

REFERENCE TITLE: universal regulatory tax credit

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2592

Introduced by
Representative Mesnard

AN ACT

AMENDING TITLE 41, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5.1; AMENDING SECTION 43-222, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1082.01; AMENDING TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1171; MAKING AN APPROPRIATION; RELATING TO CREDITS AGAINST INCOME TAXES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 6, Arizona Revised Statutes, is amended
3 by adding article 5.1, to read:

4 ARTICLE 5.1. UNIVERSAL REGULATORY TAX CREDIT

5 41-1058. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "CLAIMANT" MEANS EITHER:

8 (a) THE INDIVIDUAL OR PRIVATE ORGANIZATION ON WHICH ANY TAX AUTHORIZED
9 BY TITLE 20, 28, 42 OR 43 IS IMPOSED, LEVIED OR ASSESSED.

10 (b) THE OWNER OF PROPERTY AGAINST WHICH TAX IS ASSESSED PURSUANT TO
11 TITLE 42.

12 2. "CREDITABLE EXPENSE" MEANS ANY ACTUAL BUSINESS EXPENSE THAT IS
13 INCURRED AS A DIRECT RESULT OF REGULATION. CREDITABLE EXPENSE DOES NOT
14 INCLUDE THE NORMAL COST OF TAX COMPLIANCE, INCLUDING ACCOUNTING, PREPARATION
15 AND FILING TAX RETURNS.

16 3. "REGULATION" MEANS ANY LEGISLATION, ADMINISTRATIVE RULE OR
17 EXECUTIVE ACTION BY THIS STATE OR ITS AGENCIES TO WHICH ALL OF THE FOLLOWING
18 APPLY:

19 (a) THE REGULATION DOES NOT PROTECT HEALTH AND SAFETY.

20 (b) THE REGULATION DOES NOT PROTECT AGAINST CIVIL OR CRIMINAL FRAUD.

21 (c) THE REGULATION MANDATES THAT BUSINESSES TAKE ACTION THAT IS LIKELY
22 TO CAUSE SUBSTANTIALLY MORE ECONOMIC COSTS THAN BENEFITS AS DEMONSTRATED BY
23 QUANTITATIVE AND QUALITATIVE EVIDENCE SUPPLIED BY THE CLAIMANT.

24 4. "TAXABLE YEAR" MEANS A CLAIMANT'S TAXABLE YEAR FOR PAYING
25 INDIVIDUAL OR CORPORATE INCOME TAX, AS APPLICABLE, UNDER TITLE 43.

26 41-1058.01. Allowance of credit

27 A. A CREDIT IS ALLOWED AGAINST INCOME TAX LIABILITY ASSESSED PURSUANT
28 TO TITLE 43, CHAPTER 10 OR 11 FOR THE CREDITABLE EXPENSES DUE TO REGULATION
29 INCURRED BY A BUSINESS ENTITY AFTER DECEMBER 31, 2014. A CLAIM FOR CREDIT
30 UNDER THIS ARTICLE IS IN LIEU OF, AND CONSTITUTES A WAIVER OF, LITIGATION OR
31 PURSUING JUDICIAL REMEDIES AND APPEALS AGAINST THE RESPONSIBLE REGULATORY
32 ENTITY FOR DAMAGES AND COSTS.

33 B. A CREDIT IS NOT ALLOWED UNDER THIS SECTION UNLESS CREDITABLE
34 EXPENSES TOTAL MORE THAN TWO HUNDRED DOLLARS IN THE TAXABLE YEAR. A CLAIMANT
35 IS ALLOWED ONLY ONE CREDIT FOR CREDITABLE EXPENSES WITH RESPECT TO ONLY ONE
36 REGULATION OF ONLY ONE REGULATING ENTITY IN A TAXABLE YEAR.

