

INCOME TAX AMENDMENTS

2006 FOURTH SPECIAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the Individual Income Tax Act relating to tax brackets, additions, and subtractions, and enacts of the Single Rate Individual Income Tax Act.

Highlighted Provisions:

This bill:

- ▶ modifies tax brackets for taxable years beginning on or after January 1, 2006;
- ▶ modifies additions to and subtractions from federal taxable income for purposes of calculating individual income taxes;
- ▶ enacts the Single Rate Individual Income Tax Act:
 - for taxable years beginning on or after January 1, 2007; and
 - that allows a resident or nonresident individual to determine each time the resident or nonresident individual files a state individual income tax return or amended return, whether to calculate and pay a single rate individual income tax on the basis of adjusted gross income or pay a multi-rate individual income tax on the basis of federal taxable income;
- ▶ enacts, modifies, and repeals definitions;
- ▶ repeals the authority for the State Tax Commission to prescribe tax tables and for an individual to elect to pay an individual income tax on the basis of those tax tables;
- ▶ repeals an intent statement relating to the Individual Income Tax Act;
- ▶ grants rulemaking authority to the State Tax Commission; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date and provides for retrospective operation.

Utah Code Sections Affected:

AMENDS:

- 33 **59-10-103**, as last amended by Chapters 223 and 224, Laws of Utah 2006
34 **59-10-104**, as last amended by Chapters 323 and 324, Laws of Utah 2001
35 **59-10-104.1**, as enacted by Chapter 323, Laws of Utah 2001
36 **59-10-114**, as last amended by Chapters 223 and 224, Laws of Utah 2006
37 **59-10-115**, as last amended by Chapter 223, Laws of Utah 2006
38 **59-10-116**, as last amended by Chapter 79, Laws of Utah 2004
39 **59-10-117**, as last amended by Chapters 311 and 345, Laws of Utah 1995
40 **59-10-202**, as last amended by Chapter 223, Laws of Utah 2006
41 **59-10-303**, as renumbered and amended by Chapter 2, Laws of Utah 1987
42 **59-10-1002**, as enacted by Chapter 223, Laws of Utah 2006
43 **59-10-1005**, as renumbered and amended by Chapter 223, Laws of Utah 2006

44 ENACTS:

- 45 **59-10-1201**, Utah Code Annotated 1953
46 **59-10-1202**, Utah Code Annotated 1953
47 **59-10-1203**, Utah Code Annotated 1953
48 **59-10-1204**, Utah Code Annotated 1953
49 **59-10-1205**, Utah Code Annotated 1953
50 **59-10-1206**, Utah Code Annotated 1953
51 **59-10-1207**, Utah Code Annotated 1953

52 REPEALS:

- 53 **59-10-102**, as renumbered and amended by Chapter 2, Laws of Utah 1987
54 **59-10-105**, as last amended by Chapter 323, Laws of Utah 2001
55 **59-10-111**, as last amended by Chapter 96, Laws of Utah 1987
56 **59-10-112**, as last amended by Chapter 223, Laws of Utah 2006

57

58 *Be it enacted by the Legislature of the state of Utah:*59 Section 1. Section **59-10-103** is amended to read:60 **59-10-103. Definitions.**

61 (1) As used in this chapter:

62 (a) "Adjusted gross income":63 (i) for a resident or nonresident individual, is as defined in Section 62, Internal

64 Revenue Code; or

65 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),

66 Internal Revenue Code.

67 ~~(a)~~ (b) "Adoption expenses" means:

68 (i) any actual medical and hospital expenses of the mother of the adopted child which
69 are incident to the child's birth;

70 (ii) any welfare agency fees or costs;

71 (iii) any child placement service fees or costs;

72 (iv) any legal fees or costs; or

73 (v) any other fees or costs relating to an adoption.

74 ~~(b)~~ (c) "Adult with a disability" means an individual who:

75 (i) is 18 years of age or older;

76 (ii) is eligible for services under Title 62A, Chapter 5, Services for People with
77 Disabilities; and

78 (iii) is not enrolled in:

79 (A) an education program for students with disabilities that is authorized under Section
80 53A-15-301; or

81 (B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.

82 ~~(c)~~ (d) (i) For purposes of Subsection 59-10-114(2)(1), "capital gain transaction"
83 means a transaction that results in a:

84 (A) short-term capital gain; or

85 (B) long-term capital gain.

86 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
87 the commission may by rule define the term "transaction."

88 ~~(d)~~ (e) "Commercial domicile" means the principal place from which the trade or
89 business of a Utah small business corporation is directed or managed.

90 ~~(e)~~ (f) "Corporation" includes:

91 (i) associations;

92 (ii) joint stock companies; and

93 (iii) insurance companies.

94 ~~(f)~~ (g) "Dependent child with a disability" means an individual 21 years of age or

95 younger who:

96 (i) (A) is diagnosed by a school district representative under rules adopted by the State

97 Board of Education as having a disability classified as:

98 (I) autism;

99 (II) deafness;

100 (III) preschool developmental delay;

101 (IV) dual sensory impairment;

102 (V) hearing impairment;

103 (VI) intellectual disability;

104 (VII) multidisability;

105 (VIII) orthopedic impairment;

106 (IX) other health impairment;

107 (X) traumatic brain injury; or

108 (XI) visual impairment;

109 (B) is not receiving residential services from:

110 (I) the Division of Services for People with Disabilities created under Section

111 62A-5-102; or

112 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

113 and

114 (C) is enrolled in:

115 (I) an education program for students with disabilities that is authorized under Section

116 53A-15-301; or

117 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

118 or

119 (ii) is identified under guidelines of the Department of Health as qualified for:

120 (A) Early Intervention; or

121 (B) Infant Development Services.

122 [~~(g)~~] (h) "Distributable net income" is as defined in Section 643, Internal Revenue

123 Code.

124 [~~(h)~~] (i) "Employee" is as defined in Section 59-10-401.

125 [~~(i)~~] (j) "Employer" is as defined in Section 59-10-401.

- 126 (k) "Federal taxable income":
- 127 (i) for a resident or nonresident individual, means taxable income as defined by Section
- 128 63, Internal Revenue Code; or
- 129 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
- 130 (b), Internal Revenue Code.
- 131 ~~(j)~~ (l) "Fiduciary" means:
- 132 (i) a guardian;
- 133 (ii) a trustee;
- 134 (iii) an executor;
- 135 (iv) an administrator;
- 136 (v) a receiver;
- 137 (vi) a conservator; or
- 138 (vii) any person acting in any fiduciary capacity for any individual.
- 139 ~~(k)~~ (m) "Homesteaded land diminished from the Uintah and Ouray Reservation"
- 140 means the homesteaded land that was held to have been diminished from the Uintah and Ouray
- 141 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).
- 142 ~~(l)~~ (n) "Individual" means a natural person and includes aliens and minors.
- 143 ~~(m)~~ (o) "Irrevocable trust" means a trust in which the settlor may not revoke or
- 144 terminate all or part of the trust without the consent of a person who has a substantial beneficial
- 145 interest in the trust and the interest would be adversely affected by the exercise of the settlor's
- 146 power to revoke or terminate all or part of the trust.
- 147 ~~(n)~~ (p) For purposes of Subsection 59-10-114(2)(l), "long-term capital gain" is as
- 148 defined in Section 1222, Internal Revenue Code.
- 149 ~~(o)~~ (q) "Nonresident individual" means an individual who is not a resident of this
- 150 state.
- 151 ~~(p)~~ (r) "Nonresident trust" or "nonresident estate" means a trust or estate which is not
- 152 a resident estate or trust.
- 153 ~~(q)~~ (s) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
- 154 unincorporated organization:
- 155 (A) through or by means of which any business, financial operation, or venture is
- 156 carried on; and

