

- 33 **53B-8a-102**, as last amended by Laws of Utah 2015, Chapter 94
 34 **59-7-105**, as last amended by Laws of Utah 2015, Chapter 30
 35 **59-7-106**, as last amended by Laws of Utah 2015, Chapters 30 and 94
 36 **59-10-114 (Effective 01/01/17)**, as last amended by Laws of Utah 2016, Chapter 263
 37 **59-10-202**, as last amended by Laws of Utah 2010, Chapter 6
 38 **59-10-1017**, as last amended by Laws of Utah 2015, Chapter 94

39 ENACTS:

- 40 **53B-8a-102.5**, Utah Code Annotated 1953
 41 **53B-8a-201**, Utah Code Annotated 1953
 42 **53B-8a-202**, Utah Code Annotated 1953
 43 **53B-8a-203**, Utah Code Annotated 1953
 44 **53B-8a-204**, Utah Code Annotated 1953
 45 **53B-8a-205**, Utah Code Annotated 1953
 46 **59-10-1017.1**, Utah Code Annotated 1953

47

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

49 Section 1. Section **53B-8a-102** is amended to read:

50 **53B-8a-102. Definitions for chapter.**

51 As used in this chapter:

52 (1) "Account agreement" means an agreement between an account owner and the Utah
 53 Educational Savings Plan entered into under this chapter.

54 (2) "Account owner" means a person, estate, or trust, if that person, estate, or trust has
 55 entered into an account agreement under this chapter to save for the higher education costs on
 56 behalf of a beneficiary.

57 ~~[(3) "Administrative fund" means the money used to administer the Utah Educational~~
 58 ~~Savings Plan.]~~

59 ~~[(4)]~~ (3) "Beneficiary" means the individual designated in an account agreement to
 60 benefit from the amount saved for higher education costs.

61 ~~[(5)]~~ (4) "Board" means the board of directors of the Utah Educational Savings Plan
 62 which is the state Board of Regents acting in its capacity as the Utah Higher Education
 63 Assistance Authority under Title 53B, Chapter 12, Higher Education Assistance Authority.

64 ~~[(6) "Endowment fund" means the endowment fund established under Section~~
65 ~~53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan.]~~

66 ~~[(7) "Executive director" means the administrator appointed to administer and manage~~
67 ~~the Utah Educational Savings Plan.]~~

68 ~~[(8) "Federally insured depository institution" means an institution whose deposits and~~
69 ~~accounts are to any extent insured by a federal deposit insurance agency, including the Federal~~
70 ~~Deposit Insurance Corporation and the National Credit Union Administration.]~~

71 ~~[(9) "Grantor trust" means a trust, the income of which is for the benefit of the grantor~~
72 ~~under Section 677, Internal Revenue Code.]~~

73 ~~[(10) "Higher education costs" means qualified higher education expenses as defined in~~
74 ~~Section 529(e)(3), Internal Revenue Code.]~~

75 ~~[(11) "Owner of the grantor trust" means one or more individuals who are treated as an~~
76 ~~owner of a trust under Section 677, Internal Revenue Code, if that trust is a grantor trust.]~~

77 ~~[(12) "Plan" means the Utah Educational Savings Plan created in Section 53B-8a-103.]~~

78 ~~[(13) "Program fund" means the program fund created under Section 53B-8a-107,~~
79 ~~which is held as a separate fund within the Utah Educational Savings Plan.]~~

80 ~~[(14) "Qualified investment" means an amount invested in accordance with an account~~
81 ~~agreement established under this chapter.]~~

82 ~~[(15) "Tuition and fees" means the quarterly or semester charges imposed to attend an~~
83 ~~institution of higher education and required as a condition of enrollment.]~~

84 Section 2. Section **53B-8a-102.5** is enacted to read:

85 **53B-8a-102.5. Definitions for part.**

86 As used in this part:

87 (1) "Administrative fund" means the money used to administer the Utah Educational
88 Savings Plan.

89 (2) "Endowment fund" means the endowment fund established under Section
90 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.

91 (3) "Executive director" means the administrator appointed to administer and manage
92 the Utah Educational Savings Plan.

93 (4) "Federally insured depository institution" means an institution whose deposits and
94 accounts are to any extent insured by a federal deposit insurance agency, including the Federal

95 Deposit Insurance Corporation and the National Credit Union Administration.

96 (5) "Grantor trust" means a trust, the income of which is for the benefit of the grantor
97 under Section 677, Internal Revenue Code.

98 (6) "Higher education costs" means qualified higher education expenses as defined in
99 Section 529(e)(3), Internal Revenue Code.

100 (7) "Owner of the grantor trust" means one or more individuals who are treated as an
101 owner of a trust under Section 677, Internal Revenue Code, if that trust is a grantor trust.

102 (8) "Plan" means the Utah Educational Savings Plan created in Section 53B-8a-103.

103 (9) "Program fund" means the program fund created under Section 53B-8a-107, which
104 is held as a separate fund within the Utah Educational Savings Plan.

105 (10) "Qualified investment" means an amount invested in accordance with an account
106 agreement established under this part.