37 C. SUBJECT TO SUBSECTION D OF THIS SECTION, THE AMOUNT OF CREDIT UNDER
38 THIS SECTION IS THE LESSER OF:

39 1. THE TOTAL AMOUNT OF CREDITABLE EXPENSES INCURRED BY A CLAIMANT IN
40 THE TAXABLE YEAR FOR WHICH THE TAX LIABILITY IS COMPUTED AND ASSESSED.

41 2. FOUR THOUSAND DOLLARS.

42 D. THE AMOUNT OF CREDITS THAT ARE APPROVED UNDER THIS ARTICLE SHALL
43 NOT EXCEED IN THE ANNUAL AGGREGATE:

44 1. IN CALENDAR YEARS 2015 AND 2016, \$400,000.

45 2. BEGINNING WITH CALENDAR YEAR 2017, \$800,000.

1 E. FOR THE PURPOSES OF COMPUTING THE MAXIMUM AGGREGATE DOLLAR VALUE OF
2 CLAIMS ALLOWED UNDER SUBSECTION D OF THIS SECTION, A CLAIM APPROVED BY THE
3 GOVERNOR'S REGULATORY REVIEW COUNCIL, REGARDLESS OF THE APPROVED AMOUNT,
4 SHALL BE DEEMED TO BE THE MAXIMUM VALUE ALLOWED BY SUBSECTION C, PARAGRAPH 2
5 OF THIS SECTION, AND NO FURTHER CLAIM BY THAT CLAIMANT MAY BE APPROVED FOR
6 THAT CALENDAR YEAR AGAINST ANY REGULATING ENTITY.

7 41-1058.02. Claiming the credit; electronic claim form;
8 approval or denial of claim; credit certificate;
9 public register

10 A. THE GOVERNOR'S REGULATORY REVIEW COUNCIL SHALL ADMINISTER THIS
11 ARTICLE.

12 B. THE COUNCIL SHALL DEVELOP A SINGLE UNIVERSAL ELECTRONIC CLAIM FORM
13 FOR ELECTRONIC SUBMISSION TO THE COUNCIL BY THE CLAIMANT. THE CLAIM FORM
14 MUST INCLUDE THE FOLLOWING INFORMATION:

15 1. THE NAME OF THE CLAIMANT.

16 2. THE NAME, TITLE, BUSINESS ADDRESS, TELEPHONE NUMBER AND E-MAIL
17 ADDRESS OF THE INDIVIDUAL SUBMITTING THE CLAIM.

18 3. EVIDENCE OF BUSINESS ACTIVITY, SUCH AS A "DOING BUSINESS AS" NAME,
19 BUSINESS LOCATION, DESCRIPTION OF BUSINESS, TAXPAYER IDENTIFICATION NUMBER OR
20 TRANSACTION PRIVILEGE TAX LICENSE NUMBER AND OTHER INFORMATION NECESSARY TO
21 DETERMINE WHETHER THE CLAIMANT IS ACTUALLY ENGAGED IN BONA FIDE BUSINESS
22 ACTIVITY.

23 4. AN IDENTIFICATION OF THE REGULATION CAUSING THE CLAIM AND THE
24 CORRESPONDING AMOUNT OF CREDITABLE EXPENSES ATTRIBUTABLE TO THE REGULATION.

25 5. THE NAME OF THE REGULATING ENTITY DIRECTLY RESPONSIBLE FOR
26 ENACTING, ADOPTING OR ENFORCING THE REGULATION.

27 6. A WAIVER AND ACKNOWLEDGEMENT THAT BY FILING THE CLAIM AND SEEKING
28 RECOVERY UNDER THIS ARTICLE, THE CLAIMANT WAIVES AND WILL NOT LITIGATE OR
29 PURSUE JUDICIAL REMEDIES OR APPEALS AGAINST:

30 (a) THE RESPONSIBLE REGULATING ENTITY FOR DAMAGES OR COSTS ARISING
31 FROM THE REGULATION.

32 (b) THE COUNCIL OR ANY OTHER ENTITY RESPONSIBLE FOR EVALUATING, RULING
33 ON, PAYING OR DENYING REMEDIES FOR CLAIMS MADE PURSUANT TO THIS ARTICLE.