- 157 (B) which is not, within the meaning of this chapter:
- 158 (I) a trust;
- 159 (II) an estate; or
- 160 (III) a corporation.
- 161 (ii) "Partnership" does not include any organization not included under the definition of
- 162 "partnership" in Section 761, Internal Revenue Code.
- 163 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
- 164 organization described in Subsection (1)~~(t)~~ (s)(i).
- 165 ~~(t)~~ (t) "Qualifying military service member" means a member of:
- 166 (i) The Utah Army National Guard;
- 167 (ii) The Utah Air National Guard; or
- 168 (iii) the following if the member is assigned to a unit that is located in the state:
- 169 (A) The Army Reserve;
- 170 (B) The Naval Reserve;
- 171 (C) The Air Force Reserve;
- 172 (D) The Marine Corps Reserve; or
- 173 (E) The Coast Guard Reserve.
- 174 ~~(s)~~ (u) "Qualifying stock" means stock that is:
- 175 (i) (A) common; or
- 176 (B) preferred;
- 177 (ii) as defined by the commission by rule, originally issued to:
- 178 (A) a resident or nonresident individual; or
- 179 (B) a partnership if the resident or nonresident individual making a subtraction from
- 180 federal taxable income in accordance with Subsection 59-10-114(2)(l):
- 181 (I) was a partner when the stock was issued; and
- 182 (II) remains a partner until the last day of the taxable year for which the resident or
- 183 nonresident individual makes the subtraction from federal taxable income in accordance with
- 184 Subsection 59-10-114(2)(l); and
- 185 (iii) issued:
- 186 (A) by a Utah small business corporation;
- 187 (B) on or after January 1, 2003; and

188 (C) for:

189 (I) money; or

190 (II) other property, except for stock or securities.

191 ~~(t)~~ (v) (i) "Resident individual" means:

192 (A) an individual who is domiciled in this state for any period of time during the

193 taxable year, but only for the duration of the period during which the individual is domiciled in

194 this state; or

195 (B) an individual who is not domiciled in this state but:

196 (I) maintains a permanent place of abode in this state; and

197 (II) spends in the aggregate 183 or more days of the taxable year in this state.

198 (ii) For purposes of Subsection (1)~~(t)~~ (v)(i)(B), a fraction of a calendar day shall be

199 counted as a whole day.

200 ~~(t)~~ (w) "Resident estate" or "resident trust" is as defined in Section 75-7-103.

201 ~~(v)~~ (x) For purposes of Subsection 59-10-114(2)(l), "short-term capital gain" is as

202 defined in Section 1222, Internal Revenue Code.

203 ~~(w)~~ (y) "Taxable income" ~~and~~ or "state taxable income" ~~are defined as provided in~~

204 ~~Sections 59-10-111, 59-10-112, 59-10-201.1, and 59-10-204.];~~

205 (i) subject to Subsection 59-10-302(2), for a resident individual other than a resident

206 individual described in Subsection (1)(y)(iii), means the resident individual's federal taxable

207 income after making the:

208 (A) additions and subtractions required by Section 59-10-114; and

209 (B) adjustments required by Section 59-10-115;

210 (ii) for a nonresident individual other than a nonresident individual described in

211 Subsection (1)(y)(iii), is as defined in Section 59-10-116;

212 (iii) for a resident or nonresident individual that collects and pays a tax described in

213 Part 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;

214 (iv) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

215 (v) for a nonresident estate or trust, is as calculated under Section 59-10-204.

216 ~~(x)~~ (z) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or

217 trust, whose income is subject in whole or part to the tax imposed by this chapter.

218 ~~(y)~~ (aa) "Uintah and Ouray Reservation" means the lands recognized as being

219 included within the Uintah and Ouray Reservation in:

220 (i) Hagen v. Utah, 510 U.S. 399 (1994); and

221 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

222 ~~[(z)]~~ (bb) (i) "Utah small business corporation" means a corporation that:

223 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
224 Code;

225 (B) except as provided in Subsection (1)~~[(z)]~~(bb)(ii), meets the requirements of Section
226 1244(c)(1)(C), Internal Revenue Code; and

227 (C) has its commercial domicile in this state.

228 (ii) Notwithstanding Subsection (1)~~[(z)]~~(bb)(i)(B), the time period described in Section
229 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a
230 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the
231 resident or nonresident individual makes a subtraction from federal taxable income in
232 accordance with Subsection 59-10-114(2)(1).

233 ~~[(aa)]~~ (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute
234 Indian Tribe of the Uintah and Ouray Reservation.

235 ~~[(bb)]~~ (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray
236 Reservation.

237 ~~[(cc)]~~ (ee) "Wages" is as defined in Section 59-10-401.

238 (2) (a) Any term used in this chapter has the same meaning as when used in
239 comparable context in the laws of the United States relating to federal income taxes unless a
240 different meaning is clearly required.

241 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
242 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
243 federal income taxes that are in effect for the taxable year.

244 (c) Any reference to a specific section of the Internal Revenue Code or other provision
245 of the laws of the United States relating to federal income taxes shall include any
246 corresponding or comparable provisions of the Internal Revenue Code as hereafter amended,
247 redesignated, or reenacted.

248 Section 2. Section **59-10-104** is amended to read:

249 **59-10-104. Tax basis -- Rates -- Exemption.**

250 (1) Except as provided in Subsection (4) or Part 12, Single Rate Individual Income Tax
 251 Act, for taxable years beginning on or after January 1, [~~2001~~] 2006, a tax is imposed on the
 252 state taxable income [~~, as defined in Section 59-10-112,~~] of every resident individual as
 253 provided in this section.

