

1 **INDIVIDUAL INCOME TAX - ADDITION OF**
2 **INTEREST TO FEDERAL TAXABLE INCOME**

3 2001 FIRST SPECIAL SESSION

4 STATE OF UTAH

5 **Sponsor: Greg J. Curtis**

6 **This act modifies the Individual Income Tax Act to provide that for taxable years beginning**
7 **on or after January 1, 2002, interest on certain bonds, notes, and other indebtedness of other**
8 **states or the District of Columbia is subject to state individual income taxation. This act**
9 **makes technical changes.**

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

11 AMENDS:

12 **59-10-114**, as last amended by Chapters 116 and 233, Laws of Utah 2001

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

14 Section 1. Section **59-10-114** is amended to read:

15 **59-10-114. Additions to and subtractions from federal taxable income of an**
16 **individual.**

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

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

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

25 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's income
26 calculated under Subsection (5) that:

27 (i) a parent elects to report on the parent's federal individual income tax return for the



28 taxable year; and

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

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

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

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

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

38 (f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education
39 Savings Incentive Program, in the year in which the amount is refunded[-]; and

40 (g) except as provided in Subsection (6), for taxable years beginning on or after January
41 1, 2002, for bonds, notes, and other evidences of indebtedness acquired on or after January 1,
42 2002, the interest from bonds, notes, and other evidences of indebtedness issued by one or more
43 of the following entities:

44 (i) a state other than this state;

45 (ii) the District of Columbia;

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

47 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through

48 (iii).

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

51 (a) the interest or dividends on obligations or securities of the United States and its
52 possessions or of any authority, commission, or instrumentality of the United States, to the extent
53 includable in gross income for federal income tax purposes but exempt from state income taxes
54 under the laws of the United States, but the amount subtracted under this Subsection (2)(a) shall
55 be reduced by any interest on indebtedness incurred or continued to purchase or carry the
56 obligations or securities described in this Subsection (2)(a), and by any expenses incurred in the
57 production of interest or dividend income described in this Subsection (2)(a) to the extent that such
58 expenses, including amortizable bond premiums, are deductible in determining federal taxable

59 income;

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

63 (c) the amount of adoption expenses which, for purposes of this Subsection (2)(c), means
64 any actual medical and hospital expenses of the mother of the adopted child which are incident to
65 the child's birth and any welfare agency, child placement service, legal, and other fees or costs
66 relating to the adoption;

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

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

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

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

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

84 (i) for:

85 (A) the taxpayer;

86 (B) the taxpayer's spouse; and

87 (C) the taxpayer's dependents; and

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

90 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a contribution
91 made ~~[in]~~ during the ~~[tax]~~ taxable year on behalf of the taxpayer to a medical care savings account
92 and interest earned on a contribution to a medical care savings account established pursuant to
93 Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is
94 accepted by the account administrator as provided in the Medical Care Savings Account Act, and
95 if the taxpayer did not deduct or include amounts on ~~[his]~~ the taxpayer's federal individual income
96 tax return pursuant to Section 220, Internal Revenue Code~~[-A]~~; and

97 (ii) contribution deductible under this Subsection (2)(i) may not exceed either of the
98 following:

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

103 ~~[(i)]~~ (B) the maximum contribution allowed under the Medical Care Savings Account Act
104 for the tax year for taxpayers:

105 ~~[(A)]~~ (I) who do not file a joint return; or

106 ~~[(B)]~~ (II) who file a joint return, but do not qualify under Subsection (2)(i)(i)(A); and

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

112 (k) for ~~[tax]~~ taxable years beginning on or after January 1, 2000, any amounts paid for
113 premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the amounts
114 paid for long-term care insurance were not deducted under Section 213, Internal Revenue Code,
115 in determining federal taxable income; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

161 (i) may not:

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

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

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

166 (ii) shall:

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

168 (B) be in writing;

169 (C) be signed by:

170 (I) the governor; and

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

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

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

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

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

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

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

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

185 (5) (a) For purposes of this Subsection (5), "Form 8814" means:

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

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

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

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

198 (i) the lesser of:

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

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

201 (I) the child's taxable interest;

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

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

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

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

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

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

214 state:

215 (i) the entity; or

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

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

Legislative Review Note
as of 6-20-01 8:58 AM

For purposes of the individual income tax, this legislation taxes interest from certain state and local bonds, notes, or other debts ("interest on debts") that are issued out of state while not taxing interest on debts issued in Utah. This differential taxation of interest on debts might be challenged as discriminatory under the Commerce Clause of the Constitution of the United States ("Commerce Clause"). Legal arguments exist in favor of and against the constitutionality of this legislation. However, a limited legal review of this issue has found that a significant majority of states tax interest on out of state debts, and that at least one court, the Ohio Court of Appeals, has upheld a similar tax which was challenged under the Commerce Clause.

Office of Legislative Research and General Counsel