107 (11) "Tuition and fees" means the quarterly or semester charges imposed to attend an
108 institution of higher education and required as a condition of enrollment.

109 Section 3. Section **53B-8a-201** is enacted to read:

110 **Part 2. Student Prosperity Savings Plan Account**

111 **53B-8a-201. Definitions.**

112 As used in this part:

113 (1) "529 savings account" means a tax-advantaged method of saving for higher
114 education costs on behalf of a particular individual that:

115 (a) meets the requirements of Section 529, Internal Revenue Code; and

116 (b) is managed by the educational savings plan.

117 (2) "Child" means an individual less than 20 years of age.

118 (3) "Community partner" means a nonprofit organization that provides services to a
119 child who is economically disadvantaged or a family that has at least one child or foster child
120 who is economically disadvantaged.

121 (4) "Contribution" means a gift, grant, donation, or any other conveyance of money by
122 a person other than the Legislature that is not made for the benefit or on behalf of a particular
123 individual.

124 (5) "Economically disadvantaged" means that a student is:

125 (a) less than 20 years of age;

126 (b) experiencing intergenerational poverty; or
127 (c) a member or foster child of a family with an annual income at or below 185% of the
128 federal poverty level.

129 (6) "Educational savings plan" means the Utah Educational Savings Plan created in
130 Section 53B-8a-103.

131 (7) "Eligible individual" means an individual who:

132 (a) is at least 15 years of age and under 20 years of age;

133 (b) is in grade 10, grade 11, or grade 12 in Utah;

134 (c) is economically disadvantaged; and

135 (d) receives, or has a family member who receives, services from a community partner.

136 (8) "Federal poverty level" means the poverty level as defined by the most recently
137 revised poverty income guidelines published by the United States Department of Health and
138 Human Services in the Federal Register.

139 (9) "Higher education costs" means the same as that term is defined in Section
140 53B-8a-102.5, except that the expenses must be incurred at:

141 (a) a credit-granting institution of higher education within the state system of higher
142 education;

143 (b) a private, nonprofit college or university in the state that is accredited by the
144 Northwestern Association of Schools and Colleges; or

145 (c) a college within the Utah College of Applied Technology.

146 (10) "Intergenerational poverty" means the same as that term is defined in Section
147 35A-9-102.

148 (11) "Prosperity savings plan" means the Student Prosperity Savings Plan created in
149 Section 53B-8a-202.

150 Section 4. Section **53B-8a-202** is enacted to read:

151 **53B-8a-202. Student Prosperity Savings Plan.**

152 (1) There is created the Student Prosperity Savings Plan.

153 (2) The prosperity savings plan is funded by:

154 (a) appropriations from the Legislature; and

155 (b) contributions made in accordance with Section 53B-8a-203.

156 (3) (a) The educational savings plan shall administer the prosperity savings plan.

157 (b) The educational savings plan shall use the prosperity savings plan to create 529
158 savings accounts in accordance with this part.

159 Section 5. Section **53B-8a-203** is enacted to read:

160 **53B-8a-203. Contributions to the prosperity savings plan.**

161 (1) (a) A person may make a contribution to the prosperity savings plan by:

162 (i) sending the contribution to the educational savings plan; and

163 (ii) including with the contribution, direction that the contribution benefit the
164 prosperity savings plan.

165 (b) A person making a contribution shall include the person's name and mailing
166 address with the contribution.

167 (2) (a) The educational savings plan shall mail a receipt to the person that makes the
168 contribution.

169 (b) The receipt described in Subsection (2)(a) shall state:

170 (i) the name of the person that made the contribution;

171 (ii) the amount of the contribution; and

172 (iii) the date on which the person makes the contribution.

173 (c) The date on which the person makes a contribution to the prosperity savings plan is
174 the date on which the educational savings plan receives the contribution, unless the educational
175 savings plan receives the contribution on a Saturday, a Sunday, or a holiday, in which case the
176 date on which the person makes the contribution shall be the first business day after the day on
177 which the educational savings plan receives the contribution.

178 (d) A person that receives a receipt described in Subsection (2)(a) shall retain the
179 receipt for the same time period a person is required to keep books and records under Section
180 59-1-1406.

181 Section 6. Section **53B-8a-204** is enacted to read:

182 **53B-8a-204. Distribution of the prosperity savings plan -- Application process --**
183 **Prioritization -- Account agreements.**

184 (1) The educational savings plan shall distribute money in the prosperity savings plan
185 by creating a 529 savings account for an eligible individual identified by a community partner.

186 (2) (a) (i) The educational savings plan shall carry out the responsibility described in
187 Subsection (1) by establishing a process in which a community partner may apply for an

188 allocation of prosperity savings plan money to designate for eligible individuals.

189 (ii) The educational savings plan, through the board, shall establish the application
190 process by rules made in accordance with Title 63G, Chapter 3, Utah Administrative
191 Rulemaking Act.

192 (iii) The rules described in Subsection (2)(a)(ii) shall include:

193 (A) the criteria for a community partner to apply for an allocation of prosperity savings
194 plan money;

195 (B) the criteria that the educational savings plan will use to prioritize applications if the
196 dollar amounts requested in the applications exceed the dollar amount available;

197 (C) the requirements for establishing a 529 savings account in the name of an eligible
198 individual; and

199 (D) the roles and responsibilities of a community partner that makes a successful
200 application for an allocation of prosperity savings plan money.