254 (2) For an individual, other than a husband and wife or head of household required to
 255 use the tax table under Subsection (3), the tax under this section is imposed in accordance with
 256 the following table:

257 If the state taxable income is:	The tax is:
258 Less than or equal to [\$863] <u>\$1,105</u>	2.3% of the state taxable income
259 Greater than [\$863] <u>\$1,105</u> but less than	[\$20] <u>\$25</u> , plus 3.3% of state taxable
260 or equal to [\$1,726] <u>\$2,208</u>	income greater than [\$863] <u>\$1,105</u>
261 Greater than [\$1,726] <u>\$2,208</u> but less than	[\$48] <u>\$62</u> , plus 4.2% of state taxable
262 or equal to [\$2,588] <u>\$3,313</u>	income greater than [\$1,726] <u>\$2,208</u>
263 Greater than [\$2,588] <u>\$3,313</u> but less than	[\$85] <u>\$108</u> , plus 5.2% of state taxable
264 or equal to [\$3,450] <u>\$4,416</u>	income greater than [\$2,588] <u>\$3,313</u>
265 Greater than [\$3,450] <u>\$4,416</u> but less than	[\$129] <u>\$166</u> , plus 6% of state taxable
266 or equal to [\$4,313] <u>\$5,521</u>	income greater than [\$3,450] <u>\$4,416</u>
267 Greater than [\$4,313] <u>\$5,521</u>	[\$181] <u>\$232</u> , plus 7% of state taxable
268	income greater than [\$4,313] <u>\$5,521</u>

269 (3) For a husband and wife filing a single return jointly, or a head of household as
 270 defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section
 271 is imposed in accordance with the following table:

272 If the state taxable income is:	The tax is:
273 Less than or equal to [\$1,726] <u>\$2,210</u>	2.3% of the state taxable income
274 Greater than [\$1,726] <u>\$2,210</u> but less than	[\$40] <u>\$51</u> , plus 3.3% of state taxable
275 or equal to [\$3,450] <u>\$4,416</u>	income greater than [\$1,726] <u>\$2,210</u>
276 Greater than [\$3,450] <u>\$4,416</u> but less than	[\$97] <u>\$124</u> , plus 4.2% of state taxable
277 or equal to [\$5,176] <u>\$6,626</u>	income greater than [\$3,450] <u>\$4,416</u>
278 Greater than [\$5,176] <u>\$6,626</u> but less than	[\$169] <u>\$216</u> , plus 5.2% of state taxable
279 or equal to [\$6,900] <u>\$8,832</u>	income greater than [\$5,176] <u>\$6,626</u>
280 Greater than [\$6,900] <u>\$8,832</u> but less than	[\$259] <u>\$331</u> , plus 6% of state taxable

281 or equal to [~~\$8,626~~] \$11,042 income greater than [~~\$6,900~~] \$8,832
 282 Greater than [~~\$8,626~~] \$11,042 [~~\$362~~] \$464, plus 7% of state taxable
 283 income greater than [~~\$8,626~~] \$11,042

284 (4) This section does not apply to a resident individual exempt from taxation under
 285 Section 59-10-104.1.

286 Section 3. Section **59-10-104.1** is amended to read:

287 **59-10-104.1. Exemption from taxation.**

288 (1) For purposes of this section:

289 (a) "Personal exemptions" means the total exemption amount an individual is allowed
 290 to claim for the taxable year under Section 151, Internal Revenue Code, for:

291 (i) the individual;

292 (ii) the individual's spouse; and

293 (iii) the individual's dependents[~~; and~~].

294 (b) "Standard deduction":

295 (i) except as provided in Subsection (1)(b)(ii), means the standard deduction an
 296 individual is allowed to claim for the taxable year under Section 63, Internal Revenue Code;
 297 and

298 (ii) notwithstanding Subsection (1)(b)(i), does not include an additional amount
 299 allowed under Section 63(f), Internal Revenue Code, for an individual or an individual's spouse
 300 who is:

301 (A) blind; or

302 (B) 65 years of age or older.

303 (2) For taxable years beginning on or after January 1, 2002, an individual is exempt
 304 from a tax imposed by Section 59-10-104[~~; 59-10-105;~~] or 59-10-116 or described in Section
 305 59-10-1203 if the individual's adjusted gross income on the individual's federal individual
 306 income tax return for the taxable year is less than or equal to the sum of the individual's:

307 (a) personal exemptions for that taxable year; and

308 (b) standard deduction for that taxable year.

309 Section 4. Section **59-10-114** is amended to read:

310 **59-10-114. Additions to and subtractions from federal taxable income of an**
 311 **individual.**

- 312 (1) There shall be added to federal taxable income of a resident or nonresident
313 individual:
- 314 (a) the amount of any income tax imposed by this or any predecessor Utah individual
315 income tax law and the amount of any income tax imposed by the laws of another state, the
316 District of Columbia, or a possession of the United States, to the extent deducted from ~~[federal]~~
317 adjusted gross income~~[, as defined by Section 62, Internal Revenue Code,]~~ in determining
318 federal taxable income;
- 319 (b) a lump sum distribution that the taxpayer does not include in adjusted gross income
320 on the taxpayer's federal individual income tax return for the taxable year;
- 321 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's
322 income calculated under Subsection (5) that:
- 323 (i) a parent elects to report on the parent's federal individual income tax return for the
324 taxable year; and
- 325 (ii) the parent does not include in adjusted gross income on the parent's federal
326 individual income tax return for the taxable year;
- 327 (d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue
328 Code;
- 329 (e) a withdrawal from a medical care savings account and any penalty imposed in the
330 taxable year if:
- 331 (i) the ~~[taxpayer]~~ resident or nonresident individual did not deduct or include the
332 amounts on the ~~[taxpayer's]~~ resident or nonresident individual's federal individual income tax
333 return pursuant to Section 220, Internal Revenue Code; ~~[and]~~
- 334 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and
- 335 (iii) the withdrawal is deducted by the resident or nonresident individual under
336 Subsection (2)(h);
- 337 (f) the amount disbursed to an account owner under Title 53B, Chapter 8a, Higher
338 Education Savings Incentive Program, ~~[in]~~ for the taxable year ~~[in]~~ for which the amount is
339 disbursed~~[;]~~, if that amount disbursed to the account owner:
- 340 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and
- 341 (ii) is deducted by the account owner under Subsection (2)(i);
- 342 (g) except as provided in Subsection (6), for taxable years beginning on or after

343 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
344 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
345 one or more of the following entities:

- 346 (i) a state other than this state;
- 347 (ii) the District of Columbia;
- 348 (iii) a political subdivision of a state other than this state; or
- 349 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
350 (iii);
- 351 (h) subject to Subsection (2)(n), any distribution received by a resident beneficiary of a
352 resident trust of income that was taxed at the trust level for federal tax purposes, but was
353 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(c);
- 354 (i) any distribution received by a resident beneficiary of a nonresident trust of
355 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
356 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
357 was not taxed at the trust level by any state, with undistributed distributable net income
358 considered to be distributed from the most recently accumulated undistributed distributable net
359 income; and
- 360 (j) any adoption expense:
 - 361 (i) for which a resident or nonresident individual receives reimbursement from another
362 person; and
 - 363 (ii) to the extent to which the resident or nonresident individual deducts that adoption
364 expense:
 - 365 (A) under Subsection (2)(c); or
 - 366 (B) from federal taxable income on a [state or] federal individual income tax return.
- 367 (2) There shall be subtracted from federal taxable income of a resident or nonresident
368 individual:
 - 369 (a) the interest or a dividend on obligations or securities of the United States and its
370 possessions or of any authority, commission, or instrumentality of the United States, to the
371 extent that interest or dividend is included in gross income for federal income tax purposes for
372 the taxable year but exempt from state income taxes under the laws of the United States, but
373 the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on

374 indebtedness incurred or continued to purchase or carry the obligations or securities described
375 in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend
376 income described in this Subsection (2)(a) to the extent that such expenses, including
377 amortizable bond premiums, are deductible in determining federal taxable income;

