



CHESTER J. CULVER
GOVERNOR

OFFICE OF THE GOVERNOR

PATTY JUDGE
LT. GOVERNOR

April 15, 2010

The Honorable Michael Mauro
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

Senate File 2380, an Act relating to taxation, including the administration and review of certain economic development programs and certain tax incentive programs and the reenactment of the estate tax and including effective date and retroactive and other applicability provisions.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chester J. Culver".

Chester J. Culver
Governor

CJC:bdj

cc: Secretary of the Senate
Chief Clerk of the House





Senate File 2380

AN ACT

RELATING TO TAXATION, INCLUDING THE ADMINISTRATION AND REVIEW OF CERTAIN ECONOMIC DEVELOPMENT PROGRAMS AND CERTAIN TAX INCENTIVE PROGRAMS AND THE REENACTMENT OF THE ESTATE TAX AND INCLUDING EFFECTIVE DATE AND RETROACTIVE AND OTHER APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

REVIEW AND REAUTHORIZATION OF PROGRAMS

Section 1. INTENT AND PURPOSE.

1. It is the intent of the general assembly that each tax credit, withholding credit, and revenue division program should effectuate the purposes for which it was enacted and that the cost of such programs should be included more readily in the yearly budgeting process.

2. The purposes of this Act are to provide for the regular review of all tax credit, withholding credit, and revenue division programs in order to facilitate the reauthorization of successful programs and to do so at a cost that can be accommodated by the state's annual budget.

DIVISION II

LEGISLATIVE TAX EXPENDITURE COMMITTEE

Sec. 2. Section 2.45, Code Supplement 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 5. a. The legislative tax expenditure committee which shall be composed of ten members of the general assembly, consisting of five members from each house, to be appointed by the legislative council. In appointing the five members of each house to the committee, the council shall appoint three members from the majority party and two members

from the minority party.

b. The legislative tax expenditure committee shall have the powers and duties described in section 2.48.

Sec. 3. NEW SECTION. 2.48 Legislative tax expenditure committee — review of tax incentive programs.

1. *Duties of committee.* The legislative tax expenditure committee shall do all of the following:

a. Evaluate any tax expenditure available under Iowa law and assess its equity, simplicity, competitiveness, public purpose, adequacy, and extent of conformance with the original purposes of the legislation that enacted the tax expenditure, as those issues pertain to taxation in Iowa. For purposes of this section, "tax expenditure" means an exclusion from the operation or collection of a tax imposed in this state. Tax expenditures include tax credits, exemptions, deductions, and rebates. Tax expenditures also include sales tax refunds issued pursuant to section 423.3 or section 423.4.

b. Establish and maintain a system for making available to the public information about the amount and effectiveness of tax expenditures, and the extent to which tax expenditures comply with the original intent of the legislation that enacted the tax expenditure.

2. *Review of tax expenditures — budget estimates.* The legislative tax expenditure committee shall do all of the following:

a. Engage in the regular review of the state's tax expenditures.

(1) In reviewing tax expenditures, the committee may review any tax expenditure at any time, but shall at a minimum perform the reviews described in subsection 3.

(2) For each tax expenditure reviewed, the committee shall submit a report to the legislative council containing the results of the review. The report shall contain a statement of the policy goals of the tax expenditure and a return on investment calculation for the tax expenditure. For purposes of this subparagraph, "return on investment calculation" means analyzing the cost to the state of providing the tax expenditure, analyzing the benefits realized by the state from providing the tax expenditure, and reaching a conclusion as to whether the benefits of the tax expenditure are worth the cost to the state of providing the tax expenditure.

(3) The report described in subparagraph (2) may include recommendations for better aligning tax expenditures with

the original intent of the legislation that enacted the tax expenditure.

b. (1) Estimate for each fiscal year, in conjunction with the legislative services agency and the department of revenue, the cost of each individual tax expenditure and the total cost of all tax expenditures, and by December 15 provide those estimates to the governor for use in the preparation of the budget message under section 8.22 and to the general assembly to be used in the budget process.

(2) The estimates provided pursuant to subparagraph (1) may include the committee's recommendations for the imposition of a limitation on a specified tax expenditure, a limitation on the total amount of tax expenditures, or any other recommendation for a specific tax expenditure or the program under which the tax expenditure is provided.

