

28 **Other Special Clauses:**

29 This bills has retrospective operation for taxable years beginning on or after January 1,
30 2004.

31 **Utah Code Sections Affected:**

32 AMENDS:

- 33 **59-10-103**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session
- 34 **59-10-104.1**, as enacted by Chapter 323, Laws of Utah 2001
- 35 **59-10-105**, as last amended by Chapter 323, Laws of Utah 2001
- 36 **59-10-108.1**, as enacted by Chapter 272, Laws of Utah 1999
- 37 **59-10-112**, as last amended by Chapter 345, Laws of Utah 1995
- 38 **59-10-114**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session
- 39 **59-10-116**, as last amended by Chapter 323, Laws of Utah 2001
- 40 **59-10-117**, as last amended by Chapters 311 and 345, Laws of Utah 1995
- 41 **59-10-119**, as renumbered and amended by Chapter 2, Laws of Utah 1987
- 42 **59-10-121**, as renumbered and amended by Chapter 2, Laws of Utah 1987
- 43 **59-10-129**, as last amended by Chapter 198, Laws of Utah 2003
- 44 **59-10-131**, as last amended by Chapter 59, Laws of Utah 1999
- 45 **59-10-132**, as last amended by Chapter 59, Laws of Utah 1999
- 46 **59-10-201.1**, as enacted by Chapter 345, Laws of Utah 1995
- 47 **59-10-202**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session
- 48 **59-10-204**, as last amended by Chapter 345, Laws of Utah 1995
- 49 **59-10-303**, as renumbered and amended by Chapter 2, Laws of Utah 1987
- 50 **59-10-529**, as last amended by Chapter 35, Laws of Utah 2002
- 51 **59-10-536**, as renumbered and amended by Chapter 2, Laws of Utah 1987
- 52 **59-10-543**, as renumbered and amended by Chapter 2, Laws of Utah 1987

53 ENACTS:

54 **59-10-111.1**, Utah Code Annotated 1953



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

57 Section 1. Section **59-10-103 (Effective 01/01/04)** is amended to read:

58 **59-10-103. Definitions.**

- 59 (1) As used in this chapter:
- 60 (a) "Adoption expenses" means:
- 61 (i) any actual medical and hospital expenses of the mother of the adopted child which
62 are incident to the child's birth;
- 63 (ii) any welfare agency fees or costs;
- 64 (iii) any child placement service fees or costs;
- 65 (iv) any legal fees or costs; or
- 66 (v) any other fees or costs relating to an adoption.
- 67 (b) "Adult with a disability" means an individual who:
- 68 (i) is 18 years of age or older;
- 69 (ii) is eligible for services under Title 62A, Chapter 5, Services for People with
70 Disabilities; and
- 71 (iii) is not enrolled in:
- 72 (A) an education program for students with disabilities that is authorized under Section
73 53A-15-301; or
- 74 (B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.
- 75 (c) (i) For purposes of Subsection 59-10-114(2)(m), "capital gain transaction" means a
76 transaction that results in a:
- 77 (A) short-term capital gain; or
- 78 (B) long-term capital gain.
- 79 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
80 the commission may by rule define the term "transaction."
- 81 (d) "Commercial domicile" means the principal place from which the trade or business
82 of a Utah small business corporation is directed or managed.
- 83 (e) "Corporation" includes:
- 84 (i) associations;
- 85 (ii) joint stock companies; and
- 86 (iii) insurance companies.
- 87 (f) "Dependent child with a disability" means an individual 21 years of age or younger
88 who:
- 89 (i) (A) is diagnosed by a school district representative under rules adopted by the State

90 Board of Education as having a disability classified as:
91 (I) autism;
92 (II) deafness;
93 (III) preschool developmental delay;
94 (IV) dual sensory impairment;
95 (V) hearing impairment;
96 (VI) intellectual disability;
97 (VII) multidisability;
98 (VIII) orthopedic impairment;
99 (IX) other health impairment;
100 (X) traumatic brain injury; or
101 (XI) visual impairment;
102 (B) is not receiving residential services from:
103 (I) the Division of Services for People with Disabilities created under Section
104 62A-5-102; or
105 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
106 and
107 (C) is enrolled in:
108 (I) an education program for students with disabilities that is authorized under Section
109 53A-15-301; or
110 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
111 or
112 (ii) is identified under guidelines of the Department of Health as qualified for:
113 (A) Early Intervention; or
114 (B) Infant Development Services.
115 (g) "Employer," "employee," and "wages" are defined as provided in Section
116 59-10-401.
117 (h) "Fiduciary" means:
118 (i) a guardian;
119 (ii) a trustee;
120 (iii) an executor;

121 (iv) an administrator;

122 (v) a receiver;

123 (vi) a conservator; or

124 (vii) any person acting in any fiduciary capacity for any individual.

125 (i) Except as otherwise provided in Subsection 59-10-114(3), "fixed federal adjusted
126 gross income" means federal adjusted gross income as defined in Section 62, Internal Revenue
127 Code, as amended and in effect on the date specified in Section 59-10-111.1.

128 (j) "Fixed federal tax credit" means a federal tax credit provided in the Internal
129 Revenue Code, as amended and in effect on the date specified in Section 59-10-111.1.

130 (k) Except as otherwise provided in Section 59-10-201.1, "fixed federal taxable
131 income" means federal taxable income as defined in Section 63, Internal Revenue Code, as
132 amended and in effect on the date specified in Section 59-10-111.1.

133 (l) Except as otherwise provided in Section 59-10-104.1, "fixed personal exemption"
134 means a personal exemption as defined and calculated in Section 151, Internal Revenue Code,
135 as amended and in effect on the date specified in Section 59-10-111.1.

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

139 ~~(j)~~ (n) "Individual" means a natural person and includes aliens and minors.

140 ~~(k)~~ (o) "Irrevocable trust" means a trust in which the settlor may not revoke or
141 terminate all or part of the trust without the consent of a person who has a substantial beneficial
142 interest in the trust and the interest would be adversely affected by the exercise of the settlor's
143 power to revoke or terminate all or part of the trust.

144 ~~(t)~~ (p) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as
145 defined in Section 1222, Internal Revenue Code, as amended and in effect on the date specified
146 in Section 59-10-111.1.

147 ~~(m)~~ (q) "Nonresident individual" means an individual who is not a resident of this
148 state.

149 ~~(n)~~ (r) "Nonresident trust" or "nonresident estate" means a trust or estate which is not
150 a resident estate or trust.

151 ~~(o)~~ (s) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other

152 unincorporated organization:

153 (A) through or by means of which any business, financial operation, or venture is
154 carried on; and

155 (B) which is not, within the meaning of this chapter:

156 (I) a trust;

157 (II) an estate; or

158 (III) a corporation.

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

161 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
162 organization described in Subsection (1)~~(t)~~(s)(i).

163 ~~(t)~~ (u) "Qualifying stock" means stock that is:

164 (i) (A) common; or

165 (B) preferred;

166 (ii) as defined by the commission by rule, originally issued to:

167 (A) a resident or nonresident individual; or

168 (B) a partnership if the resident or nonresident individual making a subtraction from
169 fixed federal taxable income in accordance with Subsection 59-10-114(2)(m):

170 (I) was a partner when the stock was issued; and

171 (II) remains a partner until the last day of the taxable year for which the resident or
172 nonresident individual makes the subtraction from fixed federal taxable income in accordance
173 with Subsection 59-10-114(2)(m); and

174 (iii) issued:

175 (A) by a Utah small business corporation;

176 (B) on or after January 1, 2003; and

177 (C) for:

178 (I) money; or

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

180 ~~(t)~~ (u) (i) "Resident individual" means:

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

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

183 this state; or

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

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

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

187 (ii) For purposes of Subsection (1)~~(q)~~(u)(i)(B), a fraction of a calendar day shall be
188 counted as a whole day.

189 ~~(r)~~ (v) (i) "Resident estate" or "resident trust" means:

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

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

193 (C) a trust administered in this state.

194 (ii) A trust shall be considered to be administered in this state if:

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

197 (B) the trust states that this state is the place of administration, and any administration
198 of the trust is done in this state.

199 ~~(s)~~ (w) For purposes of Subsection 59-10-114(2)(m), "short-term capital gain" is as
200 defined in Section 1222, Internal Revenue Code, as amended and in effect on the date specified
201 in Section 59-10-111.1.