378 (b) 1/2 of the net amount of any income tax paid or payable to the United States after all
379 allowable credits, as reported on the United States individual income tax return of the taxpayer
380 for the same taxable year;

381 (c) the amount of adoption expenses for one of the following taxable years as elected
382 by the resident or nonresident individual:

383 (i) regardless of whether a court issues an order granting the adoption, the taxable year
384 in which the adoption expenses are:

385 (A) paid; or

386 (B) incurred;

387 (ii) the taxable year in which a court issues an order granting the adoption; or

388 (iii) any year in which the resident or nonresident individual may claim the federal
389 adoption expenses credit under Section 23, Internal Revenue Code;

390 (d) amounts received by taxpayers under age 65 as retirement income which, for
391 purposes of this section, means pensions and annuities, paid from an annuity contract
392 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),
393 Internal Revenue Code, or purchased by an employee under a plan which meets the
394 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or
395 political subdivision thereof, or the District of Columbia, to the employee involved or the
396 surviving spouse;

397 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500
398 personal retirement exemption;

399 (f) 75% of the amount of the personal exemption, as defined and calculated in the
400 Internal Revenue Code, for each dependent child with a disability and adult with a disability
401 who is claimed as a dependent on a taxpayer's return;

402 (g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the
403 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

404 (i) for:

405 (A) the taxpayer;

406 (B) the taxpayer's spouse; and

407 (C) the taxpayer's dependents; and

408 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or

409 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

410 (h) (i) except as provided in this Subsection (2)(h), the amount of a contribution made

411 during the taxable year on behalf of the taxpayer to a medical care savings account and interest

412 earned on a contribution to a medical care savings account established pursuant to Title 31A,

413 Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by

414 the account administrator as provided in the Medical Care Savings Account Act, and if the

415 taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax

416 return pursuant to Section 220, Internal Revenue Code; and

417 (ii) a contribution deductible under this Subsection (2)(h) may not exceed either of the

418 following:

419 (A) the maximum contribution allowed under the Medical Care Savings Account Act

420 for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is

421 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that

422 covers the other spouse, and each spouse has a medical care savings account; or

423 (B) the maximum contribution allowed under the Medical Care Savings Account Act

424 for the tax year for taxpayers:

425 (I) who do not file a joint return; or

426 (II) who file a joint return, but do not qualify under Subsection (2)(h)(ii)(A);

427 (i) the amount included in federal taxable income that was derived from money paid by

428 an account owner to the program fund under Title 53B, Chapter 8a, Higher Education Savings

429 Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d), and

430 investment income earned on account agreements entered into under Section 53B-8a-106 that

431 is included in federal taxable income, but only when the funds are used for qualified higher

432 education costs of the beneficiary;

433 (j) for taxable years beginning on or after January 1, 2000, any amounts paid for

434 premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the

435 amounts paid for long-term care insurance were not deducted under Section 213, Internal

436 Revenue Code, in determining federal taxable income;

437 (k) for taxable years beginning on or after January 1, 2000, if the conditions of

438 Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

439 (i) during a time period that the Ute tribal member resides on homesteaded land

440 diminished from the Uintah and Ouray Reservation; and

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

442 (l) (i) for taxable years beginning on or after January 1, 2003, the total amount of a

443 resident or nonresident individual's short-term capital gain or long-term capital gain on a

444 capital gain transaction:

445 (A) that occurs on or after January 1, 2003;

446 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

447 (I) to purchase qualifying stock in a Utah small business corporation; and

448 (II) within a 12-month period after the day on which the capital gain transaction occurs;

449 and

450 (C) if, prior to the purchase of the qualifying stock described in Subsection

451 (2)(l)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the

452 Utah small business corporation that issued the qualifying stock; and

453 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

454 commission may make rules:

455 (A) defining the term "gross proceeds"; and

456 (B) for purposes of Subsection (2)(l)(i)(C), prescribing the circumstances under which

457 a resident or nonresident individual has an ownership interest in a Utah small business

458 corporation;

459 (m) for the taxable year beginning on or after January 1, 2005, but beginning on or

460 before December 31, 2005, the first \$2,200 of income a qualifying military service member

461 receives:

462 (i) for service:

463 (A) as a qualifying military service member; or

464 (B) under an order into active service in accordance with Section 39-1-5; and

465 (ii) to the extent that income is included in adjusted gross income on that resident or

466 nonresident individual's federal individual income tax return for that taxable year;

467 (n) an amount received by a resident or nonresident individual or distribution received
468 by a resident or nonresident beneficiary of a resident trust:

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

470 (A) a state; or

471 (B) the District of Columbia; and

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

475 (o) the amount of a railroad retirement benefit:

476 (i) paid:

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

479 (B) to a resident or nonresident individual; and

480 (C) for the taxable year; and

481 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
482 that resident or nonresident individual's federal individual income tax return for that taxable
483 year; and

484 (p) an amount:

485 (i) received by an enrolled member of an American Indian tribe; and

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

488 (A) federal law;

489 (B) a treaty; or

490 (C) a final decision issued by a court of competent jurisdiction.

491 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
492 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
493 \$4,800, except that:

494 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
495 earned over \$32,000, the amount of the retirement income exemption that may be subtracted
496 shall be reduced by 50 cents;

497 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income

498 earned over \$16,000, the amount of the retirement income exemption that may be subtracted
499 shall be reduced by 50 cents; and

500 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
501 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
502 reduced by 50 cents.

503 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption
504 shall be further reduced according to the following schedule:

505 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
506 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50
507 cents;

508 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
509 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50
510 cents; and

511 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
512 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

513 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be
514 calculated by adding to [federal] adjusted gross income any interest income not otherwise
515 included in [federal] adjusted gross income.

516 (d) For purposes of determining ownership of items of retirement income common law
517 doctrine will be applied in all cases even though some items may have originated from service
518 or investments in a community property state. Amounts received by the spouse of a living
519 retiree because of the retiree's having been employed in a community property state are not
520 deductible as retirement income of such spouse.

521 (e) For purposes of Subsection (2)(g), a subtraction for an amount paid for health care
522 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

523 (i) for an amount that is reimbursed or funded in whole or in part by the federal
524 government, the state, or an agency or instrumentality of the federal government or the state;
525 and

526 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded
527 in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

528 (4) (a) A subtraction for an amount described in Subsection (2)(k) is allowed only if:

- 529 (i) the taxpayer is a Ute tribal member; and
- 530 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 531 requirements of this Subsection (4).
- 532 (b) The agreement described in Subsection (4)(a):
- 533 (i) may not:
- 534 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 535 (B) provide a subtraction under this section greater than or different from the
- 536 subtraction described in Subsection (2)(k); or
- 537 (C) affect the power of the state to establish rates of taxation; and
- 538 (ii) shall:
- 539 (A) provide for the implementation of the subtraction described in Subsection (2)(k);
- 540 (B) be in writing;
- 541 (C) be signed by:
- 542 (I) the governor; and
- 543 (II) the chair of the Business Committee of the Ute tribe;
- 544 (D) be conditioned on obtaining any approval required by federal law; and
- 545 (E) state the effective date of the agreement.
- 546 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 547 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
- 548 in effect.
- 549 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 550 subtraction permitted under Subsection (2)(k) is not allowed for taxable years beginning on or
- 551 after the January 1 following the termination of the agreement.
- 552 (d) For purposes of Subsection (2)(k) and in accordance with Title 63, Chapter 46a,
- 553 Utah Administrative Rulemaking Act, the commission may make rules:
- 554 (i) for determining whether income is derived from a source within the Uintah and
- 555 Ouray Reservation; and
- 556 (ii) that are substantially similar to how ~~federal~~ adjusted gross income derived from
- 557 Utah sources is determined under Section 59-10-117.
- 558 (5) (a) For purposes of this Subsection (5), "Form 8814" means:
- 559 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's

560 Interest and Dividends; or

561 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
562 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
563 2000 Form 8814 if for purposes of federal individual income taxes the information contained
564 on 2000 Form 8814 is reported on a form other than Form 8814; and

565 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
566 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
567 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
568 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
569 8814.