3. *Schedule of review of all tax expenditures.* The committee shall review the following tax expenditures and incentives according to the following schedule:

a. In 2011:

(1) The high quality jobs program under chapter 15, subchapter II, part 13.

(2) The tax credits for increasing research activities available under sections 15.335, 15A.9, 422.10, and 422.33.

(3) The franchise tax credits available under sections 422.11 and 422.33.

(4) The earned income tax credit available under section 422.12B.

b. In 2012:

(1) The Iowa fund of funds program in chapter 15E, division VII.

(2) Property tax revenue divisions for urban renewal areas under section 403.19.

(3) The targeted jobs withholding credits available under section 403.19A.

(4) Funding of urban renewal projects with increased local sales and services tax revenues under section 423B.10.

(5) School tuition organization tax credits under sections 422.11S and 422.33.

(6) Tuition and textbook tax credits under section 422.12.

c. In 2013:

(1) The child and dependent care and early childhood development tax credits under section 422.12C.

(2) The endow Iowa tax credits authorized under section

15E.305.

(3) The redevelopment tax credits available under section 15.293A.

(4) The disaster recovery housing tax credits available under sections 16.211 and 16.212.

(5) The tax credits available for film, television, and video project promotion under section 15.393.

d. In 2014:

(1) Tax credits for investments in qualifying businesses and community-based seed capital funds under chapter 15E, division V.

(2) Historic preservation and cultural and entertainment district tax credits under chapter 404A.

(3) Wind energy production tax credits under chapter 476B.

(4) Renewable energy tax credits under chapter 476C.

(5) The ethanol promotion tax credits available under section 422.11N.

(6) The E-85 gasoline promotion tax credits available under section 422.11O.

(7) The biodiesel blended fuel tax credits available under section 422.11P.

e. In 2015:

(1) The agricultural assets transfer tax credit under section 175.37.

(2) The claim of right tax credit under section 422.5.

(3) The reduction in allocating income to Iowa by S corporation shareholders under section 422.8.

(4) The minimum tax credit under sections 422.11B, 422.33, and 422.60.

(5) The assistive device corporate tax credit under section 422.33.

(6) The charitable conservation contribution tax credit under sections 422.11W and 422.33.

(7) The motor vehicle fuel tax credit under section 422.11O.

(8) The new jobs tax credits available under section 422.11A.

(9) The financial assistance available under the enterprise zones program in chapter 15E, division XVIII.

4. A tax expenditure or incentive reviewed pursuant to subsection 3 shall be reviewed again not more than five years after the tax expenditure or incentive was most recently reviewed.

MAXIMUM AGGREGATE TAX CREDIT LIMIT FOR CERTAIN ECONOMIC
DEVELOPMENT PROGRAMS

Sec. 4. Section 15.119, subsection 1, Code Supplement 2009, is amended by striking the subsection and inserting in lieu thereof the following:

1. *a.* Notwithstanding any provision to the contrary in any of the programs listed in subsection 2, the department, except as provided in paragraph "b", shall not authorize for any one fiscal year an amount of tax credits for the programs specified in subsection 2 that is in excess of one hundred twenty million dollars.

b. The department may authorize an amount of tax credits during a fiscal year that is in excess of the amount specified in paragraph "a", but the amount of such excess shall be counted against the total amount of tax credits that may be authorized for the next fiscal year.

DIVISION IV

FILM PROGRAM SUSPENSION

Sec. 5. Section 15.393, Code Supplement 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 5. The department shall not register a new project pursuant to this section until July 1, 2013.

Sec. 6. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION V

SUPPLEMENTAL RESEARCH ACTIVITIES CREDIT

Sec. 7. Section 15.335, Code Supplement 2009, is amended to read as follows:

15.335 Research activities credit.

1. *a.* An eligible business may claim a corporate tax credit for increasing research activities in this state during the period the eligible business is participating in the program.

b. For purposes of this section, "research activities" includes the development and deployment of innovative renewable energy generation components manufactured or assembled in this state. For purposes of this section, "innovative renewable energy generation components" does not include a component with more than two hundred megawatts of installed effective nameplate capacity.

c. The tax credits for innovative renewable energy generation components shall not exceed two million dollars.