34 7. ANY OTHER INFORMATION REQUIRED BY THE COUNCIL TO EVALUATE AND RULE
35 ON THE VALIDITY OF THE CLAIM.

36 8. A DECLARATION OR VERIFICATION THAT THE CLAIM IS TRUE, COMPLETE AND
37 ACCURATE TO THE CLAIMANT'S BEST KNOWLEDGE AND BELIEF AND MADE UNDER PENALTY
38 OF PERJURY.

39 C. A CLAIMANT MAY FILE A CLAIM FOR A CREDIT UNDER THIS ARTICLE AT ANY
40 TIME DURING THE YEAR USING THE ELECTRONIC CLAIM FORM PRESCRIBED BY THE
41 COUNCIL. IF THE CLAIMANT FAILS TO SUBMIT A COMPLETE, CORRECT AND TIMELY
42 CLAIM FORM, THE COUNCIL SHALL DENY THE CLAIM UNTIL THE CLAIMANT IS IN FULL
43 COMPLIANCE. THE COUNCIL AT ANY TIME MAY LIMIT OR DISCONTINUE THE RECEIPT OF
44 NEW CLAIMS FOR THE PURPOSE OF PROPER AND ADEQUATE MANAGEMENT OF AND ATTENTION
45 TO CURRENTLY EXISTING CLAIMS.

1 D. ON RECEIVING A COMPLETE, CORRECT AND TIMELY CLAIM, THE COUNCIL
2 SHALL IMMEDIATELY DETERMINE WHETHER THERE IS CAPACITY UNDER THE AGGREGATE
3 MAXIMUM DOLLAR AMOUNT PRESCRIBED BY SECTION 41-1058.01, SUBSECTION D TO
4 ACCOMMODATE THE CLAIMED AMOUNT OF CREDITABLE EXPENSES.

5 E. IF THE COUNCIL DETERMINES THAT CAPACITY EXISTS UNDER THE AGGREGATE
6 MAXIMUM DOLLAR AMOUNT AND THAT THE CLAIM APPEARS TO HAVE GOOD FAITH MERIT ON
7 ITS FACE, THE COUNCIL MAY:

8 1. FORWARD A COPY OF THE CLAIM, AS FORMAL NOTICE, TO THE RESPONSIBLE
9 REGULATING ENTITY IDENTIFIED IN THE CLAIM.

10 2. REQUEST A WRITTEN RESPONSE TO THE CLAIM WITH SUPPORTING
11 DOCUMENTATION.

12 F. WITHIN SIXTY DAYS AFTER THE CLAIMANT'S SUBMISSION OF THE CLAIM, THE
13 COUNCIL SHALL MAKE AN INITIAL EVALUATION AND DETERMINATION TO APPROVE OR DENY
14 THE ENTIRE CLAIM AS SUBMITTED AND NOTIFY BOTH THE CLAIMANT AND, IF A
15 RESPONSIBLE REGULATING ENTITY WAS NOTIFIED PURSUANT TO SUBSECTION E OF THIS
16 SECTION, THE RESPONSIBLE REGULATING ENTITY OF THE DECISION BY CERTIFIED MAIL,
17 RETURN RECEIPT REQUESTED. IF THE COUNCIL:

18 1. FAILS TO MAKE A DECISION WITHIN SIXTY DAYS AFTER THE SUBMISSION OF
19 THE CLAIM, THE CLAIM IS CONSIDERED TO BE APPROVED FOR PROCESSING AS PROVIDED
20 BY PARAGRAPH 2 OF THIS SUBSECTION.

21 2. APPROVES THE CLAIM, THE COUNCIL SHALL NOTIFY THE DEPARTMENT OF
22 REVENUE.

23 3. DENIES THE CLAIM, THE COUNCIL SHALL DENY SUBSEQUENT CLAIMS WITH
24 RESPECT TO THE SAME REGULATION BASED ON SUBSTANTIALLY SIMILAR FACTUAL
25 CIRCUMSTANCES.

