

**INDIVIDUAL INCOME TAX - TREATMENT  
OF CERTAIN MILITARY INCOME**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Curtis S. Bramble**

**This act amends the Individual Income Tax Act to allow a deduction for certain income received for qualifying active duty military service by a member of the armed forces, and to make technical changes. This act has retrospective operation for taxable years beginning on or after January 1, 2002.**

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

AMENDS:

**59-10-103**, as last amended by Chapter 257, Laws of Utah 2000

**59-10-114**, as last amended by Chapters 7 and 9, Laws of Utah 2001, First Special Session

*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



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) "Employee" is as defined in Section 59-10-401.

54 [~~(d)~~] (e) "Employer," ["employee," and "wages" are defined as provided] is as defined in  
55 Section 59-10-401.

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

58 [~~(f)~~] (g) "Homesteaded land diminished from the Uintah and Ouray Reservation" means

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

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

62 (i) (i) Subject to Subsection (1)(i)(ii), "member of the armed forces" means a member of  
63 a reserve component of the United States:

64 (A) Army;

65 (B) Navy;

66 (C) Air Force;

67 (D) Marine Corps;

68 (E) Air National Guard; or

69 (F) Army National Guard.

70 (ii) A person is considered to be a member of the armed forces described in Subsection  
71 (1)(i)(i) regardless of whether the person is in:

72 (A) captive status;

73 (B) inactive status; or

74 (C) retired status.

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

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

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

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

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

86 (m) "Qualifying active duty military service" means active duty military service performed  
87 by a member of the armed forces:

88 (i) in accordance with one or more orders:

89 (A) mobilizing that person for active duty military service; and

90 (B) issued to the member of the armed forces for the taxable year in accordance with:

91 (I) 10 U.S.C. Sec. 12301(a), (b), or (g); or

92 (II) 10 U.S.C. Sec. 12302(a); and

93 (ii) if that member of the armed forces was not performing full-time military service before

94 the day on which the person received the orders described in Subsection (1)(m)(i).

95 [~~(k)~~] (n)(i) "Resident individual" means:

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

98 [~~(ii)~~] (B) an individual who is not domiciled in this state but maintains a permanent place  
99 of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state.

100 (ii) For purposes of [~~this~~] Subsection (1)[~~(k)~~]~~(i)~~](n)(i), a fraction of a calendar day shall  
101 be counted as a whole day.

102 [~~(f)~~] (o) (i) "Resident estate" or "resident trust" means:

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

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

106 (C) a trust administered in this state.

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

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

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

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

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

117 [~~(m)~~] (p) "Taxable income" and "state taxable income" are defined as provided in Sections  
118 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

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

121           ~~[(r)]~~ (r) "Uintah and Ouray Reservation" means the lands recognized as being included  
122 within the Uintah and Ouray Reservation in:

- 123           (i) Hagen v. Utah, 510 U.S. 399 (1994); and  
124           (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

125           ~~[(s)]~~ (s) "Ute tribal member" means a person who is enrolled as a member of the Ute  
126 Indian Tribe of the Uintah and Ouray Reservation.

127           ~~[(t)]~~ (t) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.  
128           (u) "Wages" is as defined in Section 59-10-401.

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

132           (b) Any reference to the Internal Revenue Code or to the laws of the United States shall  
133 mean the Internal Revenue Code or other provisions of the laws of the United States relating to  
134 federal income taxes which are in effect for the taxable year.

135           (c) Any reference to a specific section of the Internal Revenue Code or other provision of  
136 the laws of the United States relating to federal income taxes shall include any corresponding or  
137 comparable provisions of the Internal Revenue Code as ~~[hereafter]~~ amended, redesignated, or  
138 reenacted.

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

140           **59-10-114. Additions to and subtractions from federal taxable income of an**  
141 **individual.**

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

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

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

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

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

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

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

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

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

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

163 (f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education  
164 Savings Incentive Program, in the year in which the amount is refunded; and

165 (g) except as provided in Subsection (6), for taxable years beginning on or after January  
166 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after January 1,  
167 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more  
168 of the following entities:

169 (i) a state other than this state;

170 (ii) the District of Columbia;

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

172 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through  
173 (iii).