2. *a.* ~~(1) The~~ In the case of an eligible business whose

gross revenues do not exceed twenty million dollars per year, the credit equals the sum of the following:

~~(a)~~ (1) ~~Six and one-half~~ Ten percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

~~(b)~~ (2) ~~Six and one-half~~ Ten percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

b. In the case of an eligible business whose gross revenues exceed twenty million dollars per year, the credit equals the sum of the following:

(1) Three percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Three percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

~~(2)~~ 3. ~~The~~ For purposes of subsection 2, the state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

~~b.~~ 4. a. In lieu of the credit amount computed in paragraph "a", ~~subparagraph (1)~~ subsection 2, an eligible business may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

~~e.~~ b. For purposes of the alternate credit computation method in paragraph ~~"b"~~ "a", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are ~~one and sixty-five hundredths percent, two and twenty~~

~~hundredths percent, and two and seventy-five hundredths percent, respectively.~~ as follows:

(1) In the case of an eligible business whose gross revenues do not exceed twenty million dollars per year, the credit percentages are two and fifty-four hundredths percent, three and thirty-eight hundredths percent, and four and twenty-three hundredths percent, respectively.

(2) In the case of an eligible business whose gross revenues exceed twenty million dollars per year, the credit percentages are seventy-six hundredths percent, one and two hundredths percent, and one and twenty-seven hundredths percent, respectively.

~~2.~~ 5. The credit allowed in this section is in addition to the credit authorized in section 422.10 and section 422.33, subsection 5. However, if the alternative credit computation method is used in section 422.10 or section 422.33, subsection 5, the credit allowed in this section shall also be computed using that method.

~~3.~~ 6. If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

~~4.~~ 7. a. For purposes of this section, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state.

b. For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2009.

~~5.~~ 8. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following year.

~~6.~~ 9. The department of revenue shall by February 15 of each year issue an annual report to the general assembly containing the total amount of all claims made by employers under this section, and the portion of the claims issued as refunds, for all claims processed during the previous calendar

year. The report shall contain the name of each claimant for whom a tax credit in excess of five hundred thousand dollars was issued and the amount of the credit received.

Sec. 8. APPLICABILITY. This division of this Act applies to tax credits awarded under section 15.335 on or after July 1, 2010.

DIVISION VI

MAXIMUM AMOUNT OF ACCELERATED CAREER EDUCATION JOB CREDITS

Sec. 9. Section 260G.4B, subsection 1, Code 2009, is amended to read as follows:

1. The total amount of program job credits from all employers which shall be allocated for all accelerated career education programs in the state in any one fiscal year shall not exceed ~~the sum of three million dollars in the fiscal year beginning July 1, 2000, three million dollars in the fiscal year beginning July 1, 2001, three million dollars in the fiscal year beginning July 1, 2002, four million dollars in the fiscal year beginning July 1, 2003, and six million dollars in the fiscal year beginning July 1, 2004, and every fiscal year thereafter~~ five million four hundred thousand dollars. Any increase in program job credits above the six-million-dollar limitation per fiscal year shall be developed, based on recommendations in a study conducted by the department of economic development, pursuant to this section, Code Supplement 2003, of the needs and performance of approved programs in the fiscal years beginning July 1, 2000, and July 1, 2001. A community college shall file a copy of each agreement with the department of economic development. The department shall maintain an annual record of the proposed program job credits under each agreement for each fiscal year. Upon receiving a copy of an agreement, the department shall allocate any available amount of program job credits to the community college according to the agreement sufficient for the fiscal year and for the term of the agreement. When the total available program job credits are allocated for a fiscal year, the department shall notify all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. Once program job credits have been allocated to a community college, the full allocation shall be received by the community college throughout the fiscal year and for the term of the agreement even if the statewide program job credit maximum amount is subsequently allocated and used.

DIVISION VII

ECONOMIC DEVELOPMENT REGION REVOLVING LOAN FUND TAX CREDIT

Sec. 10. Section 15E.231, subsection 2, Code Supplement 2009, is amended by striking the subsection.

Sec. 11. Section 15E.232, subsections 1 and 2, Code 2009, are amended by striking the subsections.

Sec. 12. Section 422.33, subsection 17, Code Supplement 2009, is amended by striking the subsection.

Sec. 13. Section 422.60, subsection 9, Code Supplement 2009, is amended by striking the subsection.

Sec. 14. Section 533.329, subsection 2, paragraph k, Code Supplement 2009, is amended by striking the paragraph.