201 (b) (i) A community partner that receives an allocation of prosperity savings plan
202 money shall enter into a contract with the educational savings plan.

203 (ii) The contract described in Subsection (2)(b)(i) shall:

204 (A) define the roles and responsibilities of the community partner and the educational
205 savings plan with regard to the community partner's allocation of prosperity savings plan
206 money; and

207 (B) specify that the individual the community partner identifies to receive a portion of
208 the community partner's allocation is an eligible individual.

209 (3) If the educational savings plan approves a community partner's application for an
210 allocation of prosperity savings plan money, the educational savings plan may not promise or
211 otherwise encumber the allocation to any other person unless the allocation is forfeited under
212 Subsection (5)(b)(ii).

213 (4) (a) A community partner shall identify each eligible individual who will receive a
214 portion of the community partner's allocation of prosperity savings plan money.

215 (b) After a community partner identifies an eligible individual to receive a portion of
216 the community partner's allocation, the community partner shall notify the educational savings
217 plan of:

218 (i) the amount of the community partner's allocation that shall transfer to a 529 savings

219 account in the name of the identified eligible individual; and

220 (ii) the amount, if any, that the community partner will be contributing in accordance
221 with Section 53B-8a-107 to the 529 savings account on behalf of the identified eligible
222 individual.

223 (5) (a) Upon receiving the information described in Subsection (4)(b), the educational
224 savings plan shall enter into an account agreement in accordance with Section 53B-8a-106 with
225 the community partner, which shall serve as the account owner.

226 (b) The community partner shall inform the beneficiary that:

227 (i) within three years after the day on which the beneficiary graduates from high
228 school, the beneficiary shall enroll in:

229 (A) a credit-granting institution of higher education within the state system of higher
230 education;

231 (B) a private, nonprofit college or university in the state that is accredited by the
232 Northwestern Association of Schools and Colleges; or

233 (C) a college within the Utah College of Applied Technology; and

234 (ii) if the beneficiary fails to enroll within three years after the day on which the
235 beneficiary graduates from high school, any money that remains in the 529 savings account
236 shall be returned to the prosperity savings plan.

237 (c) After entering the account agreement described in Subsection (5)(a), the
238 educational savings plan shall deposit into the beneficiary's 529 savings plan the amount of the
239 allocation described in Subsection (4)(b)(i).

240 Section 7. Section **53B-8a-205** is enacted to read:

241 **53B-8a-205. Application of other provisions of this chapter.**

242 After the educational savings plan establishes an individual 529 savings account, the
243 provisions of Part 1, Utah Educational Savings Plan, govern the 529 savings account.

244 Section 8. Section **59-7-105** is amended to read:

245 **59-7-105. Additions to unadjusted income.**

246 In computing adjusted income the following amounts shall be added to unadjusted
247 income:

248 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state
249 of the United States, including any agency and instrumentality of a state of the United States;

- 250 (2) the amount of any deduction taken on a corporation's federal return for taxes paid
251 by a corporation:
- 252 (a) to Utah for taxes imposed by this chapter; and
- 253 (b) to another state of the United States, a foreign country, a United States possession,
254 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
255 exercising its corporate franchise, including income, franchise, corporate stock and business
256 and occupation taxes;
- 257 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and
258 (2)(a);
- 259 (4) capital losses that have been deducted on a Utah corporate return in previous years;
- 260 (5) any deduction on the federal return that has been previously deducted on the Utah
261 return;
- 262 (6) charitable contributions, to the extent deducted on the federal return when
263 determining federal taxable income;
- 264 (7) the amount of gain or loss determined under Section 59-7-114 relating to a target
265 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
266 been included in the unadjusted income of the target corporation;
- 267 (8) the amount of gain or loss determined under Section 59-7-115 relating to
268 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
269 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
270 income of the target corporation;
- 271 (9) adjustments to gains, losses, depreciation expense, amortization expense, and
272 similar items due to a difference between basis for federal purposes and basis as computed
273 under Section 59-7-107;
- 274 (10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings
275 Plan, from the account of a corporation that is an account owner as defined in Section
276 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn
277 from the account of the corporation that is the account owner:
- 278 (a) is not expended for:
- 279 (i) higher education costs as defined in Section [~~53B-8a-102~~] 53B-8a-102.5; or
- 280 (ii) a payment or distribution that qualifies as an exception to the additional tax for

281 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
282 Internal Revenue Code; and
283 (b) is subtracted by the corporation:
284 (i) that is the account owner; and
285 (ii) in accordance with Subsection 59-7-106 (1)(r); and
286 (11) the amount of the deduction for dividends paid, as defined in Section 561, Internal
287 Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in
288 computing the taxable income of a captive real estate investment trust, if that captive real estate
289 investment trust is subject to federal income taxation.

