

**TAX INCREMENT AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Stephen G. Handy

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**LONG TITLE**

**General Description:**

This bill amends provisions related to a community reinvestment agency's collection of tax increment revenue.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ clarifies the application of the Community Reinvestment Agency Act;
- ▶ clarifies the manner in which an agency may receive a taxing entity's tax revenue that results from a tax increase; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**17C-1-102**, as last amended by Laws of Utah 2018, Chapter 364

**17C-1-103**, as last amended by Laws of Utah 2016, Chapter 350

**17C-1-407**, as last amended by Laws of Utah 2016, Chapter 350

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

29 Section 1. Section 17C-1-102 is amended to read:

30 **17C-1-102. Definitions.**

31 As used in this title:

32 (1) "Active project area" means a project area that has not been dissolved in accordance  
33 with Section 17C-1-702.

34 (2) "Adjusted tax increment" means the percentage of tax increment, if less than 100%,  
35 that an agency is authorized to receive:

36 (a) for a pre-July 1, 1993, project area plan, under Section 17C-1-403, excluding tax  
37 increment under Subsection 17C-1-403(3);

38 (b) for a post-June 30, 1993, project area plan, under Section 17C-1-404, excluding tax  
39 increment under Section 17C-1-406;

40 (c) under a project area budget approved by a taxing entity committee; or

41 (d) under an interlocal agreement that authorizes the agency to receive a taxing entity's  
42 tax increment.

43 (3) "Affordable housing" means housing owned or occupied by a low or moderate  
44 income family, as determined by resolution of the agency.

45 (4) "Agency" or "community reinvestment agency" means a separate body corporate  
46 and politic, created under Section 17C-1-201.5 or as a redevelopment agency or community  
47 development and renewal agency under previous law:

48 (a) that is a political subdivision of the state;

49 (b) that is created to undertake or promote project area development as provided in this  
50 title; and

51 (c) whose geographic boundaries are coterminous with:

52 (i) for an agency created by a county, the unincorporated area of the county; and

53 (ii) for an agency created by a municipality, the boundaries of the municipality.

54 (5) "Agency funds" means money that an agency collects or receives for agency  
55 operations, implementing a project area plan, or other agency purposes, including:

- 56 (a) project area funds;
- 57 (b) income, proceeds, revenue, or property derived from or held in connection with the  
58 agency's undertaking and implementation of project area development; or
- 59 (c) a contribution, loan, grant, or other financial assistance from any public or private  
60 source.
- 61 (6) "Annual income" means the same as that term is defined in regulations of the  
62 United States Department of Housing and Urban Development, 24 C.F.R. Sec. 5.609, as  
63 amended or as superseded by replacement regulations.
- 64 (7) "Assessment roll" means the same as that term is defined in Section 59-2-102.
- 65 (8) "Base taxable value" means, unless otherwise adjusted in accordance with  
66 provisions of this title, a property's taxable value as shown upon the assessment roll last  
67 equalized during the base year.
- 68 (9) "Base year" means, except as provided in Subsection 17C-1-402(4)(c), the year  
69 during which the assessment roll is last equalized:
- 70 (a) for a pre-July 1, 1993, urban renewal or economic development project area plan,  
71 before the project area plan's effective date;
- 72 (b) for a post-June 30, 1993, urban renewal or economic development project area  
73 plan, or a community reinvestment project area plan that is subject to a taxing entity  
74 committee:
- 75 (i) before the date on which the taxing entity committee approves the project area  
76 budget; or
- 77 (ii) if taxing entity committee approval is not required for the project area budget,  
78 before the date on which the community legislative body adopts the project area plan;
- 79 (c) for a project on an inactive airport site, after the later of:
- 80 (i) the date on which the inactive airport site is sold for remediation and development;  
81 or
- 82 (ii) the date on which the airport that operated on the inactive airport site ceased

83 operations; or

84 (d) for a community development project area plan or a community reinvestment  
85 project area plan that is subject to an interlocal agreement, as described in the interlocal  
86 agreement.

