

1 **AMENDMENTS TO TAX CREDITS FOR**
2 **RESEARCH ACTIVITIES CONDUCTED IN**
3 **THE STATE**

4 2010 GENERAL SESSION

5 STATE OF UTAH

6
7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Corporate Franchise and Income Taxes chapter and the Individual
10 Income Tax Act to address nonrefundable tax credits for research activities conducted
11 in the state.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the nonrefundable income tax credits for research activities conducted in
15 the state to provide that the tax credits and the calculation of the base amount for
16 purposes of the tax credits do not include the federal alternative simplified credit;
17 and
- 18 ▶ makes technical and conforming changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill has retrospective operation for a taxable year beginning on or after January 1,
23 2010.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **59-7-612**, as last amended by Laws of Utah 2008, Chapters 4 and 382

27 **59-10-1012**, as last amended by Laws of Utah 2008, Chapters 4 and 382

28
29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **59-7-612** is amended to read:

31 **59-7-612. Tax credits for research activities conducted in the state -- Carry**

32 **forward -- Commission to report modification or repeal of certain federal provisions --**
33 **Utah Tax Review Commission study.**

34 (1) (a) A taxpayer meeting the requirements of this section may claim the following
35 nonrefundable tax credits:

36 (i) a research tax credit of 5% of the taxpayer's qualified research expenses for the
37 current taxable year that exceed the base amount provided for under Subsection (4);

38 (ii) a tax credit for a payment to a qualified organization for basic research as provided
39 in Section 41(e), Internal Revenue Code, of 5% for the current taxable year that exceed the
40 base amount provided for under Subsection (4); and

41 (iii) a tax credit equal to:

42 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
43 before December 31, 2008, 5% of the taxpayer's qualified research expenses for the current
44 taxable year;

45 (B) for the taxable year beginning on or after January 1, 2009, but beginning on or
46 before December 31, 2009, 6.3% of the taxpayer's qualified research expenses for the current
47 taxable year; or

48 (C) for taxable years beginning on or after January 1, 2010, 9.2% of the taxpayer's
49 qualified research expenses for the current taxable year.

50 (b) Subject to Subsection (5), a taxpayer may claim a tax credit under:

51 (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the taxpayer incurs
52 the qualified research expenses; or

53 (ii) Subsection (1)(a)(ii), for the taxable year for which the taxpayer makes the payment
54 to the qualified organization.

55 (c) The tax credits provided for in this section do not include:

56 (i) the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue
57 Code[-]; or

58 (ii) the alternative simplified credit provided for in Section 41(c)(5), Internal Revenue
59 Code.

60 (2) For purposes of claiming a tax credit under this section, a unitary group as defined
61 in Section 59-7-101 is considered to be one taxpayer.

62 (3) Except as specifically provided for in this section:

- 63 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in
64 Section 41, Internal Revenue Code; and
- 65 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
66 the tax credits authorized under Subsection (1).
- 67 (4) For purposes of this section:
- 68 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h),
69 Internal Revenue Code, except that:
- 70 (i) the base amount does not include the calculation of:
- 71 (A) the alternative incremental credit provided for in Section 41(c)(4), Internal
72 Revenue Code; or
- 73 (B) the alternative simplified credit provided for in Section 41(c)(5), Internal Revenue
74 Code;
- 75 (ii) a taxpayer's gross receipts include only those gross receipts attributable to sources
76 within this state as provided in Part 3, Allocation and Apportionment of Income -- Utah
77 UDITPA Provisions; and
- 78 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
79 the base amount, a taxpayer:
- 80 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
81 regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II);
82 and
- 83 (B) may not revoke an election to be treated as a start-up company under Subsection
84 (4)(a)(iii)(A);
- 85 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
86 that the term includes only basic research conducted in this state;
- 87 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
88 that the term includes only qualified research conducted in this state;
- 89 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal
90 Revenue Code, except that the term includes only:
- 91 (i) in-house research expenses incurred in this state; and
92 (ii) contract research expenses incurred in this state; and
93 (e) a tax credit provided for in this section is not terminated if a credit terminates under