290 Section 9. Section **59-7-106** is amended to read:

291 **59-7-106. Subtractions from unadjusted income.**

292 (1) In computing adjusted income, the following amounts shall be subtracted from
293 unadjusted income:

294 (a) the foreign dividend gross-up included in gross income for federal income tax
295 purposes under Section 78, Internal Revenue Code;

296 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the
297 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the
298 taxable year for which the net capital loss is incurred;

299 (c) the decrease in salary expense deduction for federal income tax purposes due to
300 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

301 (d) the decrease in qualified research and basic research expense deduction for federal
302 income tax purposes due to claiming the federal credit for increasing research activities under
303 Section 41, Internal Revenue Code;

304 (e) the decrease in qualified clinical testing expense deduction for federal income tax
305 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for
306 rare diseases or conditions under Section 45C, Internal Revenue Code;

307 (f) any decrease in any expense deduction for federal income tax purposes due to
308 claiming any other federal credit;

309 (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and
310 (2)(b);

311 (h) any income on the federal corporation income tax return that has been previously

312 taxed by Utah;

313 (i) an amount included in federal taxable income that is due to a refund of a tax,

314 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation

315 tax:

316 (i) if that tax is imposed for the privilege of:

317 (A) doing business; or

318 (B) exercising a corporate franchise;

319 (ii) if that tax is paid by the corporation to:

320 (A) Utah;

321 (B) another state of the United States;

322 (C) a foreign country;

323 (D) a United States possession; or

324 (E) the Commonwealth of Puerto Rico; and

325 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

326 (j) a charitable contribution, to the extent the charitable contribution is allowed as a

327 subtraction under Section 59-7-109;

328 (k) subject to Subsection (3), 50% of a dividend considered to be received or received

329 from a subsidiary that:

330 (i) is a member of the unitary group;

331 (ii) is organized or incorporated outside of the United States; and

332 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

333 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a

334 foreign operating company;

335 (m) the amount of gain or loss that is included in unadjusted income but not recognized

336 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as

337 defined in Section 338, Internal Revenue Code, if an election has been made in accordance

338 with Section 338(h)(10), Internal Revenue Code;

339 (n) the amount of gain or loss that is included in unadjusted income but not recognized

340 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance

341 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal

342 Revenue Code, has been made for federal purposes;

- 343 (o) subject to Subsection (5), an adjustment to the following due to a difference
344 between basis for federal purposes and basis as computed under Section 59-7-107:
- 345 (i) an amortization expense;
 - 346 (ii) a depreciation expense;
 - 347 (iii) a gain;
 - 348 (iv) a loss; or
 - 349 (v) an item similar to Subsections (1)(o)(i) through (iv);
 - 350 (p) an interest expense that is not deducted on a federal corporation income tax return
351 under Section 265(b) or 291(e), Internal Revenue Code;
 - 352 (q) 100% of dividends received from a subsidiary that is an insurance company if that
353 subsidiary that is an insurance company is:
 - 354 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
 - 355 (ii) under common ownership;
 - 356 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
357 defined in Section 53B-8a-102 [~~shall subtract~~], the amount of a qualified investment as defined
358 in Section [~~53B-8a-102~~] 53B-8a-102.5:
 - 359 (i) that the corporation or a person other than the corporation makes into an account
360 owned by the corporation during the taxable year;
 - 361 (ii) to the extent that neither the corporation nor the person other than the corporation
362 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax
363 return; and
 - 364 (iii) to the extent the qualified investment does not exceed the maximum amount of the
365 qualified investment that may be subtracted from unadjusted income for a taxable year in
366 accordance with Subsection 53B-8a-106(1);
 - 367 (s) for a corporation that makes a contribution, as that term is defined in Section
368 53B-8a-201, to the Student Prosperity Savings Plan created in Section 53B-8a-202, the amount
369 of the contribution to the extent that the corporation did not deduct the contribution on a
370 federal income tax return;
 - 371 [~~(s)~~] (t) for purposes of income included in a combined report under Part 4, Combined
372 Reporting, the entire amount of the dividends a member of a unitary group receives or is
373 considered to receive from a captive real estate investment trust; and

374 ~~[(t)]~~ (u) the increase in income for federal income tax purposes due to claiming a:

375 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

376 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code.

377 (2) For purposes of Subsection (1)(b):

378 (a) the subtraction shall be made by claiming the subtraction on a return filed:

379 (i) under this chapter for the taxable year for which the net capital loss is incurred; and

380 (ii) by the due date of the return, including extensions; and

381 (b) a net capital loss for a taxable year shall be:

382 (i) subtracted for the taxable year for which the net capital loss is incurred; or

383 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue

384 Code.

385 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a

386 taxpayer shall first subtract from a dividend considered to be received or received an expense

387 directly attributable to that dividend.

388 (b) For purposes of Subsection (3)(a), the amount of an interest expense that is

389 considered to be directly attributable to a dividend is calculated by multiplying the interest

390 expense by a fraction:

391 (i) the numerator of which is the taxpayer's average investment in the dividend paying

392 subsidiaries; and

393 (ii) the denominator of which is the taxpayer's average total investment in assets.

394 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in

395 determining income apportionable to this state, a portion of the factors of a foreign subsidiary

396 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the

397 combined report factors as provided in this Subsection (3)(c).

