



28 who:

29 (i) (A) is diagnosed by a school district representative under rules adopted by the State  
30 Board of Education as having a disability classified as:

31 (I) autism;

32 (II) deafness;

33 (III) preschool developmental delay;

34 (IV) dual sensory impairment;

35 (V) hearing impairment;

36 (VI) intellectual disability;

37 (VII) multidisability;

38 (VIII) orthopedic impairment;

39 (IX) other health impairment;

40 (X) traumatic brain injury; or

41 (XI) visual impairment;

42 (B) is not receiving residential services from:

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

44 or

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

46 (C) is enrolled in:

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

48 53A-15-301; or

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

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

51 (A) Early Intervention; or

52 (B) Infant Development Services.

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

54 (e) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator,

55 or any person acting in any fiduciary capacity for any individual.

56 (f) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the  
57 homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation  
58 in Hagen v. Utah, 520 U.S. 399 (1994).

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

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

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

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

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

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

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

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

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

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

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

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

82           (C) a trust administered in this state.

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

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

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

88           (iii) Where there are two or more fiduciaries, the residency status of the trust shall be  
89 determined by the situs of the corporate or professional fiduciary with primary responsibility for

90 the administration of the trust as defined in the trust instrument.

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

93 [(t)] (m) "Taxable income" and "state taxable income" are defined as provided in Sections  
94 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

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

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

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

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

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

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

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

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

113 **59-10-114. Additions to and subtractions from federal taxable income of an**  
114 **individual.**

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

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

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

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

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

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

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

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

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

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

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

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

150 (d) amounts received by taxpayers under age 65 as retirement income which, for purposes  
151 of this section, means pensions and annuities, paid from an annuity contract purchased by an

152 employer under a plan which meets the requirements of Section 404 (a)(2), Internal Revenue Code,  
153 or purchased by an employee under a plan which meets the requirements of Section 408, Internal  
154 Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District  
155 of Columbia, to the employee involved or the surviving spouse;

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

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

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

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

167 (i) for:

168 (A) the taxpayer;

169 (B) the taxpayer's spouse; and

170 (C) the taxpayer's dependents; and

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

173 (i) except as otherwise provided in this subsection, the amount of a contribution made in  
174 the tax year on behalf of the taxpayer to a medical care savings account and interest earned on a  
175 contribution to a medical care savings account established pursuant to Title 31A, Chapter ~~[32]~~ 32a,  
176 Medical Care Savings Account Act, to the extent the contribution is accepted by the account  
177 administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not  
178 deduct or include amounts on his federal tax return pursuant to Section 220, Internal Revenue  
179 Code. A contribution deductible under this subsection may not exceed either of the following:

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

183 spouse, and each spouse has a medical care savings account; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

242 (i) may not:

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

244 (B) provide a subtraction under this section greater than or different from the subtraction

245 described in Subsection (2)(1); or

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

247 (ii) shall:

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

249 (B) be in writing;

250 (C) be signed by:

251 (I) the governor; and

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

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

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

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

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

260 (d) For purposes of Subsection (2)(1) and in accordance with Title 63, Chapter 46a, Utah  
261 Administrative Rulemaking Act, the commission may make rules:

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

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

266 **Section 3. Retrospective operation.**

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

268 **Section 4. Dependent enactment.**

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

**Legislative Review Note**

**as of 2-8-00 1:51 PM**

This legislation raises the following constitutional or statutory concerns:

This bill amends tax provisions to reflect specific negotiations with the Ute Indian Tribe of the Uintah and Ouray Reservation. Under the federal and state constitutions, there are some limits on a legislature's ability to legislate on the basis of classifications if those classifications are improperly narrow. A court may find that the tribe-specific classification in this legislation may be permissible because it is consistent with the government-to-government relationship between the state and tribes.

**Office of Legislative Research and General Counsel**