94 Section 41, Internal Revenue Code.

95 (5) (a) If the amount of a tax credit claimed by a taxpayer under Subsection (1)(a)(i) or
96 (ii) exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the
97 tax credit exceeding the tax liability:

98 (i) may be carried forward for a period that does not exceed the next 14 taxable years;
99 and

100 (ii) may not be carried back to a taxable year preceding the current taxable year.

101 (b) A taxpayer may not carry forward the tax credit allowed by Subsection (1)(a)(iii).

102 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
103 commission may make rules for purposes of this section prescribing a certification process for
104 qualified organizations to ensure that amounts paid to the qualified organizations are for basic
105 research conducted in this state.

106 (7) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
107 commission shall report the modification or repeal to the Utah Tax Review Commission within
108 60 days after the day on which the modification or repeal becomes effective.

109 (8) (a) The Utah Tax Review Commission shall review the tax credits provided for in
110 this section on or before October 1 of the year after the year in which the commission reports
111 under Subsection (7) a modification or repeal of a provision of Section 41, Internal Revenue
112 Code.

113 (b) Notwithstanding Subsection (8)(a), the Utah Tax Review Commission is not
114 required to review the tax credits provided for in this section if the only modification to a
115 provision of Section 41, Internal Revenue Code, is the extension of the termination date
116 provided for in Section 41(h), Internal Revenue Code.

117 (c) The Utah Tax Review Commission shall address in a review under this section:

118 (i) the cost of the tax credits provided for in this section;

119 (ii) the purpose and effectiveness of the tax credits provided for in this section;

120 (iii) whether the tax credits provided for in this section benefit the state; and

121 (iv) whether the tax credits provided for in this section should be:

122 (A) continued;

123 (B) modified; or

124 (C) repealed.

125 (d) If the Utah Tax Review Commission reviews the tax credits provided for in this
126 section, the Utah Tax Review Commission shall report its findings to the Revenue and
127 Taxation Interim Committee on or before the November interim meeting of the year in which
128 the Utah Tax Review Commission reviews the tax credits.

129 Section 2. Section **59-10-1012** is amended to read:

130 **59-10-1012. Tax credits for research activities conducted in the state -- Carry**
131 **forward -- Commission to report modification or repeal of certain federal provisions --**
132 **Utah Tax Review Commission study.**

133 (1) (a) A claimant, estate, or trust meeting the requirements of this section may claim
134 the following nonrefundable tax credits:

135 (i) a research tax credit of 5% of the claimant's, estate's, or trust's qualified research
136 expenses for the current taxable year that exceed the base amount provided for under
137 Subsection (3);

138 (ii) a tax credit for a payment to a qualified organization for basic research as provided
139 in Section 41(e), Internal Revenue Code of 5% for the current taxable year that exceed the base
140 amount provided for under Subsection (3); and

141 (iii) a tax credit equal to:

142 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
143 before December 31, 2008, 5% of the claimant's, estate's, or trust's qualified research expenses
144 for the current taxable year;

145 (B) for the taxable year beginning on or after January 1, 2009, but beginning on or
146 before December 31, 2009, 6.3% of the claimant's, estate's, or trust's qualified research
147 expenses for the current taxable year; or

148 (C) for taxable years beginning on or after January 1, 2010, 9.2% of the claimant's,
149 estate's, or trust's qualified research expenses for the current taxable year.

150 (b) Subject to Subsection (4), a claimant, estate, or trust may claim a tax credit under:

151 (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the claimant, estate,
152 or trust incurs the qualified research expenses; or

153 (ii) Subsection (1)(a)(ii), for the taxable year for which the claimant, estate, or trust
154 makes the payment to the qualified organization.