202 ~~(t)~~ (x) "Taxable income" and "state taxable income" are defined as provided in
203 Sections 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

204 ~~(u)~~ (y) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or
205 trust, whose income is subject in whole or part to the tax imposed by this chapter.

206 ~~(v)~~ (z) "Uintah and Ouray Reservation" means the lands recognized as being included
207 within the Uintah and Ouray Reservation in:

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

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

210 ~~(w)~~ (aa) (i) "Utah small business corporation" means a corporation that:

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

213 (B) except as provided in Subsection (1)~~(w)~~(aa)(ii), meets the requirements of

214 Section 1244(c)(1)(C), Internal Revenue Code; and

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

216 (ii) Notwithstanding Subsection (1)~~(w)~~(aa)(i)(B), the time period described in Section
217 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a
218 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the
219 resident or nonresident individual makes a subtraction from fixed federal taxable income in
220 accordance with Subsection 59-10-114(2)(m).

221 ~~(x)~~ (bb) "Ute tribal member" means a person who is enrolled as a member of the Ute
222 Indian Tribe of the Uintah and Ouray Reservation.

223 ~~(y)~~ (cc) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

224 (2) (a) ~~Any~~ Except as otherwise provided in this chapter, any term used in this
225 chapter has the same meaning as when used in comparable context in the laws of the United
226 States relating to federal income taxes unless a different meaning is clearly required.

227 (b) ~~Any~~ Except as otherwise provided in this chapter, any reference to the Internal
228 Revenue Code or to the laws of the United States shall mean the Internal Revenue Code or
229 other provisions of the laws of the United States relating to federal income taxes that are in
230 effect for the taxable year.

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

235 Section 2. Section **59-10-104.1** is amended to read:

236 **59-10-104.1. Exemption from taxation.**

237 (1) ~~For~~ Notwithstanding Section 59-10-103, for purposes of this section:

238 (a) "fixed personal exemptions" means the total exemption amount an individual is
239 allowed to claim for the taxable year under Section 151, Internal Revenue Code, as amended
240 and in effect on the date specified in Section 59-10-111.1, for:

241 (i) the individual;

242 (ii) the individual's spouse; and

243 (iii) the individual's dependents; and

244 (b) "fixed standard deduction":

245 (i) except as provided in Subsection (1)(b)(ii), means the standard deduction an
246 individual is allowed to claim for the taxable year under Section 63, Internal Revenue Code, as
247 amended and in effect on the date specified in Section 59-10-111.1; and

248 (ii) notwithstanding Subsection (1)(b)(i), does not include an additional amount
249 allowed under Section 63(f), Internal Revenue Code, as amended and in effect on the date
250 specified in Section 59-10-111.1, for an individual or an individual's spouse who is:

251 (A) blind; or

252 (B) 65 years of age or older.

253 (2) For taxable years beginning on or after January 1, 2002, an individual is exempt
254 from a tax imposed by Section 59-10-104, 59-10-105, or 59-10-116 if the individual's fixed
255 federal adjusted gross income on the individual's federal individual income tax return for the
256 taxable year is less than or equal to the sum of the individual's:

257 (a) fixed personal exemptions for that taxable year; and

258 (b) fixed standard deduction for that taxable year.

259 Section 3. Section **59-10-105** is amended to read:

260 **59-10-105. Optional tax -- Calculation -- Commission authority to prescribed tax**
261 **tables -- Exemption.**

262 (1) (a) Except as provided in Subsection (4), for taxable years beginning on or after
263 January 1, 2002, if the commission prescribes state individual income tax tables in accordance
264 with Subsection (2), a tax is imposed as provided in this section on the state taxable income of
265 an individual who elects to compute the individual's income tax in accordance with the state
266 individual income tax tables prescribed by the commission.

267 (b) An individual who pays a tax imposed by this section is not subject to the tax
268 imposed by Section 59-10-104.

269 (2) The commission may prescribe state individual income tax tables:

270 (a) for a taxable year;

271 (b) for purposes of computing the tax authorized by this section; and

272 (c) if the state individual income tax tables are substantially in accordance with Section
273 3, Internal Revenue Code, except that the commission shall use:

274 (i) the tax rates and tax brackets provided for in Section 59-10-104;

275 (ii) state taxable income as defined in Section 59-10-112; and

276 (iii) any other provision of this chapter necessary to prescribe state individual income
277 tax tables under this section.

278 (3) An individual electing to compute the individual's income tax in accordance with
279 this section shall use the:

280 (a) standard deduction as provided in Section 63(c), Internal Revenue Code, as
281 amended and in effect on the date specified in Section 59-10-111.1; and

282 (b) number and amount of fixed personal exemptions [~~allowed by Section 151, Internal~~
283 ~~Revenue Code~~].

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

286 Section 4. Section **59-10-108.1** is amended to read:

287 **59-10-108.1. Tax credit for at-home parent.**

288 (1) As used in this section:

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

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

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

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

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

298 (B) the gross income listed on the parent's federal Form 1040 Schedule C, Profit or
299 Loss From Business.

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

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

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

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

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

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

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

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

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

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

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

314 (a) the taxpayer or another taxpayer filing a joint individual income tax return with the
315 taxpayer is an at-home parent; and

316 (b) the fixed federal adjusted gross income of all of the taxpayers filing the individual
317 income tax return is less than or equal to \$50,000.

318 (3) A taxpayer may not carry forward or carry back a credit authorized by this section.

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

322 Section 5. Section **59-10-111.1** is enacted to read:

323 **59-10-111.1. Date of Internal Revenue Code for certain purposes.**

324 (1) Subject to Subsection (2), the Internal Revenue Code, as amended and in effect on
325 January 1, 2004, shall be used for purposes of any reference to the Internal Revenue Code that
326 is fixed to the date specified in this section, including calculating:

327 (a) fixed federal adjusted gross income;

328 (b) fixed federal taxable income;

329 (c) any fixed federal tax credit;

330 (d) any fixed personal exemption; and

331 (e) the fixed standard deduction.

332 (2) Any federal tax table shall be used for purposes of calculations under this chapter if
333 the tax table:

334 (a) is in effect for the current taxable year; and

335 (b) provides for adjustments due to inflation or deflation pursuant to the provisions of
336 Section 1(f), Internal Revenue Code, as amended and in effect on the date specified in
337 Subsection (1).

338 Section 6. Section **59-10-112** is amended to read:

339 **59-10-112. State taxable income of resident individual.**

340 "State taxable income" in the case of a resident individual [~~means his~~] means the
341 resident individual's fixed federal taxable income [~~(as defined by Section 59-10-111)~~] with the
342 modifications, subtractions, and adjustments provided in Section 59-10-114. The state taxable
343 income of a resident individual who is the beneficiary of an estate or trust shall be modified by
344 the adjustments provided in Section 59-10-209.

345 Section 7. Section **59-10-114** is amended to read:

346 **59-10-114. Additions to and subtractions from federal taxable income of an**
347 **individual.**

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

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

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

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

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

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

363 (d) 25% of the fixed personal exemptions[~~, as defined and calculated in the Internal~~
364 ~~Revenue Code~~];

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

367 (i) the taxpayer did not deduct or include the amounts on the taxpayer's federal
368 individual income tax return pursuant to Section 220, Internal Revenue Code, as amended and

- 369 in effect on the date specified in Section 59-10-111.1; and
- 370 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2);
- 371 (f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education
- 372 Savings Incentive Program, in the year in which the amount is refunded;
- 373 (g) except as provided in Subsection (6), for taxable years beginning on or after
- 374 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
- 375 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
- 376 one or more of the following entities:
- 377 (i) a state other than this state;
- 378 (ii) the District of Columbia;
- 379 (iii) a political subdivision of a state other than this state; or
- 380 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
- 381 (iii);
- 382 (h) any distribution received by a resident beneficiary of a resident trust of income that
- 383 was taxed at the trust level for federal tax purposes, but was subtracted from state taxable
- 384 income of the trust pursuant to Subsection 59-10-202(2)(c); and
- 385 (i) any distribution received by a resident beneficiary of a nonresident trust of income
- 386 that was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by
- 387 any state.
- 388 (2) There shall be subtracted from fixed federal taxable income of a resident or
- 389 nonresident individual:
- 390 (a) the interest or dividends on obligations or securities of the United States and its
- 391 possessions or of any authority, commission, or instrumentality of the United States, to the
- 392 extent includable in fixed federal adjusted gross income for federal income tax purposes but
- 393 exempt from state income taxes under the laws of the United States, but the amount subtracted
- 394 under this Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or
- 395 continued to purchase or carry the obligations or securities described in this Subsection (2)(a),
- 396 and by any expenses incurred in the production of interest or dividend income described in this
- 397 Subsection (2)(a) to the extent that such expenses, including amortizable bond premiums, are
- 398 deductible in determining fixed federal taxable income;
- 399 (b) (i) except as provided in Subsection (2)(b)(ii), 1/2 of the net amount of any income