26 G. IF AT ANY TIME DURING ANY PROCEEDING DESCRIBED BY SUBSECTION D, E
27 OR F OF THIS SECTION THE COUNCIL DETERMINES THAT THE MAXIMUM ANNUAL AMOUNT OF
28 CREDITS PRESCRIBED BY SECTION 41-1058.01, SUBSECTION D HAS BEEN AWARDED, THE
29 COUNCIL SHALL NOTIFY ALL PARTIES, AND FURTHER PROCEEDINGS ARE TERMINATED AND
30 NO FURTHER CREDITS MAY BE AWARDED WITH RESPECT TO THE CALENDAR YEAR.

31 H. ANY AMOUNT OF A CLAIM FINALLY APPROVED BY THE COUNCIL UNDER THIS
32 SECTION CONSTITUTES A CREDIT AGAINST THE CLAIMANT'S INCOME TAX LIABILITY AS
33 PROVIDED BY SECTION 43-1082.01 OR 43-1171, AS APPLICABLE. THE COUNCIL SHALL
34 ISSUE TO THE CLAIMANT A CREDIT CERTIFICATE THAT INCLUDES THE AMOUNT OF THE
35 APPROVED CLAIM. TO CLAIM THE CREDIT, THE CLAIMANT MUST SUBMIT A COPY OF THE
36 CREDIT CERTIFICATE AT THE TIME OF FILING THE TAXPAYER'S INCOME TAX RETURN
37 UNDER TITLE 43.

38 I. THE COUNCIL SHALL MAINTAIN A PUBLIC ELECTRONIC REGISTER OF CLAIMS
39 FILED UNDER THIS SECTION THAT INDICATES WHETHER THE CLAIM WAS ULTIMATELY
40 APPROVED OR DENIED, THE LOCATION OF THE CLAIM, THE DOLLAR AMOUNT OF THE CLAIM
41 AND THE APPROVED AMOUNT OF ANY CREDIT, AND THE REGULATION AND CREDITABLE
42 EXPENSES ASSOCIATED WITH EACH REGULATION BY REGULATING ENTITY AND CITED,
43 CLASSIFIED AND CODED IN UNIFORM COMMON NOMENCLATURE TO EXPEDITE PUBLIC ACCESS
44 AND APPLICATION IN INDIVIDUAL CIRCUMSTANCES. IF A REGULATION IS REPEALED OR

1 MODIFIED IN ANY WAY TO AFFECT THE ASSOCIATED CREDITABLE EXPENSES, THE COUNCIL
2 SHALL ANNOTATE THE REGISTER ACCORDINGLY.

3 41-1058.03. Administration; forms and procedures; public
4 information

5 THE COUNCIL SHALL:

6 1. ADOPT, PUBLISH AND PRESCRIBE FORMS AND PROCEDURES AS NECESSARY TO
7 EFFECTUATE THE PURPOSES OF THIS ARTICLE TO ENCOURAGE THE REPEAL, RESCISSION
8 OR MODERATION OF REGULATION.

9 2. MAINTAIN AND, ON REQUEST, PROVIDE TO THE PUBLIC ANNUAL DATA ON THE
10 NUMBER OF CLAIMS FILED WITH THE COUNCIL, NUMBER OF CLAIMS ACCEPTED FOR
11 REVIEW, NUMBER OF CLAIMS APPROVED IN WHOLE OR IN PART AND TOTAL AMOUNT OF
12 MONIES CREDITED PURSUANT TO THIS ARTICLE, IN ELECTRONIC FORMAT, BOTH
13 AGGREGATED AND DISAGGREGATED AND CATEGORIZED ACCORDING TO REGULATION,
14 REGULATING ENTITY AND RESPONSIBLE STATE AGENCY, WITHOUT PERSONAL IDENTIFYING
15 INFORMATION OF ANY TAXPAYER.

