

TAX REVISIONS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends the Individual Income Tax Act to modify a subtraction from federal taxable income for capital gain.

Highlighted Provisions:

This bill:

- ▶ repeals definitions;
- ▶ modifies a subtraction from federal taxable income for capital gain to allow the subtraction for long-term capital gain; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for taxable years beginning on or after January 1, 2005.

Utah Code Sections Affected:

AMENDS:

59-10-103, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session

59-10-114, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session

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

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



28 **59-10-103. Definitions.**

29 (1) As used in this chapter:

30 (a) "Adoption expenses" means:

31 (i) any actual medical and hospital expenses of the mother of the adopted child which

32 are incident to the child's birth;

33 (ii) any welfare agency fees or costs;

34 (iii) any child placement service fees or costs;

35 (iv) any legal fees or costs; or

36 (v) any other fees or costs relating to an adoption.

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

38 (i) is 18 years of age or older;

39 (ii) is eligible for services under Title 62A, Chapter 5, Services [to] for People with

40 Disabilities; and

41 (iii) is not enrolled in:

42 (A) an education program for students with disabilities that is authorized under Section

43 53A-15-301; or

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

45 (c) (i) For purposes of Subsection 59-10-114(2)(m), "capital gain transaction" means a

46 transaction that results in a [~~:(A) short-term capital gain; or (B)~~] long-term capital gain.

47 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

48 the commission may by rule define the term "transaction."

49 [~~(d) "Commercial domicile" means the principal place from which the trade or business~~50 ~~of a Utah small business corporation is directed or managed.]~~51 [~~(e)~~] (d) "Corporation" includes:

52 (i) associations;

53 (ii) joint stock companies; and

54 (iii) insurance companies.

55 [~~(f)~~] (e) "Dependent child with a disability" means an individual 21 years of age or

56 younger who:

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

58 Board of Education as having a disability classified as:

- 59 (I) autism;
- 60 (II) deafness;
- 61 (III) preschool developmental delay;
- 62 (IV) dual sensory impairment;
- 63 (V) hearing impairment;
- 64 (VI) intellectual disability;
- 65 (VII) multidisability;
- 66 (VIII) orthopedic impairment;
- 67 (IX) other health impairment;
- 68 (X) traumatic brain injury; or
- 69 (XI) visual impairment;
- 70 (B) is not receiving residential services from:
 - 71 (I) the Division of Services for People with Disabilities created under Section
 - 72 62A-5-102; or
 - 73 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
 - 74 and
 - 75 (C) is enrolled in:
 - 76 (I) an education program for students with disabilities that is authorized under Section
 - 77 53A-15-301; or
 - 78 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
 - 79 or
 - 80 (ii) is identified under guidelines of the Department of Health as qualified for:
 - 81 (A) Early Intervention; or
 - 82 (B) Infant Development Services.
- 83 [~~(g)~~] (f) "Employee" is as defined in Section 59-10-401.
- 84 [~~(h)~~] (g) "Employer" is as defined in Section 59-10-401.
- 85 [~~(i)~~] (h) "Fiduciary" means:
 - 86 (i) a guardian;
 - 87 (ii) a trustee;
 - 88 (iii) an executor;
 - 89 (iv) an administrator;

90 (v) a receiver;

91 (vi) a conservator; or

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

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

96 ~~[(k)]~~ (j) "Individual" means a natural person and includes aliens and minors.

97 ~~[(h)]~~ (k) "Irrevocable trust" means a trust in which the settlor may not revoke or
98 terminate all or part of the trust without the consent of a person who has a substantial beneficial
99 interest in the trust and the interest would be adversely affected by the exercise of the settlor's
100 power to revoke or terminate all or part of the trust.

101 ~~[(m)]~~ (l) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as
102 defined in Section 1222, Internal Revenue Code.

103 ~~[(n)]~~ (m) "Nonresident individual" means an individual who is not a resident of this
104 state.

105 ~~[(o)]~~ (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not
106 a resident estate or trust.

107 ~~[(p)]~~ (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
108 unincorporated organization:

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

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

112 (I) a trust;

113 (II) an estate; or

114 (III) a corporation.

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

117 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
118 organization described in Subsection (1)~~[(p)]~~~~[(o)]~~(i).