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

572 (i) the lesser of:

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

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

575 (I) the child's taxable interest;

576 (II) the child's ordinary dividends; and

577 (III) the child's capital gain distributions; and

578 (ii) the amount not taxed that is specified on Form 8814.

579 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences
580 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be
581 added to federal taxable income of a resident or nonresident individual if, as annually
582 determined by the commission:

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

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

589 (i) the entity; or

590 (ii) (A) the state in which the entity is located; or

591 (B) the District of Columbia, if the entity is located within the District of Columbia.

592 Section 5. Section **59-10-115** is amended to read:

593 **59-10-115. Adjustments to federal taxable income.**

594 (1) The commission shall allow an adjustment to [~~state~~] federal taxable income of a
595 taxpayer if the taxpayer would otherwise:

596 (a) receive a double tax benefit under this part; or

597 (b) suffer a double tax detriment under this part.

598 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
599 commission may make rules to allow for the adjustment to [~~state~~] federal taxable income
600 required by Subsection (1).

601 Section 6. Section **59-10-116** is amended to read:

602 **59-10-116. Definitions -- Tax on nonresident individual -- Calculation --**
603 **Exemption.**

604 (1) For purposes of this section:

605 (a) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101[;].

606 (b) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101[;].

607 (c) "State income tax percentage" means a percentage equal to a nonresident
608 individual's [~~federal~~] adjusted gross income for the taxable year received from Utah sources, as
609 determined under Section 59-10-117, divided by the difference between:

610 (i) the nonresident individual's total [~~federal~~] adjusted gross income for that taxable
611 year; and

612 (ii) if the nonresident individual described in Subsection (1)(c)(i) is a servicemember,
613 the compensation the servicemember receives for military service if the servicemember is
614 serving in compliance with military orders[; ~~and~~].

615 (d) "State taxable income" means a nonresident individual's federal taxable income
616 after making the:

617 (i) additions and subtractions required by Section 59-10-114; and

618 (ii) adjustments required by Section 59-10-115.

619 [~~(d)~~] (e) "Unapportioned state tax" means the product of the:

620 (i) difference between:

621 (A) a nonresident individual's [~~federal taxable income, as defined in Section~~

622 ~~59-10-111, with the modifications, subtractions, and adjustments provided for in Section~~
 623 ~~59-10-114]~~ state taxable income; and

624 (B) if the nonresident individual described in Subsection (1)~~[(d)]~~~~(e)~~(i)(A) is a
 625 servicemember, compensation the servicemember receives for military service if the
 626 servicemember is serving in compliance with military orders; and

627 (ii) tax rate imposed under Section 59-10-104.

628 (2) Except as provided in Subsection (3) or Part 12, Single Rate Individual Income Tax
 629 Act, a tax is imposed on a nonresident individual in an amount equal to the product of the
 630 nonresident individual's:

631 (a) unapportioned state tax; and

632 (b) state income tax percentage.

633 (3) This section does not apply to a nonresident individual exempt from taxation under
 634 Section 59-10-104.1.

635 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for
 636 purposes of Subsection (1), the commission may by rule define what constitutes compensation.
 637 Section 7. Section **59-10-117** is amended to read:

638 **59-10-117. Adjusted gross income derived from Utah sources.**

639 (1) For ~~[the purpose]~~ purposes of Section 59-10-116, ~~[federal]~~ adjusted gross income
 640 derived from Utah sources ~~[shall include]~~ includes those items includable in ~~[federal]~~ adjusted
 641 gross income~~["(as defined by Section 62 of the Internal Revenue Code)]~~ attributable to or
 642 resulting from:

643 (a) the ownership in this state of any interest in real or tangible personal property,
 644 ~~[(f)]~~including real property or property rights from which "gross income from mining," as
 645 defined by Section 613(c) ~~[of the]~~ Internal Revenue Code, is derived~~[-]~~; or

646 (b) the carrying on of a business, trade, profession, or occupation in this state.

647 (2) For the purposes of Subsection (1):

648 (a) income from intangible personal property, including annuities, dividends, interest,
 649 and gains from the disposition of intangible personal property shall constitute income derived
 650 from Utah sources only to the extent that such income is from property employed in a trade,
 651 business, profession, or occupation carried on in this state~~[-]~~;

652 (b) deductions with respect to capital losses, net long-term capital gains, and net

653 operating losses shall be based solely on income, gain, loss, and deduction connected with Utah
654 sources, under rules prescribed by the commission in accordance with Title 63, Chapter 46a,
655 Utah Administrative Rulemaking Act, but otherwise shall be determined in the same manner as
656 the corresponding federal deductions[-];

657 (c) salaries, wages, commissions, and compensation for personal services rendered
658 outside this state shall not be considered to be derived from Utah sources[-];

659 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
660 deduction derived from or connected with Utah sources shall be determined under Section
661 59-10-118[-];

662 (e) a nonresident, other than a dealer holding property primarily for sale to customers
663 in the ordinary course of [~~his~~] the dealer's trade or business, [~~shall~~] may not be considered to
664 carry on a trade, business, profession, or occupation in this state solely by reason of the
665 purchase or sale of property for [~~his~~] the nonresident's own account[-];

666 (f) if a trade, business, profession, or occupation is carried on partly within and partly
667 without this state, items of income, gain, loss, and deductions derived from or connected with
668 Utah sources shall be determined in accordance with the provisions of Section 59-10-118[-];

669 (g) a nonresident partner's distributive share of partnership income, gain, loss, and
670 deduction derived from or connected with Utah sources shall be determined under Section
671 59-10-303[-];

672 (h) the share of a nonresident estate or trust and nonresident beneficiaries of any estate
673 or trust in income, gain, loss, and deduction derived from or connected with Utah sources shall
674 be determined under Section 59-10-207[-]; and

675 (i) any dividend, interest, or distributive share of income, gain, or loss from a real
676 estate investment trust, as defined in Section 59-7-116.5, distributed or allocated to a
677 nonresident investor in the trust, including any shareholder, beneficiary, or owner of a
678 beneficial interest in the trust, shall be income from intangible personal property under
679 Subsection (2)(a), and shall constitute income derived from Utah sources only to the extent the
680 nonresident investor is employing its beneficial interest in the trust in a trade, business,
681 profession, or occupation carried on by the investor in this state.