16 41-1058.04. Debt financing and increased tax or fee revenue
17 prohibited

18 A REGULATING ENTITY THAT IS RESPONSIBLE FOR A REGULATION THAT RESULTS
19 IN TAX CREDITS UNDER THIS ARTICLE SHALL NOT ENGAGE IN DEBT FINANCING OR
20 IMPOSE NEW OR INCREASED TAXES OR FEES TO OFFSET THE FISCAL IMPACT OF ANY
21 CREDIT ALLOWED UNDER THIS ARTICLE.

22 Sec. 2. Section 43-222, Arizona Revised Statutes, is amended to read:

23 43-222. Income tax credit review schedule

24 The joint legislative income tax credit review committee shall review
25 the following income tax credits:

26 1. For years ending in 0 and 5, sections 43-1079.01, 43-1087, 43-1088,
27 43-1090.01, 43-1167.01, 43-1175 and 43-1182.

28 2. For years ending in 1 and 6, sections 43-1074.02, 43-1083,
29 43-1083.02, 43-1085.01, 43-1164.02, 43-1164.03 and 43-1183.

30 3. For years ending in 2 and 7, sections 43-1073, 43-1079, 43-1080,
31 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1090,
32 43-1164, 43-1167, 43-1169, 43-1176 and 43-1181.

33 4. For years ending in 3 and 8, sections 43-1074.01, 43-1081, 43-1168,
34 43-1170 and 43-1178.

35 5. For years ending in 4 and 9, sections 43-1076, 43-1076.01,
36 43-1081.01, 43-1082.01, 43-1083.01, 43-1084, 43-1162, 43-1162.01, 43-1164.01,
37 43-1170.01, 43-1171 and 43-1184 and, beginning in 2019, sections 43-1083.03
38 and 43-1164.04.

39 Sec. 3. Title 43, chapter 10, article 5, Arizona Revised Statutes, is
40 amended by adding section 43-1082.01, to read:

41 43-1082.01. Regulatory tax credit

42 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2014, A
43 CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR CREDITABLE
44 EXPENSES OF REGULATION INCURRED BY A TAXPAYER AFTER DECEMBER 31, 2014 AS
45 APPROVED AND CERTIFIED PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 5.1.

1 B. THE AMOUNT OF THE CREDIT IS THE APPROVED AMOUNT DETERMINED AND
2 CERTIFIED PURSUANT TO SECTION 41-1058.02. TO CLAIM THE CREDIT, THE TAXPAYER
3 MUST SUBMIT WITH THE INCOME TAX RETURN A COPY OF THE CREDIT CERTIFICATE
4 ISSUED TO THE TAXPAYER PURSUANT TO SECTION 41-1058.02, SUBSECTION H.

5 C. IF THE AMOUNT OF THE CREDIT EXCEEDS THE TAXES DUE FOR THE TAXABLE
6 YEAR, THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET AGAINST THE TAX
7 LIABILITY FOR THAT TAXABLE YEAR MAY BE CARRIED FORWARD AS A CREDIT AGAINST UP
8 TO FIVE CONSECUTIVE SUBSEQUENT TAXABLE YEARS, BUT NOT EXCEEDING THE
9 CLAIMANT'S INCOME TAX LIABILITY IN EACH SUBSEQUENT TAXABLE YEAR.

10 D. THE AMOUNT OF CREDIT UNDER THIS SECTION CONSTITUTES A DEBIT AGAINST
11 THE STATE GENERAL FUND APPROPRIATION TO ANY STATE AGENCY DIRECTLY RESPONSIBLE
12 FOR ENACTING, ADOPTING OR ENFORCING THE REGULATION THAT RESULTED IN THE TAX
13 CREDIT. NOTWITHSTANDING ANY OTHER LAW, THE DEPARTMENT OF REVENUE SHALL
14 NOTIFY THE DEPARTMENT OF ADMINISTRATION TO DEDUCT AND WITHHOLD THE AMOUNT OF
15 THE CREDIT FROM MONIES OTHERWISE APPROPRIATED TO THE AGENCY IN THE CURRENT
16 FISCAL YEAR. MONIES AFFECTED BY THIS SUBSECTION REVERT TO THE STATE GENERAL
17 FUND.