398 (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign

399 subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be

400 included in the combined report factors is calculated by multiplying each factor of the foreign

401 subsidiary by a fraction:

402 (A) not to exceed 100%; and

403 (B) (I) the numerator of which is the amount of the dividend paid by the foreign

404 subsidiary that is included in adjusted income; and

405 (II) the denominator of which is the current year earnings and profits of the foreign
406 subsidiary as determined under the Internal Revenue Code.

407 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under
408 Subsection (1)(l):

409 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
410 59-7-403; or

411 (ii) for the following:

412 (A) income generated from intangible property; or

413 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is
414 generated from an asset held for investment and not from a regular business trading activity.

415 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating
416 company:

417 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

418 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a
419 transaction that occurs between members of a unitary group.

420 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining
421 income apportionable to this state, the factors for a foreign operating company shall be
422 included in the combined report factors in the same percentages as the foreign operating
423 company's adjusted income is included in the combined adjusted income.

424 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
425 commission may by rule define what constitutes:

426 (i) income generated from intangible property; or

427 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is
428 generated from an asset held for investment and not from a regular business trading activity.

429 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of
430 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax
431 credit is claimed if:

432 (i) there is a reduction in federal basis for a federal tax credit; and

433 (ii) there is no corresponding tax credit allowed in this state.

434 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
435 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)

436 through (iv).

437 Section 10. Section **59-10-114 (Effective 01/01/17)** is amended to read:

438 **59-10-114 (Effective 01/01/17). Additions to and subtractions from adjusted gross**
439 **income of an individual.**

440 (1) There shall be added to adjusted gross income of a resident or nonresident
441 individual:

442 (a) a lump sum distribution that the taxpayer does not include in adjusted gross income
443 on the taxpayer's federal individual income tax return for the taxable year;

444 (b) the amount of a child's income calculated under Subsection (4) that:

445 (i) a parent elects to report on the parent's federal individual income tax return for the
446 taxable year; and

447 (ii) the parent does not include in adjusted gross income on the parent's federal
448 individual income tax return for the taxable year;

449 (c) (i) a withdrawal from a medical care savings account and any penalty imposed for
450 the taxable year if:

451 (A) the resident or nonresident individual does not deduct the amounts on the resident
452 or nonresident individual's federal individual income tax return under Section 220, Internal
453 Revenue Code;

454 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

455 (C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a
456 return the resident or nonresident individual files under this chapter;

457 (ii) a disbursement required to be added to adjusted gross income in accordance with
458 Subsection 31A-32a-105(3); or

459 (iii) an amount required to be added to adjusted gross income in accordance with
460 Subsection 31A-32a-105(5)(c);

461 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
462 from the account of a resident or nonresident individual who is an account owner as defined in
463 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount
464 withdrawn from the account of the resident or nonresident individual who is the account
465 owner:

466 (i) is not expended for:

- 467 (A) higher education costs as defined in Section [~~53B-8a-102~~] 53B-8a-102.5; or
- 468 (B) a payment or distribution that qualifies as an exception to the additional tax for
- 469 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
- 470 Internal Revenue Code; and
- 471 (ii) is:
- 472 (A) subtracted by the resident or nonresident individual:
- 473 (I) who is the account owner; and
- 474 (II) on the resident or nonresident individual's return filed under this chapter for a
- 475 taxable year beginning on or before December 31, 2007; or
- 476 (B) used as the basis for the resident or nonresident individual who is the account
- 477 owner to claim a tax credit under Section 59-10-1017;
- 478 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of
- 479 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
- 480 evidences of indebtedness issued by one or more of the following entities:
- 481 (i) a state other than this state;
- 482 (ii) the District of Columbia;
- 483 (iii) a political subdivision of a state other than this state; or
- 484 (iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through
- 485 (iii);
- 486 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a
- 487 resident trust of income that was taxed at the trust level for federal tax purposes, but was
- 488 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);
- 489 (g) any distribution received by a resident beneficiary of a nonresident trust of
- 490 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
- 491 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
- 492 was not taxed at the trust level by any state, with undistributed distributable net income
- 493 considered to be distributed from the most recently accumulated undistributed distributable net
- 494 income; and
- 495 (h) any adoption expense:
- 496 (i) for which a resident or nonresident individual receives reimbursement from another
- 497 person; and

498 (ii) to the extent to which the resident or nonresident individual subtracts that adoption
499 expense:

500 (A) on a return filed under this chapter for a taxable year beginning on or before
501 December 31, 2007; or

502 (B) from federal taxable income on a federal individual income tax return.

