

TARGETED BUSINESS INCOME TAX CREDIT REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

This bill modifies tax credit provisions related to enterprise zones.

Highlighted Provisions:

This bill:

- ▶ modifies the targeted business income tax credit program;
- ▶ modifies the application requirements for businesses to apply for a targeted business income tax credit;
- ▶ modifies the Governor's Office of Economic Development (GOED) oversight and reporting responsibilities in administering the targeted business income tax credit program;
- ▶ limits the amount of tax credits that may be awarded each year;
- ▶ defines terms; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

63N-2-302, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-303, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-304, as renumbered and amended by Laws of Utah 2015, Chapter 283

30 **63N-2-305**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 1



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **63N-2-302** is amended to read:

34 **63N-2-302. Definitions.**

35 As used in this part:

36 ~~[(1) "Allocated cap amount" means the total amount of the targeted business income~~
37 ~~tax credit that a business applicant is allowed to claim for a taxable year that represents a pro~~
38 ~~rata share of the total amount of \$300,000 for each fiscal year allowed under Subsection~~
39 ~~**63N-2-305(2).**]~~

40 ~~[(2)]~~ (1) "Business applicant" means a business that:

41 (a) is a ~~[(i)]~~ claimant~~[(ii)]~~, estate~~[(iii)]~~, or trust; and

42 (b) meets the criteria established in Section **63N-2-304**.

43 ~~[(3)]~~ (2) (a) Except as provided in Subsection ~~[(3)]~~ (2)(b), "claimant" means a resident
44 person or a nonresident person.

45 (b) "Claimant" does not include an estate or trust.

46 ~~[(4)]~~ (3) "Community investment project" means a project that includes one or more of
47 the following criteria in addition to the normal operations of the business applicant:

48 (a) ~~[substantial]~~ significant new employment; or

49 (b) significant new capital development~~[(or)]~~.

50 ~~[(c) a combination of both Subsections (4)(a) and (b).]~~

51 ~~[(5) "Community investment project period" means the total number of years that the~~
52 ~~office determines a business applicant is eligible for a targeted business income tax credit for~~
53 ~~each community investment project.]~~

54 ~~[(6)]~~ (4) "Enterprise zone" means an area within a county or municipality that has been
55 designated as an enterprise zone by the office under Part 2, Enterprise Zone Act.

56 ~~[(7)]~~ (5) "Estate" means a ~~[nonresident estate or a resident estate.]~~ resident estate or a
57 nonresident estate.

58 ~~[(8) "Local zone administrator" means a person:]~~
59 ~~[(a) designated by the governing authority of the county or municipal applicant as the~~
60 ~~local zone administrator in an enterprise zone application; and]~~

61 ~~[(b) approved by the office as the local zone administrator.]~~

62 ~~[(9)]~~ (6) "Refundable tax credit" ~~[or "tax credit"]~~ means a tax credit that a claimant,
63 estate, or trust may claim:

64 (a) as provided by statute; and

65 (b) regardless of whether, for the taxable year for which the claimant, estate, or trust
66 claims the tax credit, the claimant, estate, or trust has a tax liability under:

67 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

68 (ii) Title 59, Chapter 10, Individual Income Tax Act.

69 ~~[(10)]~~ (7) "Targeted business income tax credit" means a refundable tax credit
70 available under ~~[Section 63N-2-305]~~ this part.

71 ~~[(11)]~~ (8) "Targeted business income tax credit eligibility ~~[form]~~ certificate" means a
72 document ~~[provided annually to the business applicant by the office that complies with the~~
73 ~~requirements of Subsection 63N-2-305(8).]~~ provided by the office to a business applicant
74 before the applicant may claim a targeted business income tax credit under this part.

75 ~~[(12)]~~ (9) "Trust" means a ~~[nonresident]~~ resident trust or a ~~[resident]~~ nonresident trust.

76 Section 2. Section 63N-2-303 is amended to read:

77 **63N-2-303. Powers of the office.**

78 The office shall:

79 (1) monitor the implementation and operation of this part and conduct a continuing
80 evaluation of the effectiveness of the targeted business income tax credit in bringing significant
81 new employment and significant new capital development to rural communities;

82 (2) determine a business entity's eligibility for a targeted business income tax credit
83 award;

84 (3) ensure that tax credits are only awarded under this part to a business applicant that
85 has satisfied performance benchmarks as determined by the office;

86 (4) ensure that the amount of targeted business income tax credit awarded to a business
87 applicant through a targeted business income tax credit eligibility certificate is no more than
88 \$100,000 for the business applicant's taxable year;

