

**INCOME TAXES - APPLICATION TO THE
UINTAH AND OURAY RESERVATION**

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Beverly Ann Evans

AN ACT RELATING TO REVENUE AND TAXATION; ADDRESSING INDIVIDUAL INCOME TAXATION IN RELATION TO THE BOUNDARIES OF THE UINTAH AND OURAY RESERVATION; MAKING TECHNICAL CHANGES; PROVIDING FOR RETROSPECTIVE OPERATION; AND PROVIDING FOR DEPENDENT ENACTMENT.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

59-10-103, as last amended by Chapter 88, Laws of Utah 1999

59-10-114, as last amended by Chapters 60, 131, 240 and 282, Laws of Utah 1999

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

Section 1. Section **59-10-103** is amended to read:

59-10-103. Definitions.

(1) As used in this chapter:

(a) "Adult with a disability" means an individual who:

(i) is 18 years of age or older;

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

and

(iii) is not enrolled in:

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

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

(b) "Corporation" includes associations, joint stock companies, and insurance companies.

(c) "Dependent child with a disability" means an individual 21 years of age or younger who:

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

Board of Education as having a disability classified as:

- (I) autism;
- (II) deafness;
- (III) preschool developmental delay;
- (IV) dual sensory impairment;
- (V) hearing impairment;
- (VI) intellectual disability;
- (VII) multidisability;
- (VIII) orthopedic impairment;
- (IX) other health impairment;
- (X) traumatic brain injury; or
- (XI) visual impairment;

(B) is not receiving residential services from:

- (I) the Division of Services for People with Disabilities created under Section 62A-5-102;

or

- (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind; and
- (C) is enrolled in:

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

- (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind; or
- (ii) is identified under guidelines of the Department of Health as qualified for:

- (A) Early Intervention; or
- (B) Infant Development Services.

(d) "Employer," "employee," and "wages" are defined as provided in Section 59-10-401.

(e) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any individual.

(f) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

~~[(f)]~~ (g) "Individual" means a natural person and includes aliens and minors.

~~[(g)]~~ (h) "Nonresident individual" means an individual who is not a resident of this state.

~~[(h)]~~ (i) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a resident estate or trust.

~~[(i)]~~ (j) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this chapter, a trust or estate or a corporation.

(ii) "Partnership" does not include any organization not included under the definition of "partnership" contained in Section 761, Internal Revenue Code.

(iii) "Partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

~~[(j)]~~ (k) "Resident individual" means:

(i) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of such period; or

(ii) an individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state. For purposes of this Subsection (1)~~[(j)]~~(k)(ii), a fraction of a calendar day shall be counted as a whole day.

~~[(k)]~~ (l) (i) "Resident estate" or "resident trust" means:

(A) an estate of a decedent who at his death was domiciled in this state;

(B) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state; or

(C) a trust administered in this state.

(ii) For purposes of this chapter, a trust shall be considered to be administered in this state if:

(A) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state; or

(B) the usual place of business of the fiduciary is in this state.

(iii) Where there are two or more fiduciaries, the residency status of the trust shall be determined by the situs of the corporate or professional fiduciary with primary responsibility for the administration of the trust as defined in the trust instrument.

(iv) The commission may, by rule, provide additional guidelines to determine the residency status of a trust.

~~[(h)]~~ (m) "Taxable income" and "state taxable income" are defined as provided in Sections 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

~~[(m)]~~ (n) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or trust, whose income is subject in whole or part to the tax imposed by this chapter.

(o) "Uintah and Ouray Reservation" means the lands recognized as being included within the Uintah and Ouray Reservation in:

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

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

(p) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian Tribe of the Uintah and Ouray Reservation.

(q) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

(2) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference to the Internal Revenue Code or to the laws of the United States shall mean the Internal Revenue Code or other provisions of the laws of the United States relating to federal income taxes which are in effect for the taxable year. Any reference to a specific section of the Internal Revenue Code or other provision of the laws of the United States relating to federal income taxes shall include any corresponding or comparable provisions of the Internal Revenue Code as hereafter amended, redesignated, or reenacted.

Section 2. Section **59-10-114** is amended to read:

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

(1) There shall be added to federal taxable income of a resident or nonresident individual:

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

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

(c) 25% of the personal exemptions, as defined and calculated in the Internal Revenue Code;

(d) a withdrawal from a medical care savings account and any penalty imposed in the taxable year if:

(i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant to Section 220, Internal Revenue Code; and

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

(e) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is refunded.

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this subsection, and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

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

(c) the amount of adoption expenses which, for purposes of this subsection, means any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth and any welfare agency, child placement service, legal, and other fees or costs relating to the adoption;

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

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

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

(g) any amount included in federal taxable income that was received pursuant to any federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to United States citizens and resident aliens of Japanese ancestry who were interned during World War II;

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

(i) for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

(i) except as otherwise provided in this subsection, the amount of a contribution made in the tax year on behalf of the taxpayer to a medical care savings account and interest earned on a

contribution to a medical care savings account established pursuant to Title 31A, Chapter ~~32~~ 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on his federal tax return pursuant to Section 220, Internal Revenue Code. A contribution deductible under this subsection may not exceed either of the following:

(i) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other spouse, and each spouse has a medical care savings account; or

(ii) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year for taxpayers:

(A) who do not file a joint return; or

(B) who file a joint return, but do not qualify under Subsection (2)(i)(i); and

(j) the amount included in federal taxable income that was derived from money paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d) and investment income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher education costs of the beneficiary; ~~and~~

(k) for tax years beginning on or after January 1, 2000, any amounts paid for premiums on long-term care insurance policies as defined in Section 31A-22-1402 to the extent the amounts paid for long-term care insurance were not deducted under Section 213, Internal Revenue Code, in determining federal taxable income~~[-]; and~~

(l) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

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

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

(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for

taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or \$4,800, except that:

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) A subtraction for an amount described in Subsection (2)(1) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

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

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

(i) may not:

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

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(1); or

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

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(1);

(B) be in writing;

(C) be signed by:

(I) the governor; and

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

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

(E) state the effective date of the agreement.

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

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

(d) For purposes of Subsection (2)(1) and in accordance with Title 63, Chapter 46a, Utah

Administrative Rulemaking Act, the commission may make rules:

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

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

Section 3. Retrospective operation.

This act has retrospective operation for taxable years beginning on or after January 1, 2000.

Section 4. Dependent enactment.

It is the intent of the Legislature that if S.B. 213, Motor and Special Fuel Tax - Application to the Uintah and Ouray Reservation, is not also passed by this Legislature, the enacting clause of this S.B. 181 is stricken and the provisions of this S.B. 181 not be given effect.