400 tax paid or payable to the United States after all allowable fixed federal tax credits, as reported
401 on the United States individual income tax return of the taxpayer for the same taxable year; and

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

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

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

412 (A) paid; or

413 (B) incurred;

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

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

417 (d) amounts received by taxpayers under age 65 as retirement income which, for
418 purposes of this section, means pensions and annuities, paid from an annuity contract
419 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),
420 Internal Revenue Code, as amended and in effect on the date specified in Section 59-10-111.1,
421 or purchased by an employee under a plan which meets the requirements of Section 408,
422 Internal Revenue Code, as amended and in effect on the date specified in Section 59-10-111.1,
423 or paid by the United States, a state, or political subdivision thereof, or the District of
424 Columbia, to the employee involved or the surviving spouse;

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

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

430 (g) any amount included in fixed federal taxable income that was received pursuant to

431 any federal law enacted in 1988 to provide reparation payments, as damages for human
432 suffering, to United States citizens and resident aliens of Japanese ancestry who were interned
433 during World War II;

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

436 (i) for:

437 (A) the taxpayer;

438 (B) the taxpayer's spouse; and

439 (C) the taxpayer's dependents; and

440 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
441 213, Internal Revenue Code, as amended and in effect on the date specified in Section
442 59-10-111.1, in determining fixed federal taxable income for the taxable year;

443 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a
444 contribution made during the taxable year on behalf of the taxpayer to a medical care savings
445 account and interest earned on a contribution to a medical care savings account established
446 pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the
447 contribution is accepted by the account administrator as provided in the Medical Care Savings
448 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal
449 individual income tax return pursuant to Section 220, Internal Revenue Code, as amended and
450 in effect on the date specified in Section 59-10-111.1; and

451 (ii) a contribution deductible under this Subsection (2)(i) may not exceed either of the
452 following:

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

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

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

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

461 (j) the amount included in fixed federal taxable income that was derived from money

462 paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education
463 Savings Incentive Program, not to exceed amounts determined under Subsection
464 53B-8a-106(1)(d), and investment income earned on participation agreements under
465 Subsection 53B-8a-106(1) that is included in fixed federal taxable income, but only when the
466 funds are used for qualified higher education costs of the beneficiary;

467 (k) for taxable years beginning on or after January 1, 2000, any amounts paid for
468 premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the
469 amounts paid for long-term care insurance were not deducted under Section 213, Internal
470 Revenue Code, in determining federal taxable income;

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

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

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

476 (m) (i) for taxable years beginning on or after January 1, 2003, the total amount of a
477 resident or nonresident individual's short-term capital gain or long-term capital gain on a
478 capital gain transaction:

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

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

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

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

483 and

484 (C) if, prior to the purchase of the qualifying stock described in Subsection
485 (2)(m)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the
486 Utah small business corporation that issued the qualifying stock; and

487 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
488 commission may make rules:

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

490 (B) for purposes of Subsection (2)(m)(i)(C), prescribing the circumstances under which
491 a resident or nonresident individual has an ownership interest in a Utah small business
492 corporation.

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

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

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

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

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

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

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

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

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

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

523 (e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care

524 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

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

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

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

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

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

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

535 (i) may not:

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

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

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

540 (ii) shall:

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

542 (B) be in writing;

543 (C) be signed by:

544 (I) the governor; and

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

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

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

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

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

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

555 Utah Administrative Rulemaking Act, the commission may make rules:

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

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

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

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

563 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
564 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
565 2000 Form 8814 if for purposes of federal individual income taxes the information contained
566 on 2000 Form 8814 is reported on a form other than Form 8814; and

567 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
568 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
569 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
570 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
571 8814.

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

574 (i) the lesser of:

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

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

577 (I) the child's taxable interest;

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

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

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

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

585 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the

586 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
587 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

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

591 (i) the entity; or

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

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

594 Section 8. Section **59-10-116** is amended to read:

595 **59-10-116. Tax on nonresident individual's state taxable income -- Calculation --**
596 **Exemption.**

597 (1) For purposes of this section:

598 (a) "state income tax percentage" means a percentage equal to a nonresident
599 individual's fixed federal adjusted gross income for the taxable year received from Utah
600 sources, as determined under Section 59-10-117, divided by the nonresident individual's total
601 fixed federal adjusted gross income for that taxable year; and

602 (b) "state taxable income" means the product of a nonresident individual's:

603 (i) fixed federal taxable income, [~~as defined in Section 59-10-111,~~] with the
604 modifications, subtractions, and adjustments provided for in Section 59-10-114; and

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

606 (2) (a) Except as provided in Subsection (3), a tax is imposed as provided in this
607 section on the state taxable income calculated under this section of a nonresident individual.

608 (b) The tax under this section shall be calculated by multiplying the nonresident
609 individual's state taxable income by the nonresident individual's state income tax percentage.

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

612 Section 9. Section **59-10-117** is amended to read:

613 **59-10-117. Fixed federal adjusted gross income derived from Utah sources.**

614 (1) For the purpose of Section 59-10-116, fixed federal adjusted gross income derived
615 from Utah sources shall include those items includable in fixed federal [²]adjusted gross
616 income[¹ (~~as defined by Section 62 of the Internal Revenue Code~~)] attributable to or resulting

617 from:

618 (a) the ownership in this state of any interest in real or tangible personal property,
619 [(f)including real property or property rights from which ["gross income from mining[" as
620 defined by Section 613(c) [~~of the~~], Internal Revenue Code, as amended and in effect on the
621 date specified in Section 59-10-111.1, is derived[)]; or

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

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

624 (a) Income from intangible personal property, including annuities, dividends, interest,
625 and gains from the disposition of intangible personal property shall constitute income derived
626 from Utah sources only to the extent that such income is from property employed in a trade,
627 business, profession, or occupation carried on in this state.

628 (b) Deductions with respect to capital losses, net long-term capital gains, and net
629 operating losses shall be based solely on income, gain, loss, and deduction connected with Utah
630 sources, under rules prescribed by the commission, but otherwise shall be determined in the
631 same manner as the corresponding federal deductions.

632 (c) Salaries, wages, commissions, and compensation for personal services rendered
633 outside this state shall not be considered to be derived from Utah sources.

634 (d) A nonresident shareholder's distributive share of ordinary income, gain, loss, and
635 deduction derived from or connected with Utah sources shall be determined under Section
636 59-10-118.

637 (e) A nonresident, other than a dealer holding property primarily for sale to customers
638 in the ordinary course of his trade or business, shall not be considered to carry on a trade,
639 business, profession, or occupation in this state solely by reason of the purchase or sale of
640 property for his own account.

641 (f) If a trade, business, profession, or occupation is carried on partly within and partly
642 without this state, items of income, gain, loss, and deductions derived from or connected with
643 Utah sources shall be determined in accordance with the provisions of Section 59-10-118.

644 (g) A nonresident partner's distributive share of partnership income, gain, loss, and
645 deduction derived from or connected with Utah sources shall be determined under Section
646 59-10-303.

647 (h) The share of a nonresident estate or trust and nonresident beneficiaries of any estate

648 or trust in income, gain, loss, and deduction derived from or connected with Utah sources shall
649 be determined under Section 59-10-207.

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

657 Section 10. Section **59-10-119** is amended to read:

658 **59-10-119. Returns by husband and wife, either or both of whom is a**
659 **nonresident.**

660 (1) If the federal taxable income of a husband and wife [~~¶~~ who are both nonresidents
661 of this state~~¶~~] is reported or determined on separate federal returns, their state taxable incomes
662 in this state shall be separately determined.