119 ~~[(q)]~~ (p) "Qualifying military service" means:

120 (i) in the case of a member of The Army Reserve, The Naval Reserve, The Air Force

121 Reserve, The Marine Corps Reserve, or The Coast Guard Reserve, active duty in accordance
122 with an order received under:

- 123 (A) 10 U.S.C. Sec. 12301;
- 124 (B) 10 U.S.C. Sec. 12302;
- 125 (C) 10 U.S.C. Sec. 12303; or
- 126 (D) 10 U.S.C. Sec. 12304; or

127 (ii) in the case of a member of The Army National Guard of the United States or The
128 Air National Guard of the United States:

129 (A) active duty in accordance with an order received under:

- 130 (I) 10 U.S.C. Sec. 12301;
- 131 (II) 10 U.S.C. Sec. 12302;
- 132 (III) 10 U.S.C. Sec. 12303; or
- 133 (IV) 10 U.S.C. Sec. 12304; or

134 (B) service under a call to active service:

135 (I) authorized by the:

136 (Aa) President of the United States; or

137 (Bb) Secretary of Defense of the United States;

138 (II) for a period of more than 30 consecutive days;

139 (III) in accordance with an order received under 32 U.S.C. Sec. 502(f); and

140 (IV) for purposes of responding to a national emergency:

141 (Aa) declared by the President of the United States; and

142 (Bb) supported by federal funds.

143 [~~(r) "Qualifying stock" means stock that is:~~]

144 [~~(i) (A) common; or~~]

145 [~~(B) preferred;~~]

146 [~~(ii) as defined by the commission by rule, originally issued to:~~]

147 [~~(A) a resident or nonresident individual; or~~]

148 [~~(B) a partnership if the resident or nonresident individual making a subtraction from
149 federal taxable income in accordance with Subsection 59-10-114(2)(m):]~~]

150 [~~(f) was a partner when the stock was issued; and~~]

151 [~~(H) remains a partner until the last day of the taxable year for which the resident or~~]

152 nonresident individual makes the subtraction from federal taxable income in accordance with
 153 Subsection 59-10-114(2)(m); and]

154 [~~(iii) issued;~~]

155 [~~(A) by a Utah small business corporation;~~]

156 [~~(B) on or after January 1, 2003; and]~~

157 [~~(C) for;~~]

158 [~~(D) money; or]~~

159 [~~(H) other property, except for stock or securities.]~~

160 [~~(s)] (q) (i) "Resident individual" means:~~

161 (A) an individual who is domiciled in this state for any period of time during the
 162 taxable year, but only for the duration of the period during which the individual is domiciled in
 163 this state; or

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

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

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

167 (ii) For purposes of Subsection (1)[~~(s)] (q)(i)(B), a fraction of a calendar day shall be
 168 counted as a whole day.~~

169 [~~(t)] (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.~~

170 [~~(u) For purposes of Subsection 59-10-114(2)(m), "short-term capital gain" is as
 171 defined in Section 1222, Internal Revenue Code.]~~

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

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

176 [~~(x)] (u) "Uintah and Ouray Reservation" means the lands recognized as being included
 177 within the Uintah and Ouray Reservation in:~~

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

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

180 [~~(y) (i) "Utah small business corporation" means a corporation that:]~~

181 [~~(A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
 182 Code;]~~

183 ~~[(B) except as provided in Subsection (1)(y)(ii), meets the requirements of Section~~
184 ~~1244(c)(1)(C), Internal Revenue Code, and]~~

185 ~~[(C) has its commercial domicile in this state.]~~

186 ~~[(ii) Notwithstanding Subsection (1)(y)(i)(B), the time period described in Section~~
187 ~~1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a~~
188 ~~corporation's aggregate gross receipts shall end on the last day of the taxable year for which the~~
189 ~~resident or nonresident individual makes a subtraction from federal taxable income in~~
190 ~~accordance with Subsection 59-10-114(2)(m).]~~

191 ~~[(z)]~~ (v) "Ute tribal member" means a person who is enrolled as a member of the Ute
192 Indian Tribe of the Uintah and Ouray Reservation.

193 ~~[(aa)]~~ (w) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

194 ~~[(bb)]~~ (x) "Wages" is as defined in Section 59-10-401.

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

198 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
199 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
200 federal income taxes that are in effect for the taxable year.

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

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

206 **59-10-114. Additions to and subtractions from federal taxable income of an**
207 **individual.**

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

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

214 taxable income;

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

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

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

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

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

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

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

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

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

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

236 (i) a state other than this state;

237 (ii) the District of Columbia;

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

239 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
240 (iii);

241 (h) any distribution received by a resident beneficiary of a resident trust of income that
242 was taxed at the trust level for federal tax purposes, but was subtracted from state taxable
243 income of the trust pursuant to Subsection 59-10-202(2)(c); and

244 (i) any distribution received by a resident beneficiary of a nonresident trust of income

245 that was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by
246 any state.