Sec. 15. REPEAL. Sections 422.11K and 432.12F, Code 2009, are repealed.

Sec. 16. RETROACTIVE APPLICABILITY. This division of this Act applies retroactively to January 1, 2010, for tax years beginning on or after that date.

DIVISION VIII

MAXIMUM AMOUNT OF ENDOW IOWA TAX CREDITS

Sec. 17. Section 15E.305, subsection 2, unnumbered paragraph 1, Code Supplement 2009, is amended to read as follows:

The aggregate amount of tax credits authorized pursuant to this section shall not exceed a total of ~~three~~ two million seven hundred thousand dollars plus such additional credit amount as provided by this section annually. The maximum amount of tax credits granted to a taxpayer shall not exceed five percent of the aggregate amount of tax credits authorized.

Sec. 18. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 19. RETROACTIVE APPLICABILITY. This division of this Act applies retroactively to January 1, 2010, for endow Iowa tax credits authorized on or after that date.

DIVISION IX

VENTURE CAPITAL — IOWA FUND OF FUNDS

Sec. 20. Section 15E.66, subsections 1 and 7, Code 2009, are amended to read as follows:

1. The board may issue certificates and related tax credits to designated investors which, if redeemed for the maximum possible amount, shall not exceed a total aggregate of ~~one hundred~~ sixty million dollars of tax credits. The certificates shall be issued contemporaneously with a commitment to invest in the Iowa fund of funds by a designated investor. A certificate

issued by the board shall have a specific maturity date or dates designated by the board and shall be redeemable only in accordance with the contingencies reflected on the certificate or incorporated therein by reference. A certificate and the related tax credit shall be transferable by the designated investor. A tax credit shall not be claimed or redeemed except by a designated investor or transferee in accordance with the terms of a certificate from the board. A tax credit shall not be claimed for a tax year that begins earlier than the maturity date or dates stated on the certificate. An individual may claim the credit of a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following seven years, or until depleted, whichever is earlier.

7. In determining the ~~one hundred million dollar~~ maximum aggregate limit in subsection 1 and the ~~twenty million dollar~~ fiscal year limitation in subsection 5, the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors. However, certificates and related tax credits which have expired shall not be included and certificates and related tax credits which have been redeemed shall be included only to the extent of tax credits actually allowed.

Sec. 21. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION X

VENTURE CAPITAL — INVESTMENT TAX CREDIT

Sec. 22. Section 422.33, subsection 13, Code Supplement 2009, is amended by striking the subsection.

Sec. 23. Section 422.60, subsection 6, Code Supplement 2009, is amended by striking the subsection.

Sec. 24. Section 533.329, subsection 2, paragraph i, Code Supplement 2009, is amended by striking the paragraph.

Sec. 25. REPEAL. Sections 15E.51, 422.11G, and 432.12B, Code 2009, are repealed.

Sec. 26. TAX CREDIT CERTIFICATE VALIDITY. Tax credit certificates issued for future tax years for investments made on

or before July 1, 2010, under the provisions repealed in this division of this Act are valid and may be claimed by a taxpayer after the effective date of this division of this Act in the tax year stated on the certificate.

DIVISION XI

REFUNDABLE INVESTMENT TAX CREDITS FOR VALUE-ADDED AGRICULTURAL PRODUCTS

Sec. 27. Section 15.333, subsection 3, Code Supplement 2009, is amended by striking the subsection.

Sec. 28. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION XII

MAXIMUM AMOUNT OF HISTORIC TAX CREDITS

Sec. 29. Section 404A.4, subsection 2, Code Supplement 2009, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. For the fiscal year beginning July 1, 2012, and for each fiscal year thereafter, the department shall reserve not more than forty-five million dollars worth of tax credits for any one taxable year.

Sec. 30. Section 404A.4, subsection 4, paragraph a, Code Supplement 2009, is amended to read as follows:

a. The total amount of tax credits that may be approved for a fiscal year prior to the fiscal year beginning July 1, 2012, under this chapter shall not exceed fifty million dollars. The total amount of tax credits that may be approved for a fiscal year beginning on or after July 1, 2012, shall not exceed forty-five million dollars.

DIVISION XIII

ESTATE TAX REENACTED

Sec. 31. NEW SECTION. 451.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Adjusted taxable estate*" means the taxable estate computed for federal estate tax purposes reduced by sixty thousand dollars.