663 (2) If the federal taxable income of a husband and wife [~~¶~~ who are both nonresidents~~¶~~]
664 of this state is reported or determined on a joint return their tax shall be reported or determined
665 in this state on a joint return.

666 (3) (a) If either husband or wife is a nonresident of this state and the other a resident of
667 this state, separate taxes shall be determined on their separate state taxable incomes on such
668 forms as the commission shall prescribe, unless both elect to determine their state taxable
669 income as if both were residents.

670 (b) If a husband and wife [~~(one being a resident, the other a nonresident)~~] described in
671 Subsection (3)(a) file a joint federal income tax return, but determine their state taxable income
672 separately, they shall compute their fixed federal taxable incomes in this state as if their fixed
673 federal taxable incomes had been determined separately.

674 Section 11. Section **59-10-121** is amended to read:

675 **59-10-121. Proration when two returns required.**

676 Where two returns are required to be filed as provided in Section 59-10-120:

677 (1) personal exemptions and the standard deduction as used on the federal return shall
678 be prorated between the two returns, under rules prescribed by the commission, to reflect the

679 proportions of the taxable year during which the individual was a resident and a nonresident;
680 and

681 (2) the total of the taxes due thereon shall not be less than would be due if the total of
682 the fixed federal taxable incomes reported on the two returns were includable in one return.

683 Section 12. Section **59-10-129** is amended to read:

684 **59-10-129. Utah low-income housing tax credit.**

685 (1) As used in this section:

686 (a) "Allocation certificate" means:

687 (i) the certificate prescribed by the commission and issued by the Utah Housing
688 Corporation to each taxpayer that specifies the percentage of the annual fixed federal
689 low-income housing tax credit that each taxpayer may take as an annual credit against state
690 income tax; or

691 (ii) a copy of the allocation certificate that the housing sponsor provides to the
692 taxpayer.

693 (b) "Building" means a qualified low-income building as defined in Section 42(c),
694 Internal Revenue Code, as amended and in effect on the date specified in Section 59-10-111.1.

695 (c) "Federal low-income housing tax credit" means the tax credit under Section 42,
696 Internal Revenue Code.

697 (d) "Fixed federal low-income housing tax credit" means the tax credit under Section
698 42, Internal Revenue Code, as amended and in effect on the date specified in Section
699 59-10-111.1.

700 ~~(d)~~ (e) "Housing sponsor" means a corporation in the case of a C corporation, a
701 partnership in the case of a partnership, a corporation in the case of an S corporation, or a
702 limited liability company in the case of a limited liability company.

703 ~~(e)~~ (f) "Qualified allocation plan" means the qualified allocation plan adopted by the
704 Utah Housing Corporation pursuant to Section 42(m), Internal Revenue Code.

705 ~~(f)~~ (g) "Special low-income housing tax credit certificate" means a certificate:

706 (i) prescribed by the commission;

707 (ii) that a housing sponsor issues to a taxpayer for a taxable year; and

708 (iii) that specifies the amount of a tax credit a taxpayer may claim under this section if
709 the taxpayer meets the requirements of this section.

710 ~~(g)~~ (h) "Taxpayer" means a person that is allowed a tax credit in accordance with this
711 section which is the corporation in the case of a C corporation, the partners in the case of a
712 partnership, the shareholders in the case of an S corporation, and the members in the case of a
713 limited liability company.

714 (2) (a) For taxable years beginning on or after January 1, 1995, there is allowed a
715 nonrefundable tax credit against taxes otherwise due under this chapter for taxpayers issued an
716 allocation certificate.

717 (b) The tax credit shall be in an amount equal to the greater of the amount of:

718 (i) fixed federal low-income housing tax credit to which the taxpayer is allowed during
719 that year multiplied by the percentage specified in an allocation certificate issued by the Utah
720 Housing Corporation; or

721 (ii) tax credit specified in the special low-income housing tax credit certificate that the
722 housing sponsor issues to the taxpayer as provided in Subsection (2)(c).

723 (c) For purposes of Subsection (2)(b)(ii), the tax credit is equal to the product of:

724 (i) the total amount of low-income housing tax credit under this section that:

725 (A) a housing sponsor is allowed for a building; and

726 (B) all of the taxpayers may claim with respect to the building if the taxpayers meet the
727 requirements of this section; and

728 (ii) the percentage of tax credit a taxpayer may claim:

729 (A) under this section if the taxpayer meets the requirements of this section; and

730 (B) as provided in the agreement between the taxpayer and the housing sponsor.

731 (d) (i) For the calendar year beginning on January 1, 1995, through the calendar year
732 beginning on January 1, 2005, the aggregate annual tax credit that the Utah Housing
733 Corporation may allocate for the credit period described in Section 42(f), Internal Revenue
734 Code, pursuant to this section and Section 59-7-607 is an amount equal to the product of:

735 (A) 12.5 cents; and

736 (B) the population of Utah.

737 (ii) For purposes of this section, the population of Utah shall be determined in
738 accordance with Section 146(j), Internal Revenue Code.

739 (3) (a) By October 1, 1994, the Utah Housing Corporation shall determine criteria and
740 procedures for allocating the tax credit under this section and Section 59-7-607 and incorporate

741 the criteria and procedures into the Utah Housing Corporation's qualified allocation plan.

742 (b) The Utah Housing Corporation shall create the criteria under Subsection (3)(a)
743 based on:

744 (i) the number of affordable housing units to be created in Utah for low and moderate
745 income persons in the residential housing development of which the building is a part;

746 (ii) the level of area median income being served by the development;

747 (iii) the need for the tax credit for the economic feasibility of the development; and

748 (iv) the extended period for which the development commits to remain as affordable
749 housing.

750 (4) (a) The following may apply to the Utah Housing Corporation for a tax credit under
751 this section:

752 (i) any housing sponsor that has received an allocation of the federal low-income
753 housing tax credit; or

754 (ii) any applicant for an allocation of the federal low-income housing tax credit.

755 (b) The Utah Housing Corporation may not require fees for applications of the tax
756 credit under this section in addition to those fees required for applications for the federal
757 low-income housing tax credit.

758 (5) (a) The Utah Housing Corporation shall determine the amount of the tax credit to
759 allocate to a qualifying housing sponsor in accordance with the qualified allocation plan of the
760 Utah Housing Corporation.

761 (b) (i) The Utah Housing Corporation shall allocate the tax credit to housing sponsors
762 by issuing an allocation certificate to qualifying housing sponsors.

763 (ii) The allocation certificate under Subsection (5)(b)(i) shall specify the allowed
764 percentage of the fixed federal low-income housing tax credit as determined by the Utah
765 Housing Corporation.

766 (c) The percentage specified in an allocation certificate may not exceed 100% of the
767 fixed federal low-income housing tax credit.

768 (6) A housing sponsor shall provide a copy of the allocation certificate to each taxpayer
769 that is issued a special low-income housing tax credit certificate.

770 (7) (a) A housing sponsor shall provide to the commission a list of:

771 (i) the taxpayers issued a special low-income housing tax credit certificate; and

772 (ii) for each taxpayer described in Subsection (7)(a)(i), the amount of tax credit listed
773 on the special low-income housing tax credit certificate.

774 (b) A housing sponsor shall provide the list required by Subsection (7)(a):

775 (i) to the commission;

776 (ii) on a form provided by the commission; and

777 (iii) with the housing sponsor's tax return for each taxable year for which the housing
778 sponsor issues a special low-income housing tax credit certificate described in this Subsection
779 (7).

780 (8) (a) All elections made by the taxpayer pursuant to Section 42, Internal Revenue
781 Code, shall apply to this section.

782 (b) (i) If a taxpayer is required to recapture a portion of any federal low-income
783 housing tax credit, the taxpayer shall also be required to recapture a portion of any state tax
784 credits authorized by this section.

785 (ii) The state recapture amount shall be equal to the percentage of the state tax credit
786 that equals the proportion the federal recapture amount bears to the original federal low-income
787 housing tax credit amount subject to recapture.

788 (9) (a) Any tax credits returned to the Utah Housing Corporation in any year may be
789 reallocated within the same time period as provided in Section 42, Internal Revenue Code.

790 (b) Tax credits that are unallocated by the Utah Housing Corporation in any year may
791 be carried over for allocation in the subsequent year.

