

MEMORANDUM

TO: Revenue Interim Committee

FROM: David Merrien, Bureau Chief – Business & Income Taxes Division

DATE: August 15, 2023

SUBJECT: Infrastructure User Fee Credit (IUFC)

The Infrastructure User Fee Credit (IUFC)

The IUFC is nonrefundable and can be claimed by a business entity when a local government charges a fee for the use of an infrastructure financed through a loan granted by the board of investment (BOI).



Eligibility for the credit and its limitations depend on the loan attributes granted to local governments. The loan eligibility and rates depend on the businesses ability to create a minimum of 15 full time jobs. The local government charges a user fee to repay the loan. This interdependence between local governments and businesses makes the verification of the IUFC dependent on BOI's information.

Mechanism in a nutshell:

- a) The local government's eligibility for the loan is contingent on the businesses using the infrastructure to meet the job creation requirement. Loans are therefore granted based on prospective job creations.
- b) The local government may charge a fee to businesses using the infrastructure paid through an infrastructure loan. The fees are pledged to the BOI for loan repayment. Thus, it is assumed that businesses bear the financial burden of the loan.
- c) Businesses paying the fee may claim the credit which is limited to the amount of user fee paid and to the amount of the loan (principal + Interest). The credit can be carried back 3 years and carried forward 7 years.
- d) If the job creation requirement under 17-6-309(2) is not met, the amount of IUFC claimed for the use of the infrastructure must be recaptured.

1. Does DOR have any comments about administration of the credit?

Taxpayers claim the credit, including carryover amounts, on Form IUFC. Claimants must add a copy of the BOI letter stating the amount of loan that was repaid during the year. DOR verifies periodically that the credit amount reported is correct. Regarding the recapture, DOR is entirely dependent on BOI's determinations, and it is unclear if BOI could ever make such determination (See reply to question 4).

2. Please confirm that a taxpayer can deduct infrastructure user fees as a business expense and claim the tax credit provided in 17-6-316.

The tax treatment of the user fees as business expenses is not mentioned in the statute. As a result, neither the statute or the rules prevent the taxpayer from claiming both the credit and the deduction.

As a remark regarding credits in general, DOR would recommend that all sections providing for a tax credit related to a business expenditure explicitly state if the deduction of the underlying expenses is allowed as it is customarily done for federal business credits. That would clarify DOR instructions and eliminate such inquiry from stakeholders in the future.

3. How does DOR determine which taxpayers are eligible to claim the credit? Does BOI notify you?

BOI sends a letter to DOR for each eligible entity showing the amount of loan paid each year including the amount of principal and the amount of interest.

4. Does BOI make the determination about revoking a credit if job creation requirements are not met?

Yes, BOI determines whether the loan meets the requirement under 17-6-309(2), MCA (ARM 42.4.3004). DOR will revoke the credit if BOI communicates such determination.

However, it is unclear when a recapture can be determined because the recapture statute itself is unclear.

Under 17-6-309(2) the loan is granted based on the estimation that at least 15 qualifying jobs will be created within four years. Yet the business may never reach that threshold. BOI Policy 70.730 provides that if the required number of qualifying jobs is not reached, the business must repay the loan to a level to which the current number of jobs supports. In addition, if the business falls under that threshold within the repayment period, the interest rate can be increased. In that mechanism, the 15 qualifying jobs becomes a parameter to modulate the loan principal and the interest rate, which are paid to BOI through the user fee.

The IUFC recapture under 17-6-316(2), MCA is contingent on whether the condition under 17-6-309(2) is met. That condition is an estimation of job creation reviewed by BOI before granting the loan. In addition, 17-6-316(2), MCA does not explicitly state when that determination must occur.

Because BOI's loan policy already provides penalties in the form of interest rate increases when the business eliminates qualifying jobs, a recapture of any previous credit claimed

would add an additional cost to the loan. For this reason, and because 17-6-216(2) is contingent on BOI not being satisfied at some indeterminate point by the estimation it already validated prior to granting the credit, a recapture is unlikely to ever occur.

5. Are you aware of any taxpayers having to repay the credit because they didn't meet the requirements?

At this time DOR is not aware of taxpayers who had to repay the credit.

6. Aaron McNay sent me data on credit usage. I asked for data on carryforward and carryback of the credit. Aaron indicated DOR does not load Form IUFCA into the system from which he pulls the data. How much work would it be to load that form?

It would take considerable resources to load the back year data in the system for so few taxpayers. Loading the data in future years could be done during the yearly tax form update without using many resources.

I performed a manual search for tax years 2019, 2020 and 2021 on income tax returns. Based on that search, no carryback has occurred during that period. Carryforward amounts were generated several years prior. In general, the amount of available credit greatly exceed the tax liabilities and it is very likely that a large portion of the available credit will be carried forward seven years without offsetting any tax liability.

For individual income tax:

Tax year	Total available	Amount used	Amount carried over to the next year
2019	\$5,043,127	\$356,671	\$4,686,456
2020	\$4,686,956	\$10,228	\$4,676,728
2021	\$4,745,484	\$80,690	\$4,664,794

Note that 2022 is the last year for a large portion of the carryover from 2021.

For corporate income tax:

Tax year	Total available	Amount used	Amount carried over to the next year
2019	\$3,754,320	\$264,738	\$3,489,582
2020	\$3,505,157	\$398,786	\$3,106,371
2021	\$3,721,222	\$244,796	\$3,476,426