87 (10) "Basic levy" means the portion of a school district's tax levy constituting the  
88 minimum basic levy under Section 59-2-902.

89 (11) "Blight" or "blighted" means the condition of an area that meets the requirements  
90 described in Subsection 17C-2-303(1) for an urban renewal project area or Section 17C-5-405  
91 for a community reinvestment project area.

92 (12) "Blight hearing" means a public hearing regarding whether blight exists within a  
93 proposed:

94 (a) urban renewal project area under Subsection 17C-2-102(1)(a)(i)(C) and Section  
95 17C-2-302; or

96 (b) community reinvestment project area under Section 17C-5-405.

97 (13) "Blight study" means a study to determine whether blight exists within a survey  
98 area as described in Section 17C-2-301 for an urban renewal project area or Section 17C-5-403  
99 for a community reinvestment project area.

100 (14) "Board" means the governing body of an agency, as described in Section  
101 17C-1-203.

102 (15) "Budget hearing" means the public hearing on a proposed project area budget  
103 required under Subsection 17C-2-201(2)(d) for an urban renewal project area budget,  
104 Subsection 17C-3-201(2)(d) for an economic development project area budget, or Subsection  
105 17C-5-302(2)(e) for a community reinvestment project area budget.

106 (16) "Closed military base" means land within a former military base that the Defense  
107 Base Closure and Realignment Commission has voted to close or realign when that action has  
108 been sustained by the president of the United States and Congress.

109 (17) "Combined incremental value" means the combined total of all incremental values

110 from all project areas, except project areas that contain some or all of a military installation or  
111 inactive industrial site, within the agency's boundaries under project area plans and project area  
112 budgets at the time that a project area budget for a new project area is being considered.

113 (18) "Community" means a county or municipality.

114 (19) "Community development project area plan" means a project area plan adopted  
115 under Chapter 4, Part 1, Community Development Project Area Plan.

116 (20) "Community legislative body" means the legislative body of the community that  
117 created the agency.

118 (21) "Community reinvestment project area plan" means a project area plan adopted  
119 under Chapter 5, Part 1, Community Reinvestment Project Area Plan.

120 (22) "Contest" means to file a written complaint in the district court of the county in  
121 which the agency is located.

122 (23) "Economic development project area plan" means a project area plan adopted  
123 under Chapter 3, Part 1, Economic Development Project Area Plan.

124 (24) "Fair share ratio" means the ratio derived by:

125 (a) for a municipality, comparing the percentage of all housing units within the  
126 municipality that are publicly subsidized income targeted housing units to the percentage of all  
127 housing units within the county in which the municipality is located that are publicly  
128 subsidized income targeted housing units; or

129 (b) for the unincorporated part of a county, comparing the percentage of all housing  
130 units within the unincorporated county that are publicly subsidized income targeted housing  
131 units to the percentage of all housing units within the whole county that are publicly subsidized  
132 income targeted housing units.

133 (25) "Family" means the same as that term is defined in regulations of the United  
134 States Department of Housing and Urban Development, 24 C.F.R. Section 5.403, as amended  
135 or as superseded by replacement regulations.

136 (26) "Greenfield" means land not developed beyond agricultural, range, or forestry use.

137 (27) "Hazardous waste" means any substance defined, regulated, or listed as a  
138 hazardous substance, hazardous material, hazardous waste, toxic waste, pollutant, contaminant,  
139 or toxic substance, or identified as hazardous to human health or the environment, under state  
140 or federal law or regulation.

141 (28) "Housing allocation" means project area funds allocated for housing under Section  
142 [17C-2-203](#), [17C-3-202](#), or [17C-5-307](#) for the purposes described in Section [17C-1-412](#).

143 (29) "Housing fund" means a fund created by an agency for purposes described in  
144 Section [17C-1-411](#) or [17C-1-412](#) that is comprised of:

145 (a) project area funds allocated for the purposes described in Section [17C-1-411](#); or

146 (b) an agency's housing allocation.

