

ECONOMIC DEVELOPMENT ZONE TAX INCENTIVES ACT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the Governor's Office of Economic Development to enact the Significant Capital Investment Tax Incentives Act and provide related tax credits.

Highlighted Provisions:

This bill:

- ▶ enacts nonrefundable significant capital investment tax credits;
- ▶ requires a study by the Revenue and Taxation Interim Committee; and
- ▶ enacts the Significant Capital Investment Tax Incentives Act, including:
 - defining terms;
 - granting rulemaking authority to establish conditions to establish a significant capital investment;
 - requiring that the office enters into an agreement with a business entity for the business entity to qualify for a significant capital investment tax credit;
 - establishing a procedure to certify a tax credit; and
 - requiring reporting.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides effective dates.



28 **Utah Code Sections Affected:**

29 ENACTS:

- 30 **59-7-614.6**, Utah Code Annotated 1953
- 31 **59-10-1025**, Utah Code Annotated 1953
- 32 **63M-1-2901**, Utah Code Annotated 1953
- 33 **63M-1-2902**, Utah Code Annotated 1953
- 34 **63M-1-2903**, Utah Code Annotated 1953
- 35 **63M-1-2904**, Utah Code Annotated 1953
- 36 **63M-1-2905**, Utah Code Annotated 1953
- 37 **63M-1-2906**, Utah Code Annotated 1953



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

40 Section 1. Section **59-7-614.6** is enacted to read:

41 **59-7-614.6. Nonrefundable significant capital investment tax credit.**

42 (1) As used in this section:

43 (a) "Business entity" means a taxpayer that is a business entity as defined in Section
44 63M-1-2902.

45 (b) "Office" means the Governor's Office of Economic Development.

46 (2) Subject to the other provisions of this section, a business entity may claim a
47 nonrefundable tax credit for a significant capital investment in Utah.

48 (3) The tax credit is an amount equal to the lesser of:

49 (a) the amount listed as the significant capital investment on the tax credit certificate
50 that the office issues to the business entity for the taxable year; or

51 (b) 30% of the taxpayer's tax liability under this chapter for the taxable year.

52 (4) A business entity that claims a tax credit under this section for a taxable year may
53 not claim a tax credit under Section 59-7-614.2 or 59-10-1107 for that taxable year.

54 (5) (a) On or before October 1, 2016, and every five years after October 1, 2016, the
55 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
56 make recommendations concerning whether the tax credit should be continued, modified, or
57 repealed.

58 (b) For purposes of the study required by this Subsection (5), the office shall provide

59 the following information to the Revenue and Taxation Interim Committee:

60 (i) the total amount listed as a significant capital investment on tax credit certificates
61 the office issues to business entities;

62 (ii) the criteria that the office uses in determining whether a business entity makes a
63 significant capital investment in Utah; and

64 (iii) any other information the Revenue and Taxation Interim Committee requests.

65 (c) The Revenue and Taxation Interim Committee shall ensure that its
66 recommendations under Subsection (5)(a) include an evaluation of:

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

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

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

70 Section 2. Section **59-10-1025** is enacted to read:

71 **59-10-1025. Nonrefundable significant capital investment tax credit.**

72 (1) As used in this section:

73 (a) "Business entity" means a claimant, estate, or trust that is a business entity as
74 defined in Section 63M-1-2902.

75 (b) "Office" means the Governor's Office of Economic Development.

76 (2) Subject to the other provisions of this section, a business entity may claim a
77 nonrefundable tax credit for a significant capital investment in Utah.

78 (3) The tax credit is an amount equal to the lesser of:

79 (a) the amount listed as the significant capital investment on the tax credit certificate
80 that the office issues to the business entity for the taxable year; or

81 (b) 30% of the taxpayer's tax liability under this chapter for the taxable year.

82 (4) A business entity that claims a tax credit under this section for a taxable year may
83 not claim a tax credit under Section 59-7-614.2 or 59-10-1107 for that taxable year.

84 (5) (a) On or before October 1, 2016, and every five years after October 1, 2016, the
85 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
86 make recommendations concerning whether the tax credit should be continued, modified, or
87 repealed.

88 (b) For purposes of the study required by this Subsection (5), the office shall provide
89 the following information to the Revenue and Taxation Interim Committee:

90 (i) the total amount listed as a significant capital investment on tax credit certificates
91 the office issues to business entities;

92 (ii) the criteria that the office uses in determining whether a business entity makes a
93 significant capital investment in Utah; and

94 (iii) any other information the Revenue and Taxation Interim Committee requests.

95 (c) The Revenue and Taxation Interim Committee shall ensure that its
96 recommendations under Subsection (5)(a) include an evaluation of:

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

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

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

100 Section 3. Section **63M-1-2901** is enacted to read:

101 **Part 29. Significant Capital Investment Tax Incentives Act**

102 **63M-1-2901. Title.**

103 This part is known as the "Significant Capital Investment Tax Incentives Act."

104 Section 4. Section **63M-1-2902** is enacted to read:

105 **63M-1-2902. Definitions.**

106 As used in this part:

107 (1) "Business entity" means a person that enters into an agreement with the office to
108 make significant capital investment in Utah that will qualify the person to receive a tax credit
109 under Section 59-7-614.6 or 59-10-1025.