503 (2) There shall be subtracted from adjusted gross income of a resident or nonresident
504 individual:

505 (a) the difference between:

506 (i) the interest or a dividend on an obligation or security of the United States or an
507 authority, commission, instrumentality, or possession of the United States, to the extent that
508 interest or dividend is:

509 (A) included in adjusted gross income for federal income tax purposes for the taxable
510 year; and

511 (B) exempt from state income taxes under the laws of the United States; and

512 (ii) any interest on indebtedness incurred or continued to purchase or carry the
513 obligation or security described in Subsection (2)(a)(i);

514 (b) for taxable years beginning on or after January 1, 2000, if the conditions of
515 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

516 (i) during a time period that the Ute tribal member resides on homesteaded land
517 diminished from the Uintah and Ouray Reservation; and

518 (ii) from a source within the Uintah and Ouray Reservation;

519 (c) an amount received by a resident or nonresident individual or distribution received
520 by a resident or nonresident beneficiary of a resident trust:

521 (i) if that amount or distribution constitutes a refund of taxes imposed by:

522 (A) a state; or

523 (B) the District of Columbia; and

524 (ii) to the extent that amount or distribution is included in adjusted gross income for
525 that taxable year on the federal individual income tax return of the resident or nonresident
526 individual or resident or nonresident beneficiary of a resident trust;

527 (d) the amount of a railroad retirement benefit:

528 (i) paid:

- 529 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
530 seq.;
- 531 (B) to a resident or nonresident individual; and
- 532 (C) for the taxable year; and
- 533 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
534 that resident or nonresident individual's federal individual income tax return for that taxable
535 year; and
- 536 (e) an amount:
- 537 (i) received by an enrolled member of an American Indian tribe; and
- 538 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
539 part on that amount in accordance with:
- 540 (A) federal law;
- 541 (B) a treaty; or
- 542 (C) a final decision issued by a court of competent jurisdiction.
- 543 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
- 544 (i) the taxpayer is a Ute tribal member; and
- 545 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
546 requirements of this Subsection (3).
- 547 (b) The agreement described in Subsection (3)(a):
- 548 (i) may not:
- 549 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 550 (B) provide a subtraction under this section greater than or different from the
551 subtraction described in Subsection (2)(b); or
- 552 (C) affect the power of the state to establish rates of taxation; and
- 553 (ii) shall:
- 554 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
- 555 (B) be in writing;
- 556 (C) be signed by:
- 557 (I) the governor; and
- 558 (II) the chair of the Business Committee of the Ute tribe;
- 559 (D) be conditioned on obtaining any approval required by federal law; and

560 (E) state the effective date of the agreement.

561 (c) (i) The governor shall report to the commission by no later than February 1 of each
562 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is
563 in effect.

564 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the
565 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or
566 after the January 1 following the termination of the agreement.

567 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
568 Utah Administrative Rulemaking Act, the commission may make rules:

569 (i) for determining whether income is derived from a source within the Uintah and
570 Ouray Reservation; and

571 (ii) that are substantially similar to how adjusted gross income derived from Utah
572 sources is determined under Section 59-10-117.

573 (4) (a) For purposes of this Subsection (4), "Form 8814" means:

574 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
575 Interest and Dividends; or

576 (ii) (A) a form designated by the commission in accordance with Subsection
577 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
578 individual income taxes the information contained on 2000 Form 8814 is reported on a form
579 other than Form 8814; and

580 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
581 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
582 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
583 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
584 8814.

585 (b) The amount of a child's income added to adjusted gross income under Subsection
586 (1)(b) is equal to the difference between:

587 (i) the lesser of:

588 (A) the base amount specified on Form 8814; and

589 (B) the sum of the following reported on Form 8814:

590 (I) the child's taxable interest;

- 591 (II) the child's ordinary dividends; and
- 592 (III) the child's capital gain distributions; and
- 593 (ii) the amount not taxed that is specified on Form 8814.
- 594 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences
- 595 of indebtedness issued by an entity described in Subsections (1)(e)(i) through (iv) may not be
- 596 added to adjusted gross income of a resident or nonresident individual if, as annually
- 597 determined by the commission:
- 598 (a) for an entity described in Subsection (1)(e)(i) or (ii), the entity and all of the
- 599 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
- 600 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
- 601 (b) for an entity described in Subsection (1)(e)(iii) or (iv), the following do not impose
- 602 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
- 603 this state:
- 604 (i) the entity; or
- 605 (ii) (A) the state in which the entity is located; or
- 606 (B) the District of Columbia, if the entity is located within the District of Columbia.
- 607 Section 11. Section **59-10-202** is amended to read:
- 608 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**
- 609 **nonresident estate or trust.**
- 610 (1) There shall be added to unadjusted income of a resident or nonresident estate or
- 611 trust:
- 612 (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal
- 613 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in
- 614 determining adjusted gross income;
- 615 (b) except as provided in Subsection (3), for bonds, notes, and other evidences of
- 616 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
- 617 evidences of indebtedness issued by one or more of the following entities:
- 618 (i) a state other than this state;
- 619 (ii) the District of Columbia;
- 620 (iii) a political subdivision of a state other than this state; or
- 621 (iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through

622 (iii);

623 (c) any portion of federal taxable income for a taxable year if that federal taxable
624 income is derived from stock:

625 (i) in an S corporation; and

626 (ii) that is held by an electing small business trust;

627 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
628 from the account of a resident or nonresident estate or trust that is an account owner as defined
629 in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount
630 withdrawn from the account of the resident or nonresident estate or trust that is the account
631 owner:

632 (i) is not expended for:

633 (A) higher education costs as defined in Section [~~53B-8a-102~~] 53B-8a-102.5; or

634 (B) a payment or distribution that qualifies as an exception to the additional tax for
635 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
636 Internal Revenue Code; and

637 (ii) is:

638 (A) subtracted by the resident or nonresident estate or trust:

639 (I) that is the account owner; and

640 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a
641 taxable year beginning on or before December 31, 2007; or

642 (B) used as the basis for the resident or nonresident estate or trust that is the account
643 owner to claim a tax credit under Section 59-10-1017; and

644 (e) any fiduciary adjustments required by Section 59-10-210.