147 (30) (a) "Inactive airport site" means land that:

148 (i) consists of at least 100 acres;

149 (ii) is occupied by an airport:

150 (A) (I) that is no longer in operation as an airport; or

151 (II) (Aa) that is scheduled to be decommissioned; and

152 (Bb) for which a replacement commercial service airport is under construction; and

153 (B) that is owned or was formerly owned and operated by a public entity; and

154 (iii) requires remediation because:

155 (A) of the presence of hazardous waste or solid waste; or

156 (B) the site lacks sufficient public infrastructure and facilities, including public roads,  
157 electric service, water system, and sewer system, needed to support development of the site.

158 (b) "Inactive airport site" includes a perimeter of up to 2,500 feet around the land  
159 described in Subsection (30)(a).

160 (31) (a) "Inactive industrial site" means land that:

161 (i) consists of at least 1,000 acres;

162 (ii) is occupied by an inactive or abandoned factory, smelter, or other heavy industrial  
163 facility; and

164 (iii) requires remediation because of the presence of hazardous waste or solid waste.

165 (b) "Inactive industrial site" includes a perimeter of up to 1,500 feet around the land  
166 described in Subsection (31)(a).

167 (32) "Income targeted housing" means housing that is owned or occupied by a family  
168 whose annual income is at or below 80% of the median annual income for a family within the  
169 county in which the housing is located.

170 (33) "Incremental value" means a figure derived by multiplying the marginal value of  
171 the property located within a project area on which tax increment is collected by a number that  
172 represents the adjusted tax increment from that project area that is paid to the agency.

173 (34) "Loan fund board" means the Olene Walker Housing Loan Fund Board,  
174 established under Title 35A, Chapter 8, Part 5, Olene Walker Housing Loan Fund.

175 (35) (a) "Local government building" means a building owned and operated by a  
176 community for the primary purpose of providing one or more primary community functions,  
177 including:

178 (i) a fire station;

179 (ii) a police station;

180 (iii) a city hall; or

181 (iv) a court or other judicial building.

182 (b) "Local government building" does not include a building the primary purpose of  
183 which is cultural or recreational in nature.

184 (36) "Marginal value" means the difference between actual taxable value and base  
185 taxable value.

186 (37) "Military installation project area" means a project area or a portion of a project  
187 area located within a federal military installation ordered closed by the federal Defense Base  
188 Realignment and Closure Commission.

189 (38) "Municipality" means a city, town, or metro township as defined in Section  
190 [10-2a-403](#).

191 (39) "Participant" means one or more persons that enter into a participation agreement  
192 with an agency.

193 (40) "Participation agreement" means a written agreement between a person and an  
194 agency that:

195 (a) includes a description of:

196 (i) the project area development that the person will undertake;

197 (ii) the amount of project area funds the person may receive; and

198 (iii) the terms and conditions under which the person may receive project area funds;

199 and

200 (b) is approved by resolution of the board.

201 (41) "Plan hearing" means the public hearing on a proposed project area plan required  
202 under Subsection 17C-2-102(1)(a)(vi) for an urban renewal project area plan, Subsection  
203 17C-3-102(1)(d) for an economic development project area plan, Subsection 17C-4-102(1)(d)  
204 for a community development project area plan, or Subsection 17C-5-104(3)(e) for a  
205 community reinvestment project area plan.

206 (42) "Post-June 30, 1993, project area plan" means a project area plan adopted on or  
207 after July 1, 1993, and before May 10, 2016, whether or not amended subsequent to the project  
208 area plan's adoption.

209 (43) "Pre-July 1, 1993, project area plan" means a project area plan adopted before July  
210 1, 1993, whether or not amended subsequent to the project area plan's adoption.

211 (44) "Private," with respect to real property, means property not owned by a public  
212 entity or any other governmental entity.

213 (45) "Project area" means the geographic area described in a project area plan within  
214 which the project area development described in the project area plan takes place or is  
215 proposed to take place.