792 (10) (a) Amounts otherwise qualifying for the tax credit, but not allowable because the
793 tax credit exceeds the tax, may be carried back three years or may be carried forward five years
794 as a credit against the tax.

795 (b) Carryover tax credits under Subsection (10)(a) shall be applied against the tax:

796 (i) before the application of the tax credits earned in the current year; and

797 (ii) on a first-earned first-used basis.

798 (11) Any tax credit taken in this section may be subject to an annual audit by the
799 commission.

800 (12) The Utah Housing Corporation shall provide an annual report to the Revenue and
801 Taxation Interim Committee which shall include at least:

802 (a) the purpose and effectiveness of the tax credits; and

803 (b) the benefits of the tax credits to the state.

804 (13) The commission may, in consultation with the Utah Housing Corporation,
805 promulgate rules to implement this section.

806 Section 13. Section **59-10-131** is amended to read:

807 **59-10-131. Credits for research activities conducted in the state -- Carry forward**
808 **-- Commission to report modification or repeal of federal credits -- Tax Review**
809 **Commission study.**

810 (1) (a) For taxable years beginning on or after January 1, 1999, but beginning before
811 December 31, 2010, a taxpayer meeting the requirements of this section shall qualify for the
812 following nonrefundable credits for increasing research activities in this state:

813 (i) a research credit of 6% of the taxpayer's qualified research expenses for the current
814 taxable year that exceed the base amount provided for under Subsection (4); and

815 (ii) a credit for payments to qualified organizations for basic research as provided in
816 Section 41(e), Internal Revenue Code, as amended and in effect on the date specified in Section
817 59-10-111.1, of 6% for the current taxable year that exceed the base amount provided for under
818 Subsection (4).

819 (b) If a taxpayer qualifying for a credit under Subsection (1)(a) seeks to claim the credit
820 the taxpayer shall:

821 (i) claim the credit or a portion of the credit for the taxable year immediately following
822 the taxable year for which the taxpayer qualifies for the credit;

823 (ii) carry the credit or a portion of the credit forward as provided in Subsection (4)(f);
824 or

825 (iii) claim a portion of the credit and carry forward a portion of the credit as provided
826 in Subsections (1)(b)(i) and (ii).

827 (c) The credits provided for in this section do not include the alternative incremental
828 credit provided for in Section 41(c)(4), Internal Revenue Code, as amended and in effect on the
829 date specified in Section 59-10-111.1.

830 (2) For purposes of claiming a credit under this section, a unitary group as defined in
831 Section 59-7-101 is considered to be one taxpayer.

832 (3) Except as specifically provided for in this section:

833 (a) the credits authorized under Subsection (1) shall be calculated as provided in

834 Section 41, Internal Revenue Code, as amended and in effect on the date specified in Section
835 59-10-111.1; and

836 (b) the definitions provided in Section 41, Internal Revenue Code, as amended and in
837 effect on the date specified in Section 59-10-111.1, apply in calculating the credits authorized
838 under Subsection (1).

839 (4) For purposes of this section:

840 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h),
841 Internal Revenue Code, as amended and in effect on the date specified in Section 59-10-111.1,
842 except that:

843 (i) the base amount does not include the calculation of the alternative incremental
844 credit provided for in Section 41(c)(4), Internal Revenue Code, as amended and in effect on the
845 date specified in Section 59-10-111.1;

846 (ii) a taxpayer's gross receipts include only those gross receipts attributable to sources
847 within this state as provided in Chapter 7, Part 3, Allocation and Apportionment of Income --
848 Utah UDITPA Provisions; and

849 (iii) notwithstanding Section 41(c), Internal Revenue Code, as amended and in effect
850 on the date specified in Section 59-10-111.1, for purposes of calculating the base amount, a
851 taxpayer:

852 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
853 regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II);
854 and

855 (B) may not revoke an election to be treated as a start-up company under Subsection
856 (4)(a)(iii)(A);

857 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, as
858 amended and in effect on the date specified in Section 59-10-111.1, except that the term
859 includes only basic research conducted in this state;

860 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, as
861 amended and in effect on the date specified in Section 59-10-111.1, except that the term
862 includes only qualified research conducted in this state;

863 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal
864 Revenue Code, as amended and in effect on the date specified in Section 59-10-111.1, except

865 that the term includes only those expenses incurred in conducting qualified research in this
866 state;

867 (e) notwithstanding the provisions of Section 41(h), Internal Revenue Code, as
868 amended and in effect on the date specified in Section 59-10-111.1, the credits provided for in
869 this section shall not terminate if the credits terminate under Section 41, Internal Revenue
870 Code, as amended and in effect on the date specified in Section 59-10-111.1; and

871 (f) notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code, as
872 amended and in effect on the date specified in Section 59-10-111.1, governing the carry
873 forward and carry back of federal tax credits, if the amount of a tax credit claimed by a
874 taxpayer under this section exceeds the taxpayer's tax liability under this chapter for a taxable
875 year, the amount of the credit exceeding the liability:

876 (i) may be carried forward for a period that does not exceed the next 14 taxable years;
877 and

878 (ii) may not be carried back to a taxable year preceding the current taxable year.

879 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
880 commission may make rules for purposes of this section prescribing a certification process for
881 qualified organizations to ensure that amounts paid to the qualified organizations are for basic
882 research conducted in this state.

883 (6) If a federal tax credit under Section 41, Internal Revenue Code, is modified or
884 repealed, the commission shall report the modification or repeal to the Tax Review
885 Commission within 60 days after the day on which the modification or repeal becomes
886 effective.

887 (7) (a) Except as provided in Subsection (7)(b), the Tax Review Commission shall
888 review the credits provided for in this section on or before the earlier of:

889 (i) October 1 of the year after the year in which the commission reports under
890 Subsection (6) a modification or repeal of a federal tax credit under Section 41, Internal
891 Revenue Code; or

892 (ii) October 1, 2004.

893 (b) Notwithstanding Subsection (7)(a), the Tax Review Commission is not required to
894 review the credits provided for in this section if the only modification to a federal tax credit
895 under Section 41, Internal Revenue Code, is the extension of the termination date provided for

896 in Section 41(h), Internal Revenue Code.

897 (c) The Tax Review Commission shall address in a review under this section the:

898 (i) cost of the credit;

899 (ii) purpose and effectiveness of the credit;

900 (iii) whether the credit benefits the state; and

901 (iv) whether the credit should be:

902 (A) continued;

903 (B) modified; or

904 (C) repealed.

905 (d) If the Tax Review Commission reviews the credits provided for in this section, the
906 Tax Review Commission shall report its findings to the Revenue and Taxation Interim
907 Committee on or before the November interim meeting of the year in which the Tax Review
908 Commission reviews the credits.

909 Section 14. Section **59-10-132** is amended to read:

910 **59-10-132. Credits for machinery, equipment, or both primarily used for**
911 **conducting qualified research or basic research -- Carry forward -- Commission to report**
912 **modification or repeal of federal credits -- Tax Review Commission study.**

913 (1) As used in this section:

914 (a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, as
915 amended and in effect on the date specified in Section 59-10-111.1, except that the term
916 includes only basic research conducted in this state.

917 (b) "Equipment" includes:

918 (i) computers;

919 (ii) computer equipment; and

920 (iii) computer software.

921 (c) "Purchase price":

922 (i) includes the cost of installing an item of machinery or equipment; and

923 (ii) does not include sales or use taxes imposed on an item of machinery or equipment.

924 (d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code,
925 as amended and in effect on the date specified in Section 59-10-111.1.

926 (e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, as

927 amended and in effect on the date specified in Section 59-10-111.1, except that the term
928 includes only qualified research conducted in this state.

929 (2) (a) Except as provided in Subsection (2)(c), for taxable years beginning on or after
930 January 1, 1999, but beginning before December 31, 2010, a taxpayer shall qualify for the
931 following nonrefundable credits for the taxable year in which the machinery, equipment, or
932 both, meets the requirements of either Subsection (2)(a)(i) or (2)(a)(ii):

933 (i) a credit of 6% of the purchase price of either machinery, equipment, or both:

934 (A) purchased by the taxpayer during the taxable year;

935 (B) that is not exempt from sales or use taxes; and

936 (C) that is primarily used to conduct qualified research in this state; and

937 (ii) a credit of 6% of the purchase price paid by the taxpayer for either machinery,
938 equipment, or both:

939 (A) purchased by the taxpayer during the taxable year;

940 (B) that is not exempt from sales or use taxes;

941 (C) that is donated to a qualified organization; and

942 (D) that is primarily used to conduct basic research in this state.