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

176 (a) the interest or dividends on obligations or securities of the United States and its  
177 possessions or of any authority, commission, or instrumentality of the United States, to the extent  
178 includable in gross income for federal income tax purposes but exempt from state income taxes  
179 under the laws of the United States, but the amount subtracted under this Subsection (2)(a) shall  
180 be reduced by any interest on indebtedness incurred or continued to purchase or carry the  
181 obligations or securities described in this Subsection (2)(a), and by any expenses incurred in the  
182 production of interest or dividend income described in this Subsection (2)(a) to the extent that such

183 expenses, including amortizable bond premiums, are deductible in determining federal taxable  
184 income;

185 (b) (i) except as provided in Subsection (2)(b)(ii), 1/2 of the net amount of any income tax  
186 paid or payable to the United States after all allowable credits, as reported on the United States  
187 individual income tax return of the taxpayer for the same taxable year; and

188 (ii) notwithstanding Subsection (2)(b)(i), for taxable years beginning on or after January  
189 1, 2001, the amount of a credit or an advance refund amount reported on a resident or nonresident  
190 individual's United States individual income tax return allowed as a result of the acceleration of  
191 the income tax rate bracket benefit for 2001 in accordance with Section 101, Economic Growth  
192 and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, may not be used in calculating the  
193 amount described in Subsection (2)(b)(i);

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

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

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

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

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

213 (h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the

214 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

215 (i) for:

216 (A) the taxpayer;

217 (B) the taxpayer's spouse; and

218 (C) the taxpayer's dependents; and

219 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213,

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

221 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a contribution

222 made during the taxable year on behalf of the taxpayer to a medical care savings account and

223 interest earned on a contribution to a medical care savings account established pursuant to Title

224 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted

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

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

227 pursuant to Section 220, Internal Revenue Code; and

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

229 following:

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

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

232 health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other

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

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

235 the tax year for taxpayers:

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

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

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

239 the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive

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

241 income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher

242 education costs of the beneficiary;

243 (k) for taxable years beginning on or after January 1, 2000, any amounts paid for premiums

244 for long-term care insurance as defined in Section 31A-1-301 to the extent the amounts paid for

245 long-term care insurance were not deducted under Section 213, Internal Revenue Code, in  
246 determining federal taxable income; [~~and~~]

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

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

251 (ii) from a source within the Uintah and Ouray Reservation[-]; and

252 (m) (i) except as provided in Subsection (2)(m)(ii), for taxable years beginning on or after  
253 January 1, 2002, income received for qualifying active duty military service by a member of the  
254 armed forces to the extent that income is included in adjusted gross income on that member of the  
255 armed force's federal individual income tax return for the taxable year;

256 (ii) notwithstanding Subsection (2)(m)(i), a subtraction from federal taxable income is not  
257 allowed under Subsection (2)(m)(i) for income received for qualifying active duty military service  
258 by a member of the armed forces as:

259 (A) retirement:

260 (I) income; or

261 (II) benefits; or

262 (B) survivor benefits; and

263 (iii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
264 commission may by rule define "income received for qualifying active duty military service."

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

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

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

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

276 cents.

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

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

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

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

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

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

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

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

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

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

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

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

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

305 (i) may not:

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

- 307 (B) provide a subtraction under this section greater than or different from the subtraction  
308 described in Subsection (2)(1); or
- 309 (C) affect the power of the state to establish rates of taxation; and
- 310 (ii) shall:
- 311 (A) provide for the implementation of the subtraction described in Subsection (2)(1);
- 312 (B) be in writing;
- 313 (C) be signed by:
- 314 (I) the governor; and
- 315 (II) the chair of the Business Committee of the Ute tribe;
- 316 (D) be conditioned on obtaining any approval required by federal law; and
- 317 (E) state the effective date of the agreement.
- 318 (c) (i) The governor shall report to the commission by no later than February 1 of each year  
319 regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.
- 320 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the  
321 subtraction permitted under Subsection (2)(1) is not allowed for taxable years beginning on or after  
322 the January 1 following the termination of the agreement.
- 323 (d) For purposes of Subsection (2)(1) and in accordance with Title 63, Chapter 46a, Utah  
324 Administrative Rulemaking Act, the commission may make rules:
- 325 (i) for determining whether income is derived from a source within the Uintah and Ouray  
326 Reservation; and
- 327 (ii) that are substantially similar to how federal adjusted gross income derived from Utah  
328 sources is determined under Section 59-10-117.
- 329 (5) (a) For purposes of this Subsection (5), "Form 8814" means:
- 330 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's  
331 Interest and Dividends; or
- 332 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by the  
333 commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to 2000  
334 Form 8814 if for purposes of federal individual income taxes the information contained on 2000  
335 Form 8814 is reported on a form other than Form 8814; and
- 336 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter 46a,  
337 Utah Administrative Rulemaking Act, the commission may make rules designating a form as being

338 substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the  
339 information contained on 2000 Form 8814 is reported on a form other than Form 8814.

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

342 (i) the lesser of:

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

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

345 (I) the child's taxable interest;

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

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

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

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

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

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

359 (i) the entity; or

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

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

362 **Section 3. Retrospective operation.**

363 This act has retrospective operation for taxable years beginning on or after January 1, 2002.

**Legislative Review Note**  
**as of 1-31-02 3:45 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**