216 (46) "Project area budget" means a multiyear projection of annual or cumulative  
217 revenues and expenses and other fiscal matters pertaining to a project area prepared in



218 accordance with:

219 (a) for an urban renewal project area, Section [~~17C-2-202~~] [17C-2-201](#);

220 (b) for an economic development project area, Section [~~17C-3-202~~] [17C-3-201](#);

221 (c) for a community development project area, Section [17C-4-204](#); or

222 (d) for a community reinvestment project area, Section [17C-5-302](#).

223 (47) "Project area development" means activity within a project area that, as  
224 determined by the board, encourages, promotes, or provides development or redevelopment for  
225 the purpose of implementing a project area plan, including:

226 (a) promoting, creating, or retaining public or private jobs within the state or a  
227 community;

228 (b) providing office, manufacturing, warehousing, distribution, parking, or other  
229 facilities or improvements;

230 (c) planning, designing, demolishing, clearing, constructing, rehabilitating, or  
231 remediating environmental issues;

232 (d) providing residential, commercial, industrial, public, or other structures or spaces,  
233 including recreational and other facilities incidental or appurtenant to the structures or spaces;

234 (e) altering, improving, modernizing, demolishing, reconstructing, or rehabilitating  
235 existing structures;

236 (f) providing open space, including streets or other public grounds or space around  
237 buildings;

238 (g) providing public or private buildings, infrastructure, structures, or improvements;

239 (h) relocating a business;

240 (i) improving public or private recreation areas or other public grounds;

241 (j) eliminating blight or the causes of blight;

242 (k) redevelopment as defined under the law in effect before May 1, 2006; or

243 (l) any activity described in this Subsection (47) outside of a project area that the board  
244 determines to be a benefit to the project area.

245 (48) "Project area funds" means tax increment or sales and use tax revenue that an  
246 agency receives under a project area budget adopted by a taxing entity committee or an  
247 interlocal agreement.

248 (49) "Project area funds collection period" means the period of time that:

249 (a) begins the day on which the first payment of project area funds is distributed to an  
250 agency under a project area budget approved by a taxing entity committee or an interlocal  
251 agreement; and

252 (b) ends the day on which the last payment of project area funds is distributed to an  
253 agency under a project area budget approved by a taxing entity committee or an interlocal  
254 agreement.

255 (50) "Project area plan" means an urban renewal project area plan, an economic  
256 development project area plan, a community development project area plan, or a community  
257 reinvestment project area plan that, after the project area plan's effective date, guides and  
258 controls the project area development.

259 (51) (a) "Property tax" means each levy on an ad valorem basis on tangible or  
260 intangible personal or real property.

261 (b) "Property tax" includes a privilege tax imposed under Title 59, Chapter 4, Privilege  
262 Tax.

263 (52) "Public entity" means:

264 (a) the United States, including an agency of the United States;

265 (b) the state, including any of the state's departments or agencies; or

266 (c) a political subdivision of the state, including a county, municipality, school district,  
267 local district, special service district, community reinvestment agency, or interlocal cooperation  
268 entity.

269 (53) "Publicly owned infrastructure and improvements" means water, sewer, storm  
270 drainage, electrical, natural gas, telecommunication, or other similar systems and lines, streets,  
271 roads, curb, gutter, sidewalk, walkways, parking facilities, public transportation facilities, or

272 other facilities, infrastructure, and improvements benefitting the public and to be publicly  
273 owned or publicly maintained or operated.

274 (54) "Record property owner" or "record owner of property" means the owner of real  
275 property, as shown on the records of the county in which the property is located, to whom the  
276 property's tax notice is sent.

277 (55) "Sales and use tax revenue" means revenue that is:

278 (a) generated from a tax imposed under Title 59, Chapter 12, Sales and Use Tax Act;

279 and

280 (b) distributed to a taxing entity in accordance with Sections [59-12-204](#) and [59-12-205](#).

281 (56) "Superfund site":

282 (a) means an area included in the National Priorities List under the Comprehensive  
283 Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sec. 9605; and

284 (b) includes an area formerly included in the National Priorities List, as described in  
285 Subsection (56)(a), but removed from the list following remediation that leaves on site the  
286 waste that caused the area to be included in the National Priorities List.