2. "*Federal estate tax*" means the tax imposed by the provisions of the Federal Estate Tax Act.

3. "*Federal Estate Tax Act*" and all such similar terms, means Title III of chapter 27 of the Acts of the Sixty-ninth Congress of the United States, first session, appearing in 44 Statutes at Large, chapter 27, as of January 1, 2000, as amended.

4. "*Gross estate*" means the gross estate as determined under section 451.3.

5. "*Internal Revenue Code*" means the Internal Revenue Code as of the implementation date of this chapter, as specified in section 451.13.

6. "*Iowa estate tax*" means the tax imposed by this chapter.

7. "*Month*" means a calendar month.

8. "*Net estate*" means the net estate as determined under the provisions of section 451.3.

9. "*Personal representative*" means the executor of the will or administrator of the estate of the decedent, or if there is no such executor or administrator appointed, qualified and acting, then any person in actual or constructive possession of any property included in the gross estate of the decedent.

Sec. 32. NEW SECTION. 451.2 Additional tax.

1. An amount equal to the federal estate tax credit for state inheritance and estate taxes as allowed in the Internal Revenue Code is imposed upon every transfer of the net estate of every decedent being a resident of, or owning property in, this state.

2. If the decedent is a resident of Iowa and all property is located in Iowa, or is subject to the jurisdiction of the courts of Iowa, an amount equal to the tax imposed under subsection 1 shall be paid to the state of Iowa. If the decedent is a nonresident or if property is located outside the state of Iowa and not subject to jurisdiction of Iowa courts, the tax shall be prorated on the basis that the Iowa property bears to the total gross estate for federal tax purposes.

3. The total tax or the Iowa share of the total tax shall be credited with the amount of any inheritance tax due the state of Iowa as provided in chapter 450.

Sec. 33. NEW SECTION. 451.3 Gross and net estate.

The gross estate shall be the same as finally determined for federal estate tax and the net estate shall be the gross estate less deductions as permitted by federal law, in arriving at the net taxable federal estate, all determined as provided in the Internal Revenue Code.

Sec. 34. NEW SECTION. 451.4 Tax on net estate.

The tax imposed by this chapter shall be upon the transfer of the total net estate of every decedent dying after the implementation date of this chapter as provided in section 451.13.

Sec. 35. NEW SECTION. 451.5 Duty of personal

representative.

The personal representative of a decedent whose estate may be subject to the tax imposed by this chapter, shall file in the office of the director of revenue, on or before the last day of the ninth month after the death of the decedent, duplicate copies of the estate tax return provided for in the Federal Estate Tax Act, and in like manner, duplicate copies of all supplemental or amended returns. The values of all items included in the gross estate, as shown by those returns, or supplemental or amended returns, shall be considered as the values of those items for the purposes of this chapter. In case of revaluation or correction of valuation of any of those items, either by supplemental or amended returns, or by the federal commissioner of internal revenue, or by an appellate tribunal by which the value is finally determined, the corrected values shall be considered as the values of those items for the purposes of this chapter.

Sec. 36. NEW SECTION. 451.6 Payment of tax.

The tax imposed by this chapter shall be paid by the personal representative to the department of revenue on or before the last day of the ninth month after the death of the decedent.

Sec. 37. NEW SECTION. 451.7 Disposal of tax.

The proceeds of this tax shall be paid into the general fund of the state.

Sec. 38. NEW SECTION. 451.8 Claim for credit or refund.

If the personal representative of a resident decedent shall have paid to the treasurer of the United States or to a collector of internal revenue an estate tax under the provisions of the Federal Estate Tax Act in respect of property included in the gross estate, determined as herein provided, and shall have claimed as credits or deductions against the federal estate tax a sum less than the maximum credits or deductions allowed by the provisions of the Federal Estate Tax Act for any estate, inheritance, legacy or succession taxes actually paid to any state or territory of the United States, or to the District of Columbia, it shall be the personal representative's duty, with due diligence, to file in the bureau of internal revenue a claim for credit or refund for such amount, if any, as such estate shall be properly entitled to receive under the provisions of the Federal Estate Tax Act and of this chapter.

Sec. 39. NEW SECTION. 451.9 Appeal.

If any claim for refund or credit, or any part thereof, shall be denied or disallowed by the commissioner of internal revenue,