645 (2) There shall be subtracted from unadjusted income of a resident or nonresident
646 estate or trust:

647 (a) the interest or a dividend on obligations or securities of the United States and its
648 possessions or of any authority, commission, or instrumentality of the United States, to the
649 extent that interest or dividend is included in gross income for federal income tax purposes for
650 the taxable year but exempt from state income taxes under the laws of the United States, but
651 the amount subtracted under this Subsection (2) shall be reduced by any interest on
652 indebtedness incurred or continued to purchase or carry the obligations or securities described

653 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
654 income described in this Subsection (2) to the extent that such expenses, including amortizable
655 bond premiums, are deductible in determining federal taxable income;

656 (b) income of an irrevocable resident trust if:

657 (i) the income would not be treated as state taxable income derived from Utah sources
658 under Section 59-10-204 if received by a nonresident trust;

659 (ii) the trust first became a resident trust on or after January 1, 2004;

660 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
661 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

662 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

663 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the
664 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,
665 Subchapter J, Subpart E of the Internal Revenue Code; and

666 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on
667 indebtedness incurred or continued to purchase or carry the assets generating the income
668 described in this Subsection (2)(b), and by any expenses incurred in the production of income
669 described in this Subsection (2)(b), to the extent that those expenses, including amortizable
670 bond premiums, are deductible in determining federal taxable income;

671 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or
672 nonresident estate or trust derived from a deceased Ute tribal member:

673 (i) during a time period that the Ute tribal member resided on homesteaded land
674 diminished from the Uintah and Ouray Reservation; and

675 (ii) from a source within the Uintah and Ouray Reservation;

676 (d) any amount:

677 (i) received by a resident or nonresident estate or trust;

678 (ii) that constitutes a refund of taxes imposed by:

679 (A) a state; or

680 (B) the District of Columbia; and

681 (iii) to the extent that amount is included in total income on that resident or nonresident
682 estate's or trust's federal tax return for estates and trusts for that taxable year;

683 (e) the amount of a railroad retirement benefit:

684 (i) paid:

685 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
686 seq.;

687 (B) to a resident or nonresident estate or trust derived from a deceased resident or
688 nonresident individual; and

689 (C) for the taxable year; and

690 (ii) to the extent that railroad retirement benefit is included in total income on that
691 resident or nonresident estate's or trust's federal tax return for estates and trusts;

692 (f) an amount:

693 (i) received by a resident or nonresident estate or trust if that amount is derived from a
694 deceased enrolled member of an American Indian tribe; and

695 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
696 part on that amount in accordance with:

697 (A) federal law;

698 (B) a treaty; or

699 (C) a final decision issued by a court of competent jurisdiction;

700 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
701 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
702 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
703 the taxable year; and

704 (h) any fiduciary adjustments required by Section 59-10-210.

705 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences
706 of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not be
707 added to unadjusted income of a resident or nonresident estate or trust if, as annually
708 determined by the commission:

709 (a) for an entity described in Subsection (1)(b)(i) or (ii), the entity and all of the
710 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
711 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

712 (b) for an entity described in Subsection (1)(b)(iii) or (iv), the following do not impose
713 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
714 this state:

- 715 (i) the entity; or
- 716 (ii) (A) the state in which the entity is located; or
- 717 (B) the District of Columbia, if the entity is located within the District of Columbia.
- 718 (4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:
- 719 (i) the income is derived from a deceased Ute tribal member; and
- 720 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 721 requirements of this Subsection (4).
- 722 (b) The agreement described in Subsection (4)(a):
- 723 (i) may not:
- 724 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 725 (B) provide a subtraction under this section greater than or different from the
- 726 subtraction described in Subsection (2)(c); or
- 727 (C) affect the power of the state to establish rates of taxation; and
- 728 (ii) shall:
- 729 (A) provide for the implementation of the subtraction described in Subsection (2)(c);
- 730 (B) be in writing;
- 731 (C) be signed by:
- 732 (I) the governor; and
- 733 (II) the chair of the Business Committee of the Ute tribe;
- 734 (D) be conditioned on obtaining any approval required by federal law; and
- 735 (E) state the effective date of the agreement.
- 736 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 737 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
- 738 in effect.
- 739 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 740 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
- 741 after the January 1 following the termination of the agreement.
- 742 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,
- 743 Utah Administrative Rulemaking Act, the commission may make rules:
- 744 (i) for determining whether income is derived from a source within the Uintah and
- 745 Ouray Reservation; and

746 (ii) that are substantially similar to how adjusted gross income derived from Utah
747 sources is determined under Section 59-10-117.