287 (57) "Survey area" means a geographic area designated for study by a survey area  
288 resolution to determine whether:

289 (a) one or more project areas within the survey area are feasible; or

290 (b) blight exists within the survey area.

291 (58) "Survey area resolution" means a resolution adopted by a board that designates a  
292 survey area.

293 (59) "Taxable value" means:

294 (a) the taxable value of all real property a county assessor assesses in accordance with  
295 Title 59, Chapter 2, Part 3, County Assessment, for the current year;

296 (b) the taxable value of all real and personal property the commission assesses in  
297 accordance with Title 59, Chapter 2, Part 2, Assessment of Property, for the current year; and

298 (c) the year end taxable value of all personal property a county assessor assesses in

299 accordance with Title 59, Chapter 2, Part 3, County Assessment, contained on the prior year's  
300 tax rolls of the taxing entity.

301 (60) (a) "Tax increment" means the difference between:

302 (i) the amount of property tax revenue generated each tax year by a taxing entity from  
303 the area within a project area designated in the project area plan as the area from which tax  
304 increment is to be collected, using the current assessed value of the property and each taxing  
305 entity's current certified tax rate as defined in Section 59-2-924; and

306 (ii) the amount of property tax revenue that would be generated from that same area  
307 using the base taxable value of the property and each taxing entity's current certified tax rate as  
308 defined in Section 59-2-924.

309 (b) "Tax increment" does not include taxes levied and collected under Section

310 59-2-1602 on or after January 1, 1994, upon the taxable property in the project area unless:

311 (i) the project area plan was adopted before May 4, 1993, whether or not the project  
312 area plan was subsequently amended; and

313 (ii) the taxes were pledged to support bond indebtedness or other contractual  
314 obligations of the agency.

315 (61) "Taxing entity" means a public entity that:

316 (a) levies a tax on property located within a project area; or

317 (b) imposes a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act.

318 (62) "Taxing entity committee" means a committee representing the interests of taxing  
319 entities, created in accordance with Section 17C-1-402.

320 (63) "Unincorporated" means not within a municipality.

321 (64) "Urban renewal project area plan" means a project area plan adopted under  
322 Chapter 2, Part 1, Urban Renewal Project Area Plan.

323 Section 2. Section 17C-1-103 is amended to read:

324 **17C-1-103. Limitations on applicability of title -- Amendment of previously**  
325 **adopted project area plan.**

326 (1) Except where expressly provided, nothing in this title may be construed to:  
327 (a) impose a requirement or obligation on an agency, with respect to a project area plan  
328 adopted or an agency action taken, that was not imposed by the law in effect at the time the  
329 project area plan was adopted or the action taken;  
330 (b) prohibit an agency from taking an action that:  
331 (i) was allowed by the law in effect immediately before an applicable amendment to  
332 this title;  
333 (ii) is permitted or required under the project area plan adopted before the amendment;  
334 and  
335 (iii) is not explicitly prohibited under this title;  
336 (c) revive any right to challenge any action of the agency that had already expired; or  
337 (d) require a project area plan to contain a provision that was not required by the law in  
338 effect at the time the project area plan was adopted.

339 (2) (a) A project area plan adopted before an amendment to this title becomes effective  
340 may be amended as provided in this title.

341 (b) Unless explicitly prohibited by this title, an amendment under Subsection (2)(a)  
342 may include a provision that is allowed under this title but that was not required or allowed by  
343 the law in effect before the applicable amendment.

344 (3) Except as expressly provided in this title, this title applies to all project areas,  
345 regardless of when the project area was created.

346 Section 3. Section **17C-1-407** is amended to read:

347 **17C-1-407. Limitations on tax increment.**

348 (1) (a) If the development of retail sales of goods is the primary objective of an urban  
349 renewal project area, tax increment from the urban renewal project area may not be paid to or  
350 used by an agency unless a finding of blight is made under Chapter 2, Part 3, Blight  
351 Determination in Urban Renewal Project Areas.