682 Section 8. Section **59-10-202** is amended to read:

683 **59-10-202. Additions to and subtractions from federal taxable income of a**

684 **resident or nonresident estate or trust.**

685 (1) There shall be added to federal taxable income of a resident or nonresident estate or
686 trust:

687 (a) the amount of any income tax imposed by this or any predecessor Utah individual
688 income tax law and the amount of any income tax imposed by the laws of another state, the
689 District of Columbia, or a possession of the United States, to the extent deducted from federal
690 adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal
691 taxable income;

692 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the
693 Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue
694 Code in determining [~~federal~~] adjusted gross income;

695 (c) except as provided in Subsection (3), for taxable years beginning on or after
696 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
697 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
698 one or more of the following entities:

699 (i) a state other than this state;

700 (ii) the District of Columbia;

701 (iii) a political subdivision of a state other than this state; or

702 (iv) an agency or instrumentality of an entity described in Subsections (1)(c)(i) through
703 (iii);

704 (d) any portion of federal taxable income for a taxable year if that federal taxable
705 income is derived from stock:

706 (i) in an S corporation; and

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

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

709 (2) There shall be subtracted from federal taxable income of a resident or nonresident
710 estate or trust:

711 (a) the interest or a dividend on obligations or securities of the United States and its
712 possessions or of any authority, commission, or instrumentality of the United States, to the
713 extent that interest or dividend is included in gross income for federal income tax purposes for
714 the taxable year but exempt from state income taxes under the laws of the United States, but

715 the amount subtracted under this Subsection (2) shall be reduced by any interest on
716 indebtedness incurred or continued to purchase or carry the obligations or securities described
717 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
718 income described in this Subsection (2) to the extent that such expenses, including amortizable
719 bond premiums, are deductible in determining federal taxable income;

720 (b) 1/2 of the net amount of any income tax paid or payable to the United States after
721 all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the
722 same taxable year;

723 (c) income of an irrevocable resident trust if:

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

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

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

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

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

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

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

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

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

743 (e) (i) for taxable years beginning on or after January 1, 2003, the total amount of a
744 resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on a
745 capital gain transaction:

- 746 (A) that occurs on or after January 1, 2003;
- 747 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:
- 748 (I) to purchase qualifying stock in a Utah small business corporation; and
- 749 (II) within a 12-month period after the day on which the capital gain transaction occurs;
- 750 and
- 751 (C) if, prior to the purchase of the qualifying stock described in Subsection
- 752 (2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in
- 753 the Utah small business corporation that issued the qualifying stock; and
- 754 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 755 commission may make rules:
- 756 (A) defining the term "gross proceeds"; and
- 757 (B) for purposes of Subsection (2)(e)(i)(C), prescribing the circumstances under which
- 758 a resident or nonresident estate or trust has an ownership interest in a Utah small business
- 759 corporation;
- 760 (f) for the taxable year beginning on or after January 1, 2005, but beginning on or
- 761 before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or
- 762 trust that is derived from a deceased qualifying military service member:
- 763 (i) for service:
- 764 (A) as a qualifying military service member; or
- 765 (B) under an order into active service in accordance with Section 39-1-5; and
- 766 (ii) to the extent that income is included in total income on that resident or nonresident
- 767 estate's or trust's federal income tax return for estates and trusts for that taxable year;
- 768 (g) any amount:
- 769 (i) received by a resident or nonresident estate or trust;
- 770 (ii) that constitutes a refund of taxes imposed by:
- 771 (A) a state; or
- 772 (B) the District of Columbia; and
- 773 (iii) to the extent that amount is included in total income on that resident or nonresident
- 774 estate's or trust's federal tax return for estates and trusts for that taxable year;
- 775 (h) the amount of a railroad retirement benefit:
- 776 (i) paid:

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

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

781 (C) for the taxable year; and

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

784 (i) an amount:

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

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

789 (A) federal law;

790 (B) a treaty; or

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

792 (j) any fiduciary adjustments required by Section 59-10-210.

793 (3) Notwithstanding Subsection (1)(c), interest from bonds, notes, and other evidences
794 of indebtedness issued by an entity described in Subsections (1)(c)(i) through (iv) may not be
795 added to federal taxable income of a resident or nonresident estate or trust if, as annually
796 determined by the commission:

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

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

803 (i) the entity; or

804 (ii) (A) the state in which the entity is located; or

805 (B) the District of Columbia, if the entity is located within the District of Columbia.

806 (4) (a) A subtraction for an amount described in Subsection (2)(d) is allowed only if:

807 (i) the income is derived from a deceased Ute tribal member; and

808 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
809 requirements of this Subsection (4).

810 (b) The agreement described in Subsection (4)(a):

811 (i) may not:

812 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

813 (B) provide a subtraction under this section greater than or different from the
814 subtraction described in Subsection (2)(d); or

815 (C) affect the power of the state to establish rates of taxation; and

816 (ii) shall:

817 (A) provide for the implementation of the subtraction described in Subsection (2)(d);

818 (B) be in writing;

819 (C) be signed by:

820 (I) the governor; and

821 (II) the chair of the Business Committee of the Ute tribe;

822 (D) be conditioned on obtaining any approval required by federal law; and

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

824 (c) (i) The governor shall report to the commission by no later than February 1 of each
825 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
826 in effect.

827 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
828 subtraction permitted under Subsection (2)(d) is not allowed for taxable years beginning on or
829 after the January 1 following the termination of the agreement.

830 (d) For purposes of Subsection (2)(d) and in accordance with Title 63, Chapter 46a,
831 Utah Administrative Rulemaking Act, the commission may make rules:

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

834 (ii) that are substantially similar to how [federal] adjusted gross income derived from
835 Utah sources is determined under Section 59-10-117.

836 Section 9. Section **59-10-303** is amended to read:

837 **59-10-303. Nonresident's share of partnership income.**

838 (1) In determining the adjusted gross income of a nonresident partner of any

839 partnership, there shall be included only that part derived from or connected with sources in
840 this state of the partner's distributive share of items of partnership income, gain, loss, and
841 deduction entering into ~~[his federal]~~ the partner's adjusted gross income, as such part is
842 determined under rules prescribed by the commission in accordance with the general rules in
843 Section 59-10-116.

844 (2) In determining the sources of a nonresident partner's income, no effect shall be
845 given to a provision in the partnership agreement which:

846 (a) characterizes payments to the partner as being for services or for the use of capital,
847 or allocates to the partner, as income or gain from sources outside this state, a greater
848 proportion of ~~[his]~~ the partner's distributive share of partnership income or gain than the ratio
849 of partnership income or gain from sources outside this state to partnership income or gain
850 from all sources, except as authorized in Subsection (4);

851 (b) allocates to the partner a greater proportion of a partnership item of loss or
852 deduction connected with sources in this state than ~~[his]~~ the partner's proportionate share, for
853 federal income tax purposes, of partnership loss or deduction generally, except as authorized in
854 Subsection (4).

855 (3) Any modification described in Section 59-10-114 that relates to an item of
856 partnership income, gain, loss, or deduction, shall be made in accordance with the partner's
857 distributive share for federal income tax purposes of the item to which the modification relates,
858 but limited to the portion of such item derived from or connected with sources in this state.