943 (b) If a taxpayer qualifying for a credit under Subsection (2)(a) seeks to claim the
944 credit, the taxpayer shall:

945 (i) claim the credit or a portion of the credit for the taxable year immediately following
946 the taxable year for which the taxpayer qualifies for the credit;

947 (ii) carry the credit or a portion of the credit forward as provided in Subsection (5);

948 (iii) claim a portion of the credit and carry forward a portion of the credit as provided
949 in Subsections (2)(b)(i) and (ii).

950 (c) Notwithstanding Subsection (2)(a), if a taxpayer qualifies for a credit under
951 Subsection (2)(a) for a purchase of machinery, equipment, or both, the taxpayer may not claim
952 the credit or carry the credit forward if the machinery, equipment, or both, is primarily used to
953 conduct qualified research in the state for a time period that is less than 12 consecutive months.

954 (3) For purposes of claiming a credit under this section, a unitary group as defined in
955 Section 59-7-101 is considered to be one taxpayer.

956 (4) Notwithstanding the provisions of Section 41(h), Internal Revenue Code, as
957 amended and in effect on the date specified in Section 59-10-111.1, the credits provided for in

958 this section shall not terminate if the credits terminate under Section 41, Internal Revenue
959 Code, as amended and in effect on the date specified in Section 59-10-111.1.

960 (5) Notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code,
961 as amended and in effect on the date specified in Section 59-10-111.1, governing the carry
962 forward and carry back of federal tax credits, if the amount of a tax credit claimed by a
963 taxpayer under this section exceeds a taxpayer's tax liability under this chapter for a taxable
964 year, the amount of the credit exceeding the liability:

965 (a) may be carried forward for a period that does not exceed the next 14 taxable years;
966 and

967 (b) may not be carried back to a taxable year preceding the current taxable year.

968 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
969 commission may make rules for purposes of this section prescribing a certification process for
970 qualified organizations to ensure that either machinery, equipment, or both provided to the
971 qualified organization is to be primarily used to conduct basic research in this state.

972 (7) If a federal tax credit under Section 41, Internal Revenue Code, is modified or
973 repealed, the commission shall report the modification or repeal to the Tax Review
974 Commission within 60 days after the day on which the modification or repeal becomes
975 effective.

976 (8) (a) Except as provided in Subsection (8)(b), the Tax Review Commission shall
977 review the credits provided for in this section on or before the earlier of:

978 (i) October 1 of the year after the year in which the commission reports under
979 Subsection (7) a modification or repeal of a federal tax credit under Section 41, Internal
980 Revenue Code; or

981 (ii) October 1, 2004.

982 (b) Notwithstanding Subsection (8)(a), the Tax Review Commission is not required to
983 review the credits provided for in this section if the only modification to a federal tax credit
984 under Section 41, Internal Revenue Code, is the extension of the termination date provided for
985 in Section 41(h), Internal Revenue Code.

986 (c) The Tax Review Commission shall address in a review under this section the:

987 (i) cost of the credit;

988 (ii) purpose and effectiveness of the credit;

989 (iii) whether the credit benefits the state; and

990 (iv) whether the credit should be:

991 (A) continued;

992 (B) modified; or

993 (C) repealed.

994 (d) If the Tax Review Commission reviews the credits provided for in this section, the

995 Tax Review Commission shall report its findings to the Revenue and Taxation Interim

996 Committee on or before the November interim meeting of the year in which the Tax Review

997 Commission reviews the credits.

998 Section 15. Section **59-10-201.1** is amended to read:

999 **59-10-201.1. State taxable income of resident estate or trust defined.**

1000 The state taxable income of a resident estate or trust means its fixed federal taxable
1001 income as defined in Subsections (a) and (b), Section 641, Internal Revenue Code, as amended
1002 and in effect on the date specified in Section 59-10-111.1, as adjusted by Sections 59-10-202
1003 and 59-10-209.

1004 Section 16. Section **59-10-202** is amended to read:

1005 **59-10-202. Additions to and subtractions from state taxable income of resident or**
1006 **nonresident estate or trust.**

1007 (1) There shall be added to fixed federal taxable income of a resident or nonresident
1008 estate or trust:

1009 (a) the amount of any income tax imposed by this or any predecessor Utah individual
1010 income tax law and the amount of any income tax imposed by the laws of another state, the
1011 District of Columbia, or a possession of the United States, to the extent deducted from fixed
1012 federal adjusted total income [~~as defined in Section 62, Internal Revenue Code,~~] in determining
1013 fixed federal taxable income;

1014 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) [~~of the~~],
1015 Internal Revenue Code, as amended and in effect on the date specified in Section 59-10-111.1,
1016 to the extent deductible under Section 62(a)(8) [~~of the~~], Internal Revenue Code, as amended
1017 and in effect on the date specified in Section 59-10-111.1, in determining fixed federal adjusted
1018 gross income; and

1019 (c) the amount of any gain as defined in Section 644(b) [~~of the~~], Internal Revenue

1020 Code, as amended and in effect on the date specified in Section 59-10-111.1, to the extent
1021 deductible under Section 641(c) [~~of the~~], Internal Revenue Code, as amended and in effect on
1022 the date specified in Section 59-10-111.1, in determining the fixed federal taxable income of a
1023 trust.

1024 (2) There shall be subtracted from fixed federal taxable income of a resident or
1025 nonresident estate or trust:

1026 (a) the interest or dividends on obligations or securities of the United States and its
1027 possessions or of any authority, commission, or instrumentality of the United States, to the
1028 extent includable in fixed federal adjusted gross income for federal income tax purposes but
1029 exempt from state income taxes under the laws of the United States, but the amount subtracted
1030 under this Subsection (2) shall be reduced by any interest on indebtedness incurred or
1031 continued to purchase or carry the obligations or securities described in this Subsection (2), and
1032 by any expenses incurred in the production of interest or dividend income described in this
1033 Subsection (2) to the extent that such expenses, including amortizable bond premiums, are
1034 deductible in determining fixed federal taxable income;

1035 (b) 1/2 of the net amount of any income tax paid or payable to the United States after
1036 all allowable fixed federal tax credits, as per the United States fiduciary income tax return of
1037 the taxpayer for the same taxable year; and

1038 (c) income of an irrevocable resident trust if:

1039 (i) the income would not be treated as state taxable income derived from Utah sources
1040 under Section 59-10-204 if received by a nonresident trust;

1041 (ii) the trust first became a resident trust on or after January 1, 2004;

1042 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
1043 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

1044 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

1045 (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor
1046 or any other person is treated as an owner of any portion of the trust under Subtitle A,
1047 Subchapter J, Subpart E of the Internal Revenue Code; and

1048 (vi) the amount subtracted under this Subsection (2) is reduced by any interest on
1049 indebtedness incurred or continued to purchase or carry the assets generating the income
1050 described in this Subsection (2), and by any expenses incurred in the production of income

1051 described in this Subsection (2), to the extent that those expenses, including amortizable bond
1052 premiums, are deductible in determining federal taxable income.

1053 Section 17. Section **59-10-204** is amended to read:

1054 **59-10-204. State taxable income of nonresident estate or trust defined.**

1055 The state taxable income of a nonresident estate or trust shall be its fixed federal
1056 taxable income as defined in Section 59-10-201.1, derived from Utah sources determined in
1057 accordance with the principles of Section 59-10-117, and adjusted as provided in Section
1058 59-10-207.

1059 Section 18. Section **59-10-303** is amended to read:

1060 **59-10-303. Nonresident's share of partnership income.**

1061 (1) In determining the fixed federal adjusted gross income of a nonresident partner of
1062 any partnership, there shall be included only that part derived from or connected with sources
1063 in this state of the partner's distributive share of items of partnership income, gain, loss, and
1064 deduction entering into [~~his~~] the partner's fixed federal adjusted gross income, as such part is
1065 determined under rules prescribed by the commission in accordance with the general rules in
1066 Section 59-10-116.