89 (5) ensure that the aggregate amount of targeted business income tax credits awarded to
90 business applicants through targeted business income tax credit eligibility certificates is no
91 more than \$300,000 for each fiscal year;

92 (6) as part of the annual written report described in Section 63N-1-301, prepare an
93 annual evaluation that provides:

94 (a) the identity of each business applicant that was provided a targeted business income
95 tax credit eligibility certificate by the office during the year of the annual report; and

96 (b) the total amount awarded in targeted business income tax credit for each
97 development zone; and

98 (7) [In] in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
99 and [for purposes of this part, the office shall] in accordance with the provisions of this part,
100 make rules regarding:

101 ~~[(1) to determine]~~ (a) the determination of what constitutes:

102 ~~[(a) substantial]~~ (i) significant new employment;

103 ~~[(b)]~~ (ii) significant new capital development; and

104 ~~[(c) a]~~ (iii) a community investment project; [and (2) to establish a formula for
105 determining the allocated cap amount for each business applicant.]

106 (b) the form and content of an application for a targeted business income tax credit
107 eligibility certificate under this part;

108 (c) documentation or other requirements for a business applicant to receive a targeted
109 business income tax credit eligibility certificate under this part; and

110 (d) administration of targeted business income tax credit awards and the issuing of
111 targeted business income tax credit eligibility certificates, including relevant timelines and
112 deadlines.

113 Section 3. Section **63N-2-304** is amended to read:

114 **63N-2-304. Application for targeted business income tax credit.**

115 (1) (a) For ~~[taxable years]~~ a taxable year beginning on or after January 1, ~~[2002]~~ 2017,
116 a business applicant may ~~[elect to claim a targeted business income tax credit available under~~
117 ~~Section 63N-2-305]~~ apply to the office for a targeted business income tax credit eligibility
118 certificate under this part if the business applicant:

119 (i) is located in:

120 (A) an enterprise zone; and

121 (B) a county with ~~[-(F)]~~ a population of less than 25,000; ~~[and (H) an unemployment~~
122 ~~rate that for six months or more of each calendar year is at least one percentage point higher~~
123 ~~than the state average;]~~

124 (ii) meets the requirements of Section 63N-2-212;

125 (iii) provides ~~[-(A)]~~ a community investment project within the enterprise zone; and

126 ~~[(B) a portion of the community investment project during each taxable year for which~~
127 ~~the business applicant claims the targeted business tax incentive; and]~~

128 (iv) ~~[in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,]~~
129 is not engaged in the following ~~[-, as defined by the State Tax Commission by rule]:~~

130 (A) construction;

131 (B) retail trade; or

132 (C) public utility activities.

133 (b) For a taxable year for which a business applicant claims a targeted business income
134 tax credit available under this part, the business applicant may not claim or carry forward a tax
135 credit available under Section 59-7-610, 59-10-1007, or 63N-2-213.

136 (2) (a) A business applicant seeking to claim a targeted business income tax credit
137 under this part shall ~~[file]~~ submit an application ~~[as provided in Subsection (2)(b) with the local~~
138 ~~zone administrator]~~ to the office by no later than June 1 of the taxable year in which the
139 business applicant is seeking to claim ~~[a]~~ the targeted business income tax credit.

140 (b) The application described in Subsection (2)(a) shall include:

141 (i) any documentation required by the ~~[local zone administrator]~~ office to demonstrate

142 that the business applicant meets the requirements of Subsection (1);

143 (ii) a plan developed by the business applicant that ~~[outlines]~~ describes:

144 (A) if the community investment project includes ~~[substantial]~~ significant new
145 employment, the projected number and anticipated wage level of the jobs that the business
146 applicant plans to create as the basis for qualifying for a targeted business income tax credit;

147 (B) if the community investment project includes significant new capital development,
148 ~~[a description of]~~ the capital development the business applicant plans to make as the basis for
149 qualifying for a targeted business income tax credit; ~~[and]~~

150 (C) ~~[a description of]~~ how the business applicant's plan coordinates with~~[:(F)]~~ the goals
151 of the enterprise zone in which the business applicant is providing a community investment
152 project; ~~[and]~~

153 ~~[(H)]~~ (D) how the business applicant's plan coordinates with the overall economic
154 development goals of the county or municipality in which the business applicant is providing a
155 community investment project; ~~[and]~~

156 (E) any matching funds that will be used for the community investment project;

157 (F) how any targeted business income tax credit incentives that were awarded in a
158 previous year have been used for the community investment project by the business applicant;
159 and

160 (G) the requested amount of the targeted business income tax credit; and

161 (iii) any additional information required by the ~~[local zone administrator]~~ office.