859 (4) The commission may, on application, authorize the use of such other methods of
860 determining a nonresident partner's portion of partnership items derived from or connected
861 with sources in this state, and the modifications related thereto, as may be appropriate and
862 equitable, on such terms and conditions as ~~[it]~~ the commission may require.

863 (5) (a) A nonresident partner's distributive share of items of income, gain, loss, or
864 deduction shall be determined under Subsection 59-10-302(2).

865 (b) The character of partnership items for a nonresident partner shall ~~[also]~~ be
866 determined under Subsection 59-10-302(1).

867 Section 10. Section **59-10-1002** is amended to read:

868 **59-10-1002. Definitions.**

869 As used in this part:

870 (1) (a) Except as provided in Subsection (1)(b) or Subsection 59-10-1003(2),
871 "claimant" means a resident or nonresident person that has state taxable income [~~under Part 1,~~
872 ~~Determination and Reporting of Tax Liability and Information~~].

873 (b) "Claimant" does not include an estate or trust.

874 (2) Except as provided in Subsection 59-10-1003(2), "estate" means a nonresident
875 estate or a resident estate that has state taxable income [~~under Part 2, Trusts and Estates~~].

876 (3) "Nonrefundable tax credit" or "tax credit" means a tax credit that a claimant, estate,
877 or trust may:

878 (a) claim:

879 (i) as provided by statute; and

880 (ii) in an amount that does not exceed the claimant's, estate's, or trust's tax liability
881 under this chapter for a taxable year; and

882 (b) carry forward or carry back:

883 (i) if allowed by statute; and

884 (ii) to the extent that the amount of the tax credit exceeds the claimant's, estate's, or
885 trust's tax liability under this chapter for a taxable year.

886 (4) Except as provided in Subsection 59-10-1003(2), "trust" means a nonresident trust
887 or a resident trust that has state taxable income [~~under Part 2, Trusts and Estates~~].

888 Section 11. Section **59-10-1005** is amended to read:

889 **59-10-1005. Tax credit for at-home parent.**

890 (1) As used in this section:

891 (a) "At-home parent" means a parent:

892 (i) who provides full-time care at the parent's residence for one or more of the parent's
893 own qualifying children;

894 (ii) who claims the qualifying child as a dependent on the parent's individual income
895 tax return for the taxable year for which the parent claims the credit; and

896 (iii) if the sum of the following amounts are \$3,000 or less for the taxable year for
897 which the parent claims the credit:

898 (A) the total wages, tips, and other compensation listed on all of the parent's federal
899 Forms W-2; and

900 (B) the gross income listed on the parent's federal Form 1040 Schedule C, Profit or

901 Loss From Business.

902 (b) "Parent" means an individual who:

903 (i) is the biological mother or father of a qualifying child;

904 (ii) is the stepfather or stepmother of a qualifying child;

905 (iii) (A) legally adopts a qualifying child; or

906 (B) has a qualifying child placed in the individual's home:

907 (I) by a child placing agency as defined in Section 62A-4a-601; and

908 (II) for the purpose of legally adopting the child;

909 (iv) is a foster parent of a qualifying child; or

910 (v) is a legal guardian of a qualifying child.

911 (c) "Qualifying child" means a child who is no more than 12 months of age on the last
912 day of the taxable year for which the tax credit is claimed.

913 (2) For taxable years beginning on or after January 1, 2000, a claimant may claim on
914 the claimant's individual income tax return a nonrefundable tax credit of \$100 for each
915 qualifying child if:

916 (a) the claimant or another claimant filing a joint individual income tax return with the
917 claimant is an at-home parent; and

918 (b) the [federal] adjusted gross income of all of the claimants filing the individual
919 income tax return is less than or equal to \$50,000.

920 (3) A claimant may not carry forward or carry back a tax credit authorized by this
921 section.

922 (4) It is the intent of the Legislature that for fiscal years beginning on or after fiscal
923 year 2000-01, the Legislature appropriate from the General Fund a sufficient amount to replace
924 Uniform School Fund revenues expended to provide for the tax credit under this section.

925 Section 12. Section **59-10-1201** is enacted to read:

926 **Part 12. Single Rate Individual Income Tax Act**

927 **59-10-1201. Title.**

928 This part is known as the "Single Rate Individual Income Tax Act."

929 Section 13. Section **59-10-1202** is enacted to read:

930 **59-10-1202. Definitions.**

931 As used in this part:

- 932 (1) "Military service" is as defined in Pub. L. No. 108-189, Sec 101.
- 933 (2) "Servicemember" is as defined in Pub. L. No. 108-189, Sec 101.
- 934 (3) "State income tax percentage" means a percentage equal to a nonresident
 935 individual's adjusted gross income for the taxable year received from Utah sources, as
 936 determined under Section 59-10-117, divided by the difference between:
- 937 (a) the nonresident individual's total adjusted gross income for that taxable year; and
 938 (b) if the nonresident individual described in Subsection (3)(a) is a servicemember, the
 939 compensation the servicemember receives for military service if the servicemember is serving
 940 in compliance with military orders.
- 941 (4) "State taxable income" means a resident or nonresident individual's adjusted gross
 942 income after making the:
- 943 (a) additions and subtractions required by Section 59-10-1204; and
 944 (b) adjustments required by Section 59-10-1205.
- 945 (5) "Unapportioned state tax" means the product of the:
- 946 (a) difference between:
- 947 (i) a nonresident individual's state taxable income; and
 948 (ii) if the nonresident individual described in Subsection (5)(a)(i) is a servicemember,
 949 compensation the servicemember receives for military service if the servicemember is serving
 950 in compliance with military orders; and
- 951 (b) percentage listed in Subsection 59-10-1203(2)(a)(i)(B).
- 952 Section 14. Section **59-10-1203** is enacted to read:
- 953 **59-10-1203. Single rate tax for resident or nonresident individual -- Tax rate --**
 954 **Contributions -- Exemption -- Amended returns.**
- 955 (1) For taxable years beginning on or after January 1, 2007, a resident or nonresident
 956 individual may calculate and pay a tax under this section as provided in this part.
- 957 (2) (a) A resident individual that calculates and pays a tax under this section:
- 958 (i) shall pay for a taxable year an amount equal to the product of:
- 959 (A) the resident individual's state taxable income for that taxable year; and
 960 (B) 5.35%; and
- 961 (ii) is exempt from paying the tax imposed by Section 59-10-104.
- 962 (b) A nonresident individual that calculates and pays a tax under this section:

963 (i) shall pay for a taxable year an amount equal to the product of the nonresident
964 individual's:

965 (A) unapportioned state tax; and

966 (B) state income tax percentage; and

967 (ii) is exempt from paying the tax imposed by Section 59-10-116.

968 (3) Except as required by Section 59-10-1204 or 59-10-1205, a resident or nonresident
969 individual that calculates and pays a tax under this section may not make any addition or
970 adjustment to or subtraction from adjusted gross income.