1067 (2) In determining the sources of a nonresident partner's income, no effect shall be
1068 given to a provision in the partnership agreement which:

1069 (a) characterizes payments to the partner as being for services or for the use of capital,
1070 or allocates to the partner, as income or gain from sources outside this state, a greater
1071 proportion of his distributive share of partnership income or gain than the ratio of partnership
1072 income or gain from sources outside this state to partnership income or gain from all sources,
1073 except as authorized in Subsection (4);

1074 (b) allocates to the partner a greater proportion of a partnership item of loss or
1075 deduction connected with sources in this state than [~~his~~] the partner's proportionate share, for
1076 federal income tax purposes, pursuant to the Internal Revenue Code, as amended and in effect
1077 on the date specified in Section 59-10-111.1, of partnership loss or deduction generally, except
1078 as authorized in Subsection (4).

1079 (3) Any modification described in Section 59-10-114 that relates to an item of
1080 partnership income, gain, loss, or deduction, shall be made in accordance with the partner's
1081 distributive share for federal income tax purposes, pursuant to the Internal Revenue Code, as

1082 amended and in effect on the date specified in Section 59-10-111.1, of the item to which the
1083 modification relates, but limited to the portion of such item derived from or connected with
1084 sources in this state.

1085 (4) The commission may, on application, authorize the use of such other methods of
1086 determining a nonresident partner's portion of partnership items derived from or connected
1087 with sources in this state, and the modifications related thereto, as may be appropriate and
1088 equitable, on such terms and conditions as it may require.

1089 (5) A nonresident partner's distributive share of items of income, gain, loss, or
1090 deduction shall be determined under Subsection 59-10-302(2). The character of partnership
1091 items for a nonresident partner shall also be determined under Subsection 59-10-302(1).

1092 Section 19. Section **59-10-529** is amended to read:

1093 **59-10-529. Overpayment of tax -- Credits -- Refunds.**

1094 (1) In cases where there has been an overpayment of any tax imposed by this chapter,
1095 the amount of overpayment is credited as follows:

1096 (a) against any income tax then due from the taxpayer;

1097 (b) against:

1098 (i) the amount of any judgment against the taxpayer, including one ordering the
1099 payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime Victims

1100 Restitution Act, obtained through due process of law by any entity of state government; or

1101 (ii) any child support obligation which is due or past due, as determined by the Office
1102 of Recovery Services in the Department of Human Services and after notice and an opportunity
1103 for an adjudicative proceeding, as provided in Subsection (2); or

1104 (c) as bail, to ensure the appearance of the taxpayer before the appropriate authority to
1105 resolve an outstanding warrant against the taxpayer for which bail is due, if a court of
1106 competent jurisdiction has not approved an alternative form of payment. This bail may be
1107 applied to any fine or forfeiture which is due and related to a warrant which is outstanding on
1108 or after February 16, 1984, and in accordance with Subsections (3) and (4).

1109 (2) (a) Subsection (1)(b)(ii) may be exercised only if the Office of Recovery Services
1110 has sent written notice to the taxpayer's last-known address or the address on file under Section
1111 62A-11-304.4, stating:

1112 (i) the amount of child support that is due or past due as of the date of the notice or

1113 other specified date;

1114 (ii) that any overpayment shall be applied to reduce the amount of due or past-due child
1115 support specified in the notice; and

1116 (iii) that the taxpayer may contest the amount of past-due child support specified in the
1117 notice by filing a written request for an adjudicative proceeding with the office within 15 days
1118 of the notice being sent.

1119 (b) The Office of Recovery Services shall establish rules to implement this Subsection
1120 (2), including procedures, in accordance with the other provisions of this section, to ensure
1121 prompt reimbursement to the taxpayer of any amount of an overpayment of taxes which was
1122 credited against a child support obligation in error, and to ensure prompt distribution of
1123 properly credited funds to the obligee parent.

1124 (3) Subsection (1)(c) may be exercised only if:

1125 (a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail,
1126 appear, or otherwise satisfy the terms of a citation, summons, or court order; and

1127 (b) a notice of intent to apply the overpayment as bail on the issued warrant has been
1128 sent to the person's current address on file with the commission.

1129 (4) (a) The commission shall deliver the overpayment applied as bail to the court that
1130 issued the warrant of arrest. The clerk of the court is authorized to endorse the check or
1131 commission warrant of payment on behalf of the payees and deposit the monies in the court
1132 treasury.

1133 (b) The court receiving the overpayment applied as bail shall order withdrawal of the
1134 warrant for arrest of the taxpayer if the case is one for which a personal appearance of the
1135 taxpayer is not required and if the dollar amount of the overpayment represents the full dollar
1136 amount of bail. In all other cases, the court receiving the overpayment applied as bail is not
1137 required to order the withdrawal of the warrant of arrest of the taxpayer during the 40-day
1138 period, and the taxpayer may be arrested on the warrant. However, the bail amount shall be
1139 reduced by the amount of tax overpayment received by the court.

1140 (c) If the taxpayer fails to respond to the notice described in Subsection (3), or to
1141 resolve the warrant within 40 days after the notice was sent under that subsection, the
1142 overpayment applied as bail is forfeited and notice of the forfeiture shall be mailed to the
1143 taxpayer at the current address on file with the commission. The court may then issue another

1144 warrant or allow the original warrant to remain in force if:

1145 (i) the taxpayer has not complied with an order of the court;

1146 (ii) the taxpayer has failed to appear and respond to a criminal charge for which a
1147 personal appearance is required; or

1148 (iii) the taxpayer has paid partial but not full bail in a case for which a personal
1149 appearance is not required.

1150 (5) If the alleged violations named in the warrant are later resolved in favor of the
1151 taxpayer, the bail amount shall be remitted to the taxpayer.

1152 (6) Any balance shall be refunded immediately to the taxpayer.

1153 (7) (a) If a refund or credit is due because the amount of tax deducted and withheld
1154 from wages exceeds the actual tax due, a refund or credit may not be made or allowed unless
1155 the taxpayer or his legal representative files with the commission a tax return claiming the
1156 refund or credit:

1157 (i) within three years from the due date of the return, plus the period of any extension
1158 of time for filing the return provided for in Subsection (7)(c); or

1159 (ii) within two years from the date the tax was paid, whichever period is later.

1160 (b) Except as provided in Subsection (7)(d), in other instances where a refund or credit
1161 of tax which has not been deducted and withheld from income is due, a credit or refund may
1162 not be allowed or made after three years from the time the tax was paid, unless, before the
1163 expiration of the period, a claim is filed by the taxpayer or his legal representative.

1164 (c) Beginning on July 1, 1998, the commission shall extend the period for a taxpayer to
1165 file a claim under Subsection (7)(a)(i) if:

1166 (i) the time period for filing a claim under Subsection (7)(a) has not expired; and

1167 (ii) the commission and the taxpayer sign a written agreement:

1168 (A) authorizing the extension; and

1169 (B) providing for the length of the extension.

1170 (d) Notwithstanding Subsection (7)(b), beginning on July 1, 1998, the commission
1171 shall extend the period for a taxpayer to file a claim under Subsection (7)(b) if:

1172 (i) the three-year period under Subsection (7)(b) has not expired; and

1173 (ii) the commission and the taxpayer sign a written agreement:

1174 (A) authorizing the extension; and

- 1175 (B) providing for the length of the extension.
- 1176 (8) The fine and bail forfeiture provisions of this section apply to all warrants and fines
1177 issued in cases charging the taxpayer with a felony, a misdemeanor, or an infraction described
1178 in this section which are outstanding on or after February 16, 1984.
- 1179 (9) If the amount allowable as a credit for tax withheld from the taxpayer exceeds the
1180 tax to which the credit relates, the excess is considered an overpayment.
- 1181 (10) A claim for credit or refund of an overpayment which is attributable to the
1182 application to the taxpayer of a net operating loss carryback shall be filed within three years
1183 from the time the return was due for the taxable year of the loss.
- 1184 (11) If there has been an overpayment of the tax which is required to be deducted and
1185 withheld under Section 59-10-402, a refund shall be made to the employer only to the extent
1186 that the amount of overpayment was not deducted and withheld by the employer.
- 1187 (12) If there is no tax liability for a period in which an amount is paid as income tax,
1188 the amount is an overpayment.
- 1189 (13) If an income tax is assessed or collected after the expiration of the applicable
1190 period of limitation, that amount is an overpayment.
- 1191 (14) (a) If a taxpayer is required to report a change or correction in federal taxable
1192 income reported on [his] the taxpayer's federal income tax return that changes the taxpayer's
1193 fixed federal taxable income, or to report a change or correction which is treated in the same
1194 manner as if it were an overpayment for federal income tax purposes, or to file an amended
1195 return with the commission, a claim for credit or refund of any resulting overpayment of tax
1196 shall be filed by the taxpayer within two years from the date the notice of the change,
1197 correction, or amended return was required to be filed with the commission.
- 1198 (b) If the report or amended return is not filed within 90 days, interest on any resulting
1199 refund or credit ceases to accrue after the 90-day period.
- 1200 (c) The amount of the credit or refund may not exceed the amount of the reduction in
1201 tax attributable to the federal change, correction, or items amended on the taxpayer's amended
1202 federal income tax return.
- 1203 (d) Except as specifically provided, this section does not affect the amount or the time
1204 within which a claim for credit or refund may be filed.
- 1205 (15) No credit or refund may be allowed or made if the overpayment is less than \$1.