162 (3) (a) The ~~[local zone administrator]~~ office shall:

163 (i) evaluate an application filed under Subsection (2); ~~[and]~~

164 (ii) determine whether the business applicant is potentially eligible for a targeted
165 business income tax credit~~[-];~~ and

166 (iii) if the business applicant is potentially eligible for a targeted business income tax
167 credit, determine performance benchmarks and the deadline for meeting those benchmarks that
168 the business applicant must achieve before the office awards a targeted business income tax
169 credit to the business applicant.

170 (b) If the ~~[local zone administrator]~~ office determines that the business applicant is
171 potentially eligible for a targeted business income tax credit, the ~~[local zone administrator]~~
172 office shall:

173 (i) ~~[certify that the]~~ notify the business applicant that the business applicant is eligible
174 for ~~[the]~~ a targeted business income tax credit if the business applicant meets the performance
175 benchmarks by the deadline as determined by the office as described in Subsection (3)(a)(iii);

176 ~~[(ii) structure the targeted business income tax credit for the business applicant in~~
177 ~~accordance with Section 63N-2-305; and]~~

178 (ii) notify the business applicant of the potential amount of the targeted business
179 income tax credit that may be awarded to the business applicant, which amount may be no
180 more than \$100,000 for the business applicant in a taxable year; and

181 (iii) monitor a business applicant to ensure compliance with this section[-] and to
182 measure the business applicant's progress in meeting performance benchmarks.

183 (c) If the business applicant provides evidence to the office, in a form prescribed by the
184 office, that the business applicant has achieved the performance benchmarks by the deadline as
185 determined by the office as described in Subsection (3)(a)(iii), the office shall:

186 (i) certify that the business applicant is eligible for a targeted business income tax
187 credit;

188 (ii) issue a targeted business income tax credit eligibility certificate to the business
189 applicant in accordance with Section 63N-2-305; and

190 (iii) provide a duplicate copy of the targeted business income tax credit eligibility
191 certificate to the State Tax Commission.

192 ~~[(4) A local zone administrator shall report to the office by no later than June 30 of~~
193 ~~each year:]~~

194 ~~[(a) (i) any application approved by the local zone administrator during the last fiscal~~
195 ~~year; and]~~

196 ~~[(ii) the information established in Subsections 63N-2-305(4)(a) through (d) for each~~
197 ~~new business applicant; and]~~

198 ~~[(b) (i) the status of any existing business applicants that the local zone administrator~~
 199 ~~monitors; and]~~

200 ~~[(ii) any information required by the office to determine the status of an existing~~
 201 ~~business applicant.]~~

202 ~~[(5) (a) By July 15 of each year, the department shall notify the local zone~~
 203 ~~administrator of the allocated cap amount that each business applicant that the local zone~~
 204 ~~administrator monitors is eligible to claim.]~~

205 ~~[(b) By September 15 of each year, the local zone administrator shall notify, in writing,~~
 206 ~~each business applicant that the local zone administrator monitors of the allocated cap amount~~
 207 ~~determined by the office under Subsection (5)(a) that the business applicant is eligible to claim~~
 208 ~~for a taxable year.]~~

209 Section 4. Section 63N-2-305 is amended to read:

210 **63N-2-305. Targeted business income tax credit structure -- Revenue and**
 211 **Taxation Interim Committee study.**

212 (1) A business applicant that is certified and issued a targeted business income tax
 213 credit eligibility certificate by the office under Subsection 63N-2-304(3) ~~[and issued a targeted~~
 214 ~~business tax credit eligibility form by the office under Subsection (8)]~~ may claim a refundable
 215 tax credit in the amount specified on the targeted business income tax credit eligibility
 216 certificate:

217 (a) against the business applicant's tax liability under:

218 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

219 (ii) Title 59, Chapter 10, Individual Income Tax Act; and

220 (b) subject to requirements and limitations provided by this part.

221 (2) The total amount of the targeted business income tax credits allowed under this part
 222 for all business applicants may not exceed \$300,000 in any fiscal year.

223 (3) ~~[(a)]~~ A targeted business income tax credit allowed under this part for each
 224 community investment project provided by a business applicant may not ~~[(i) be claimed by a~~
 225 ~~business applicant for more than seven consecutive taxable years from the date the business~~

226 applicant first qualifies for a targeted business income tax credit on the basis of a community
227 investment project;(ii)] be carried forward or carried back[;].