971 (4) A resident or nonresident individual that calculates and pays a tax under this
972 section may designate on the resident or nonresident individual's individual income tax return
973 for a taxable year a contribution allowed by:

974 (a) Section 59-10-530;

975 (b) Section 59-10-530.5;

976 (c) Section 59-10-547;

977 (d) Section 59-10-549;

978 (e) Section 59-10-550;

979 (f) Section 59-10-550.1; or

980 (g) Section 59-10-550.2.

981 (5) This section does not apply to a resident or nonresident individual exempt from
982 taxation under Section 59-10-104.1.

983 (6) (a) A resident or nonresident individual may determine for each taxable year for
984 which the resident or nonresident individual files an individual income tax return under this
985 chapter whether to calculate and pay a tax under this section as provided in this part.

986 (b) If a resident or nonresident individual files an amended return for a taxable year
987 beginning on or after January 1, 2007, the resident or nonresident individual may determine
988 whether to calculate and pay a tax under this section as provided in this part for that taxable
989 year.

990 Section 15. Section **59-10-1204** is enacted to read:

991 **59-10-1204. Additions to and subtractions from adjusted gross income of a**
992 **resident or nonresident individual.**

993 (1) In calculating state taxable income for purposes of this part, the following amounts

994 shall be added to the adjusted gross income of a resident or nonresident individual:

995 (a) the amount described in Subsection 59-10-114(1)(a), if that amount is deducted by
996 a resident or nonresident estate or trust in determining federal taxable income;

997 (b) the lump sum distribution described in Subsection 59-10-114(1)(b);

998 (c) subject to Subsection 59-10-114(5), the amount described in Subsection
999 59-10-114(1)(c);

1000 (d) a withdrawal described in Subsection 59-10-114(1)(e);

1001 (e) the amount described in Subsection 59-10-114(1)(f);

1002 (f) subject to Subsection 59-10-114(6), the interest described in Subsection
1003 59-10-114(1)(g);

1004 (g) a distribution described in Subsection 59-10-114(1)(h);

1005 (h) a distribution described in Subsection 59-10-114(1)(i); or

1006 (i) an expense described in Subsection 59-10-114 (1)(j).

1007 (2) In calculating state taxable income for purposes of this part, the following amounts
1008 shall be subtracted from the adjusted gross income of a resident or nonresident individual:

1009 (a) the interest or dividends described in Subsection 59-10-114(2)(a);

1010 (b) subject to Subsection 59-10-114(4), the amount described in Subsection
1011 59-10-114(2)(k);

1012 (c) an amount described in Subsection 59-10-114(2)(n);

1013 (d) the amount described in Subsection 59-10-114(2)(o); and

1014 (e) an amount described in Subsection 59-10-114(2)(p).

1015 Section 16. Section **59-10-1205** is enacted to read:

1016 **59-10-1205. Adjustments to adjusted gross income of a resident or nonresident**
1017 **individual.**

1018 (1) In calculating state taxable income for purposes of this part, the commission shall
1019 allow an adjustment to adjusted gross income of a resident or nonresident individual if the
1020 resident or nonresident individual would otherwise:

1021 (a) receive a double tax benefit under this part; or

1022 (b) suffer a double tax detriment under this part.

1023 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1024 commission may make rules to allow for the adjustment to adjusted gross income required by

1025 Subsection (1).

1026 Section 17. Section **59-10-1206** is enacted to read:

1027 **59-10-1206. Tax credits.**

1028 (1) Subject to Subsections (2) and (3), a resident or nonresident individual that
1029 calculates and pays a tax as provided in this part may claim, carry forward, or carry back any
1030 tax credit for a taxable year:

1031 (a) against the tax liability that the resident or nonresident individual would otherwise
1032 be required to pay; and

1033 (b) that the resident or nonresident individual would have been allowed to claim, carry
1034 forward, or carry back for the taxable year had the resident or nonresident individual been
1035 subject to a tax imposed by Part 1, Determination and Reporting of Tax Liability and
1036 Information, for that taxable year.

1037 (2) A resident or nonresident individual that calculates and pays a tax as provided in
1038 this part shall:

1039 (a) determine the resident or nonresident individual's eligibility to claim a tax credit on
1040 the basis of the resident or nonresident individual's tax liability under this part; and

1041 (b) calculate a tax credit on the basis of the resident or nonresident individual's tax
1042 liability under this part.

1043 (3) If a resident or nonresident individual that calculates and pays a tax as provided in
1044 this part claims a refundable tax credit, the resident or nonresident individual may receive a
1045 refund for the amount of the tax credit that exceeds the resident or nonresident individual's tax
1046 liability for the taxable year as allowed by the statute authorizing the refundable tax credit.

1047 (4) The commission shall administer a tax credit that a resident or nonresident
1048 individual claims, carries forward, or carries back in accordance with the statute authorizing the
1049 tax credit.

1050 Section 18. Section **59-10-1207** is enacted to read:

1051 **59-10-1207. Administration, collection, and enforcement of tax.**

1052 (1) Except as provided in this part, the commission shall administer, collect, and
1053 enforce a tax described in Subsection 59-10-1203(2) in accordance with:

1054 (a) (i) for a tax described in Subsection 59-10-1203(2)(a), the procedures used to
1055 administer, collect, and enforce the tax described in Section 59-10-104; or

1056 (ii) for a tax described in Subsection 59-10-1203(2)(b), the procedures used to
1057 administer, collect, and enforce the tax described in Section 59-10-116; and

1058 (b) the procedures established in:

1059 (i) Part 1, Determination and Reporting of Tax Liability and Information;

1060 (ii) Part 3, Partnerships;

1061 (iii) Part 4, Withholding of Tax;

1062 (iv) Part 5, Procedure and Administration; and

1063 (v) Part 8, Limited Liability Companies.

1064 (2) In administering, collecting, and enforcing a tax described in Subsection
1065 59-10-1203(2), the commission shall interpret:

1066 (a) the references to the term "federal taxable income" in Section 59-10-119 to be
1067 changed to "adjusted gross income";

1068 (b) the references to Section 59-10-114 in Sections 59-10-302 and 59-10-303 to be
1069 changed to Section 59-10-1204; and

1070 (c) any other reference to a term or provision in the following to be consistent with the
1071 calculation of a tax under this part:

1072 (i) Part 1, Determination and Reporting of Tax Liability and Information;

1073 (ii) Part 3, Partnerships;

1074 (iii) Part 4, Withholding of Tax;

1075 (iv) Part 5, Procedure and Administration; and

1076 (v) Part 8, Limited Liability Companies.

1077 **Section 19. Repealer.**

1078 This bill repeals:

1079 Section **59-10-102, Declaration of intent.**

1080 Section **59-10-105, Optional tax -- Calculation -- Commission authority to**
1081 **prescribed tax tables -- Exemption.**

1082 Section **59-10-111, Federal taxable income defined.**

1083 Section **59-10-112, State taxable income of a resident individual.**

1084 Section 20. **Effective date -- Retrospective operation.**

1085 (1) Except as provided in Subsection (2), this bill takes effect for taxable years
1086 beginning on or after January 1, 2007.

1087 (2) The amendments in this bill to Section 59-10-104 have retrospective operation for
1088 taxable years beginning on or after January 1, 2006.

Legislative Review Note
as of 9-12-06 11:55 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel