable years, the amount of any tax credit that exceeds the qualifying claimant's tax liability for the taxable year.

(4) A qualifying claimant may not claim a credit under this section to the extent that the qualifying claimant claims a federal tax credit under 26 U.S.C. Sec. 23 for the same adoption expense.

(5) A qualifying claimant who is married may claim a tax credit under this section only if the qualifying claimant and the qualifying claimant's spouse file a joint federal income tax return.

Section 5. Section 59-10-1102.1 is enacted to read:

59-10-1102.1. Apportionment of tax credit.

A nonresident individual or a part-year resident individual who claims the tax credit described in Section 59-10-1113 may only claim an apportioned amount of the tax credit equal to the product of:

(1) the state income tax percentage for the nonresident individual or the state income tax percentage for the part-year resident individual; and

(2) the amount of the tax credit that the nonresident individual or the part-year resident individual would have been allowed to claim but for the apportionment requirement of this section.

Section 6. Section 59-10-1113 is enacted to read:

59-10-1113. Refundable adoption income tax credit.

(1) As used in this section:

(a) "Adoption expense" means a reasonable and necessary adoption fee, court cost, attorney fee, or other expense that is:

(i) directly related to, and for the primary purpose of, adoption of a qualifying child through a domestic adoption;

(ii) not incurred in violation of federal or state law or in carrying out a surrogate parenting arrangement; and

(iii) not paid or reimbursed by an employer or state assistance program.

(b) "Domestic adoption" means an adoption of a child who is a United States citizen or a resident of the United States or its possessions before the adoption effort begins.

(c) (i) "Qualifying child" means an individual who is under the age of 18.

(ii) "Qualifying child" does not include an individual who is a child of the claimant's spouse.

(d) "Qualifying claimant" means a claimant:

(i) whose adjusted gross income is:

(A) for a claimant who files a federal income tax return jointly with the claimant's spouse, less than \$50,000; or

(B) for a claimant who files a federal income tax return other than jointly, less than \$25,000;

(ii) who did not, and if the claimant is married, whose spouse did not, receive state or federal assistance during the taxable year in which the adoption is finalized; and

(iii) who applies for and receives a certification described in Section [35A-1-111](#) from the Department of Workforce Services.

(e) "State or federal assistance" means the same as that term is defined in Section [59-10-1042](#).

(2) (a) Subject to the other provisions of this Subsection (2), once an adoption is finalized, a qualifying claimant is eligible to claim a refundable tax credit equal to the amount of the qualifying claimant's adoption expenses.

(b) (i) A qualifying claimant who claims the tax credit described in Subsection (2)(a) shall first claim the tax credit for the taxable year in which the adoption is finalized.

(ii) The amount of the tax credit for the taxable year in which the adoption is finalized

is limited to \$10,000.

(c) A qualifying claimant may claim an additional \$10,000 tax credit each taxable year after the taxable year in which the adoption is finalized until the earlier of:

(i) the qualifying claimant has claimed the amount of the tax credit described in Subsection (2)(a); or

(ii) the fourth taxable year after the qualifying claimant first claimed the tax credit described in Subsection (2)(a).

(d) The provisions of Section 59-10-1102.1 apply to a nonresident individual or part-year resident individual.

(3) A qualifying claimant may not claim a credit under this section to the extent that the qualifying claimant claims a federal tax credit under 26 U.S.C. Sec. 23 for the same adoption expense.

(4) A qualifying claimant who is married may claim a tax credit under this section only if the qualifying claimant and the qualifying claimant's spouse file a joint federal income tax return.

Section 7. Section **62A-4a-607** is amended to read:

62A-4a-607. Promotion of adoption -- Agency notice to potential adoptive parents.

(1) (a) The division and all child-placing agencies licensed under this part shall promote adoption when that is a possible and appropriate alternative for a child. Specifically, in accordance with Section **62A-4a-205.6**, the division shall actively promote the adoption of all children in ~~[its]~~ the division's custody who have a final plan for termination of parental rights pursuant to Section **78A-6-314** or a primary permanency plan of adoption.

(b) ~~[Beginning May 1, 2000, the]~~ The division may not place a child for adoption, either temporarily or permanently, with any individual or individuals who do not qualify for adoptive placement pursuant to the requirements of Sections **78B-6-117**, **78B-6-102**, and **78B-6-137**.

(2) The division shall obtain or conduct research of prior adoptive families to determine what families may do to be successful with their adoptive children and shall make this research available to potential adoptive parents.

(3) (a) A child-placing agency licensed under this part shall inform each potential

adoptive parent with whom [it] the child-placing agency is working that:

(i) children in the custody of the state are available for adoption;

(ii) Medicaid coverage for medical, dental, and mental health services may be available for these children;

(iii) tax benefits, including the tax credit provided for in Section ~~[59-10-1104]~~ 59-10-1042 or 59-10-1113, and financial assistance may be available to defray the costs of adopting these children;

(iv) training and ongoing support may be available to the adoptive parents of these children; and

(v) information about individual children may be obtained by contacting the division's offices or [its] the division's Internet site as explained by the child-placing agency.

(b) A child-placing agency shall:

(i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity; and

(ii) simultaneously distribute a copy of the pamphlet prepared by the division in accordance with Subsection (3)(d).

(c) As a condition of licensure, the child-placing agency shall certify to the Office of Licensing at the time of license renewal that it has complied with the provisions of this section.

(d) ~~[Before July 1, 2000, the]~~ The division shall:

(i) prepare a pamphlet that explains the information that is required by Subsection (3)(a); and

(ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to child-placing agencies.

(e) The division shall respond to any inquiry made as a result of the notice provided in Subsection (3)(a).

Section 8. **Repealer.**

This bill repeals:

Section ~~59-10-1104~~, **Tax credit for adoption of a child who has a special need.**

Section 9. **Retrospective operation.**

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