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

249 (a) the interest or dividends on obligations or securities of the United States and its
250 possessions or of any authority, commission, or instrumentality of the United States, to the
251 extent includable in gross income for federal income tax purposes but exempt from state
252 income taxes under the laws of the United States, but the amount subtracted under this
253 Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to
254 purchase or carry the obligations or securities described in this Subsection (2)(a), and by any
255 expenses incurred in the production of interest or dividend income described in this Subsection
256 (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in
257 determining federal taxable income;

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

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

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

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

271 (A) paid; or

272 (B) incurred;

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

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

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

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

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

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

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

294 (i) for:

295 (A) the taxpayer;

296 (B) the taxpayer's spouse; and

297 (C) the taxpayer's dependents; and

298 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
299 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

300 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a
301 contribution made during the taxable year on behalf of the taxpayer to a medical care savings
302 account and interest earned on a contribution to a medical care savings account established
303 pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the
304 contribution is accepted by the account administrator as provided in the Medical Care Savings
305 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal
306 individual income tax return pursuant to Section 220, Internal Revenue Code; and

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

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

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

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

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

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

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

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

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

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

332 (m) ~~[(†)]~~ for taxable years beginning on or after January 1, ~~[2003]~~ 2005, the total
333 amount of a resident or nonresident individual's ~~[short-term capital gain or]~~ long-term capital
334 gain on a capital gain transaction~~[-(A)]~~ that occurs on or after January 1, ~~[2003]~~ 2005; and

335 ~~[(B) if 70% or more of the gross proceeds of the capital gain transaction are expended:]~~

336 ~~[(F) to purchase qualifying stock in a Utah small business corporation; and]~~

337 ~~[(H) within a 12-month period after the day on which the capital gain transaction~~

338 occurs; and]

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

342 [~~(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
343 ~~the commission may make rules:]~~

344 [~~(A) defining the term "gross proceeds"; and]~~

345 [~~(B) for purposes of Subsection (2)(m)(i)(C), prescribing the circumstances under~~
346 ~~which a resident or nonresident individual has an ownership interest in a Utah small business~~
347 ~~corporation; and]~~

348 (n) (i) except as provided in Subsection (2)(n)(ii), for the taxable year beginning on or
349 after January 1, 2004, but beginning on or before December 31, 2004, income a resident or
350 nonresident individual receives:

351 (A) for qualifying military service; and

352 (B) to the extent that income is included in adjusted gross income on that resident or
353 nonresident individual's federal individual income tax return for that taxable year;

354 (ii) notwithstanding Subsection (2)(n)(i), a subtraction from federal taxable income is
355 not allowed under Subsection (2)(n)(i) for income included in adjusted gross income on a
356 resident or nonresident individual's federal individual income tax return for that taxable year if
357 that income is received from a source that constitutes a:

358 (A) pension; or

359 (B) survivor benefit; and

360 (iii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
361 for purposes of Subsections (1)(n)(i) and (ii), the commission may by rule define what
362 constitutes income:

363 (A) a resident or nonresident individual receives for qualifying military service; or

364 (B) received from a source that constitutes a:

365 (I) pension; or

366 (II) survivor benefit.

367 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
368 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or

369 \$4,800, except that:

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

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

376 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
377 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
378 reduced by 50 cents.

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

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

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

387 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
388 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

399 (i) for an amount that is reimbursed or funded in whole or in part by the federal

400 government, the state, or an agency or instrumentality of the federal government or the state;
401 and

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

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

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

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

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

409 (i) may not:

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

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

412 subtraction described in Subsection (2)(1); or

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

414 (ii) shall:

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

416 (B) be in writing;

417 (C) be signed by:

418 (I) the governor; and

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

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

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

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

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

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

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

431 Ouray Reservation; and

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

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

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

437 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
438 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
439 2000 Form 8814 if for purposes of federal individual income taxes the information contained
440 on 2000 Form 8814 is reported on a form other than Form 8814; and

441 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
442 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
443 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
444 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
445 8814.

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

448 (i) the lesser of:

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

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

451 (I) the child's taxable interest;

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

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

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

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

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

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

465 (i) the entity; or

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

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

468 **Section 3. Retrospective operation.**

469 This bill has retrospective operation for taxable years beginning on or after January 1,

470 2005.

Legislative Review Note

as of 2-3-05 11:33 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Passage of this bill could result in a loss to the Uniform School Fund of \$125,000,000 in FY 2006 and a loss of \$130,000,000 in FY 2007.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Uniform School Fund	\$0	\$0	(\$125,000,000)	(\$130,000,000)
TOTAL	\$0	\$0	(\$125,000,000)	(\$130,000,000)

Individual and Business Impact

Individual impacts will be dependent upon the capital gains claimed any given year.

Office of the Legislative Fiscal Analyst