18 Sec. 4. Title 43, chapter 11, article 6, Arizona Revised Statutes, is
19 amended by adding section 43-1171, to read:

20 43-1171. Regulatory tax credit

21 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2014, A
22 CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR CREDITABLE
23 EXPENSES OF REGULATION INCURRED BY A TAXPAYER AFTER DECEMBER 31, 2014 AS
24 APPROVED AND CERTIFIED PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 5.1.

25 B. THE AMOUNT OF THE CREDIT IS THE APPROVED AMOUNT DETERMINED AND
26 CERTIFIED PURSUANT TO SECTION 41-1058.02. TO CLAIM THE CREDIT, THE TAXPAYER
27 MUST SUBMIT WITH THE INCOME TAX RETURN A COPY OF THE CREDIT CERTIFICATE
28 ISSUED TO THE TAXPAYER PURSUANT TO SECTION 41-1058.02, SUBSECTION H.

29 C. IF THE AMOUNT OF THE CREDIT EXCEEDS THE TAXES DUE FOR THE TAXABLE
30 YEAR, THE AMOUNT OF THE CREDIT NOT USED AS AN OFFSET AGAINST THE TAX
31 LIABILITY FOR THAT TAXABLE YEAR MAY BE CARRIED FORWARD AS A CREDIT AGAINST UP
32 TO FIVE CONSECUTIVE SUBSEQUENT TAXABLE YEARS, BUT NOT EXCEEDING THE
33 CLAIMANT'S INCOME TAX LIABILITY IN EACH SUBSEQUENT TAXABLE YEAR.

34 D. THE AMOUNT OF CREDIT UNDER THIS SECTION CONSTITUTES A DEBIT AGAINST
35 THE STATE GENERAL FUND APPROPRIATION TO ANY STATE AGENCY DIRECTLY RESPONSIBLE
36 FOR ENACTING, ADOPTING OR ENFORCING THE REGULATION THAT RESULTED IN THE TAX
37 CREDIT. NOTWITHSTANDING ANY OTHER LAW, THE DEPARTMENT OF REVENUE SHALL
38 NOTIFY THE DEPARTMENT OF ADMINISTRATION TO DEDUCT AND WITHHOLD THE AMOUNT OF
39 THE CREDIT FROM MONIES OTHERWISE APPROPRIATED TO THE AGENCY IN THE CURRENT
40 FISCAL YEAR. MONIES AFFECTED BY THIS SUBSECTION REVERT TO THE STATE GENERAL
41 FUND.

42 Sec. 5. Appropriation; governor's regulatory review council;
43 exemption

44 A. The sum of \$350,000 is appropriated from the state general fund in
45 fiscal year 2014-2015 to the governor's regulatory review council for the

1 administration of title 41, chapter 6, article 5.1, Arizona Revised Statutes,
2 as added by this act, including four full-time equivalent employment
3 positions. The council shall ensure that employees hired for those positions
4 are knowledgeable or experienced in regulatory issues at all levels of
5 government.

6 B. The appropriation made in subsection A of this section is exempt
7 from the provisions of section 35-190, Arizona Revised Statutes, relating to
8 lapsing of appropriations.

9 Sec. 6. Purpose

10 Pursuant to section 43-223, Arizona Revised Statutes, the legislature
11 enacts sections 43-1082.01 and 43-1171, Arizona Revised Statutes, as added by
12 this act, to promote job creation and a business-friendly economic
13 development environment throughout this state and to encourage the repeal,
14 rescission or moderation of government regulation that does not protect
15 health and safety, that does not protect against civil or criminal fraud and
16 that requires businesses to take action that is likely to cause substantially
17 more economic costs than benefits, as demonstrated by quantitative and
18 qualitative evidence.