155 (c) The tax credits provided for in this section do not include:

156 (i) the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue
157 Code[-]; or

158 (ii) the alternative simplified credit provided for in Section 41(c)(5), Internal Revenue
159 Code.

160 (2) Except as specifically provided for in this section:

161 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in
162 Section 41, Internal Revenue Code; and

163 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
164 the tax credits authorized under Subsection (1).

165 (3) For purposes of this section:

166 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h),
167 Internal Revenue Code, except that:

168 (i) the base amount does not include the calculation of:

169 (A) the alternative incremental credit provided for in Section 41(c)(4), Internal
170 Revenue Code; or

171 (B) the alternative simplified credit provided for in Section 41(c)(5), Internal Revenue
172 Code;

173 (ii) a claimant's, estate's, or trust's gross receipts include only those gross receipts
174 attributable to sources within this state as provided in Section 59-10-118; and

175 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
176 the base amount, a claimant, estate, or trust:

177 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
178 regardless of whether the claimant, estate, or trust meets the requirements of Section
179 41(c)(3)(B)(i)(I) or (II); and

180 (B) may not revoke an election to be treated as a start-up company under Subsection
181 (3)(a)(iii)(A);

182 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
183 that the term includes only basic research conducted in this state;

184 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
185 that the term includes only qualified research conducted in this state;

186 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal

187 Revenue Code, except that the term includes only:

188 (i) in-house research expenses incurred in this state; and

189 (ii) contract research expenses incurred in this state; and

190 (e) a tax credit provided for in this section is not terminated if a credit terminates under
191 Section 41, Internal Revenue Code.

192 (4) (a) If the amount of a tax credit claimed by a claimant, estate, or trust under
193 Subsection (1)(a)(i) or (ii) exceeds the claimant's, estate's, or trust's tax liability under this
194 chapter for a taxable year, the amount of the tax credit exceeding the tax liability:

195 (i) may be carried forward for a period that does not exceed the next 14 taxable years;
196 and

197 (ii) may not be carried back to a taxable year preceding the current taxable year.

198 (b) A claimant, estate, or trust may not carry forward the tax credit allowed by
199 Subsection (1)(a)(iii).

200 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
201 commission may make rules for purposes of this section prescribing a certification process for
202 qualified organizations to ensure that amounts paid to the qualified organizations are for basic
203 research conducted in this state.

204 (6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
205 commission shall report the modification or repeal to the Utah Tax Review Commission within
206 60 days after the day on which the modification or repeal becomes effective.

207 (7) (a) The Utah Tax Review Commission shall review the tax credits provided for in
208 this section on or before October 1 of the year after the year in which the commission reports
209 under Subsection (6) a modification or repeal of a provision of Section 41, Internal Revenue
210 Code.

211 (b) Notwithstanding Subsection (7)(a), the Utah Tax Review Commission is not
212 required to review the tax credits provided for in this section if the only modification to a
213 provision of Section 41, Internal Revenue Code, is the extension of the termination date
214 provided for in Section 41(h), Internal Revenue Code.

215 (c) The Utah Tax Review Commission shall address in a review under this section:

216 (i) the cost of the tax credits provided for in this section;

217 (ii) the purpose and effectiveness of the tax credits provided for in this section;

- 218 (iii) whether the tax credits provided for in this section benefit the state; and
219 (iv) whether the tax credits provided for in this section should be:
220 (A) continued;
221 (B) modified; or
222 (C) repealed.
223 (d) If the Utah Tax Review Commission reviews the tax credits provided for in this
224 section, the Utah Tax Review Commission shall report its findings to the Revenue and
225 Taxation Interim Committee on or before the November interim meeting of the year in which
226 the Utah Tax Review Commission reviews the tax credits.
- 227 **Section 3. Retrospective operation.**
228 This bill has retrospective operation for a taxable year beginning on or after January 1,
229 2010.