748 Section 12. Section **59-10-1017** is amended to read:

749 **59-10-1017. Utah Educational Savings Plan tax credit.**

750 (1) As used in this section:

751 (a) "Account owner" means the same as that term is defined in Section 53B-8a-102.

752 (b) "Grantor trust" means the same as that term is defined in Section [~~53B-8a-102~~]
753 53B-8a-102.5.

754 (c) "Higher education costs" means the same as that term is defined in Section
755 [~~53B-8a-102~~] 53B-8a-102.5.

756 (d) "Maximum amount of a qualified investment for the taxable year" means, for a
757 taxable year, the product of 5% and:

758 (i) subject to Subsection (1)(d)(iii), for a claimant, estate, or trust that is an account
759 owner, if that claimant, estate, or trust is other than husband and wife account owners who file
760 a single return jointly, the maximum amount of a qualified investment:

761 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

762 (B) increased or kept for that taxable year in accordance with Subsections
763 53B-8a-106(1)(f) and (g);

764 (ii) subject to Subsection (1)(d)(iii), for claimants who are husband and wife account
765 owners who file a single return jointly, the maximum amount of a qualified investment:

766 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

767 (B) increased or kept for that taxable year in accordance with Subsections
768 53B-8a-106(1)(f) and (g); or

769 (iii) for a grantor trust:

770 (A) if the owner of the grantor trust has a single filing status or head of household
771 filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(i); or

772 (B) if the owner of the grantor trust has a joint filing status as defined in Section
773 59-10-1018, the amount described in Subsection (1)(d)(ii).

774 (e) "Owner of the grantor trust" means the same as that term is defined in Section
775 53B-8a-102.

776 (f) "Qualified investment" means the same as that term is defined in Section

777 53B-8a-102.

778 (2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of
779 this section, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax
780 credit equal to the product of:

781 (a) the amount of a qualified investment made:

782 (i) during the taxable year; and

783 (ii) into an account owned by the claimant, estate, or trust; and

784 (b) 5%.

785 (3) A claimant, estate, or trust, or a person other than the claimant, estate, or trust, may
786 make a qualified investment described in Subsection (2).

787 (4) A claimant, estate, or trust that is an account owner may not claim a tax credit
788 under this section [~~may not be claimed~~] with respect to any portion of a qualified investment
789 described in Subsection (2) that a claimant, estate, trust, or person described in Subsection (3)
790 deducts on a federal income tax return.

791 (5) A tax credit under this section may not exceed the maximum amount of a qualified
792 investment for the taxable year.

793 (6) A claimant, estate, or trust that is an account owner may not carry forward or carry
794 back the tax credit under this section [~~may not be carried forward or carried back~~].

795 (7) A claimant, estate, or trust may claim a tax credit under this section in addition to
796 the tax credit described in Section 59-10-1017.1.

797 Section 13. Section **59-10-1017.1** is enacted to read:

798 **59-10-1017.1. Student Prosperity Savings Plan Account tax credit.**

799 (1) As used in this section, "qualified investment" means an amount contributed, in
800 accordance with Section 53B-8a-203, to the Student Prosperity Savings Plan created in Section
801 53B-8a-202.

802 (2) A claimant, estate, or trust may claim a nonrefundable tax credit for a qualified
803 investment.

804 (3) The tax credit equals the product of:

805 (a) the qualified investment; and

806 (b) 5%.

807 (4) A claimant, estate, or trust may not claim a tax credit under this section with

808 respect to any portion of a qualified investment that a claimant, estate, or trust deducts on a
 809 federal income tax return.

810 (5) A claimant, estate, or trust may not carry forward or carry back the portion of the
 811 tax credit allowed by this section that exceeds the claimant's, estate's, or trust's tax liability for
 812 the taxable year in which the claimant, estate, or trust claims the tax credit.

813 (6) A claimant, estate, or trust may claim a tax credit under this section in addition to
 814 the tax credit described in Section 59-10-1017.

815 Section 14. **Appropriation.**

816 The following sums of money are appropriated for the fiscal year beginning July 1,
 817 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for
 818 fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
 819 Act, the Legislature appropriates the following sums of money from the funds or accounts
 820 indicated for the use and support of the government of the state of Utah.

821 ITEM 1

822 To the Board of Regents

823 From General Fund, One-time \$40,000

824 Schedule of Programs:

825 Administration \$40,000

826 ITEM 2

827 To the Board of Regents

828 From General Fund \$10,000

829 Schedule of Programs:

830 Administration \$10,000

831 The Legislature intends that the Board of Regents use the appropriation under this
 832 section to carry out the requirements described in Sections 53B-8a-202 through 53B-8a-204.

833 Section 15. **Effective date and retrospective operation.**

834 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members
 835 elected to each house, this bill takes effect upon approval by the governor, or the day following
 836 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
 837 signature, or in the case of a veto, the date of veto override.

838 (2) The amendments to Sections 59-7-105, 59-7-106, 59-10-114, 59-10-202, and

839 59-10-1017 and the enactment of Section 59-10-1017.1 have retrospective operation for a
840 taxable year beginning on or after January 1, 2017.