110 (2) "Development zone" means an economic development zone created under Section
111 63M-1-2404.

112 (3) "Office" means the Governor's Office of Economic Development.

113 (4) "Significant capital investment" means an expansion within the state of one or more
114 capital assets, fixed assets, or research and development related to capital assets or fixed assets:

115 (a) by at least \$100,000,000 within a taxable year as determined by the office; and

116 (b) by a business entity engaged primarily in the process of manufacturing or
117 fabricating a semiconductor or conducting research and development related to a
118 semiconductor as determined by the office.

119 (5) "Tax credit" means a significant capital investment tax credit created by Section
120 59-7-614.6 or 59-10-1025.

- 121 (6) "Tax credit certificate" means a certificate issued by the office that:
- 122 (a) lists the name of the business entity to which the office authorizes a tax credit;
- 123 (b) lists the business entity's taxpayer identification number;
- 124 (c) lists the amount of the business entity's significant capital investment for the taxable
- 125 year; and
- 126 (d) may include other information as determined by the office.

127 Section 5. Section **63M-1-2903** is enacted to read:

128 **63M-1-2903. Tax credit agreement.**

129 (1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
130 the office shall make rules establishing the conditions that a business entity shall meet to
131 qualify for a tax credit under this part.

132 (b) The office shall ensure that the conditions described in Subsection (1)(a) require
133 that a significant capital investment shall be within a development zone.

134 (2) (a) Subject to the other provisions of this Subsection (2), the office, with advice
135 from the board, may enter into an agreement with a business entity authorizing a tax credit to
136 the business entity if the business entity meets the conditions established under Subsection (1).

137 (b) The agreement required by this Subsection (2) shall:

138 (i) detail the requirements that the business entity shall meet to make a significant
139 capital investment to qualify for a tax credit under this part;

140 (ii) require the business entity to retain records supporting a claim for a tax credit for at
141 least four years after the business entity claims a tax credit under this part; and

142 (iii) require the business entity to submit to audits for verification of the tax credit
143 claimed.

144 (3) The office may grant a tax credit certificate under this section to a business entity
145 for any taxable year in which the business entity makes a significant capital investment.

146 Section 6. Section **63M-1-2904** is enacted to read:

147 **63M-1-2904. Procedure to certify tax credit.**

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

150 (2) A business entity seeking to receive a tax credit shall provide the office with:

151 (a) an application for a tax credit certificate; and

152 (b) documentation that the business entity has satisfied the conditions outlined in the
153 agreement described in Section 63M-1-2903.

154 (3) If the office determines that the information is inadequate to provide a reasonable
155 justification for authorizing a tax credit, the office shall:

156 (a) deny the tax credit; or

157 (b) inform the business entity that the information is inadequate and ask the business
158 entity to submit new documentation.

159 (4) If the office determines that there is reasonable justification for authorizing a tax
160 credit, the office shall:

161 (a) determine the amount of the significant capital investment for the taxable year;

162 (b) issue a tax credit certificate to the business entity that states the amount of the
163 significant capital investment for the taxable year; and

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

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

167 (6) A business entity that receives a tax credit certificate may claim a tax credit as
168 provided in Section 59-7-614.6 or 59-10-1025.

169 Section 7. Section **63M-1-2905** is enacted to read:

170 **63M-1-2905. Report to the Legislature.**

171 The office shall report annually to the Legislature's Workforce Services and Community
172 and Economic Development Interim Committee and the Revenue and Taxation Interim
173 Committee describing:

174 (1) the total amount listed as a significant capital investment on tax credit certificates
175 the office issues to business entities;

176 (2) the criteria that the office uses in determining whether a business entity makes a
177 significant capital investment in Utah; and

178 (3) the economic impact on the state related to providing tax credits under this part.

179 Section 8. Section **63M-1-2906** is enacted to read:

180 **63M-1-2906. Reports of tax credits.**

181 (1) Before December 1 of each year, the office shall submit a report to the Governor's
182 Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the Division of

183 Finance identifying:
184 (a) the total amount listed as a significant capital investment on tax credit certificates
185 the office issues to business entities; and
186 (b) the criteria that the office uses in determining whether a business entity makes a
187 significant capital investment in Utah.
188 (2) By the first business day of each month, the office shall submit a report to the
189 Governor's Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the
190 Division of Finance identifying:
191 (a) each new agreement entered into by the office since the last report;
192 (b) the total amount listed as a significant capital investment on tax credit certificates
193 the office issues to business entities; and
194 (c) the criteria that the office uses in determining whether a business entity makes a
195 significant capital investment in Utah.
196 **Section 9. Effective date.**
197 (1) Except as provided in Subsection (2), this bill takes effect on July 1, 2011.
198 (2) The amendments to Sections 59-7-614.6 and 59-10-1025 have retrospective
199 operation for a taxable year beginning on or after January 1, 2011.

Legislative Review Note
as of 2-24-11 2:32 PM

Office of Legislative Research and General Counsel