352 (b) Development of retail sales of goods does not disqualify an agency from receiving

353 tax increment.

354 (c) After July 1, 2005, an agency may not receive or use tax increment generated from  
355 the value of property within an economic development project area that is attributable to the  
356 development of retail sales of goods, unless the tax increment was previously pledged to pay  
357 for bonds or other contractual obligations of the agency.

358 ~~[(2) (a) An agency may not be paid any portion of a taxing entity's taxes resulting from  
359 an increase in the taxing entity's tax rate that occurs after the taxing entity committee approves  
360 the project area budget unless, at the time the taxing entity committee approves the project area  
361 budget, the taxing entity committee approves payment of those increased taxes to the agency.]~~

362 (2) (a) For the purpose of this Subsection (2):

363 (i) "Final tax rate" means the rate used to determine the amount of taxes a taxing entity  
364 levies as described in the notice to a taxpayer under Subsection 59-2-1317(2).

365 (ii) "Increased tax revenue" means tax revenue attributable to a tax rate increase.

366 (iii) "Tax rate increase" means the amount calculated by subtracting a taxing entity's  
367 certified rate, as defined in Section 59-2-924, from the taxing entity's final tax rate.

368 (b) Except as provided in Subsection (2)(c), for a year in which a taxing entity imposes  
369 a final tax rate higher than the certified tax rate, a county shall not pay an agency any portion of  
370 a taxing entity's increased tax revenue.

371 (c) Notwithstanding Subsection (2)(b), a county may pay all or a portion of a taxing  
372 entity's increased tax revenue to an agency if, at the time of the project area budget approval,  
373 the taxing entity committee or each taxing entity that is a party to an agreement under Section  
374 17C-4-201 or 17C-5-204 consents to pay the agency the increased tax revenue.

375 ~~[(b)]~~ (d) If the taxing entity committee or each tax entity that is a party to an agreement  
376 under Section 17C-4-201 or 17C-5-204 does not [approve] consent to payment of the increased  
377 [taxes] tax revenue to the agency under Subsection (2)[(a)](c), the county shall distribute to the  
378 taxing entity the [taxes attributable to the tax rate increase] increased tax revenue in the same  
379 manner as other property [taxes] tax revenue.

380           ~~[(e)]~~ (e) Notwithstanding any other provision of this section, if, before tax year 2013,  
381 increased ~~[taxes are]~~ tax revenue is paid to an agency without the ~~[approval]~~ consent of the  
382 taxing entity committee or each taxing entity that is a party to an agreement under Section  
383 17C-4-201 or 17C-5-204, and notwithstanding the law at the time that the tax revenue was  
384 collected or increased:

385           (i) the State Tax Commission, the county as the collector of the taxes, a taxing entity,  
386 or any other person or entity may not recover, directly or indirectly, the increased ~~[taxes]~~ tax  
387 revenue from the agency by adjustment of a tax rate used to calculate tax increment or  
388 otherwise;

389           (ii) the county is not liable to a taxing entity or any other person or entity for the  
390 increased ~~[taxes]~~ tax revenue that ~~[were]~~ was paid to the agency; and

391           (iii) tax increment, including the increased ~~[taxes]~~ tax revenue, shall continue to be  
392 paid to the agency subject to the same number of tax years, percentage of tax increment, and  
393 cumulative dollar amount of tax increment as approved in the project area budget and  
394 previously paid to the agency.

395           (f) An adjustment may not be made to incremental value under Section 59-2-924 for  
396 increased tax revenue not paid to an agency under this section.

397           (3) Except as the taxing entity committee otherwise agrees, an agency may not receive  
398 tax increment under an urban renewal or economic development project area budget adopted  
399 on or after March 30, 2009:

400           (a) that exceeds the percentage of tax increment or cumulative dollar amount of tax  
401 increment specified in the project area budget; or

402           (b) for more tax years than specified in the project area budget.