1206 (16) The amount of the credit or refund may not exceed the tax paid during the three
1207 years immediately preceding the filing of the claim, or if no claim is filed, then during the three
1208 years immediately preceding the allowance of the credit or refund.

1209 (17) In the case of an overpayment of tax by the employer under the withholding
1210 provisions of this chapter, a refund or credit shall be made to the employer only to the extent
1211 that the amount of the overpayment was not deducted and withheld from wages under the
1212 provisions of this chapter.

1213 (18) If a taxpayer who is entitled to a refund under this chapter dies, the commission
1214 may make payment to the duly appointed executor or administrator of the taxpayer's estate. If
1215 there is no executor or administrator, payment may be made to those persons who establish
1216 entitlement to inherit the property of the decedent in the proportions set out in Title 75, Utah
1217 Uniform Probate Code.

1218 (19) Where an overpayment relates to adjustments to net income referred to in
1219 Subsection 59-10-536(3)(c), credit may be allowed or a refund paid any time before the
1220 expiration of the period within which a deficiency may be assessed.

1221 (20) An overpayment of a tax imposed by this chapter shall accrue interest at the rate
1222 and in the manner prescribed in Section 59-1-402.

1223 Section 20. Section **59-10-536** is amended to read:

1224 **59-10-536. Limitations on assessment and collection.**

1225 (1) Except as otherwise provided in this section, the amount of any tax imposed by this
1226 chapter shall be assessed within three years after the return was filed (whether or not such
1227 return was filed on or after the date prescribed), and no proceeding in court without assessment
1228 for the collection of such tax shall be begun after the expiration of such period.

1229 (2) For purposes of this section:

1230 (a) A return of tax imposed by this chapter, except withholding tax, filed before the last
1231 day prescribed by statute or by rules promulgated pursuant to statute for the filing thereof, shall
1232 be deemed to be filed on such last day.

1233 (b) If a return of withholding tax for any period ending with or within a calendar year is
1234 filed before April 15 of the succeeding calendar year, such return shall be deemed to be filed on
1235 April 15 of such succeeding calendar year.

1236 (3) The tax may be assessed at any time if:

- 1237 (a) no return is filed;
- 1238 (b) a false or fraudulent return is filed with intent to evade tax; or
- 1239 (c) a return for the taxpayer is prepared by the commission in accordance with Section
1240 59-10-506.
- 1241 (4) If, before the expiration of the time prescribed in this section for the assessment of
1242 tax, both the commission and the taxpayer have consented in writing to its assessment after
1243 such time, the tax may be assessed at any time prior to the expiration of the period agreed upon.
1244 The period so agreed upon may be extended by subsequent agreements in writing made before
1245 the expiration of the period previously agreed upon.
- 1246 (5) (a) If a change is made in a taxpayer's net income on his or her federal income tax
1247 return, either because the taxpayer has filed an amended return or because of an action by the
1248 federal government, the taxpayer must notify the commission within 90 days after the final
1249 determination of such change. The taxpayer shall file a copy of the amended federal return and
1250 an amended state return which conforms to the changes on the federal return. No notification
1251 is required of changes in the taxpayer's federal income tax return which do not affect state tax
1252 liability.
- 1253 (b) The commission may assess any deficiency in state income taxes within three years
1254 after such report or amended return was filed. The amount of such assessment of tax shall not
1255 exceed the amount of the increase in Utah tax attributable to such federal change or correction.
1256 The provisions of this Subsection (5)(b) do not affect the time within which or the amount for
1257 which an assessment may otherwise be made. However, if the taxpayer fails to report to the
1258 commission the correction specified in this Subsection (5)(b) the assessment may be made at
1259 any time within six years after the date of said correction.
- 1260 (6) If a deficiency in federal income tax required to be reported is attributable to the
1261 application to the taxpayer of a net operating loss carryback within the meaning of Section
1262 6501(h) of the Internal Revenue Code, the corresponding deficiency in the tax imposed by this
1263 chapter may be assessed at any time before the expiration of the period within which a
1264 deficiency for the taxable year of the net operating loss giving rise to the carryback may be
1265 assessed.
- 1266 (7) An erroneous refund shall be considered an underpayment of tax on the date made,
1267 and an assessment of a deficiency arising out of an erroneous refund may be made at any time

1268 within three years from the time the refund was made, except that the assessment may be made
1269 within five years from the time the refund was made if it appears that any part of the refund
1270 was induced by fraud or misrepresentation of a material fact.

1271 (8) If a return is required for a decedent or for his estate during the period of
1272 administration, the tax shall be assessed within 18 months after written request therefor (made
1273 after the return is filed) by the executor, administrator, or other person representing the estate
1274 of such decedent, but not more than three years after the time the return was filed, except as
1275 otherwise provided in Subsections (3) through (9).

1276 (9) The amount of any tax imposed by this chapter may be assessed at any time within
1277 six years after the time the return was filed if:

1278 (a) a resident individual, estate, or trust omits from fixed federal adjusted gross income
1279 [~~as reported for federal income tax purposes~~] an amount properly includable therein which is in
1280 excess of 25% of the amount of fixed federal adjusted gross income stated in the return; or

1281 (b) a nonresident individual, estate, or trust omits from fixed federal adjusted gross
1282 income as reported for federal income tax purposes an amount of fixed federal adjusted gross
1283 income derived from Utah sources as defined by Section 59-10-117, properly includable
1284 therein, which is in excess of 25% of the amount of fixed federal adjusted gross income
1285 derived from Utah sources which is reflected in such return. For the purposes of this
1286 Subsection (9)(b) there may not be taken into account any amount which is omitted in the
1287 return if such amount is disclosed in the return, or in a statement attached to the return, in a
1288 manner adequate to apprise the commission of the nature and amount of such item.

1289 (10) The running of the period of limitations on assessments or collection of tax or
1290 other amount [~~or of a transferee's liability~~] shall, after the mailing of a notice of deficiency,
1291 be suspended for the period during which the commission is prohibited from making the
1292 assessment or from collecting by levy.

1293 Section 21. Section **59-10-543** is amended to read:

1294 **59-10-543. Burden of proof.**

1295 In any proceeding before the commission under this chapter, the burden of proof shall
1296 be upon the petitioner except for the following issues, as to which the burden of proof shall be
1297 upon the commission:

1298 (1) whether the petitioner has been guilty of fraud with intent to evade tax;

1299 (2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to
1300 show that the taxpayer was liable for the tax; and

1301 (3) whether the petitioner is liable for any increase in a deficiency where such increase
1302 is asserted initially after a notice of deficiency was mailed and a petition under [~~Title 59,~~
1303 Chapter 1, Part 5, Petitions for Redetermination of Deficiencies, is filed, unless such increase
1304 in deficiency is the result of a change or correction of fixed federal taxable income required to
1305 be reported, and of which change or correction the commission had no notice at the time it
1306 mailed the notice of deficiency.

1307 Section 22. **Retrospective operation.**

1308 This bills has retrospective operation for taxable years beginning on or after January 1,
1309 2004.

Legislative Review Note

as of 11-13-03 1:56 PM

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

Office of Legislative Research and General Counsel

Interim Committee Note

as of 12-10-03 12:02 PM

The Revenue and Taxation Interim Committee recommended this bill.