228 [(iii) exceed \$100,000 in total amount for the community investment project period
229 during which the business applicant is eligible to claim a targeted business income tax credit;
230 or]

231 [(iv) exceed in any year that the targeted business income tax credit is claimed the
232 lesser of:]

233 [(A) 50% of the maximum amount allowed by the local zone administrator; or]

234 [(B) the allocated cap amount determined by the office under Subsection
235 63N-2-304(5).]

236 [(b) A business applicant may apply to the local zone administrator to claim a targeted
237 business income tax credit allowed under this part for each community investment project
238 provided by the business applicant as the basis for its eligibility for a targeted business income
239 tax credit.]

240 [(4) Subject to other provisions of this section, the local zone administrator shall
241 establish for each business applicant that qualifies for a targeted business income tax credit:]

242 [(a) criteria for maintaining eligibility for the targeted business income tax credit that
243 are reasonably related to the community investment project that is the basis for the business
244 applicant's targeted business income tax credit;]

245 [(b) the maximum amount of the targeted business income tax credit the business
246 applicant is allowed for the community investment project period;]

247 [(c) the time period over which the total amount of the targeted business income tax
248 credit may be claimed;]

249 [(d) the maximum amount of the targeted business income tax credit that the business
250 applicant will be allowed to claim each year; and]

251 [(e) requirements for a business applicant to report to the local zone administrator
252 specifying:]

253 [(i) the frequency of the business applicant's reports to the local zone administrator;

254 which shall be made at least quarterly; and]

255 [(ii) the information needed by the local zone administrator to monitor the business
256 applicant's compliance with this Subsection (4) or Section ~~63N-2-304~~ that shall be included in
257 the report.]

258 [~~(5) In accordance with Subsection (4)(c), a business applicant allowed a targeted
259 business income tax credit under this part shall report to the local zone administrator.]~~

260 [~~(6) The amount of a targeted business income tax credit that a business applicant is
261 allowed to claim for a taxable year shall be reduced by 25% for each quarter in which the office
262 or the local zone administrator determines that the business applicant has failed to comply with
263 a requirement of Subsection (3) or Section ~~63N-2-304~~.]~~

264 [~~(7)~~ (4) The office [~~or local zone administrator~~] may audit a business applicant to
265 ensure:

266 (a) eligibility for a targeted business income tax credit; [~~or~~] and

267 (b) compliance with this part, including Subsection (3) or Section ~~63N-2-304~~.

268 [~~(8) The office shall issue a targeted business income tax credit eligibility form in a
269 form jointly developed by the State Tax Commission and the office no later than 30 days after
270 the last day of the business applicant's taxable year showing:~~

271 [~~(a) the maximum amount of the targeted business income tax credit that the business
272 applicant is eligible for that taxable year;~~

273 [~~(b) any reductions in the maximum amount of the targeted business income tax credit
274 because of failure to comply with a requirement of Subsection (3) or Section ~~63N-2-304~~;~~

275 [~~(c) the allocated cap amount that the business applicant may claim for that taxable
276 year; and]~~

277 [~~(d) the actual amount of the targeted business income tax credit that the business
278 applicant may claim for that taxable year.]~~

279 [~~(9)~~ (5) (a) A business applicant shall retain the targeted business income tax credit
280 eligibility [~~form~~] certificate provided by the office under [~~this~~] Subsection [~~(9)~~] ~~63N-2-304~~(3).

281 (b) The State Tax Commission may audit a business applicant to ensure:

282 (i) eligibility for a targeted business income tax credit; ~~[or]~~ and
283 (ii) compliance with this part, including Subsection (3) ~~[or]~~ and Section 63N-2-304.
284 ~~[(10)]~~ (6) (a) On or before November 30, 2018, and every three years after 2018, the
285 Revenue and Taxation Interim Committee shall review the tax credit provided by this section
286 and make recommendations concerning whether the tax credit should be continued, modified,
287 or repealed.

288 (b) In conducting the review required by Subsection ~~[(10)]~~ (6)(a), the Revenue and
289 Taxation Interim Committee shall:

- 290 (i) schedule time on at least one committee agenda to conduct the review;
- 291 (ii) invite state agencies, individuals, and organizations concerned with the credit under
292 review to provide testimony;
- 293 (iii) ensure that the recommendations described in this section include an evaluation of:
294 (A) the cost of the tax credit to the state;
295 (B) the purpose and effectiveness of the tax credit; and
296 (C) the extent to which the state benefits from the tax credit; and
- 297 (iv) undertake other review efforts as determined by the chairs of the Revenue and
298 Taxation Interim Committee.

299 **Section 5. Retrospective operation.**

300 This bill has retrospective operation for a taxable year beginning on or after January 1,
301 2017.